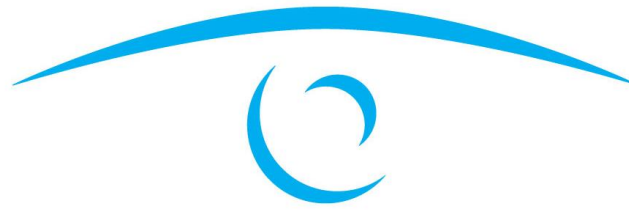


# Требования к дистрибьюторам и сервисам видео по запросу по участию в кинопроизводстве в Европе

- Майя Каппелло, руководитель департамента юридической информации Европейской аудиовизуальной обсерватории



# Legal obligations for on-demand providers to contribute to the promotion of audiovisual works

Maja Cappello

*Head of Department for Legal Information*

*European Audiovisual Observatory*

**Workshop on “The film industry in the Russian federation and in other European countries” - Moscow, 2 December 2014**

OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL  
EUROPEAN AUDIOVISUAL OBSERVATORY  
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSTELLE



# ***Table of contents***

---

- Overview of EU rules on the promotion of European works
- Focus on VOD services and the various models EU members have adopted
- Possible advantages and disadvantages of the various models according to a survey carried out by the EU Commission

# ***Table of contents***

---

- Overview of EU rules on the promotion of European works
- Focus on VOD services and the various models EU members have adopted
- Possible advantages and disadvantages of the various models according to a survey carried out by the EU Commission

# *The audiovisual media services directive*

The **AVMSD** governs EU-wide **coordination of national legislation** in the following areas:

- General principles
- Incitement to hatred
- Accessibility for people with disabilities
- Principles of Jurisdiction
- Major Events
- **Promotion and distribution of European works**
- Commercial communications
- Protection of minors

# *The definition of European works*

Article 1 (n) '**European works**' means the following:

- (i) works originating in **Member States**;
  - (ii) works originating in European **third States party to the European Convention on Transfrontier Television of the Council of Europe** and fulfilling the conditions of paragraph 3;
  - (iii) works **co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries** and fulfilling the conditions defined in each of those agreements.
3. [...] works **mainly made with authors and workers residing in one or more of the States referred to [...]** they comply with one of the following **three conditions**:
- (i) they are made by one or more **producers established in one or more of those States**;
  - (ii) the production of the works is **supervised and actually controlled by one or more producers established in one or more of those States**;
  - (iii) the **contribution of co-producers of those States** to the total co-production costs is **preponderant** and the **co-production is not controlled by one or more producers established outside those States**.

# *Rules applicable to linear services*

## **Article 16**

1. Member States shall ensure, where practicable and by appropriate means, that **broadcasters reserve for European works a majority proportion of their transmission time**, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.

## **Article 17**

Member States shall ensure, where practicable and by appropriate means, that **broadcasters reserve at least 10 % of their transmission time**, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping, **or alternately**, at the discretion of the Member State, **at least 10 % of their programming budget, for European works created by producers who are independent of broadcasters**. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria. It must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within 5 years of their production.

# *Rules applicable to non linear services*

## **Article 13**

1. Member States shall ensure that **on-demand audiovisual media services** provided by media service providers **under their jurisdiction promote**, where practicable and by appropriate means, **the production of and access to European works**. Such promotion could relate, inter alia, to the financial contribution made by such services to the **production and rights acquisition** of European works or to the **share and/or prominence of European works in the catalogue of programmes** offered by the on-demand audiovisual media service.

## **Recital 69**

[...] Such support for European works might, **for example**, take the form of **financial contributions** by such services **to the production of and acquisition of rights in European works, a minimum share of European works** in video-on-demand catalogues, **or the attractive presentation of European works** in electronic programme guides. [...]



# ***Table of contents***

---

- Overview of EU rules on the promotion of European works
- **Focus on VOD services and the various models EU members have adopted**
- Possible advantages and disadvantages of the various models according to a survey carried out by the EU Commission

# ***Three different models***

## **1. Quota obligations**

minimum share of European works in video-on-demand catalogues

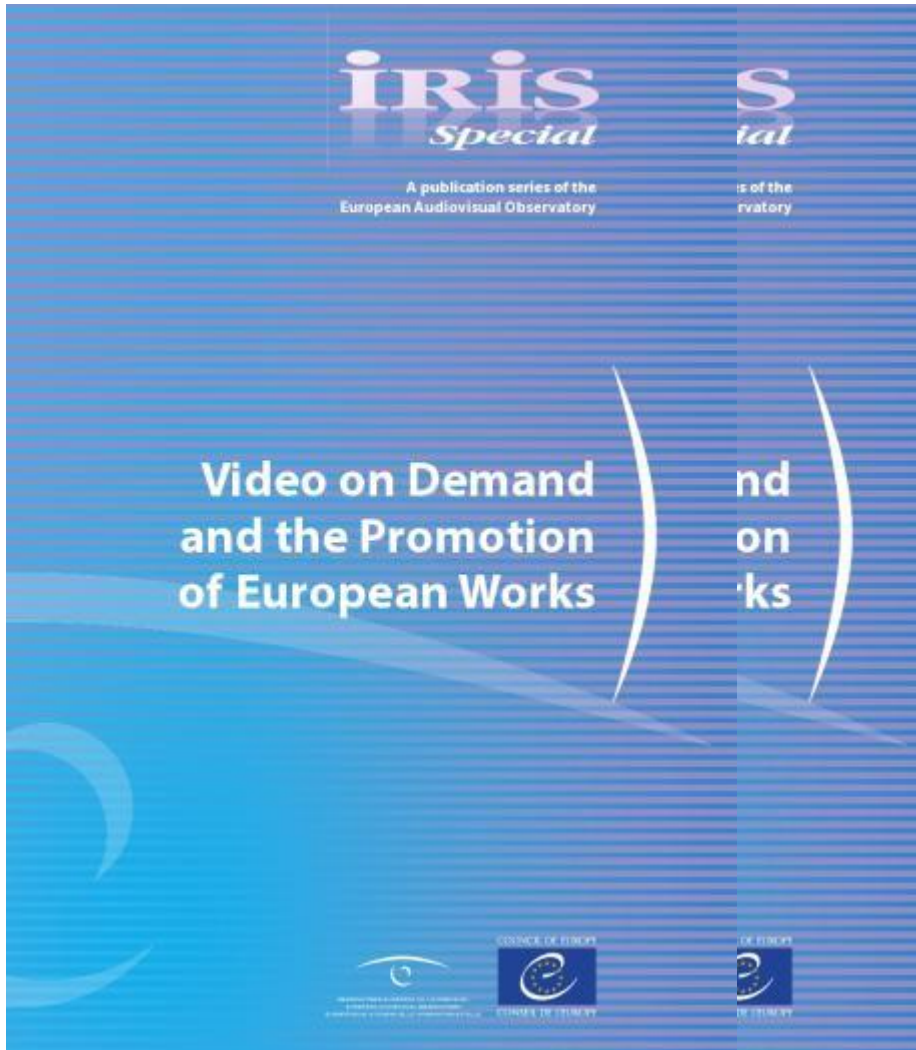
## **2. Financial obligations**

financial contributions to the production of and acquisition of rights in European works

## **3. Prominence obligations**

attractive presentation of European works in electronic programme guides

# Study of the Observatory



Workshop organised in Amsterdam in 2013

Overview of existing promotion obligations imposed on on-demand audiovisual services

Assumptions that underpin the promotion of European works in on-demand services

# ***Examples of national transpositions***

## **Italy**

quota obligations OR financial obligation

## **France**

quota obligations AND financial obligations AND prominence obligations

## **Belgium (FR)**

financial obligations AND prominence obligations

## **Slovakia**

quota obligations

# ***Table of contents***

---

- Overview of EU rules on the promotion of European works
- Focus on VOD services and the various models EU members have adopted
- Possible advantages and disadvantages of the various models

# ***General impressions from VOD providers***

- Monitoring obligation / Data provision is seen as a substantial administrative burden, especially for small operators
- Reluctance to share data about consumption of works / financial contributions since some data have business value and are covered by business secret
- VoD service providers prefer more flexible systems
- Systems are ineffective and burdensome
- Provisions are limiting commercial and editorial freedom
- Such obligations would have a dampening effect on innovation and investment in VOD services

# *Quota obligations seen by EU states*

- Less efficient than prominence tools as large amount of European works in the catalogue does not necessarily translate into consumption
- Might hamper innovation / development of the market
- Might interfere too much into business decisions and liberty of programming / important economic impact
- No consideration of the receptiveness of the users
- Not suitable for MS with smaller audiovisual markets

# ***Financial obligations seen by EU states***

- The obligation to reinvest in the production of new works – for players who exploit such works – creates a circle that contributes to European and national cultural diversity
- Least interference into companies' entrepreneurial decisions
- Monitoring is easier and more objective
- Important to give freedom to providers to choose where they want to invest
  
- Might hamper / stop the development of this sector at this stage of its development
- Current market situation does not permit sufficient revenue to enable larger financial contributions
- Difficult for new / smaller operators
- Monitoring difficulties: confidential information that operators may not want to share



# ***Prominence obligations seen by EU states***

- Stronger effect on consumption of European works than a share in the catalogue
- Not too burdensome for operators / does not imply excessive costs (can be well integrated within normal promotion / marketing activity of operators)
- Most appropriate tool for smaller markets
- Providers should be free to choose the prominence tools to achieve the result
- Can be combined with requirements regarding the catalogue itself: (e.g. having a substantial offer of European works; ensuring the diversity within EU works; maintaining works in the catalogue for extended periods)
  
- Interference into editorial freedom
- Difficult to measure impact



*For further information:*

[www.obs.coe.int](http://www.obs.coe.int)

Contact:

**Maja Cappello**

*Head of Department for Legal Information*

[maja.cappello@coe.int](mailto:maja.cappello@coe.int)

OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL  
EUROPEAN AUDIOVISUAL OBSERVATORY  
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSTELLE

