Joint Audiovisual Sector Submission
in response to the Commission's Consultation Paper
"Review of existing legislation on VAT reduced rates"
(TAXUD/C1)

4 January 2013

CEPI, FERA, FIA, FIAD, FIAPF, IVF, MPA and UNI MEI would like to thank the European Commission for the opportunity to take part in the current public consultation on the review of the legislative framework providing the option for Member States to apply reduced VAT rates. We represent a sizeable part of the audiovisual sector active across the European Union, both on the film and television sides, including authors, directors, performers, technicians, producers, distributors and publishers (see the end of this document for the exact list of signatories and a brief description of our organisations).

1. <u>Preliminary Comments</u>

The audiovisual sector that we collectively represent plays a central role in bringing the widest possible palette of creative and cultural works, products and services to European audiences every day, at international, European, national and local level. We not only ensure and promote cultural diversity and innovation but we also create jobs and contribute to economic growth, as recently recognized and illustrated by the European Commission in its Communication on the creative industries[1].

In the advanced economies and sophisticated marketplaces constituting the EU Single Market, the ability to create, finance and offer creative and cultural works, products and services are comparative advantages which should be nurtured and promoted. Looking at the current economic crisis and in the face of intense global competition among international trading partners, it is more vital than ever for the EU to continue to provide incentives to the creation, investment in, marketing, distribution and consumption of creative and cultural goods and services. These are essential drivers for economic and societal prosperity.

In this context, the EU and its Member States must carefully tailor and implement growth-enhancing fiscal policies, notably in the field of indirect taxation. In the audiovisual sector, we are well aware of the possibility for Member States to apply zero or reduced VAT rates to specific products and services. This option forms an integral part of Member States' fiscal tool-boxes. In this submission, we wish to outline why and how we consider that these incentives should be extended in scope so as to ensure equal treatment of creative and cultural goods and services, irrespective of distribution formats and/or platforms. In this context, it is worth recalling that the European Parliament has consistently supported this position. As recently as 11 December 2012, the European Parliament concluded once again that "digitally distributed cultural, journalistic or creative content should be subject to the same VAT rate as the equivalent product in a physical format or offered offline"[2]. Our focus in this submission is of course on the audiovisual sector but we are fully cognizant of the fact that these reflections are also relevant to other creative sectors, such as e.g. online publishing of text content.

The application of zero or reduced VAT rates has already proven to be a highly effective and efficient competition-neutral economic instrument for the Member States to promote cultural and economic policy objectives – i.e., the promotion of both offline and online consumption with resulting increased economic benefits for business, tax revenues and consumers.

A contrario, we regret that some Member States have recently considered or actually applied increased (instead of <u>decreased</u>) VAT rates on some cultural services. For example:

- Spain recently increased the VAT applicable to cinema admissions from 8 to 21%. This decision is not only expected to significantly damage the Spanish cinema sector, including both companies and individuals , but also – as predicted in a study prepared by Price Waterhouse on behalf of the cinema sector (available upon request) – result in an overall decrease of VAT income for the Spanish State.

[1] Communication on promoting cultural and creative sectors for growth and jobs in the EU, 26 September 2012 (COM(2012) 537 final).

[2] European Parliament resolution of 11 December 2012 on completing the Digital Single Market 2012/2030(INI)).

- Portugal increased VAT on cinema admissions from 6% to 13 % in January 2012. The immediate consequence was a 17 % drop in audience attendance and thus a resulting decrease in VAT income on cinema admissions.

- Latvia increased VAT on cinema admissions in 2009 from 8 to 21%. This led to a 20% market recession, coupled, again, with a decrease in the Latvian State's overall tax income from cinema exhibition.

- The Netherlands previously increased VAT on admissions to cultural events (cinema excluded) from 6 to 19%. However, this decision was recently reversed by the Dutch Government because of its potential damaging effects.

In past years, we have closely followed the development of the Commission's analysis and position regarding the application of reduced VAT rates in the cultural sector, notably with reference to the 2010 Green Paper on VAT and, more recently, the Commission's Communication on the future of VAT, which sets out the fundamental characteristics for a new VAT regime. One of the Commission's priorities is to review the current VAT rate structure and the undersigned organisations are fully supportive of the guiding principles developed by the Commission for this purpose, notably:

- ***"Similar goods and services should be subject to the same VAT rate; and***

- ***progress in technology should be taken into account in this respect, so that the challenge of convergence between the on-line and the physical environment is addressed."***

We share the view of the Commission that "treating like as like" for VAT purposes makes sense. We welcome the questions included in the current consultation paper, which are clearly focused precisely on how to apply reduced VAT rates online, rather that on whether the possibility for Member States to apply reduced rates should be extended to the online market place. This is of course evident.

2. Response to Specific Questions of the Consultation Paper

Question 6: "Do you agree that those electronic services that would qualify for the reduced rate will have to be precisely defined in a uniform way at an EU level or do you consider that a broad definition in the VAT Directive would be sufficient?

Question 9: "Are the definitions laid down in the Audiovisual Media Services Directive sufficiently clear were a reduced VAT rate allowed for on-line radio and television broadcasting?"

We would like to provide a joint answer to Q6 and Q9:

The current list of goods and services to which Member States may apply reduced VAT rates is set out in Annex III of the VAT Directive (2006/112/EC). It notably includes the supply of books, newspapers and periodicals, as well as admission to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, **cinemas**, exhibitions and similar cultural events and facilities. In addition, the reception of **radio and television broadcasting services** are also included in the qualifying list.

Because of the risks of distorting effects on the Single Market, all electronically supplied services (e-services) are currently excluded from the list of goods and services in respect of which Member States may apply reduced VAT rates. However, the underlying rationale for the exclusion of e-services for B2C transactions will cease to have any validity from 1 January 2015 onwards, when there will be a shift from the "country-of-origin" to the "country-of-consumption" principle for VAT charging purposes. By definition, this will remove the potential for distorting effects of indirect taxation and thus remove any remaining obstacle to the extension of reduced VAT rates to e-services. Timely regulatory steps will now have to be taken by the Commission to take into account the usual institutional time constraints and to ensure that a new regime is in place in time to meet the 2015 deadline.

We would therefore urge the Commission to factor this analysis into the formal proposal it intends to make to the Council by the end of 2013. In a nutshell and with reference to the audiovisual sector that we jointly represent, the Commission should use this window of opportunity to recommend the extension of the list of goods and services included in Annex III of the VAT Directive to include **on-demand audiovisual media services**. In addition, the review would also present a chance to reiterate the positive effects of applying reduced VAT rates to **cinema admissions** (already in place but worth recalling, considering the damaging national experiences outlined in page 2 of this submission). Last but not least, audiovisual content published on **DVDs and Blu-rays** should also explicitly be included in the list of goods and services in respect of which Member States may apply reduced VAT rates. In accordance with the principle of "treating like as like", it is essential to avoid a situation whereby the same creative work (e.g., a film) is subject to discrepant fiscal treatment between, on the one hand, its viewing in cinemas, on TV, on-demand audiovisual media services, and, on the other hand, the same film being published on a physical carrier (same basic logic as for books/e-books).

Questions 6 and 9 of the questionnaire speak to the issue of the possible need for a general definition of e-services and, more specifically, of online television services. In this context, the undersigned organisations suggest that the various audiovisual media services falling under the scope of Directive 2010/13/EU (AVMS Directive) should feature among the potential beneficiaries of reduced VAT rates. Concretely, the following services should hence be (or continue to be) included in Annex III of the VAT Directive:

- **television broadcasting** (i.e., linear services – see Article 1.1(e) of the AVMS Directive) – defined as "an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule" (already included in Annex III);

- **on-demand audiovisual media services** (i.e., non-linear services – see Article 1.1(g) of the AVMS Directive) – defined as "an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider" (new addition to Annex III).

To make the interpretation of Annex III future-proof in the audiovisual sector, we suggest, as a rule of thumb, that e-services falling under the scope of the AVMS Directive be automatically considered as qualifying as beneficiaries of reduced VAT rates. This would not only have the advantage of sparing fiscal authorities the burden of developing specific qualifying criteria for indirect taxation purposes for audiovisual services but also allow the VAT Directive automatically to reflect the dynamic interpretation of the concept of "television-like" programmes, which is currently built into the AVMS Directive (see notably its Recital 24). In addition, the list of beneficiaries of reduced VAT rates would be focused on services made available by media service providers assuming editorial responsibility for the service concerned.

The undersigned associations look forward to continuing the dialogue with the European Commission on this important topic.

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*The **European Coordination of Independent Producers** (CEPI – ID 59052572261-62) was founded in 1989 to organise and represent the interests of independent television producers in Europe.Today the Coordination represents approximately 8000 independent production companies in Europe, equivalent to 95% of the entire European audiovisual production industry. All together our members supply 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.*

*Founded in 1980, the **Federation of European Film Directors** (FERA – ID 29280842236-21) embodies 39 directors' associations from 29 countries. It speaks for approximately 20,000 European screen directors, representing their cultural, creative and economic interests vis à vis the European institutions and at the national level.*

*The **International Federation of Actors** (FIA – ID 24070646198-51) represents unions, guilds and professional associations from 70 countries from around the world and speaks on behalf of several hundreds of thousands of professional actors, dancers, variety and circus artists, broadcast professionals and other performers in the audiovisual sector.*

*The **International Federation of Film Distributors Associations** (FIAD – ID 89606066800-92) gathers national associations of film distribution companies. Distributors are intermediaries whose main activity is the release of films in cinemas; they may also be involved in the release of films on television, DVD and online.*

*The **International Federation of Film Producers Associations** (FIAPF – ID 12561298754-14) is a trade organisation dedicated to the defence and promotion of the legal, economic and creative interests of film producers throughout the world. FIAPF's members are 30 national producers' organisations from 27 countries across the globe from Europe, Africa, Asia-Pacific, North and Latin America.*

*The members of the **International Video Federation** (IVF - ID 7013477846-25) are businesses active in all segments of the film and audiovisual content sector in Europe. Their activities include the production of films and audiovisual content as well as publication thereof on digital media and in online channels.*

*The **Motion Picture Association** (MPA – ID 95201401713-39) is a trade organisation representing six major international producers and distributors of films, home entertainment and television programmes. Its members are Paramount Pictures Corporation, Sony Pictures Entertainment Inc, Twentieth Century Fox Film Corporation, Universal City Studios LLC, Walt Disney Studios and Warner Bros. Entertainment Inc.*

***UNI MEI Global Union** (UNI MEI Global Union – ID 82864476764-79) represents over 140 national unions & guilds affiliating more than 375 000 creators, technicians and other workers in the media and entertainment industries world wide.*