



Unlocking the Potential of Cultural and Creative Industries

An EU Green Paper

The perspective of Europe's Audiovisual Industries

The members of CEPI (ID 59052572261-62), FIAD, FIAPF, IFTA and the IVF (ID 7013477846-25) (collectively, “we”, “our” or “us”) are businesses active in all segments of the film, television and audiovisual content sector in Europe. Their activities include production and co-production of films and audiovisual content as well as distribution thereof in the theatrical, video, television and online channels. Certain member companies are also active in international sales.

Our organisations welcome the Commission's decision to consult broadly on the need for an enabling framework of goal-orientated policies and initiatives for the cultural and creative industries (hereinafter “CCIs”) in the European Union. We agree unreservedly with the consultation paper's observation that CCIs are a hugely significant driver of growth in the current EU economy and that they have considerable potential to take advantage of technological advances to become even more strategic as a continued source of innovation, wealth creation and high-value jobs.

We approve of the Green Paper's focus on the three major policy frameworks already enunciated in prior consultations derived from the Lisbon Agenda. Our industries have been involved in providing stakeholders' input in all three, namely the Digital Agenda for Europe, the ‘Innovation Union’ flagship initiative and the Strategy on Intellectual Property – in particular, some of our organisations have supplied detailed contributions in the context of the Commission's Communication on Copyright in the Knowledge Economy, in view of the high relevance of a strong IP protection framework for the sustainability and growth of the creative businesses we represent.

The audiovisual sector (i.e. feature films, televisions programming and other forms of professionally-made audiovisual content) occupies a unique position at the confluence of other creative industries in the European Union. An audio-visual work is a composite cultural artifact – its manufacture almost invariably mobilises other cultural assets and forms, e.g. music, choreography, design, paintings, plastic arts, underlying books or theatre works, etc. As a result, audio-visual works stimulate cultural production and dissemination in other creative industries, e.g. with book publishing, where there are many examples across the EU of sales of books being boosted by the release of a film or television version, with attendant virtuous effects on the value chain in the publishing industry. The same is true of soundtrack albums and singles, which often attract robust sales of music tied-in with an audio-visual work's exploitation cycle.

In response to the Green Paper's objectives, our organisations offer a number of important empirical observations and recommendations which we believe should be taken into account by the EU institutions in the formulation of any future enabling framework and long term strategy:

1. Audio-visual enterprise and innovation is fuelled by the ability to protect, enforce and efficiently exploit IP rights, in order to support an efficient financing and distribution cycle,

for the benefit of the consumer. The utmost priority should be given to protecting the Community *acquis* in this area, based on the exercise of exclusive rights and the practice of contractual freedom – these are the principles on which creativity and innovation must rest. They provide the best guarantees that this creative industry will be able to adapt and respond successfully to technological developments;

2. Audio-visual enterprise requires access to significant amounts of working capital in order to finance the development of new works from the initial idea to the first day of filming, a process which requires time, talent and money and which represents a high risk investment: only a minority proportion of projects in development ever reach production, with the majority being written-off, with attendant financial consequences. Since it requires substantial financial resources, successful development is therefore conditioned by the ability to trade in IP rights and access venture capital or other forms of private finance with IP assets as collateral;
3. The skills' base required to power this creative industry forward is in constant need of renewal – skills obsolescence affects our business at a faster rate in the digital era than it ever did in the analogue decades – the high-value jobs now increasingly combine a high level of technological proficiency with creative flair and ability. A skills' strategy for Europe's audio-visual industry must reflect this new reality;
4. The potential for cross-border circulation of European audio-visual works has been greatly facilitated by broadband Internet and the Worldwide Web. However, making content available on the web does not *per se* create cross-border consumer demand. Europe's CCI policy must concentrate on facilitating access to capital by audio-visual SMEs which are best placed to respond to emergent cross-border demand, to invest in marketing and new distribution models to grow that demand, and to use pragmatically their freedom to license on a single or multi-territorial basis;
5. The circulation of works across Europe's national borders is slowed down by cultural factors. The most important long term strategy to deal with such cultural fragmentation is through well-targeted grass roots initiatives, especially those targeted at the young, to ensure that non-national European audio-visual content becomes a part of young Europeans' cultural make-up;
6. The European audio-visual industry of the 21st century is fast integrating into a global creative economy. A film conceived and financed in Europe and shot in India, *Slumdog Millionaire*, became a worldwide hit and reality TV formats invented and tested in Europe are being acquired by broadcasters in Asia or America. A European policy for CCIs must embrace and encourage such developments by supporting extra-EU exports and creative partnerships with third countries;
7. Pandemic levels of online piracy threaten to lay waste to the EU's strategy for a thriving CCI sector. A wide range of measures to combat piracy and restore a workable social contract between professional audio-visual content producers, distributors and the consumers must be an integral part of unleashing Europe's full creative and innovative potential.

Putting in place the right enablers

- How to create more spaces and better support for experimentation, innovation and entrepreneurship in the CCIs? More particularly, how to increase access to ICT services in/for cultural and creative activities and improve the use of their cultural content? How could ICTs become a driver of new business models for some CCIs?

Innovation and entrepreneurial risk-taking are the prerequisites for creative and economic success in the audio-visual sector. The challenge to innovate is all the more acute in audio-visual because the sector's risk profile is especially high: development and production, where most of the creativity is concentrated, are cost centres, not profit centres and the process requires very significant costs incurred upfront without any guarantee that the project will attract enough audience to provide return on the initial investment. There is a constant upward pressure on those costs at the high-end of the market, to keep up with the technical standards and production values of some of the content from outside Europe. Additionally, audio-visual production (and especially theatrical feature films), is characterised by very high fixed costs and almost non-existent variable costs: contrary to most consumer hard goods (e.g. a laptop computer), there is no marginal cost; a film costs the same to make or distribute whether it attracts 100,000 consumers or several millions. The performance risk is also extremely high, especially with feature films, for which considerable production and marketing costs are incurred upfront, without any possibility of testing the product with consumers while it is still in development.

Some creative industries in other parts of the world (e.g. Hollywood) have historically mitigated this high risk profile through a mixture of vertical integration and portfolio investments in a range of audio-visual product. By contrast, an overwhelming proportion of Europe's creative and innovative audio-visual capital is scattered across a vast number of SMEs, which finance and produce content on a one-by-one basis, and must rely upon larger "gatekeeper" companies for access to distribution pathways. On the one hand, audiovisual SMEs are ideally structured to innovate and attract/motivate creative talent; on the other, their lack of scale means working capital is in chronically short supply, making it difficult to back up ideas with cash. Working relationships between creative SMEs and large scale media groups may partly compensate for this structural deficit. However, many SMEs find adapting to rapidly evolving technology especially challenging, due to the heavy investment required: recovery of such investment is dependent on returns from audio-visual content over which - in many cases - these companies have to split revenues with a host of other investors on each individual project.

What is needed is an EU-wide policy which supports new opportunities for SMEs to develop fresh creative ideas and offer audio-visual content at competitive prices. Access to – and mastery of – ICT may also assist our businesses in reducing production costs through making the development and production/post-production processes more rationalised and less onerous. For example, 'pre-visualisation' techniques enabled by digital production technologies allow film makers to plan each shot before and during production with a view to reducing contingency effects and speeding up the production process.

ICT as an integrated creative business tool may also assist in the formation of 'delocalised' clusters. For example, super-fast broadband is routinely used today for visual effects and post-production, with skilled workers in different countries (or continents) working simultaneously on the same shots or sequences on a 24 hours' production cycle. ICT-based clustering offers the opportunity for businesses

to associate not because of geographical convenience but because of creative affinity, complementary skills or common innovative goals.

Finally, ICT also supports the marketing and distribution of audio-visual content online. In their search for innovative business models for making content available online, our industries need to be able to master the technology, design and marketing strategies necessary to establish the new platforms that will drive content distribution in broadband Europe. Some of the incumbents in the broadcast and Internet technology markets (e.g. BBC i-Player, Apple i-Tunes, Google Videos, etc) have demonstrated leadership in putting the technology at the service of the consumer. There is, however, a danger that the market may become dominated by a very small number of global brands who would act as gatekeepers for all audio-visual content in future. Such a scenario would run counter to the stated objective of the Green Paper to preserve and foster cultural diversity within the EU. Consequently, an EU-wide strategy to empower Europe's audio-visual creativity with ICT as a tool should be three-fold:

1. Support schemes should be designed to train and re-train the audio-visual workforce at all relevant levels to access ICT and use these technologies to increase productivity and reduce costs of production and dissemination of audio-visual content;
2. Specific soft loan schemes should be available in the EU for audio-visual SMEs to be able to access ICT, bearing in mind the difficulty of many of these companies to self-finance their needs in equipment and technology – companies should be able to apply for support based on the strength of applications which would focus on rationalising the production process and/or offer the consumer a quality experience inside a secure online business model; and;
3. Competition policy should be geared towards enabling fair and transparent arms-length transactions between the emergent large-scale online gatekeepers and the diverse ecology of creative audio-visual companies developing and producing content across Europe. Access to dominant platforms should not be restricted and SMEs should be able to compete on fair terms when launching alternative platforms.

Better matching the skills needs of CCI's

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| <ul style="list-style-type: none">- How to foster art and design schools/business partnerships as a way to promote incubation, start-ups and entrepreneurship, as well as e-skills development?- How could peer-coaching in the CCI's be encouraged at the level of the European Union? |
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The tradition of the audio-visual sector partnering with universities and schools is not a universal one across the EU. While some countries have established policies in this respect, in others, the gulf between academic training and the real needs of the audio-visual and media industries has in fact become more pronounced over the past decade. As an example: too many degree courses offer to qualify students in general 'media studies' which unfortunately fail to match the increasingly more specialised employment profiles in the audio-visual sector.

The disconnect needs to be addressed on a national basis, but we believe that the process would be helped considerably were the EU to intervene as a cohesive force in the development of new relationships between academia and the CCI's, especially the audio-visual sector.

Needs are changing fast: for instance, owing to the complexity of the digital technologies involved in the manufacturing process, the new employment profile of 3-D animators now demands high standards in mathematics as well as art and design. Whereas, in the old days of stop-frame animation, a talent for drawing would have sufficed, the new technologies demand a grasp of algorithmic disciplines and the capacity to design complex and bespoke computing tasks in aid of the visual end-product. As far as audio-visual is concerned, the technology standards being constantly upgraded would therefore require partnerships not to be limited to art and design colleges but extended to other key areas, with mathematics and physics more than ever in need of emphasis.

Business incubators involving partnerships between universities and audio-visual start-ups have had a mixed history in the EU over the past decade. Whilst there are some examples of successful launches achieved in part through this approach, many have remained in the starting blocks or failed to consolidate into viable businesses. It would be extremely helpful for the EU to coordinate efforts to identify and disseminate best practices from across the EU around business/university experiments in the incubation of audio-visual enterprise.

Peer-coaching is an essential component in the tool box of audio-visual training and skills' upgrade strategies. Initiatives such as the UK's *Inside Pictures* or the Nordic website *dvoted.com* have shown how straightforward peer-mentoring can help raise the standard of knowledge and ability amongst each rising generation in Europe's audio-visual workforce. Again, we believe this area would benefit from the Commission taking an active role in identifying and disseminating examples of best practices at national and EU-wide level. The nature of today's audio-visual economy is such that many projects require cross-border cooperation between audio-visual entrepreneurs in two – or more – countries to attract the financing necessary for moving from development into production. Consequently, most audio-visual companies require managers with the requisite skills to put together multi-party deals and financing structures to ensure access and circulation of the finished work in a multiplicity of developing EU cultural marketplaces. This fact makes peer-coaching a natural area for pan-European schemes. A few successful ones are in existence today, some of them under the aegis of the EU Commission's MEDIA Programme. We recommend that special attention should be given to these schemes as part of the current review of MEDIA, with a view to allocating further resources to those whose positive impact can be demonstrated.

Access to funding

- How to stimulate private investment and improve CCIs access to finance? Is there added value for financial instruments at the EU level to support and complement efforts made at national and regional levels? If yes, how?
- How to improve the investment readiness of CCI companies? Which specific measures could be taken and at which level (regional, national, European)?

The first condition for a healthy investment climate for audio-visual CCIs results from the ability of an audio-visual enterprise to hold intellectual property assets in the form of back-catalogues of films and/or television programming. These assets generate cash-flow and may help attract equity partners and/or venture capital firms to meet a company's ongoing infrastructural and/or development needs. The greatest service the EU can perform in promoting inward investment in this sector of the CCIs, therefore, is to maintain the EU's copyright *acquis* and support vigorous action to combat piracy in both hard goods and online. Piracy erodes the value of back-catalogues, preventing EU audio-visual companies from building up cash flow and financing new projects on an ongoing basis.

The second condition for a healthy investment climate is to maintain a strong mutual learning curve between audio-visual enterprise and the private financing sector. At national level, the secondary

benefit of hypothecated tax measures (e.g. ‘tax breaks’), has been that it has encouraged both sectors to engage with each other and learn from each other through actual investment scenarios. Whilst the returns to investors were made safer by the existence of the tax measure, the enhanced level of financial investment into the sector which these measures stimulated has – in some cases – encouraged the finance sector to take more risks, outside the gamut of the tax break. In strategic terms, the more sophisticated the understanding by the private finance sector of the risk/reward equation in audio-visual, the more the opportunities for inward investment.

There exist mechanisms other than the tax breaks which can also encourage a higher level of engagement by private financiers in audio-visual production, marketing and distribution. France and Spain currently have guarantee schemes in which banks are encouraged to lend to the sector on the basis of a risk-sharing mechanism ultimately backed-up by a guarantee funds from the State. Our organisations are aware of current efforts by the Commission to consider an EU-wide guarantee fund for the audio-visual sector. We are supportive of the work undertaken thus far by the Commission and believe there is a very good case for a loan guarantee mechanism at the EU level. The majority of EU Member States do not have a national mechanism in place and their financial sectors are not structured in such a way as to facilitate such a development.

Local and regional development as a launchpad for global success

Local and regional dimension

- How to strengthen the integration of CCIs into strategic regional/local development? Which tools and which partnerships are needed for an integrated approach?

Regional and local sub-cultures have much to contribute to the rich tapestry of European multi-culturalism. One frequently observable phenomenon in European cinema has been that of low-budget films rooted in a local culture yet finding an enthusiastic audience across a whole national culture or even across Europe. Peter Cattaneo’s 1999 *The Full Monty* depicted the lives of a stoical bunch of unemployed Northern-English factory workers taking a new professional direction by becoming male strippers. Though impenetrable to most other Europeans, the thick local accent of the actors and the local humour did not prevent *Full Monty* from becoming a hit across the whole of Europe. Far from setting itself in opposition to the European project, local culture uses cinema and audio-visual to project itself onto the wider canvas of European multi-culturalism and enriches all of us in the process.

However, local cultural voices are chronically challenged in their attempt to access means of audio-visual representation at national and European levels. Centralisation and attendant lack of devolved funding, the tendency of audio-visual expertise and decision-making to be concentrated in the capitals and larger cities, health and socio-economic priorities in areas affected by workforce migrations and loss of industrial capital, all these factors combine to create precarious conditions for local and regional audio-visual businesses to emerge.

The EU’s Structural, Regional and Social funds have played their part, historically, in the development of devolved audio-visual production capacity in some of Europe’s regions, especially those attempting to attract the service and high-tech industries after the painful loss of a traditional industrial infrastructure. National governments, especially those dedicated to decentralisation and devolution policies, have also helped empower regions to participate fully in audio-visual expression and output. A remarkable phenomenon has been the extent to which some regions of Europe have worked horizontally across the rest of Europe, developing axes of audio-visual cooperation and partnerships with other regional cultures and industries. Since the 1990s, Scottish and Catalan cinema, for instance, have managed to punch above their audio-visual weight by developing a rich connective tissue of co-

production relationships with like-minded regions and cultures. The European Organisation Cine-Regio represents a deliberate attempt at developing long-term joint audio-visual strategies over projects or groups projects, between creative companies located in a variety of regional cultures inside Europe.

The EU can help these developments in a number of practical ways: first, audio-visual enterprise must be regarded as a high priority sector for the economic re-development of regions impoverished by the loss of traditional industry and productive workforce and this factor needs to be high on the strategic agenda of the Structural and Regional funds. Second, the EU should put the emphasis on helping build sustainable and lasting audio-visual capacity rather than focusing on ad-hoc high-profile projects, bearing in mind that long term sustainability is a challenge for most audio-visual SMEs but that this challenge is more pronounced in regions with a specific language and culture. Third, the EU should lend direct support to enterprises in different regions seeking capital expenditure support to develop lasting cooperation in audio-visual, of the kind that would be likely to build actual capacity in these regions and increase employment opportunities.

Mobility and the circulation of cultural and creative works

- What new instruments should be mobilised to promote cultural diversity through the mobility of cultural and creative works, artists and cultural practitioners within the European Union and beyond? To which extent could virtual mobility and online access contribute to these objectives?

As described above, the production of much of Europe's audio-visual output is already an integrated pan-European reality, with mixed crews working together routinely on European co-productions requiring technical and creative input from several countries at once. In both technical and creative grades, new creative workers are now far more mobile than a generation ago, with major production and visual effects centres such as London or Paris attracting job candidacies from throughout Europe.

The promotion of cultural diversity through the mobility of cultural and creative works is also an established reality in Europe's audio-visual industries.

Many of our members are pursuing the offer of cinematographic and audiovisual works online, either directly to end-users or working in cooperation with service providers or content aggregators deploying different business models (e.g. time-limited viewing, streaming or digital delivery of permanent copies). Such new services bring wider choice to consumers as they involve an increasing variety of content, both on the Internet, but also through other types of networks.

In the context of cross-border distribution, both the international sales agent and the national distributor must consider the value of the proposed project to specific national markets. **The decision to engage in single or multi-territorial licensing is made on the basis of informed decisions aimed at maximizing exposure of the works, on a case-by-case basis, with due consideration for local sensitivities (cultural preferences, classification regulations, language, etc.), local demand and the requirement to ensure full consumer satisfaction. Suffice to mention specific consumer demands for subtitling and very often dubbing to understand how film distributors must be closely responsive to local taste.**

The reasons why national audiences are difficult to attract to European film and TV programmes from other Member States are based on complex cultural, historical and linguistic factors which cannot be addressed through abolishing the territorial nature of copyright and related rights. Generally, a film or TV programme may travel if it has been co-produced by entities from several countries and/or if it has

performed well in its home territory. This is due to the fact that the respective production teams manage the joint project to ensure maximum attractiveness to their home markets, assuring that the final project reflects domestic sensitivities.

Mandating a single clearance framework for the whole of Europe will not create a pan-European market or audience for European films and TV programmes: the audience must be attracted to the content by topic, language, timing and mode of distribution, all items which are the subject of the special expertise of the producer and the various distributors.

As regards cultural diversity, multi-territorial licensing would result in the homogenization of language and culture in the audiovisual sector, as the economy of scale would clearly weigh in favour of dominant languages such as English.

Pan-European licensing has the potential to facilitate monopolization of the market by players with greater purchasing power, to the detriment of the many SMEs which constitute the backbone of independent film and TV production in Europe. This is particularly relevant to the audiovisual industries in the smaller EU countries and may well lead to the undesirable consequence of weakening cultural diversity in online consumption.

Imposing pan-European licensing could therefore have the unintended effect of reducing the availability of less commercially viable content. The acquisition of pan-European rights by companies which do not wish to make the content available in certain markets (because they are not present on all EU markets or due to other economic and cultural realities) could result in content effectively being warehoused.

Our organisations believe the most efficient way in which the EU can support the circulation of audio-visual works for the benefit of the European consumer, is to protect the copyright *acquis* and preserve the freedom of audio-visual entrepreneurs to freely license to distributors and platforms in any way which seems best suited to each individual film according to its cultural context and the evolution of cultural taste and interest in different European cultures. As a multi-cultural, multi-national marketplace develops, these entrepreneurs will pursue those opportunities aggressively in service of consumer demand.

Cultural exchanges and international trade

-Which tools should be foreseen or reinforced at EU level to promote cooperation, exchanges and trade between the EU CCI and third countries?

We welcome this question, which we believe is hugely relevant to current developments in Europe's audio-visual industries: over the past two decades, our sectors have become increasingly integrated in a global audio-visual economy, with a growing reliance on exports and on creative cooperation in order to continue to produce diverse, high quality European audio-visual content. We believe strongly that maintaining the capacity of Europe's audio-visual to be competitive at home and in world markets is not through increased protectionism but through a reinforcement of existing cooperation and trade links throughout the world.

In order to be effective, a European strategy in this area should be two-pronged:

1. Resources must be committed to supporting the circulation of audio-visual works across national borders within the EU. Audio-visual enterprises want to exploit their content

throughout the EU and are only limited in their capacity to do so by the cultural and structural factors discussed above. Whilst these enterprises would not be responsive to a coercive policy based on changes to the copyright *acquis*, past experience shows they are responsive to direct support aimed at sharing the financial risks on their efforts to exploit the same audio-visual content in more than one EU market. At the production stage, co-productions involving two or more countries play a key role in promoting the circulation of the work. The MEDIA Programme, operating under the aegis of the European Commission, dedicates the biggest share of its budget to cross-border distribution support. The 2007 Evaluation of these action lines showed MEDIA support was behind an average of 37.2% of the European films distributed multi-territorially in the period 2001-2005, while the selective mechanism supported multi-territorial distribution campaigns for 200 European films over the same period. To quote a few more recent figures, in 2009 the automatic support to theatrical distribution amounted to 25M€. Another important part of the program is the support to European cinemas which programme a significant share of European films: in 2009, these screens whose number has reached 2 000 have organized 1.3 million screenings of European films, gathering 33.5 m admissions and collecting 200 M€ at the box-office. The development scheme under the MEDIA Programme is also instrumental in promoting the emergence and commercial stability of a dynamic European audiovisual production sector able to meet the challenges of coproducing within the European borders as well as with third countries. MEDIA's deployment must be maintained over the long run in order to help sustain cultural diversity in the offer of films inside Europe itself;

More resources must be committed to stimulating cooperation between audio-visual enterprises in Europe and in third countries. The MEDIA Mundus initiative shows promises in this respect, with €15 million pledged to export and international cooperation support over the next three years (2011-2013) in the areas of 'Training', 'Market Access' and 'Distribution and Circulation'. Although the financial resources allocated to this programme are insufficient at this stage, the EU's commitment goes some ways towards recognising the need for Europe's audio-visual industries to reach out to a global consumer base in other cultures and to avail itself of the enormous potential for financial and creative partnerships outside of Europe.

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We remain available for further information where necessary.

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The European Coordination of Independent Producers (CEPI) represents the interests of approximately 8000 independent film and television producers in Europe, equivalent to 95% of the entire European audiovisual production industry and over 16000 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 serials.

The International Federation of Film Distributors Associations (FIAD) gathers the national organisations of film distribution companies. Film distributors are the intermediates between film producers and cinema exhibitors and cover the entire range of companies: small and medium-sized companies specialized in art house films as well as larger companies specialized in mainstream films.

FIAD's members operate in 16 European countries where they achieve from 90% to 100% of the theatrical market.

The International Federation of Film Producers Associations (FIAPF) is a trade organisation dedicated to the defence and promotion of the legal, economic and creative interests of film and audiovisual producers throughout the world. FIAPF's members are 26 national producers' organisations from 23 countries across the globe from Europe, Asia, Pacific, North America, and Latin America.

The Independent Film & Television Alliance (IFTA) represents international film production and distribution companies operating in the EU, the US and the rest of the world, independently from the Hollywood majors. Its European membership includes some of the most senior companies involved in the development, production and international sales of many award-winning European films as well as films from the rest of the world.

The members of the International Video Federation (IVF) comprise companies, which are involved in all areas of the film industry (development, production, distribution, etc.) as well as entities dedicated to, and specialized in, distribution of audiovisual content on digital media and/or over digital networks, including the Internet.