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European films and the Information Society

*Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort*

Informal Meeting of Ministers for Audiovisual, Europe Day

Cannes, 16 May 2005

Ministers, dear filmmakers and business leaders,

I am very happy to welcome you to the Third Europe Day at the Cannes Film Festival of which the subject is “European films and the information society”.

In Europe, as in other continents, the opportunities for people to enjoy films online are set to increase tremendously over the next few years. The availability of digital content is opening fantastic perspectives for the development of both the information society and the European film industry. We must take this opportunity to contribute to exploiting new markets and increasing revenue for our film makers while expanding the choice available to the general public.

To prepare for this day a meeting took place in Brussels on 5 April 2005, with *inter alia*, experts from the film industry and from the access providers. My comments today are largely based on the results of that meeting,

1. 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. Indeed, Intellectual Property protection plays a vital role for fostering investment, growth, job creation and cultural diversity in the European Union. This applies to both the traditional environment and in the new environment of digital services.

The advent of film online offers immense opportunities for the film industry both with regards to access to new audiences and to wider circulation of works, including on international markets. For instance, the fact that *Goodbye Lenin* is one of the most sought after European films on peer-to-peer networks shows that there is an audience for European films on the Internet. Furthermore, the Internet offers immense possibilities for niche markets. It also offers the possibility for creators to reach new audiences with innovative new offers.

Film online should be seen as an additional distribution channel which will complement other parts of the value chain. The collective experience of seeing a film in a cinema will remain a privileged medium. Experience shows that the advent of television and video has not resulted in the disappearance of film in cinema theatres. On the contrary, videos, and DVD in particular, have “boosted” the public’s taste for film. Hence, the Internet offers immense opportunity for the European film industry. It is a new outlet that will provide additional revenue.

Film online offers opportunities to reach new audiences, including international audiences. Audiences are often currently deprived of access to certain films – either for geographical reasons or because more artistic or experimental films often have difficulty in being screened widely. Film online can therefore contribute to the promotion of European cultural diversity, including on international markets, by offering the public a wider choice.

2. Film online also offers great opportunities for the Internet service and access providers. High quality content is a driver for the broadband industry. The broadband industry’s business model cannot be built on a free-rider system. Rights holders must receive an equitable share of the revenue. As high quality content cannot exist without such remuneration, a business model built on a free-rider system is in fact a house of cards.

Moreover, illegal uploading and downloading takes up enormous amounts of bandwidth, which puts a lot strain on the ‘backbone’ of the internet.

Promoting legitimate services will ensure access providers additional revenues on top of their access services. Agreements between rights holders and access providers will be beneficial – indeed essential - to both sides.

3. The various intellectual property rights related to a film are often held by many different people or companies. In order to acquire the rights needed to exploit a film in an online service, one has to negotiate the rights in individual negotiations. Hence, one of the major challenges for film online is **to clear the rights for this new market.**

We must recognise the opportunities represented by technological developments for niche markets, notably for independent film. But can we be sure that these niche players will benefit from the new emerging models? These film production companies as right-holders must get organised, in collecting the necessary rights, in order to become real partners for access providers.

For film online to be successful, i.e. to be able to compete with pirated works available for free on peer-to-peer networks, it is important that the 'film online window' does not come too late in the value chain. Actually, **it should always be up to the rights holders to decide when and in which manner they exploit their films.**

4. The exchange of best practices in the fight against piracy should be supported. The 'graduated response' to unauthorised file-sharing or downloading of films which is being advocated in a number of Member States now, is a major step forward. A graduated response to illegal file sharing entails, for instance, the following steps: (1) ISPs send an e-mail to their clients telling them to stop their illegal activities; (2) ISPs send a registered letter to their clients telling them to stop their illegal activities; (3) ISPs cut the bandwidth of their clients; (4) ISPs suspend or terminate the contract. This is of course to be done under judicial review.

There are clear opportunities for close co-operation between rights holders and the access providers, taking into account in particular Articles 12 and 15 of the eCommerce Directive¹. This is clearly an area where co-regulation should be developed. The Commission is ready to use its best endeavours to favour the drafting of a European Charter to be signed by all stakeholders, which would spell out clear commitments to deter illegal file sharing and develop legal services.

5. Education programmes on the value and importance of intellectual property rights for the availability of content, particularly those programmes directed at young people, are very important. Explaining why something is wrong is often more effective than telling people not to do something. In particular the accent should be put on the fact that peer-to-peer networks involve not only downloading, but also uploading of pirated works. This new active, illegal dissemination of content deprives authors from the revenues of their work.

In conclusion: The film sector must adapt to the digital evolution. We already see that in many countries, income from DVDs is higher than income from the box office. In order to ready for the future, the European film sector needs to seize new opportunities.

¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

There is an urgent need for a meaningful dialogue between the film industry and the service providers to ensure that online distribution takes place through legal supply. There may be a disastrous loss in revenue if the market is inundated with unauthorised file sharing of films, as has been observed with music. As the availability of new legitimate services becomes widespread for music, signs of recovery in the music industry are being observed and there is a strong link between the availability of legitimate services, the success of new business models and the economic recovery in the music industry. Therefore, the availability of legitimate services as an essential instrument to avoid piracy on a massive scale can prove to be a model to follow for the film industry.

Right now, there is an opportunity to enable the European film community to recover some of the ground lost during the last 50 years as a result of fragmentation. There is an opportunity to develop new business models to join up in terms of distribution.

The threat is that if no adjustments are made, it is likely that the existing business models will collapse as the rules for territories, release windows and different media all change. If that happens, the European film community will lose out.

The Commission will investigate the possibilities of designing funding mechanisms (for example through MEDIA 2007) for online distribution and to encourage the digitisation of new audiovisual works for online distribution.

But film online is not only for new films. It is also a great opportunity to give added value to catalogues of films. The Commission has already taken action to foster accessibility to film heritage: a proposal for a Recommendation is currently being discussed in the Council and Parliament.

To open the discussion, let me recall the three lines of action, which I consider to be the most important:

- **Co-operation** to fight piracy;
- **Education** on the importance of intellectual property rights for the availability of content – this could, for instance, be an important element in media literacy programmes;
- **Working together** to improve the availability of films on a mutually profitable basis.