

UNIC CONTRIBUTION TO EC CONSULTATION on Directive 2010/13/EU on audiovisual media services (AVMSD) A media framework for the 21st century

Transparency Register ID: 74301917747-65

The International Union of Cinemas/ Union Internationale des Cinémas (UNIC) is a trade body representing European cinema theatres and their national associations across 36 territories.

We welcome the opportunity to submit our position on the European Commission's consultation on Directive 2010/13/EU. While the consultation examines questions specifically related to broadcasting and online services, certain principles that are important to cinemas also arise.

Europe's cinema landscape depends on close collaboration and risk-sharing between various stakeholders across the film value chain. Cinemas and the exclusive theatrical release of films are an essential element of that eco-system. Cinema exhibitors contribute to the creation and promotion of national and non-national European films in several ways. UNIC fully recognises the cultural and economic value of a diverse and competitive European film production sector.

The contribution of our members to European film financing takes a number of forms:

- **Rental rates:** a major share of cinemas' ticket revenues goes directly to the film distributor. Distributors then reinvest a large part of that money into the financing and promotion of new films.
- **Income tax, VAT and local entertainment tax:** cinema exhibitors pay significant levels of tax across Europe. Governments use part of their state income derived from this and other sources to establish public film funds which primarily invest into the production of national and non-national European films.
- **Film levies:** In several European countries – amongst them for example Croatia, the Czech Republic, France, Germany, Poland, Portugal, Romania, Slovakia and Sweden – cinemas directly contribute to public film funding bodies via a film levy. In 2013, German cinemas contributed around € 25 million towards the German Film Fund FFA. In 2014, French exhibitors contributed € 144 million towards the French Film Fund CNC.

Given these significant investments and as a matter of principle, UNIC believes that in countries where such direct film levies exist all beneficiaries of local films should also contribute to the sustainability of the cinema system. This of course includes VOD platforms.

Article 13 of the AVMSD enables Member States to ask VOD services to promote and/ or invest in European films.

A few countries (for example France, Germany, the French Community of Belgium) request that on-demand audio-visual services contribute to the production of local films, either through direct investments or through contributions to a public film fund. In other countries (for example Croatia, Poland, Portugal and Spain) similar obligations exist for operators of cable/ pay-TV, who often also provide VOD services.

UNIC members believe that there should be a 'level playing field' between VOD services and cinema operators in terms of these mandatory contributions to public film funds, when and where they exist. We believe that it should be for each Member State to create such a position in their national film laws, as is already made possible by the current AVMS Directive.

However, UNIC members note that there are several dominant international VOD services which sidestep such laws and avoid making commitments to European cultural diversity by establishing their headquarters in EU Member States where such obligations do not exist. While, for example, iTunes and Netflix are located in Luxembourg and the Netherlands respectively, they service consumers in countries such as Germany and France, where broadcasters and cinema operators are obliged to make significant contributions to their national film funding bodies. iTunes and Netflix benefit indirectly from the contributions that cinema operators make to public film funds in those countries. This puts cinema exhibitors at a clear competitive disadvantage.

Germany and France have modified their respective legislations to also request film funding contributions from non-national VOD operators that service consumers in Germany and France respectively in order to create a level playing field for all involved. The Commission has so far delayed clearing these rules within the EU state aid framework, raising the question of conformity with EU law and in particular with the Principle of Country of Establishment enshrined in the AVMS Directive.

UNIC members strongly believe that international VOD platform providers should contribute to national film funds – when and where applicable – if they create revenues on the basis of selling films in countries where such obligations exist for other players in the value chain.

Several policy options to achieve the above have been proposed: some suggest the inclusion in the AVMSD of a common set of financing obligations that would apply to both national and non-national VOD providers. Others argue that such levy should be treated similarly to a sales tax and be administered in the country of destination.

UNIC does not have a preference regarding either of these options. However, we strongly call upon the European institutions to help facilitate a solution and create a level playing field between stakeholders operating in the same market.