



Brussels, 11 October 2022.

(Updated version of November 2022)

Object: EFAD response to Giuseppe Abbamonte' letter on the Stakeholders dialogue on cross-border availability and access to audiovisual content across the EU (not for dissemination)

Dear Giuseppe,

EFAD and some of its members have been actively participating in the meetings of the Stakeholders dialogue on cross-border availability and access to audiovisual content across the EU. We also have had continuous exchanges with your team in an excellent constructive spirit.

At these different occasions:

- We shared our concerns over the documented¹ **lack of online availability** of European works, in particular stemming from smaller language territories and our strong willingness to see not only the access but, most importantly, the online **visibility and promotion** of European works – and in particular the ones our member publicly funded - improved in the future.
- We repeated that **territorial exclusivities** remain at the heart of the financing and distribution of European works and European coproductions in particular (public funding, private financiers, sales, distributors are found territory by territory) and should therefore be preserved. It is of utmost importance that the European Commission preserve this principle (no opening of the geoblocking regulation and guaranteeing a regulatory status quo).
- We explained that within the limit of their respective scopes of interventions and budgets' constraints, EFAD members are constantly looking for **solutions and good practices** that could make a difference, provided that right holders are getting proper remuneration (see summary in point 1 of this note).
- We underlined that a lot can also be done at EU level:
 - **Proper implementation of the AVMS directive**, the 30% online quota and prominence obligation will make a difference. It is crucial to assess how the quota is met and its level of diversity (for example not only domestic works but representing a large spectrum of origins of European works) and how visible they are (dedicated section in catalogues, dedicated search functions, etc.) A better understanding of the EU market is necessary, especially after Brexit and

¹ According to the European Audiovisual Observatory, European films circulate much less online than American ones and are on average available in only 3 different online services.

the Covid-19 crisis, inter alia on the basis of the forthcoming Media Outlook Report.

- Continuous **support to cinemas** (at national and European level): we know that theatrical release makes a difference: if a film is not released in cinemas, it has less chances to circulate online.
- **Coproductions** open distribution markets and enhance the artistic value of a film, and generally its capacity to relate to a wider audience. All the support to coproductions should be therefore reinforced.
- Supporting **co-writing**, co-creation by teams of creators from different nationalities.
- The implementation of the **Copyright Directive** and in particular the teaching and heritage exceptions and the provision on out-of commerce may contribute to a broader online access to European works. Here we expect more support from European Commission to identify how these provisions can improve online access to European works in practice (example of national implementations and best practices) .
- The impact of the **portability and cabsat** on cross border access to European content should also be precisely evaluated.
- In the field of **film heritage**, there is a need for more structural funding, public money to digitize, restore, preserve and help pay for the rights and allow its citizens to watch European classics at a larger scale (with subtitles in different languages).
- More should be done to **fight against piracy** and to improve and facilitate the discoverability of legally available works.
- More should be done to make sure that video sharing platforms remunerate fairly for the online exploitation of works.
- In all these, the **support of Creative Europe-MEDIA is key**, in particular when it concerns cross border/European dimension projects where our **national bodies can not finance (budget and remit issue)**. Very promising projects have already been launched at national and European level and could be scaled up, subject to MEDIA support.²

In response to your request to concrete actions, we have summarized how EFAD members are already involved in improving – in the online world - the availability and promotion of the European works and some proposals to go further in the future.

1. What EFAD members do for promoting European works online?

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- La Cinetek : <https://www.lacinetek.com> available in France, BE, LU, AT
- European Film Factory: <https://www.europeanfilmfactory.eu/>, available in English, French, German, Greek, Italian, Polish, Romanian & Spanish on all digital devices for students (11-18 years old) and teachers across Europe
- Season of classic films (on youtube): <https://ace-film.eu/projects/season-of-classics/>
- Arte Europe (for non scripted content)
- Eyelet/Nutalone: <https://www.juntadeandalucia.es/cultura/europacreativaandalucia/nutalone/>
- Tënk

- EFAD members are **public entities** financed either by the respective state budgets and/or contributions from market operators. Their mission is to distribute public support to national and European independent creation. Public film funds are now requested to intervene in an even broader scope of matters (new genres, training, sustainability, diversity, studio capacity...) in a context where their resources are under extreme pressure due to the changes in the financing system of creation, COVID and now the inflation.
- The primary function of EFAD members is to support the **development and production** of national and European works (domestic and coproductions), so that stories reflecting the diversity of cultural and linguistic realities can be reflected on screen.
- They are also strongly committed in **audience development**, making sure the work they support are distributed and promoted, in theaters in particular and festivals. Supporting the **online distribution and promotion** of these works is a complementary scope of intervention. It is growing in importance amongst our members, even though in certain countries, intervening on the distribution market is not considered necessary.
 - Most of EFAD members are supporting theatrical distribution in their countries and abroad, often via the festivals in cooperation with their agencies responsible for promoting their works internationally (Ex. Unifrance, German Films, Austrian Films...).
 - Certain EFAD members also support online distribution via these distribution schemes or specific ones. Ex.: [ACM Distribution](#), [New Norwegian international distribution support scheme](#). In November 2022, ICAA (Spain) launched a new [International Distribution support scheme](#) for Spanish Films that covers online distribution costs. Some are considering developing specific schemes for online distribution (ex. CCA in Belgium).
 - Several EFAD members support local online services with the condition that they expose a good proportion of European works. Ex. [VoD Support](#) of the CNC, [My French Film Festival](#)³, CCA in Belgium supports local services such as Universciné and Sooner or [Avila](#), a TVoD service with a selection of Belgian films available in the word.
- EFAD members have also been involved in developing tools to increase the **findability and discoverability** of works online.
 - Online databases have been put in place by or with the support of our members, for example in France⁴, Austria⁵, Ireland⁶, Germany⁷
 - At European level, [Lumiere VoD](#) by the European Audiovisual Observatory is an excellent tool to search where works are available online (aimed for professionals not the general public though). [Agorateka](#) is an interesting repository that could have been developed further. We need to ensure indeed that the European consumer can in a couple of clicks identify where a film is

³ an online festival of French-language films originating from Belgium, Canada, France and Switzerland (including coproductions). MyFrenchFilmFestival.com platform, more than 50 partner platforms relayed the festival, including iTunes across 90 territories, Amazon, Google Play and MUBI.

⁴ <https://vad.cnc.fr/>

⁵ <https://watch.austrianfilms.com/home>

⁶ <https://www.wheretowatchireland.com/>

⁷ <https://germanfilms.usheru.com/home>

available online (similarly as in the google search results where it is already possible to see where a film plays in theaters)

- In France even, a regulatory initiative called “**Exploitation suivie**” that came into force in October 2016, provides for an obligation for the producer to seek continued exploitation of cinematographic and audiovisual works.
- As a result of the COVID situation and/or the lack of online access to their classic films, certain EFAD members have launched their **own online platforms**:

<p>Latvia https://www.filmas.lv/</p> <p>Free access in Latvia, a selection of classic films are accessible worldwide</p>	<p>The filmas.lv portal has been developed and is maintained by the National Film Centre of Latvia, filmas.lv serves both as a complete database of all films made in Latvia (since the beginning of the 20th century) and as an opportunity to watch many of these films online for free. Its catalogue of publicly available films is periodically updated and supplemented with new material.</p> <p>Filmas.lv operates mainly in Latvia and in the Latvian language, but since 2019 it has also been organising international online festivals, establishing temporary agreements with film producers and sales agents regarding specific film distribution territories.</p> <p>Latvian Film Heritage, a new permanent section of filmas.lv available worldwide and demonstrating milestones in Latvian cinema history, opens in November 2020. The films in this collection have been digitally restored and are available to viewers free of charge and with subtitle translations. 20 films with EN subtitles are available without geo-blocking for free. The content of this collection is also being periodically supplemented as films are restored and prepared for publication.</p>
<p>Hungary https://filmio.hu/home</p> <p>SVoD and TVoD in Hungary, access via an account (portability applies)</p>	<p>Service set up, financed and managed by the NFI in November 2019, SVoD (3€) and TVoD (2,4€ or 1,5€). + 400 Hungarian films. Geoblocked to Hungary but portability applies: if subscribed in HU, possibility to access from another country.</p> <p>56 people involved in the project (out of 260 staff at NFI). Classic films (NFI has the rights), more recent films. Huge task: technical development, rights negotiation, promotion/marketing, customer management, revenues sharing...</p> <p>Few thousands subscribers. Extension to neighboring countries was envisaged but huge workload (re-negotiate rights, discussions with CMOs, technical adjustments...)</p>
<p>Poland https://35mm.online/en</p> <p>worldwide access, for free, account needed for certain films</p>	<p>Streaming platform launched in September 2021.</p> <p>The project* consisted on restoration – digitization – creation of the Distribution Center – (the streaming platform).</p> <p>1. the restoration of 160 feature films, 71 documentaries, 474 animated films (incl 10 full-length animated films) and</p>

	<p>digitalizing all of them as well as 3108 unique episodes of the Polish Film Chronicle from 1945-1994.</p> <p>2. Making all the above-mentioned film materials (nearly 4,000 film items) available on the 35mm.online streaming platform</p> <p>The project led by the Polish Film Institute has been set up in 2017-2021 thanks to funding from the Ministry of Culture and National Heritage of the Republic of Poland and the EU (ERDF)**.</p> <p>99% of the catalogue is accessible worldwide. This was possible because most of rights were in the hands of 2 partners of the Project (publicly owned studios: the Documentary and Feature Film Studios and Studio Filmów Rysunkowych).</p> <p>All film materials presented on the 35mm.online platform meet the requirements of WCAG 2.0 - they have audio descriptions, transcriptions, subtitles in Polish and English, as well as comprehensive descriptions. For foreigners, the entire film library of the Platform is available in English.</p> <p>In some cases, to watch more popular, famous titles an account must be created.</p> <p>The platform is supposed to remain in operation for at least 5 years and 90% of the film materials restored as part of the Project will be available for free also for the same amount of time.</p> <p>* Project named: 'Digital restoration and digitization of Polish feature films, documentaries and animated films in order to ensure access in all fields of distribution (cinema, television, Internet, mobile devices) and to preserve Polish film heritage for future generations', under Sub-measure 2.3.2 'Digital sharing of resources of culture' for Measure 2.3 'Digital accessibility and usefulness of public sector information', under the Operational Programme Digital Poland for 2014-2020.</p> <p>** The total value of the project was ~22 275 000 €, European Union funding was ~15 698 000 EUR. The project was also co-financed by the Ministry of Culture and National Heritage of the Republic of Poland in the amount of ~2 850 910 EUR. The rest was covered from own funds.</p>
Spain	<p>Spain is working in the creation and future launch of a public OTT / VoD platform that will have three different modules. The most prominent will be the one dedicated to Heritage film, in which the content of the national image archive owned by the Spanish Film Archive - Filmoteca Española (historical images, news documentaries from the first half of the century, graduation films of the Official Film School - Escuela Oficial de Cine of the 50's, etc.) will be made available for the general audience, that will also have</p>

	<p>a private environment for professionals who can access fragments and download them in 4k.</p> <p>A second module for professionals with a digital B2B environment or marketplace in which the content of Spanish agents and production companies can be shared with international prescribers (festivals, buyers, distributors, cultural centers, programmers, etc) in order to generate a virtual all year round digital market.</p> <p>The third module will be a Free VoD section for the dissemination of programs of films and content of public domain or available online distribution rights, which would be curated. The access to the content of the platform would be free, for the professional side of the B2B and Heritage if would require registration and validation of the profiles. The use of the heritage content would require prior payment of rights for download.</p> <p>The platform is currently a work-in-progress submitted to a public tender. Some of the modules are expected to be launched in 2023, the whole project should see the light in 2024.</p>
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2. EFAD commitments

Commitment 1. Tracking and monitoring the online circulation of supported films

- EFAD members will be encouraged to reinforce or put in place process to **systematically monitor the circulation of the films they support**, not only in theaters but also **online**, in their respective countries and in Europe. The objective is to ensure a more in-depth assessment of the online availability of their supported works and develop a pro-active online exploitation strategy. This will allow them to identify the list of recent or classic films (with an international potential) that are NOT available online and for which specific incentives could be put in place;
- In cooperation with the EAO, **EFAD will closely monitor the availability in Europe of a selection of European films** (selection of the titles that have a strong circulation potential, for example Lux Audience Award winners), sharing the information with EFAD members and right holders in order to explore potential incentives to foster the availability and promotion;

Commitment 2 - Support to online distribution

- EFAD will continue to organise **regular exchanges and collection of best practices** and experiences amongst its members on initiatives to foster the access and promotion of European films online;
- Based on the result of the monitoring exercise and discussion with distributors, EFAD members will **explore how to develop or adjust their national online distribution support** (supporting technical costs, subtitles...) in order to facilitate the presence of the works they support on TVoD services at national level and abroad;

- EFAD will make recommendations to MEDIA as to how to adjust the European funding according to these objectives (for example on improving the availability of the European films with international potential)

Commitment 3 – Explore feasibility to broaden the access to publicly-funded online platforms

- Some EFAD members (see above) have already set up their own online platforms and are willing to **explore the possibility to enlarge the geographical coverage** of online services managed by film funds to more countries (where linguistic minorities are present). EU financial support will be needed to cover the extra-costs and resources for this non-domestic out-reach (administrative, legal and technical costs).
- EFAD will help and stimulate the **exchange of best practices** on how to develop such online services and propose regular showcases of national projects. The first one will be the Polish project supported by the EU <https://35mm.online/en>
- The **Netherlands Film Fund** will explore the possibility to foster online access of NFF supported works via the online platform managed by Eye, the [EYE Film player](#).
 - An additional **bonus grant** will be proposed to the right holders of a film (not recent ones), to support the online availability on the Eye Film Player (TVoD with revenue sharing, non-exclusive). The film would be made accessible to all territories where it has not been sold yet (with a possibility to withdraw the access if the film finds a commercial exploitation in the respective countries)
- The **HAVC (HR) and VAF (BE NL)** expressed the willingness to explore the feasibility of launching a VOD platform accessible to several territories, subject to financial capacity and support from the EU