

ACT INITIAL RECOMMENDATIONS ON THE EU FRAMEWORK FOR THE SOCIAL AND PROFESSIONAL SITUATION OF ARTISTS AND WORKERS IN THE CULTURAL AND CREATIVE SECTORS (2023/ 2051 INL)

INITIAL REMARKS

ACT member companies finance, produce, promote and distribute content and services benefiting millions of Europeans across all platforms. We entertain and inform Europe's households every day via thousands of channels, VoD and OTT services available across Europe. ACT believes that a healthy and sustainable commercial broadcasting sector has an important role to play in Europe's economy, society and culture. Our mission consists of ensuring a healthy and robust policy environment for the creative sector and all its components to thrive. We believe in a fair and balanced creative sector which ensures that all parts of the audiovisual value chain are fairly remunerated.

Our sector represents a key driver of growth, innovation, job creation and investment in the EU. Directly, the film and AV sector employs 1.1 million people¹. Indirectly, the sector employs another 1 million people², via other networks such as security, caterers, textiles etc. The film and AV sector in Europe contributed €46.9 billion³ to the European GDP in 2021.

According to the recent findings of the EAO⁴, private broadcasters account for 59% of hours of the total amount of content produced in the EU in 2021. We are highly invested in ensuring the success and viability of all productions we invest in or commission. Part of ensuring their success relies on the training, recruitment and retention of talent in the EU. The audiovisual market is highly competitive, not only between employers, such as broadcasters, but also downstream.

Investing in quality content is a high-risk endeavour. From the massive volumes of content produced, only a small part enjoys true success, financial or otherwise. The economic success of one title is used to support all titles that experience moderate or no economic success. This is what our experience of decades of investing in content tells us. No matter how many indications broadcasters and VoD services may have that a specific title may be successful, the reality is often hazardous.

We however recognise the fact that the European Commission and the co-legislators addressed the matter of the perceived imbalance in bargaining power in the creative sector in 2019 Copyright in the Digital Single Market Directive⁵. It is equally true that the Directive was recently adopted and its effects remain to be observed by the creators. It is however meant to produce results that will likely have clear effects in the audiovisual market and in the creative sector at large.

¹ https://www.rebuilding-europe.eu/_files/ugd/4b2ba2_1ca8a0803d8b4ced9d2b683db60c18ae.pdf

² <https://avdata4europe.eu/key-data/>

³ *ibid*

⁴ Audiovisual fiction production in Europe 2021 figures

⁵ [Directive \(EU\) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC \(Text with EEA relevance.\)](#)

KEY MESSAGES

Balancing the risks and opportunities

We recognise the importance of ensuring that creators are appropriately compensated for their work, and we support efforts to improve their conditions. We believe that this must be balanced with the need to incentivise investment content.

Broadcasters and streamers always take the risk of success or failure of a production without expecting a return on investment from authors and performers in case the respective production does not compensate its costs. On this basis, the income generated from successful productions becomes a key source of funding for less successful programmes. For example, in 2013 only 10% of French films turned a profit⁶.

If employers in the creative sector lose the ability to negotiate terms that are appropriate for both parties, commercial broadcasters, which are subject to market pressures, may become more reluctant to invest in new projects, which would limit the availability of high-quality novel content for audiences. Without sufficient funding, there is a chance that broadcasters may take on less projects and the ones that they green light may suffer from reduced budgets. As a consequence, there is much lower chance that the productions may end up being successful.

It is also worth acknowledging that creators also take risks when signing up to a project. They may invest significant time and resources into a project that ultimately fails to generate revenue. This is why creators are able to secure better remuneration on average, when compared to the European salary average. According to the 2022 EUIPO Study of IPR-intensive industries and economic performance⁷, our sector pays a large premium of 49.3% over other industries. Producers often work via limited liability companies with a portfolio of rights that enable them to spread the risks and therefore be more equipped to deal with commercial uncertainty.

The introduction of additional remuneration obligations on top of what is already enshrined in the Copyright in the DSM Directive will only increase pressure on broadcasters, streamers, and producers. The risk is that fewer productions will see the light and thus hurt opportunities for all involved in the process.

No less important is that remuneration practices remain in accordance with the overall contribution to the work itself. Because each audiovisual production involves many contributors (sometimes thousands), it would be unjustified to ignore the creative significance of each contribution. That could create a disproportionate burden to many organisations, which for the most part are SMEs⁸.

Ensuring contractual freedom

We believe that it is vital to preserve the balance in preserving contractual freedom, which allows both parties to negotiate agreements that are appropriate for their needs. This allows broadcasters to take the necessary risks when investing in new content, while giving creators the flexibility to negotiate agreements that meet their own needs and priorities.

⁶ https://www.bfmtv.com/economie/entreprises/culture-loisirs/exclu-bfm-business-seulement-un-film-francais-sur-dix-rentable-en-2013_AN-201401070340.html#:~:text=Car%20ces%20%C3%A9tudes%20montrent%20qu,seraient%20rentables%20%2Dessentiell ement%20des%20com%C3%A9dies.

⁷ https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/IPR-intensive_industries_and_economic_in_EU_2022/2022_IPR_Intensive_Industries_FullR_en.pdf

⁸ <https://avdata4europe.eu/key-data/>

It is essential to remember that paragraph 2 of Art. 18 of the 2019 Copyright in the DSM Directive⁹ states that even when implementing provisions aimed at ensuring the appropriate and proportionate remuneration of artists and performers, Member States are allowed to employ different mechanisms which take into account the principle of contractual freedom. This principle must be mirrored in any potential recommendations.

The protection of legal traditions in Member States is a key aspect to promote predictability and confidence in the applicable legal principles. Such a system takes into account the specificities of each Member State, while encouraging investments and the distinct legal approaches in the EU.

CLOSING REMARKS

We encourage policy makers to consider in any reflection related to the creative sector to respect national legal traditions. Our sector is experiencing a great transition, and it is important to ensure opportunities are seized by all throughout the ecosystem, avoiding the creation of further layers of burdensome administration. Financial obligations are a prerequisite for a well-functioning creative sector.

For these reasons, we ask the European Parliament to respect the current implementation process of the Copyright in the Digital Single Market Directive and enable it to produce effects before proposing any changes, or any additional layer of requirements on investors.

Commercial broadcasters and streamers play a crucial role in the European economy by creating jobs, promoting cultural diversity, and investing heavily in innovation and people. We encourage the members of the European Parliament to consider the respective national traditions of the Member States and protect and uphold contractual freedom in the creative sector.

⁹ *"In the implementation in national law of the principle set out in paragraph 1, Member States shall be free to use different mechanisms and take into account the principle of contractual freedom and a fair balance of rights and interests."* <https://eur-lex.europa.eu/eli/dir/2019/790/oj#d1e1598-92-1>