

IVF

International Video Federation



January 27, 2006

Commission Communication on i2010: Digital Libraries
Submission of IVF and FIAPF

FIAPF (International Federation of Film Producers Associations) represents film producers' organizations in all the leading audiovisual and cinematographic production countries in Europe and around the world.

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

Over time, FIAPF and the IVF have advised the EU Member States, the Commission and the European Parliament on legislation, policy initiatives and cultural incentives relevant to the European film industry.

Digitisation, preservation and online accessibility

The members of FIAPF and the IVF fully support the overall policy objective of preserving Europe's rich and diverse cultural heritage and facilitating the appreciation thereof by European citizens. As producers and distributors of audiovisual and cinematographic works, our members understand the value to the industry and society at large of preserving and providing access to this highly valuable component of Europe's cultural heritage. Our members continue to contribute to this important process by participation in both mandatory and voluntary deposit schemes at national level, which, coupled with individual agreements with libraries and film archives, provide the necessary framework for the subsequent preservation of the deposited materials and establish the terms and conditions under which the deposited materials may be made accessible to the public for research and cultural purposes. As regards audiovisual works, the members of FIAPF and IVF wish to discourage any policies which would disrupt existing practices which are based on arrangements resulting from a long and careful process of adjustment to national cultures and resources.

The overall public policy goal should be to encourage innovation and new business development while ensuring choice for consumers and citizens as well as promoting cultural diversity and pluralism.

The Commission Communication “i2010: Digital Libraries (the “Communication”) does make reference to the economic aspects of a European digital library to the library and archive sectors which it refers to as “major sectors of activity in terms of investments and employment”. However, the Communication would appear to ignore the economic relevance of the European creative and media businesses, including the audiovisual and cinematographic production and distribution sectors. The European creative content sector is at the heart of the knowledge-based economy and European creative products and services are indispensable to the successful uptake of high-speed digital networks. The entertainment and media industries are projected to grow 7.3% annually to US\$1.8 trillion in 2009, according to a recent report from PricewaterhouseCoopers¹. New revenue streams stimulated by Internet, broadband and wireless technologies are expected to account for a significant portion of this growth.

Thus, while rich and diverse creative content contributes much to society and to the quality of life of European citizens, it is also a business and the livelihood of European creators, producers and distributors. The European content sectors play a vital role in ensuring that creators can make their works widely available and be justly compensated for their work. European content sectors also ensure that consumers and citizens throughout Europe have access to a wide range of creative products and media services.

For new creative content services and distribution models to work as driving forces for growth and further employment in Europe, a viable business framework is an essential starting point.

A stable regulatory environment is necessary to enhance and justify continued investments by all stakeholders. An absolute pre-requisite is an appropriate legal framework ensuring respect for exclusive rights as a means to secure remuneration for creative efforts and a return on investment to producers and investors. As clearly stated by Commissioner Reding at the 2005 Cannes Film Festival: “Intellectual property rights represent the economic heart of the audiovisual industry as a creative activity. Far from being blocking factors, they pave the way for the competitiveness of the whole sector.”

Joint efforts by all stakeholders concerned to fight against online piracy and unauthorized sharing, dissemination and use of copyright content are also essential. As concluded by the “Film Online” Working Group of The Creative Economy Conference in 2005 under the UK EU Presidency: “The fight against piracy must be made a top priority – businesses cannot compete with free services”. Reference is made to the important ongoing work personally supported by Commissioner Reding on developing a Charter of Best Practices for the uptake of Film Online.

The members of FIAPF and the IVF dispute the argument made in the Commission Staff Working Document Annex to the Communication that as digitisation presupposes the making of a copy, this can be “problematic” under intellectual property rights.

Contrary to considering this matter as “problematic”, Article 5.2 (c) of the EU Copyright Directive foresees the possibility of an optional exception from the exclusive right of reproduction “in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect

¹ PricewaterhouseCoopers Global Entertainment and Media Outlook: 2005-2009.

economic or commercial advantage”. The key concepts here are “specific acts” and “not for direct or indirect economic or commercial advantage.” Thus, European legislation has made provisions for the “specific” (i.e. non-systematic) acts of reproduction which may be necessary for preservation purposes (i.e. “not for direct or indirect economic or commercial advantage”). Provided this exception is implemented into national law, organizations covered by the exception may avail themselves of its provisions for the acts covered therein. Other acts covered by exclusive rights granted to right holders by law, and in respect of which no exemption is provided for in the legislation, are usually the subject of individual agreements with right holders.

In addition, it is incorrect, and indeed irrelevant, as stated in the Communication, that the costs of establishing the IPR-status of a work will be higher than the costs of digitisation of the work itself. Digitisation is labour-intensive and costly (as stated in the Communication itself on page 5²). Audiovisual works, especially of an older date, require much technical work on the master in order to ensure an appropriate quality of sound and image in the digital context. The members of FIAPF and the IVF have much experience with this process, for example in connection with publishing audiovisual works on DVD (already a digital medium). Funding for digitisation through the MEDIA Programme and national support mechanisms should be encouraged and supported, the aim being to incentivize the digitisation of European works to create a critical mass of European content in digital form for online dissemination.

European and national regulation must be sufficiently flexible to develop and offer consumers and citizens new, viable, diverse, individualized content services and offers in an increasingly competitive market place. European and national public policy should promote a multitude of different business models to stimulate investment in many diverse types of creative products and services benefiting the entire value chain and European end-users and citizens in general.

Public policies aimed at enhancing Europe’s cultural heritage should not jeopardize investment in the creative works and services which constitute Europe’s digital future.

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² On page 7 of the Annex to the Communication it is also argued that “digitisation of one hour of media material can cost between EUR 100 (audio) and EUR 1000 (film)”.