CREATIVITY WORKS!

Ending geo-enabling would jeopardise europe's wealth of culturally diverse content and access options to the detriment of industry and consumers

Ending geo-enabling and commercial freedom to agree territorial licensing would mean:

1. Less culturally-diverse content and less artistic and business cooperation between European creators and their business partners

2. Higher prices for citizens and consumers, for less diverse content and less choice of access options

3. Content that is predominantly in the major languages (English, French, German, etc.) as the creative sectors will be forced to maximize potential audience reach

4. Jeopardising the artistic and financial viability of smaller players in Europe both on the creative and the business sides

5. A world where content production and distribution are increasingly concentrated with few market players

IS THIS THE WORLD WE WANT TO LIVE IN?

What would an end to geo-enabling mean concretely?

1. FOR CONSUMERS & USERS

Less content and loss of cultural diversity

Ending geo-enabling would erode the commercial freedom for parties to agree territorial exclusivity, in turn reducing cultural diversity both in content production and in distribution channels across Europe. Passionate producers and distributors throughout the value chain (cinemas, video online and offline, broadcasters, etc) would no longer be able to finance the development, production, marketing and distribution of content they believe in.

WHY?

— On average, European films have a budget of 2 million EUR[1]. However, the continent's film production encompasses everything from low-budget films (<EUR 1 million) with little reach beyond their country of origin, to mid-budget films (EUR 8-10 million) which are promoted and distributed in several EU countries, to big-budget productions starring household names across Europe.

— Co-productions and pre-sales of future distribution rights (the selling of rights to future national and foreign distributors for a given territory *before* the film/TV programme is made) allow the financial risks associated with production to be shared among various stakeholders, while favouring greater multi-territory incubation, local marketing and promotion and increased distribution channels both in the home market and abroad. This in turn fosters local marketing and tailoring adapted to each territory, ultimately driving content awareness and building demand among audiences;

— Ending exclusive territorial licencing would put an end to this risk sharing model of production and distribution – **driving many creators, producers, distributors and distribution channels out of business**. There is no viable alternative financing model or risk mitigating strategy for European production whether of films, TV programmes or other types of audiovisual content such as documentaries;

— Many (if not most) films and TV content would no longer be viable to make, as producers are unable to take on the entirety of the financial risk involved on their own. **As a result, they would stop developing and producing new films and TV content. European consumers would miss out on the culturally diverse range of content to which they currently have access in Europe**.

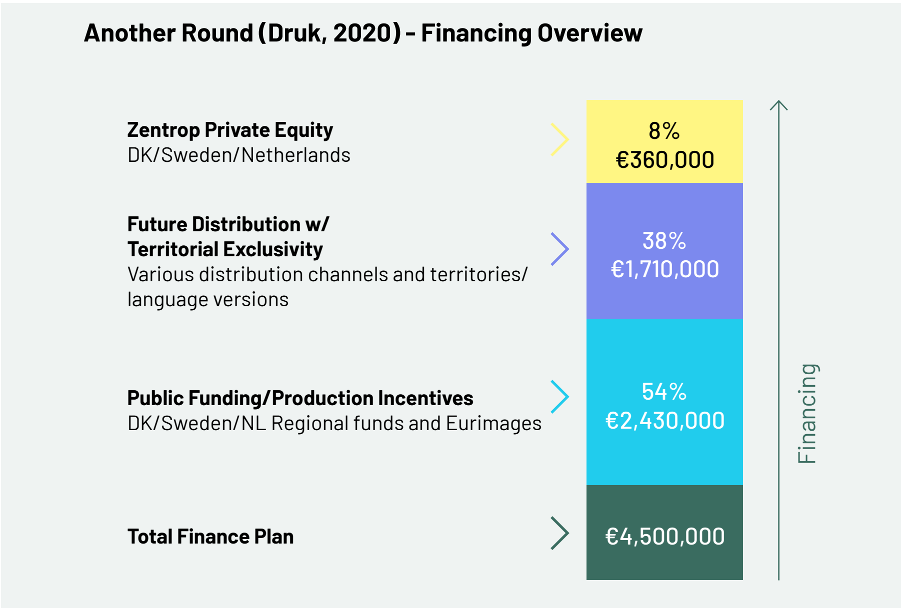
1 - European Audiovisual Observatory. 2019. Average budget of European fiction films in 2019 was EUR 2.07 million.

EXAMPLE:

FINANCING OVERVIEW - Another Round

by Thomas Vinterberg, starring Mads Mikkelsen, produced by Zentropa

Best International Feature Film winner at the 93rd Academy Awards
Cannes selection 2020, 2020 winner of the European Film Academy Award for Best Film



The pre-sale of territorially exclusive rights represented 38% of the funding required to produce this film which won multiple awards including the 2020 European Film Awards for European Film, European Screenwriter, European Director and European Actor as well as the 2021 Academy Award for Best International Feature Film.

Fewer distribution channels

- Distributors, video publishers online and offline cinema operators and broadcasters develop targeted marketing strategies to create markets for content in each respective country, taking into consideration various factors, including cultural/linguistic specificities, competition from local/international content and optimal release periods (school & national holidays etc) for different countries;
- The end of territorial licensing would weaken the financial position of many producers, video publishers online and offline, distributors, cinema operators, and broadcasters. As a result, many content distribution channels, especially local and small-scale channels, would be unable to survive. This would also have a negative impact on the future distribution opportunities for national content in each Member State. The optimal situation for content producers, distribution and distribution channels – and for audiences – is a wide variety of distribution options in each Member State with various access options and price points for consumers.

EXAMPLES:

- Let's look at **music.** If a label is releasing a new album by a band, it will be promoted differently in each territory. For example, they might want to give fans the opportunity to stream the complete album one week before its release, in order to form an opinion, even before the purchase decision. Ending geo-enabling would put an end to an important and meaningful marketing tool for labels and artists;
- **Bohemian Rhapsody** was released in a number of EU countries on November 1st 2018, but only a few weeks later in Italy to avoid release into an overcrowded theatrical release period in Italy, which included the Italian comedy *Ti Presento Sofia*.

Higher prices

In the absence of territorial distribution arrangements, rights would have to be bought for the entire European territory, something which only a handful of players would be able to afford and actually exploit as only few players have a pan-European network to distribute through. Citizens would face higher prices and only well-off audience groups would readily be able to access content services. In addition, it is unlikely that a single sale of rights for all of Europe would generate the same amount of production funding as several individual distribution deals.

WHY?

- The ability to set prices as a function of local purchasing powers would be lost;
- Prices would be established at the level of higher-income Member States;
- Meanwhile, VAT would continue to vary between Member States.

EXAMPLES:

- **103 million citizens** across Europe would face **higher prices** for sports content if they were to access the same sports coverage without geo-blocking;
- An OXERA study[2] estimated that the annual consumer welfare loss could amount to up to € 9.3 billion;
- Spotify currently differentiates prices across different Member States (e.g., Bulgaria 5 euros/month, Greece 7 euros/month & Belgium 10 euros/month). Putting an end to geo-enabling would curtail the freedom of services to adapt to local terms and offerings according to local market conditions and put pressure on these services to unify prices upwards.

2 - Oxera and O&O. 2020. The impact of including AV in the EU Geo-blocking Regulation: evidence from industry.

Less culturally diverse content

— In a scenario without the possibility to agree territorially exclusive distribution arrangements, only big market players would be able to bid for pan-European licences, while smaller (national) players would not be able to afford – or have a commercial interest in – such a cost. Consequently, the distribution market would suffer a loss of diversity and likely move towards market concentration around a few larger players;

— **In some sectors, pan-European licences would likely lead to <u>a monoculture of predominantly English-language content</u>** or content that is in the major languages (English, French, German, etc.) in an attempt to maximize audience reach. This would predominantly serve high-volume markets while leaving the rest of the EU countries and language groups underserved, with a resulting loss of cultural and linguistic diversity;

— There would be a reduction in the production and distribution of content that is adapted to local cultural tastes, market conditions, language preferences – including subtitling and dubbing preferences.

2. FOR CREATORS/THE CONTENT INDUSTRIES

Strengthening big market players, threatening the livelihood of smaller SME European players

- The introduction of pan-European licences would result in **market concentration for both production, publishing and distribution as only a handful of players** would be able to compete on the European market, to the detriment of smaller players (particularly from small EU Member States);
- Such bigger players would also be more likely to focus on serving high-volume, high-profit markets, to the detriment of content and services development for low-volume markets and/or language groups.

EXAMPLES:

- **Forcing booksellers** to sell e-books cross-border online would give an extra boost to the already dominant market player, Amazon. Initially, European booksellers began to sell e-books as an alternative to offers from major Internet platforms. However, consumer demand for this market remains limited, especially outside common linguistic areas. If booksellers are forced to offer e-books across borders, they will be required to invest in expensive technology upgrades and cybersecurity (e.g., to process payments cross-border). With limited e-book demand, many European booksellers would not be able to make the required investments. Doing so would mean hanging a permanent "closed" sign on their doors. Fewer retailers mean fewer cultural offers as major Internet platforms on the e-book market are likely to focus on bestselling titles, rather than local authors that enrich our European culture;
- **For the video game sector,** the impact of being required to offer cross border sales under Article 4 of the Regulation would be significant. Depending on each company's consumer servicing system, changes are likely to be required in areas related to payment systems, customer account identification as well as to ensure that each storefront is able to recognise the consumer's country and implement appropriate blocks or processes required by law. Assuming that Article 4(5) of the Regulation means that traders can only block the content/service that is illegal in the consumer's country rather than the storefront as a whole, this makes the required development even more complex, especially as games are increasingly moving towards games as a service, meaning that a title will be updated with new content during a longer period of time. Further, the availability of video game content across Europe is already high as video game titles are in general released for the whole EEA which means that the differences in catalogue nationally are insignificant. It remains imperative for video game companies to keep the freedom to launch incentives to develop prices locally, to drive promotions and other actions. An extension of the scope would disincentivise local pricing adaptation, and impact markets and consumers with a lower purchasing power. Consumers would ultimately lose out and the administrative burden on companies would be disproportionate.

Jobs would be lost

- Together our industries employ **15 million people**[3] (directly and indirectly) in Europe, making us the third largest employer[4] in the EU. The Creative and Cultural Industries (CCIs) accounted for 4.4% of EU GDP in terms of total turnover (compared to 4.2% in 2013)[5]. The economic contribution of CCIs is greater than that of sectors including telecommunications, high technology, pharmaceuticals or the automotive industry;
- **80%** of people working in the CCIs are part of small and medium-sized enterprises (SMEs);
- Beyond numbers, CCIs are made up of countless passionate professionals who believe in Europe's cultural diversity and strive to create quality, diverse content. These people are essential to Europe's future and must be supported in their endeavours.

WHY?

- A ban on geo-enabling would jeopardise the livelihoods of professionals in the content industries in Europe – both on the creative side and on the business side. **Smaller players would be pushed out of the market and jobs would be lost;**
- The people most likely to be vulnerable to a ban on geo-enabling are those dedicated to tailoring content and culturally enhancing experiences through producing content in all languages and appealing to the diversity of cultural tastes and traditions across the EU.

3 - IPR-intensive industries and economic performance in the European Union" study, EUIPO & EPO, 25th September 2019, see table p. 8

4 - European Commission, June 2016 - Boosting the competitiveness of cultural and creative industries for growth and jobs by Austrian Institute for SME Research and VVA Europe and VVA

5 – See the "Rebuilding Europe" report by EY, January 2021

ANNEX

WHAT HARD FACTS TELL US – Wide availability and circulation of content by the creative sectors

Diverse content makes the online world a vibrant and enjoyable place for all

The content sectors have a proven track record of how important they are to the everyday lives of European citizens.

- Europeans have access to almost 100 million musical works, on more than 200 licensed digital streaming and download services;
- The current market for Video-On-Demand services in Europe has increased the offering of theatrical European non-national films, on average, by **71%**[6].
    - Subscription-Video-On-Demand and Transactional-Video-On-Demand catalogues have almost **doubled** in a year alone (463 in December 2020 compared to 820 in December 2021).
    - European consumers have, on average, access to **8,528 European films** on Video-On-Demand in their countries - 1,570 films from their countries and 6,958 films from the rest of Europe
- More than 2.5 million e-book titles;
- Countless images;
- In addition, video games deliver experiences that enrich the daily lives of more than 54% of all Europeans[7].

Study on the impact of potential changes to geo-blocking regulation on sport[8] - 2020

- **69%** of European sports rights income would be at risk if a ban on geo-blocking was introduced.
- **26%** of European sports rights income might be lost for some sports - with smaller ones suffering disproportionately.

6 - European Audiovisual Observatory. 2021. Circulation of European films on VOD and in cinemas. Available on: https://rm.coe.int/circulation-of-european-films-on-vod-and-in-cinemas-in-europe-2021-edi/1680a5779d

7 - See an ISFE-commissioned Ipsos MORI study carried out during Q1 and Q2 this year that looked at video game player behaviour during the pandemic: https://www.isfe.eu/wp-content/uploads/2020/09/IpsosMori-Gaming-during-Lockdown-Q1-Q2-2020-report.pdf

8 - Oliver & Ohlbaum Associates. 2020. The impact of potential changes to geo-blocking regulation on sport: https://static1.squarespace.com/static/5cacbb42a568278dd5430feb/t/5e2f05490da50c6230430a77/1580139856606/2020+Oliver+and+Ohlbaum+Associates+-+The+impact+of+potential+changes+to+European+geo-blocking+regulation+on+sport.pdf

Commission's evaluation report - November 2020[9]

— The Commission's thorough evaluation concluded that the available evidence does not warrant a modification of the Geo-Blocking Regulation's scope. The November 2020 report recognised "*different market dynamics*" in the creative sectors and noted that the beneficial effects for consumers, of an extension of the Regulation's scope, are far from demonstrated. It also warned against the negative effects of such an extension, which would be "particularly detrimental" for players such as smaller booksellers. It reached similar conclusions for the video game sector. The report concluded that licensing and legitimate geo-enabling practices which underpin Europe's Digital Single Market continue to be fully justified.

Eurobarometer - 2019[10]

— The 2019 Barometer touched upon the issue of geo-blocking, asking respondents how often they were 'blocked' – any kind of blocking – from accessing AV content. **85%** of people responded in the negative – never (52%) or rarely (33%) – and 3% had no opinion. This confirms that geo-blocking of AV content is not seen as an issue by EU citizens.

— Data from other sectors:

- E-books: **91%** of people responded in the negative – never (71%) or rarely (20%) – and 5% had no opinion.
- Games/gaming apps: **91%** of people responded in the negative – never (67%) or rarely (24%) – and 4% had no opinion.
- Music: **90%** of people responded in the negative – never (67%) or rarely (23%) – and 3% had no opinion.
- Sports: **85%** of people responded in the negative – never (61%) or rarely (24%) – and 6% had no opinion.

Portability Regulation - June 2017

— Thanks to the cross-border portability regulation (2017/1128), consumers have unrestricted access to paid-for online content services when travelling abroad for business or leisure.

— The cross-border portability regulation provides the necessary legal, business and regulatory certainty while meeting consumer needs. This certainty is needed for our sectors to continue undertaking high creative and financial risks and raising the required funding for development, creation, production and distribution, including tailoring our quality content and services to audiences' language and cultural preferences.

9 - European Commission. Short-term review of the Geo-blocking Regulation.

10 - European Commission. 2019. Eurobarometer 477b: Cross-border access to content online.

CREATIVITY WORKS!

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