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The AVMS Reform: Leveling the Playing Field

The European Coordination of Independent Producers (CEPI), representing independent audiovisual production companies in Europe, welcomes the European Commission's proposals for the review of the Audiovisual Media Services (AVMS) Directive published on 25th May. We believe the AVMS proposals represent a positive first step towards creating an environment which promotes a sustainable and healthy European audiovisual sector, benefits European consumers and strengthens cultural diversity.

CEPI supports the decision to maintain the country of origin principle which has been vital to the cross-border provision of audiovisual services. Moreover, the catalogue quotas, prominence requirements, commercial communication rules and increased role for regulators are a move in the right direction towards establishing a fair level playing field between new online and existing players.

Nevertheless, it is important to bear in mind that several issues remain. Namely, the application of the Directive to video-sharing platforms is not clear and should be improved.

We especially want to highlight the following aspects of the proposals:

Article 13: Promotion of European Works and Financial Contributions

- ✓ **The current quotas for European and independent production content, as defined in Articles 16 and 17 of the AVMSD 2010/13/EU, remain of the utmost importance. "Linear TV" is still at the very core of our members' businesses which rely on the support from these rules. The effective implementation of these quotas is crucial for our members.**
- ✓ **Article 13.1** requires that the catalogues of on-demand audiovisual media services must feature at least 20% of works of European origin and that these works must be given prominence. **This proposed quota of European content is an essential element in levelling the playing field between linear and non-linear services.** While this quota is already met in several European Member States, it is vital to set a minimum threshold.
- ✓ Despite online audiovisual media services increasingly competing with traditional players (in 2013, SVoD alone grew at a rate of 148%), they are subject to lighter regime of rules in the current Directive. Encouraging a greater contribution to the creation of local content from new online players would reduce the unfair competition and make the Directive fit-for-purpose in the digital age.
- ✓ In addition, **the Council and Parliament should consider introducing a requirement that on-demand services include a minimum of works from independent producers.** European Independent producers play a crucial role in promoting cultural diversity through the production of high-quality local content works. As shown with the rules for linear services, quotas for independent production are fundamental to ensure the quotas do not only benefit in-house productions but the whole value chain.

- ✓ Requirements for non-linear services to ensure the prominence of those European works in their catalogues are particularly important in achieving the objectives of the Directive. In order to render the quotas effective, the European content must be visible to consumers.
- ✓ **Article 13.2** will provide Member States with the option to impose financial contributions on providers of non-linear services established in another Member State which are targeted towards its territory. This contribution will be in the form of an investment in the production of European works or contributions to national support funds.
- ✓ Firstly, **CEPI emphasizes the fundamental importance of the country of origin principle which underpins the Directive.** This balanced principle is what provides media service providers with the necessary legal certainty to operate on a cross border basis.
- ✓ Nevertheless, in this particular and limited case, a majority of CEPI members considers this derogation from the country of origin principle to be justified in order to level the playing field between operators active on the same national market. Currently, audiovisual media services can generate considerable earnings outside their country of establishment without contributing to the support policies in place in the country they target. According to these members, it creates an unfair situation for producers in the targeted country and the local operators in the country of establishment who are subject to national contributions. They also believe the Commission's proposals would help prevent forum-shopping, with on-demand services seeking to establish themselves in the countries with no or low obligations for financial contributions.
- ✓ Where contributions take the form of an investment in the production of European works, the majority of CEPI members recommend Member States extend such an obligation to works of independent production modelled on Article 17 AVMSD 2010.
- ✓ Please note that a minority of CEPI members is concerned with any derogation that weakens the country of origin which has been so important in facilitating the cross-border provision of audiovisual services. Furthermore, they argue that the derogation stipulated in Article 13.2 would be unfair. The rules would not only impact small and big territories alike, but also risk restricting consumer choice.
- ✓ Furthermore, CEPI notes that the implementation of Article 13.2 will only be effective with transparency from platforms over their sales to viewers from the concerned Member States, which does not currently occur. **CEPI therefore encourages the European institutions to introduce a transparency obligation on online services in the Directive** to make data on film and television series' performance, sales and audiences available.
- ✓ NB: we note the use of the term 'levies' in Recital 22 is not appropriate in this context and could lead to confusion with tax measures.

Articles 10, 11 and 23: Commercial communications

- ✓ We welcome the Commission's intention to allow greater flexibility for TV broadcasters in regard to when advertisements can be shown and give TV broadcasters more flexibility regarding the use of product placement and sponsorship. Allowing more

freedom for linear services to judge how best to draw revenues out of the commercial communications which are vital to their economic survival will benefit the AV value chain, including independent producers.

- ✓ As CEPI pointed out in its response to the Commission's consultation, current commercial communication rules place an unfair and disproportionate burden on linear broadcasters which find themselves competing for the same audiences as non-linear players. In a converging media landscape, two separate and unequal regimes are no longer justified.
- ✓ Furthermore, making more use of product placement will allow broadcasters to gather valuable funding to support programming. This is particularly important at a time of squeezed commissioning budgets.

Articles 30 and 30a: Independence of Regulators

- ✓ The proposals to reinforce the independence of national audiovisual regulators, with specific conditions relating to budgeting, enforcement powers and appointments are an encouraging step. In order to be effective, national law must also clearly define the competences and powers of regulatory authorities, as well as the means by which they can be held accountable.
- ✓ We also welcome the intention to give the European Regulators Group for AVMS (ERGA) more tasks to assist a consistent implementation of the Directive across all Member States. We strongly encourage further debate and the exchange of best practices concerning the poor implementation of the rules on quotas for independent production for linear services.
- ✓ In Central and Eastern Europe (CEE) particularly, the implementation of the AVMS is not fulfilling the objectives of the Directive. National legislation has been strongly influenced by the interest of broadcasters and independent production quotas for linear services were transposed with limited understanding of how they are supposed to help SMEs and drive the growth of a healthy audiovisual industry.
- ✓ Independent producers are for the most part SMEs that do not have the necessary resources to take the issue up with the relevant authorities and stakeholders. We therefore **strongly recommend that the ERGA make it a priority to provide guidance and best practices on how to implement the AVMS. This should include highlighting successful legislation or frameworks for contracts which go beyond the minimum rules set out in the AVMS, in particular the terms of trade model in the UK, Ireland and Sweden.** This guidance and sharing of best practices is crucial to convince national governments of the benefits of a competitive independent production sector as can be seen in the UK.
- ✓ One of the key issues preventing the effective implementation of the AVMS in Central and Eastern Europe (CEE), is the lack of transparency from broadcasters and VoD platforms. The obligations on these operators to fully disclose information on successful programmes are not always fully respected. We hope the strengthened role of regulators will help tackle this issue. In particular, in CEE and Italy, the regulator relies too greatly on the good faith of broadcasters and VoD platforms. If independent producers cannot access information concerning the success of their content, it is not possible to estimate its value and therefore ensure adequate remuneration.

- ✓ **The combination of lack of transparency and the absence of strong regulators is a fatal combination for independent European producers** who have a direct role in promoting cultural diversity through diverse works. **It is therefore crucial that quotas are respected.**

Article 12 and 28: Protection of minors

- ✓ CEPI shares and supports the objective of protecting minors against the exposure to potentially harmful content. **We therefore welcome the intention in the proposals to align the rules on the protection of minors for linear and non-linear services as well as some of those rules to on-demand services.**
- ✓ The differentiation in the current rules, based on the assumption that consumers have more control over what they consume in relation to non-linear services than on linear ones, are no longer relevant since media convergence is increasingly blurring the lines between these services. This creates an unfair framework in which linear services are subject to heavier legal burdens. It is particularly out-dated since minor consumers now watch predominately on-demand content rather than linear services.
- ✓ We also note that several encouraging self-regulatory initiatives are already underway: the Commission for the protection of minors online has been re-launched and a code of conduct on hate-speech online has been adopted.

Articles 28a and 28b: Video-sharing platforms

- ✓ The majority of CEPI members welcome the inclusion of video-sharing platforms in the scope of the AVMS as they are increasingly important players in the market competing with linear and non-linear services. Since these platforms and intermediaries provide similar services than the rest of operators e.g. “branded channels”, they all compete in the same market. Consequently, imposing obligations with regards to the protection of minors and commercial communications on these platforms levels the playing field, enabling a greater balance between competitors.
- ✓ However, **the provisions on video-sharing platforms need greater clarity** as it is not clear whether all four requirements in the definition of a video sharing platform service (Article 1(1)(aa)) must be met for a service to fall within the scope of the Directive.

About CEPI

The European Coordination of Independent Producers (CEPI) supports the interests of independent film and television producers in Europe, representing 8,000 independent production companies in Europe. Our members supply over 16,000 hours of new programming each year to broadcasters in Europe, ranging from single documentaries and special event programming to game shows, light entertainment, and high-cost drama series.

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