

Letter from the Audiovisual Sector Coalition on the European Commission's Proposal for a Regulation on Geo-Blocking¹



Brussels, 29 November 2016

Dear Mrs. GERINGER de OEDENBERG,

The undersigned organisations working across the audiovisual sector in Europe, and representing film and TV directors, commercial broadcasters, sports rights owners, publishers, distributors, film and TV producers, and cinema exhibitors, would like to express our concern regarding the recent suggestions within the European Parliament that the scope of the proposed Regulation addressing geo-blocking should be extended to include audiovisual services.

Europe's audiovisual sector relies heavily on the freedom to agree licenses and contracts on a territorial basis in order to raise funding from production and distribution partners in several

¹ Proposal for a Regulation on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, COM (2016) 289 final

countries for the creation, production and distribution of new content. Territorial exclusivity not only allows for greater investment in the development and creation of new works, but also for the offer of films and audiovisual content to be tailored to the many different audiences across Europe, creating local markets for non-national content and promoting cultural and linguistic diversity. This in turn creates more choice for European audiences. This model is both a reflection of and an engine for Europe's rich cultural diversity and borne out of the economic necessity of being able to fund European production of film and television content.

The specificities of the audiovisual sector have long been recognised by European lawmakers. This has resulted in specific legislation to address our sector and its exclusion from broad instruments such as the Services Directive, the scope of which is mirrored by the proposed Regulation on geo-blocking.

Attempting to remove the exclusion of the audiovisual sector from the proposed Regulation would therefore place the economic sustainability of our sector at risk and severely hamper our ability to fund new audiovisual content in Europe. Such a result would be contrary to the EU's long history of measures to promote cultural diversity.

In light of the objective of promotion of cultural diversity, we would like to recall the following elements:

1. The European Parliament has repeatedly recognised the specificities of the audiovisual sector in Europe

The European Parliament has repeatedly adopted resolutions by overwhelming majorities which recognise the specificities of the audiovisual sector in Europe and the importance of territoriality and contractual freedom for the financing and distribution of audiovisual content and for cultural diversity.

Most recently, these elements were highlighted in this year's resolution on the report by Evelynne Gebhardt and Kaja Kallas [Towards a Digital Single Market Act](#):

41. [...] points out that the creative sector has specificities and different challenges, notably arising from the different types of content and creative works and from the business models used; whereas the 'Territoriality and its impact on the financing of audiovisual works' study underlines the important role of territorial licensing regarding the refinancing of European films; calls therefore on the Commission to better identify and take into account these specificities;

This was also the case in last year's European Parliament's report [on the implementation of the 2001 Copyright Directive](#):

13. [...] emphasises that the ability, under the principle of freedom of contract, to select the extent of territorial coverage and the type of distribution platform encourages investment in films and television content and promotes cultural diversity [...].

We have welcomed the Parliament's support for the audiovisual sector in Europe and the recognition of its specific qualities and challenges. We continue to call on Members of the European Parliament to maintain this support.

2. The specificities of the audiovisual sector are unchanged since the adoption of the Services Directive

The clear and objective reasons for the exclusion of audiovisual services from the scope of the 2006 Services Directive remain valid today; contractual freedom continues to be a crucial factor in determining the audiovisual sector's ability to secure financing for new audiovisual content and is a key catalyst for cultural diversity.

By aligning the scope of the proposed Regulation on unjustified geo-blocking with that of the Services Directive, the Commission has chosen to prioritise regulatory consistency and legal certainty, and also to respect the principles that determined the elaboration of the scope of the Services Directive, i.e. the desire to take into account the specificities of certain sectors and, in the case of audiovisual services, to foster and preserve cultural diversity.

3. A specific framework already exists for the provision of audiovisual services

As noted in the Commission's impact assessment, the Audiovisual Media Services Directive already provides a framework for the provision of audiovisual services. We note that this Directive is currently under review.

In addition, legislative proposals are already under consideration which aim to address the cross-border use of content. These include the proposed Regulation on the Portability of Online Content Services, as well as a proposed regulation on certain online transmissions of broadcasting services and retransmissions of television and radio programmes.

4. Changing the scope of the proposed Regulation would create legal uncertainty and ignore the principles of better regulation

The public consultation carried out by the European Commission in advance of its legislative proposal on geo-blocking explicitly excluded geo-blocking related to copyright and content licensing practices. In addition, the impact assessment which accompanied the proposed Regulation did not consider the possible inclusion of audiovisual services in the scope of the Regulation.

Attempting to include audiovisual services at this stage would therefore be a clear violation of the Better Regulation Principles.

In conclusion, we respectfully urge you to support the Commission's proposal which rightfully excludes "audiovisual services" from its scope in line with the Services Directive and oppose any call for its extension as this could jeopardise the future sustainability of the audiovisual sector and ability to finance, produce and distribute new audiovisual works in Europe. Such an extension would also negatively impact cultural diversity and ultimately reduce the consumers' ability to access diverse audiovisual content.

Signatories

ACT - Association of Commercial Televisions in Europe, Grégoire Polad, Director General - gp@acte.be, and Emilie Anthonis, EU Affairs Advisor - ea@acte.be

CEPI - European Coordination of Independent Producers, Elena Lai, Secretary General - Cepi@europe-analytica.com

EUROPA DISTRIBUTION - European Network of Independent Film Distributors, Christine Eloy, General Manager - christine.elay@europa-distribution.org

FERA - Federation of European Film Directors, Pauline Durand-Vialle, CEO - pdv@filmdirectors.eu

FIAPF - International Federation of Film Producers Associations, Benoît Ginisty, Director General - B.Ginisty@fiapf.org

IVF - International Video Federation - Publishers of Audiovisual Content on Digital Media and Online, Charlotte Lund Thomsen, Legal Counsel - clthomsen@ivf-video.org

MEDIAPRO - Jaume Roures, Legal Representative Mediaproducción S.L.U., jroures@mediapro.es

Premier League - Mathieu Moreuil, Head of European Public Policy - mmoreuil@premierleague.com

UNIC - International Federation of Cinemas, Jan Runge, CEO - jrunge@unic-cinemas.org

BUNDESLIGA - Stefan Brost, Head of EU Office - stefan.brost@dfb-dfl.de

EUROKINEMA - Association de Producteurs de Cinéma et de Télévision, Yvon Thiec, General Delegate - Yvon.Thiec@eurocinema.eu

EUROPA INTERNATIONAL - Daphné Kapfer, Managing Director - info@europa-international.org

FIAD - International Federation of Film Distributors Associations, Nikolas Moschakis, Secretary General - nikolas.moschakis@fiad.eu

IFTA - Independent Film & Television Alliance, Jean Prewitt, CEO - jprewitt@ifta-online.org

LaLiga - The Spanish Football League, Javier Tebas, President - contact: Laura Vilches, Head of European Public Affairs - lvilches@laliga.es

MPA - Motion Picture Association, Stan McCoy, President and Managing Director MPA EMEA - Stan_McCoy@mpaa.org

SPIO - Spitzenorganisation der Filmwirtschaft (Association of the German Film Industry), Alfred Holighaus, President - holighaus@spio.de