

European Commission  
State Aid Unit  
stateaidgreffe@ec.europa.eu

30.09.2011 / Ref. UNIC\_2011\_03

## **STATE AID FOR FILM AND OTHER AUDIOVISUAL WORKS – UNIC POSITION**

The Union Internationale des Cinémas (“UNIC”) is pleased to participate in the EC Consultation regarding the current review of rules on state aid to cinematographic and other audiovisual works. As there will be a further round of consultation on this matter in 2012, in this initial response, we have limited our comments to issues of key concern to European cinema exhibitors.

### **1. ABOUT UNIC AND THE VALUE OF CINEMA**

UNIC is the leading European umbrella organisation for national cinema associations and cinema operators. It currently represents the interests of exhibitors in 19 European territories. Included within the national associations and major operators – which make up the members of UNIC – are cinema sites of all sizes and locations. These vary from single screen part-time sites in isolated rural areas to large multiplex sites in major cities.

All cinema sites, whatever their size, provide their local areas with a valued community resource, a trusted and ‘neutral’ communal meeting place for a broad range of local people. Many are ‘cultural hubs’ providing access not just to arthouse and other specialised films, but also to other arts and creative opportunities. And many provide much-needed employment for their local communities, either directly, or through supporting local services and suppliers.

Cinema provides an opportunity for people to understand and express their sense of local and national identity, reaching out to young and old and those from different backgrounds. It helps to recognise and celebrate the diversity of European nations and regions.

Above all, cinema remains the ‘gold standard’ environment for films - seen as the director intended, on the big screen in front of an audience enjoying the experience together.

## 2. GENERAL COMMENTS

### *Film and Cinemas are Part of a Unique Cultural Sector*

Many of the above listed cultural, social and economic contributions of cinemas can also be attributed to the wider film industry. The sector's role as a significant cultural beacon in each EU Member State is the primary reason to exempt public support for film from certain European state aid rules. This cultural policy rationale should continue to underpin EC state aid policy for film in the future. The right to support cultural activities and cultural industries such as film and partly to exempt such activity from international trade rules is enshrined in the UNESCO convention on cultural diversity, which the European Union helped to develop<sup>1</sup>. That said, the cultural and economic dimensions of film and cinemas cannot be separated. Thus, artistic inputs (actors, directors, sound, editing, etc.), technical inputs (skills, equipment, facilities, etc.) and economic inputs (investments, sales, and marketing, distribution, exhibition, etc.) are all needed to develop a thriving film and cinema industry. Cultural policy, in that context, also has a significant economic and industrial dimension. Governments throughout the EU as well as the European Commission understand this and do not try to separate these aspects.

Moreover, it should be noted that the European film and cinema industry has specific features, which make it difficult to compare it to other industries. Cinema is a high-risk industry that requires significant amounts of pre-finance and depends on large amounts of marketing and promotion to very specific audiences in order to recoup initial investments. Versioning strategies – the ability to release content on different platforms and in different geographical markets in order to maximise overall returns – is a specific commercial practice that is vital to the well-being of the sector.

Due to these specific economics of the film and cinema industry, UNIC believes that comparisons to the music industry, which have been brought forward in the issues paper, should be considered with caution. The value of exclusive exploitation in a specific version market such as cinema is considerably higher in film than in music. This is so because most films are enjoyed once – possibly twice – by an individual consumer. Conversely, music tracks are generally listened to for a lifetime and in a variety of ways. Due to these completely different consumption patterns, UNIC strongly suggests that the trajectory of the music industry in the past decade is not extrapolated to indicate the future development of the film industry. The most recent communications from DG Information Society and Media<sup>2</sup> have recognised this distinction to some degree and could serve as an example for DG Competition.

Finally, it is essential to recognise that the European film and cinema sector is a patchwork of different national markets due to highly diverging consumer tastes across linguistic and cultural borders. The market share for non-national EU film remains at around 8% in theatres and is similarly low on legitimate VOD platforms, hence contradicting some voices within the EU policy community that promote a “digital single market” for EU film<sup>3</sup>. US films have a large market share in most EU

<sup>1</sup> Convention on the protection and promotion of the diversity of cultural expressions, Paris 20 October 2005.

<sup>2</sup> Green Paper on Audiovisual Content Online. COM2011\_427. Available here: <http://bit.ly/oadV3b>

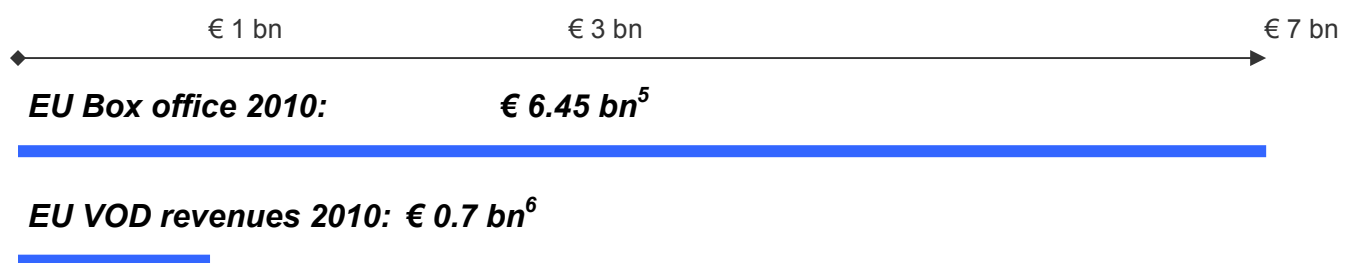
<sup>3</sup> See study on multi-territory licensing for the online distribution of audiovisual works in the EU, KEA European Affairs and Cerna, conducted for DG Information Society and Media (2010)

member states. The latter is another a key reason why public bodies should continue to be free to decide how to finance the European film and cinema industry in order to ensure that audiences can also access national and European films and enjoy the widest possible cultural offer.

Based on the above, UNIC believes that an acknowledgement concerning the cultural and economic specificities of the sector should underpin the Commission's thinking regarding the outstanding review of state aid rules.

### *Theatrical Exhibition is the Cornerstone of the European Film Industry*

Theatrical exhibition is one of the most significant and the most stable market for film in Europe. Despite the numerous challenges cinema exhibitors face, this vital segment of the audiovisual value chain has increased its turnover by 5% from 2009 – 2010. By way of example, the following illustrates how the theatrical film market performs compared to all combined Video on Demand version markets<sup>4</sup>:



The continuing strength of the exhibition sector as well as the nascence and comparably moderate market share of VOD to some degree put the trends proposed by the issues paper (3.8) into question. The film industry is currently experiencing a fast-paced evolution spurred by technological change, as it has done at several points throughout its lifespan.

Contrary to the impression given by statements in the last section (4) of the issues paper pertaining to media release windows and licensing practices, the transition to digital – which cinemas wholeheartedly embrace (see further below) – is not causing a “revolution”. The fundamental principles upon which the audiovisual sector is built and which have been enshrined in international copyright treaties<sup>7</sup> - in particular copyright exclusivity, contractual freedom, copyright territoriality and copyright enforcement – remain.

Furthermore, the discussion about a potential promotion of Creative Commons-based licensing practices (3.8) is misplaced. UNIC strongly feels that a debate about such issues cannot be part of the current discussion on a future state aid framework for film.

<sup>4</sup> Some of the VOD sub-markets, such as internet VOD, may include revenues for TV shows. However, these sub-markets make up the minority of current VOD revenues and a comparison for illustrative purposes is legitimate.

<sup>5</sup> European Audiovisual Observatory, *FOCUS 2011 - World Film Market Trends*. Figures include 23 European countries. Available here: [www.obs.coe.int/oea\\_publ/market/focus.html](http://www.obs.coe.int/oea_publ/market/focus.html)

<sup>6</sup> International Video Federation. *The European Video Yearbook 2011*. Page 6. Figures include 22 European countries analysed by Screen Digest.

<sup>7</sup> 330 Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886. WIPO Copyright Treaty adopted in Geneva on December 20, 1996 and WIPO Performances and Phonograms Treaty (WPPT) adopted in Geneva on December 20, 1996

How commercial practices evolve should be left to the market, which has proven time and again that the audiovisual sector is one of the most innovative industries in existence. We would therefore suggest the Commission recalibrates the underlying narrative of the issues paper, which is arguably more “revolutionary” than the digital reality the industry faces.

### **3. COMMENTS IN RELATION TO SPECIFIC POINTS RAISED**

Most of our specific comments are based on the observations above.

#### *The Objectives of EC State Aid Rules for Film Support*

UNIC believes that the primary purpose of EC state aid rules pertaining to film support should be to ensure that EU Member States, regions, cities and several EU institutions can continue to support the film industry for cultural reasons and due to the specific nature and circumstances of the EU film industry, if this does not distort the market in an unacceptable way and is in the common interest<sup>8</sup>. The Commission should therefore provide a framework of state aid rules within which Member States and regions can independently and freely decide how to promote audiovisual culture. However, the Commission should not focus on developing a blueprint for the future development of the film industry. Industry characteristics such as “openness, innovation, and creativity” (3.2) will be delivered by the market. Film funds may get involved in promoting these traits. The EC state aid framework should, however, refrain from considering certain future developments as more favourable than others. Innovation policy should not be within the remit of DG Competition.

#### *Subsidies for Foreign Productions*

It is not within the scope of UNIC’s position paper to comment on this issue in depth. However, we would like to suggest that in many regions across Europe the local audiovisual infrastructure – in relation to skills, technology and facilities – needs to be strengthened to maintain the capacities required to create culturally diverse content. Large-scale incoming film productions help to develop these characteristics in a unique way and thus have a cultural effect in the medium-term. So, while incentives to attract foreign productions may initially have a primarily socio-economic impact, they also significantly foster creative skills and cultural diversity in any given city, region and Member State. These benefits should be taken into consideration and it should be left to each Member State to decide how best to promote their local audiovisual clusters.

#### *Support for Other Activities than Film Production*

UNIC welcomes the consideration to widen the EC state aid framework to allow support for other activities in the film value chain, such as training, development and distribution, as these activities are directly related to the well-being of the entire film industry and helping to ensure that European films reach more audiences.

---

<sup>8</sup> Art. 107 TFEU (ex Article 87 TEC) - Notion of State Aid and Derogations (section 3.d)

### *The Specific Case of State Aid for Cinema Exhibition and Digital Roll-Out*

It should be noted that Europe's cities, regions, Member States and the European Commission also support the exhibition sector in several ways. Such support exists because cinemas are essential components of the cultural and creative fabric of local communities, as outlined above. The healthy development of cinemas is therefore as much a cultural policy objective as it is an economic ambition.

Most of the time, public support for individual cinemas is rather small.

However, if the de minimis rule does not apply, the question whether aid to cinemas actually distorts competition between EU Member States has to be asked. Cinemas depend on local audiences and do not compete across borders (i.e. a cinema in Paris does not compete with a cinema in Berlin). UNIC therefore would like to seek clarification with the Commission on why cultural support schemes for the exhibition sector have to actually be notified under EC state aid rules and whether such aid is not rather an issue for national competition authorities. In this context, we refer to the Commission's reasoning in relation to clearing the UK Film Council funded Digital Screen Network in 2004<sup>9</sup>. It determined that the aid of the scheme did not affect trading conditions and competition in the Community to an extent that was contrary to the common interest. Cinema customers are typically local and do not travel between member states in order to see a certain film. The potential of aid enabling larger cinema groups to expand their activities and to therefore distort competition and affect trade appeared as a rather theoretical possibility<sup>10</sup>.

Given this reasoning, UNIC would like to suggest that the Commission first clarifies whether there is any evidence that support to digital cinema can distort trade between EU Member States. This would help clarify whether a specific mentioning of aid to cinema exhibition is required in the revision of the Cinema Communication.

Furthermore, in relation to digital cinema roll-out it is vital to recognise the following:

According to UNIC's knowledge, the financing for the conversion of approximately 80% of EU screens has today potentially been covered by private or public financing deals. A 50% conversion rate has been predicted to be reached by the end of 2011/ beginning of 2012. However, especially small cinema sites, cinemas in rural areas and medium sized-operators that show many second-run films may miss the window of opportunity to go digital before film distributors switch to an all-digital distribution model in the not too distant future. Suggesting a precise timing in this regard is difficult as switch-over to a large extent depends on the strategies of US majors, who remain silent on the issue.

Most European cinemas that are in danger in this context cannot afford switching costs themselves or do not qualify for a commercial VPF model. Some who might benefit lack the information and networks to set up joint buying groups required to access private financing mechanisms. Any inability to move forward, whatever its nature or reason, will have dire consequences for the exhibition sector as certain sites may have to eventually close down. This would have an important impact on

---

<sup>9</sup> State aid N477/07

<sup>10</sup> For further information see the EAO article Public Aid for Digital Cinema in iris plus 2010-2. p 13

cultural diversity, as many of these operators are cinemas that show a disproportionate amount of specialised and/or national or European films.

Public support for these cinemas from the EU, the Member States and regions/ cities, is essential to safeguard cultural diversity and the wellbeing of the EU film industry in general. However UNIC believes that such aid should at all times be complementary to mechanisms offered by the private sector and not distort the market in an unacceptable way. In general, we also believe that recipients of public aid intended to help the exhibition sector should be mandated to observe certain requirements in terms of their operation – for example to show a certain minimum number of performances per year – in order to ensure that such funding does not inappropriately cross-subsidise other cultural sectors.

As regards the accessibility of public aid schemes for the digital shift, UNIC proposes that support is available on a per screen basis and to all cinema operators, regardless of their size. Furthermore, Member States, regions and cities should be able to determine the conditions under which support is granted individually.

UNIC would like to stress that Member States require a flexible competition policy framework (national or – should the EC decide so – also European) to support cinemas at this exceptional point in time. Digital roll out in many cinemas can only be adequately supported if the public sector can support cinemas both for cultural as well as for structural/ economic reasons. In some cases, regional, local as well as national aid is combined but based on different rationales. Any future competition framework should ensure that such flexible approach to helping the exhibition sector make the digital shift is also possible in the future.

#### *Digital Cinema Standards*

UNIC believes that the EC's notion of "technological neutrality" in the context of digital cinema (see section 3.4 in the issues paper) needs to be clarified. The global film community, with input from Europe's film stakeholders, has long agreed on a common 2k standard that is currently making its way through the ISO certification process. UNIC is aware of a small number of voices which see the introduction of a new lower standard for digital cinema in Europe as a potential answer to some of the challenges smaller cinemas face in adapting to a fully digital environment.

In this regard, UNIC is unwavering in its support for the agreed single standard – a unique, open and compatible worldwide standard which takes into account the position of all European exhibitors. In January 2010, the organisation made this longstanding position clear in an open letter to the MEDIA Unit of the European Commission.

Ensuring that such a single standard exists will be vital to ensure that all types of cinemas can in the future offer the full diversity of films available to their audiences. It should also be noted that the standard is supported by most funding schemes in Europe.

#### *Territorial Conditions*

One major reason for the existence of public support for film and cinemas in Europe is the strength of US films in most European markets. Without such support, there would be little left of Europe's film culture.

Territorialisation requirements enable national/ regional/ local film funds further to justify their investments into film culture before their governments/ the general public. Reducing territorialisation thresholds would most likely lead to less public investment into the European film sector and consequently reduce cultural diversity in Europe.

Given that the Commission's 2008 study into the economic and cultural effects of territorialisation<sup>11</sup> could not identify any clear causality between the level of territorial spend requirements and the economic performance of the film sector in any given territory, and as it on the other hand reconfirmed the positive impacts of territorialisation on cultural diversity in the film sector, UNIC feels that the current regulations should be maintained.

We would invite the Commission to make available further evidence on which it bases its new proposals to limit territorial spend requirements to 100% of aid granted, should it exist.

#### *To Conclude - Does the Digital "Revolution" Affect State Aid Rules?*

We feel that our statements above partly answer the questions put forward in section 3.8 of the issues paper and in conclusion would like to underline the following:

- The European film industry is experiencing a fast-paced evolution based on technological change, similar to those that it has successfully used in the past to grow further (the introduction of television, VHS, etc.).
- How the film industry might best benefit from the digital transition should be primarily left up to the market to determine.
- Where cultural diversity and the competitiveness of the EU film industry is endangered, public funding should help to safeguard the sector. However, it is not within the remit of DG Competition and this state aid review to predict future trends regarding the sector's development and question fundamental business practices such as versioning or exclusive rights licensing.
- EU state aid rules should be adapted to also allow public investments into other film-related activities such as development and distribution.
- Given the fact that cinemas do not compete across borders and therefore don't distort the single market, we seek clarification from the Commission on why public support for the exhibition sector falls within the EC's state aid remit.
- Public investment to part-finance digital conversion in cinemas is required to safeguard Europe's rich cultural film offer in cinemas. Individual member states should be free to decide how to fund digital cinema.
- Theatrical exhibition is the cornerstone of the audiovisual industry, continues to deliver stable and growing returns, and should therefore be treated in a preferential way by film funds in Europe.

---

<sup>11</sup> Study on the Economic and Cultural Impact, notably on Co-productions, of Territorialisation Clauses of state aid Schemes for Films and Audiovisual Productions: <http://ow.ly/6fiPt>

We look forward to working further with the Commission on the current state aid review and would be happy to discuss any of the raised issues in person should you wish to do so.

With kind regards,

A handwritten signature in blue ink, appearing to read 'Jan Runge', written in a cursive style.

Jan Runge  
Chief Executive  
Union Internationale des Cinémas (UNIC)