Territoriality and release windows in the European audiovisual sector

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Foreword

In 1911, Italian film theoretician Ricciotto Canudo (1877-1923) published an essay on cinema titled *La naissance d'un sixième Art*[1] (which he would later call *septième Art*),[2] in which he predicted that cinema would become "the magnificent reconciliation of the Rhythms of Space (the Visual Arts) and the Rhythms of Time (Music and Poetry)". This new art form "should in reality be precisely Painting and Sculpture developing in time, in the manner of Music and Poetry, which are only realised by giving rhythm to the air during the time of their execution". In short, Canudo considered cinema "visual arts in motion".[3]

Canudo's vision of cinema as a total work of art (an idea already present in Richard Wagner's view of opera as *Gesamtkunstwerk*) is understandable in the sense that it can reunite all art forms in one. And yet, while the visual arts (e.g. a painting or sculpture) can be enjoyed regardless of time but only in one place at a time, performing arts (e.g. a theatre play or an opera) must be performed in a specific place and at a specific time. In that sense, cinema is closer to performing arts since both have to be 'played'. There is a difference, however, between the performing arts and the Seventh Art: whereas every performance is unique (or ephemeral, as Canudo called it), a film or audiovisual work is fixed and can be played anywhere, at any time.

This reconciliation of Time and Space mentioned by Canudo takes place in cinema (and in the audiovisual arts in general) not only at the artistic level, but also at the industrial level. Since a film or audiovisual work can be played anywhere and at any time, its release can be organised by producers and distributors in terms of both time and space. A film can be exploited in different markets (cinemas, VOD, pay TV, and free TV) at different times. A film may also be distributed in different territories at different times. In the first case, we are talking about what is usually called a system of release windows (although in France the term 'media chronology' is preferred). The second case implies a principle of copyright law called territoriality.

Both territoriality and release windows have been challenged in recent times. Licensing on a territory-per-territory basis has raised competition law concerns and has been seen by the European Commission as an obstacle to the circulation of audiovisual works throughout the European Union. Release windows have been challenged particularly by US-based SVOD services which would like to have fewer obstacles to the exploitation of audiovisual works online. As such, both territoriality and release windows

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[1] "La naissance d'un sixième Art – essai sur le cinématographe", in *Les Entretiens idéalistes*, 25 octobre 1911, https://www.filosofia.org/hem/191/9111025c.htm.

[2] Canudo would later add Dance as the Sixth Art, with Cinema thus becoming the Seventh Art, see Canudo R., "Manifeste des SEPT ARTS", in *Gazette des sept arts* n°2, 25 January 1923, http://www.cineressources.net/consultationPdf/web/o000/527.pdf.

[3] The original text: *…il sera la superbe conciliation des Rythmes de l'Espace (les Arts plastiques) et des Rythmes du Temps (Musique et Poésie) […] La nouvelle expression de l'Art, devrait être en réalité précisément une Peinture et une Sculpture se développant dans le temps, à la manière de la Musique et de la Poésie, qui ne se réalisent qu'en rythmant l'air pendant le temps de leur exécution. […] C'est l'inconnu de demain qui créera le courant énorme d'émotion esthétique nouvelle, d'où surgira dans le plus absurde des triomphes l'Art plastique en mouvement.*

raise a number of legal questions to which this IRIS Plus aims to provide factual answers. This report is based on and updates the following two reports by the Observatory:

- Cabrera Blázquez F.J., Cappello M., Fontaine G., Talavera Milla J., Valais S., "Release windows in Europe: a matter of time", *IRIS Plus*, European Audiovisual Observatory, Strasbourg, October 2019, https://rm.coe.int/release-windows-in-europe-a-matter-of-time/1680986358 (hereafter referred to as *IRIS Plus* 2019-2).
- Cabrera Blázquez F.J., Cappello M., Fontaine G., Talavera Milla J., Valais S., "Territoriality and financing of audiovisual works: latest developments", *IRIS Plus*, European Audiovisual Observatory, Strasbourg, November 2019, https://rm.coe.int/iris-plus-2019-3-territoriality-and-financing-of-audiovisual-works-lat/16809a417c (hereafter referred to as *IRIS Plus* 2019-3).

During the process of drafting this report, we benefited from the collaboration of members of the Observatory's Advisory Committee, who provided information notably on their positions regarding both territoriality and release windows. Moreover, we are indebted to Europa Distribution, the International Federation of Film Distributors' Associations (FIAD), the International Video Federation (IVF-Video) and the International Union of Cinemas (UNIC), who conducted a joint survey to help us understand the state of current practice in Europe with regard to release windows. Our warmest thanks go to Christine Eloy (Europa Distribution); Robert Heslop (FIAD); Charlotte Lund Thomsen and Julia Hahn (IVF-Video); and Laura Houlgatte and Sonia Ragone (UNIC). The table annexed to this report is the result of this valuable cooperation.

Strasbourg, June 2023

Maja Cappello
IRIS Coordinator
Head of the Department for Legal Information
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1. Setting the scene

Release windows and territoriality have been traditionally considered to be the fundamental pillars for the exploitation of cinematographic and audiovisual works in Europe. The principle of territoriality in copyright law allows rightsholders to license works on a territory-per-territory basis. Rightsholders exploit works on a window-per-window basis. These two pillars allow the European audiovisual industry to maximise the economic potential of cinematographic and audiovisual works.

This first chapter will provide an overview of both pillars from a market perspective. The first subchapter deals with the system of release windows in Europe and its recent developments. The second subchapter provides insights into the circulation of theatrical European non-national films on VOD and takes a closer look at metrics which could explain VOD availability.

1.1. Release windows

1.1.1. Definition

From a historical perspective, the appearance of a new form of exploitation in the cinematographic sector has raised fears of a negative impact on cinema attendance, starting with TV in the 1950s, home video in the mid-1970s, and VOD in the 1990s, leading to the expansion of the OTT services that we know today.[4] These market and technological developments led to the development of so-called release windows.[5] This is a term that refers to the more or less flexible practices or territory-based legislation regarding the time that must pass between the release in cinemas of a theatrical film and its exploitation on other services (VOD, TV, home video). In some countries, only common trade practices can be observed; in others, there are gentlemen's agreements between producers, distributors and exhibitors to respect a certain margin of time between windows; and there are also countries where industry associations have signed

[4] For more details on the history of release windows see section 1.1.2. of IRIS Plus 2019-2.
[5] Other terms that refer to this practice are statutory windows, release patterns, exploitation window regulations or media chronology.

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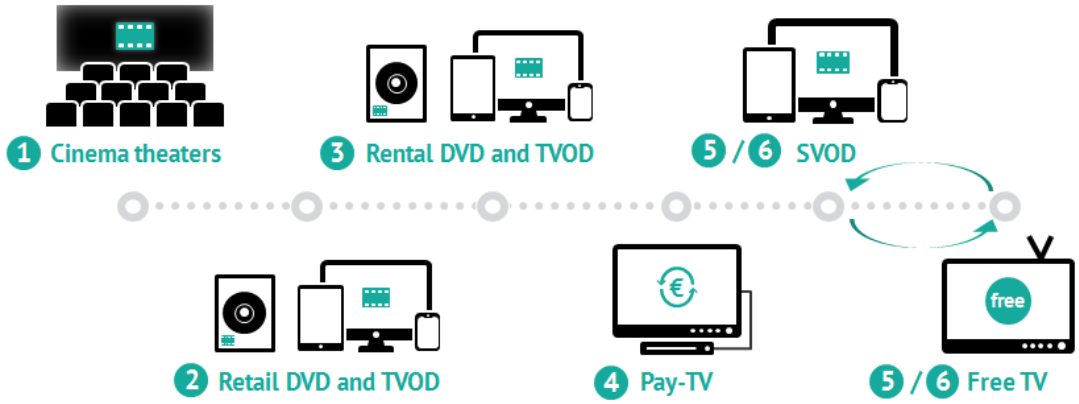
agreements to establish the framework for release windows. In a few countries, the release windows are regulated by law.[6]

Release windows are conceived in chronological order. To date, by and large, the common chronology is as follows: cinema theatres, TVOD/physical retail, TVOD/physical rental, pay TV, SVOD and free TV (although the position of the last two can be interchangeable or simultaneous).

Figure 1. Typical release window schedule



Source: European Audiovisual Observatory

The first release windows were the result of industry agreements. The first legislation on release windows in Europe came from France in a law developed by a decree in 1983,[7] which established a minimum theatrical window of six months before home video release. At European level, the European Convention on Transfrontier Television of 1989 initially set a two-year lapse between theatrical release and broadcasting.[8] Later that same year, the EEC "Television Without Frontiers" Directive mirrored this requirement.[9] However, successive updates of these two latter pieces of legislation have eliminated this requirement.[10]

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[6] See Chapter 3 of this publication.

[7] *Décret n° 83-4 du 4 janvier 1983 portant application des dispositions de l'article 89 de la loi n° 82-652 du 29 juillet 1982 sur la communication audiovisuelle* (Decree 83-4 of 4th January 1983 applying the provisions of Article 89 of Law 82-652 of 29th July 1982 on audiovisual communication), https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000858045&dateTexte=20140711.

[8] European Convention on Transfrontier Television, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=132.

[9] Article 7, Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31989L0552.

[10] See Chapter 2 of this publication.

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1.1.2. The impact of the COVID pandemic

The abovementioned multiplication of windows also led to a reduction of window widths. The retail TVOD window, also known as EST (electronic-sell-through), experienced an acute reduction – by one month over the 2013-2018 period, down to an average of two months and 25 days in the United States.[11] In France, the 2018 legislation on release windows foresaw a delay of four months between theatrical exhibition and DVD or TVOD releases, introducing a new exceptional three-month delay between theatrical exhibition and DVD/TVOD for films with fewer than 100 000 admissions during the first four weeks of exhibition.[12]

Then came the COVID pandemic with its dramatic impact on the audiovisual sector, and most particularly on theatrical exhibition, leading to exceptional changes in the way the exploitation of cinematographic and audiovisual works was carried out during the period 2020-2022, notably with regard to the exceptional cancellation of theatrical releases and shortening/elimination of release windows.

The audiovisual sector in Europe had a EUR 7 billion loss in revenues during the 2019/2020 period. These losses, however, were not evenly spread between market segments.[13] Excluding SVOD service revenues, which continued to increase sharply during the pandemic, the decrease amounted to EUR 11 billion (9%). SVOD was immune to the crisis, which, however, did not boost the sector, figures suggest. In fact, SVOD grew at a slightly slower rate in 2020 than it did in 2019 (although still at an impressive rate of 41%).

[11] http://www.natoonline.org/wp-content/uploads/2019/03/Major-Studio-Release-Windows-EST-3_7_19.pdf.
[12] See Section 3.2.2. of this publication.
[13] See Yearbook 2021/2022 Key Trends, European Audiovisual Observatory, Strasbourg, 2022, pages 34 and 38,
https://rm.coe.int/yearbook-key-trends-2021-2022-en/1680a5d46b.

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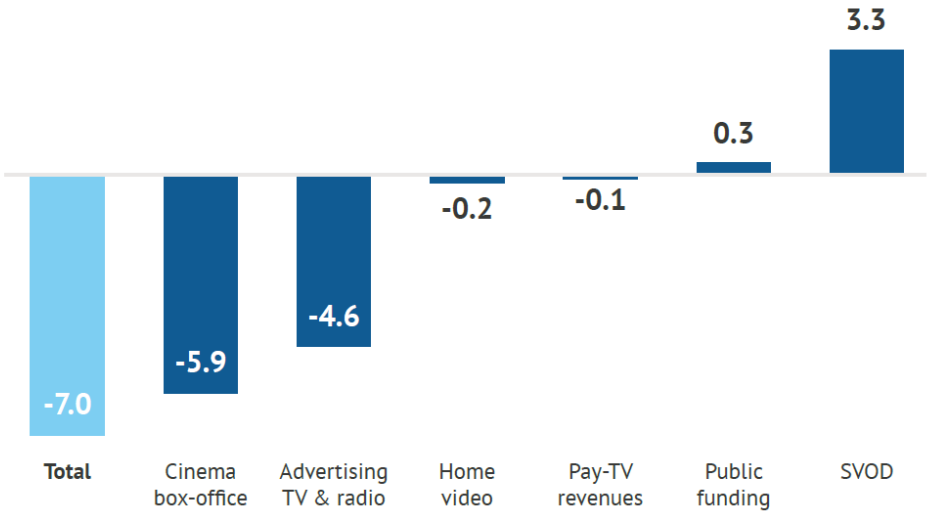
Figure 2. **Breakdown of 2019-2020 changes in revenues of the audiovisual sector in Europe by market segment (in EUR billion)**



Source: Key Trends 2021/2022, European Audiovisual Observatory

The Cinema box-office was the most severely hit not only in relative terms (a 70% decrease in revenues compared to 2019), but also in absolute terms. The coronavirus outbreak took a heavy toll on the theatrical market, as cinema attendance in the EU and the UK nosedived by 70.2% in 2020, to an estimated 299 million tickets sold. This compares to over one billion admissions in 2019, the highest level on record since 2004. As the average ticket price remained stable at EUR 7.1, box-office takings dropped from EUR 7.20 billion to EUR 2.14 billion in 2020, registering a 70.3% decrease over the previous year. This staggering decline was clearly the result of the prolonged closure of cinemas, forced to lower their curtains in March 2020 in most countries in response to the pandemic. Theatres were allowed to reopen from mid-May in most territories, operating under strict safety protocols, before closing again in late autumn during the second wave of the pandemic. In addition, many blockbuster films originally scheduled for 2020 postponed their theatrical release or were directly distributed on VOD platforms.

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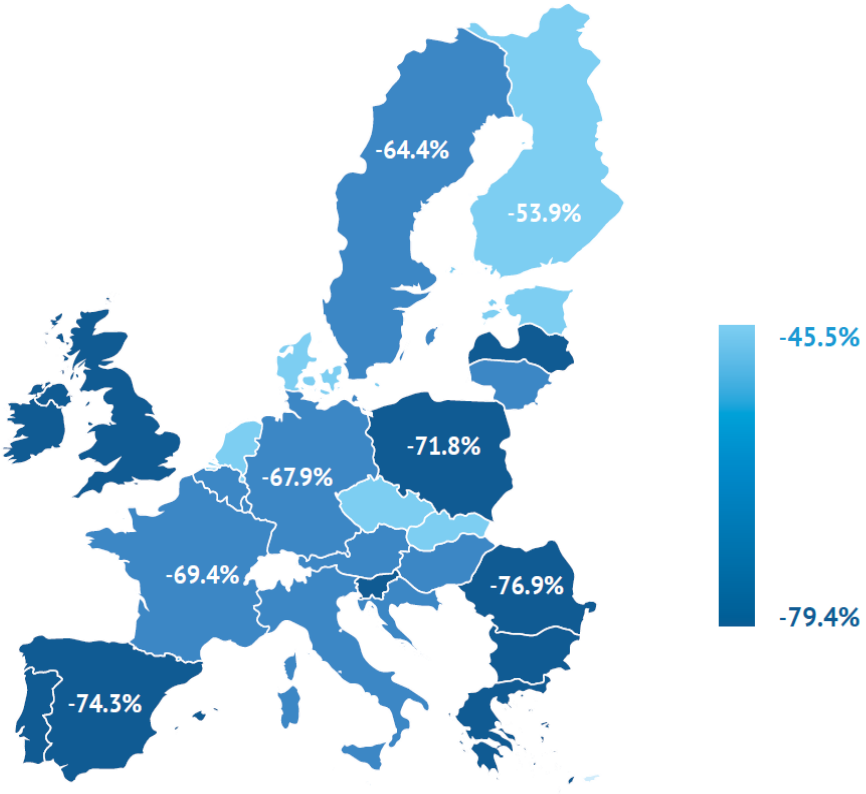
Figure 3. Yearly decrease in cinema attendance in the EU 27 and the UK (2020/2019)



Source: Key Trends 2021/2022, European Audiovisual Observatory

Cinema attendance gradually picked up again in 2021.[14] Amid the prolonged closure of theatres and other restrictions in several markets, ticket sales grew from 299 million to 394 million in the EU and the UK. While this figure represents a 31% increase year-on-year, it accounts for barely 40% of the average attendance level registered between 2017 and 2019. With average ticket prices on the up, GBO recovered to a higher degree than admissions, as revenues went up by 38% to an estimated EUR 2.94 billion in 2021. However, this only corresponds to 42% of the average box office levels from the pre-pandemic era. 2021 admissions were even lower than 2020 in nine countries. The box office developed in a heterogeneous manner across Europe, also depending on the varying degrees to which the individual markets had collapsed in 2020 and on the different restrictive measures applied in each territory.

[14] See Yearbook 2022/2023 Key Trends, European Audiovisual Observatory, Strasbourg, 2023, page 38, https://rm.coe.int/yearbook-key-trends-2022-2023-en/1680aa9f02.

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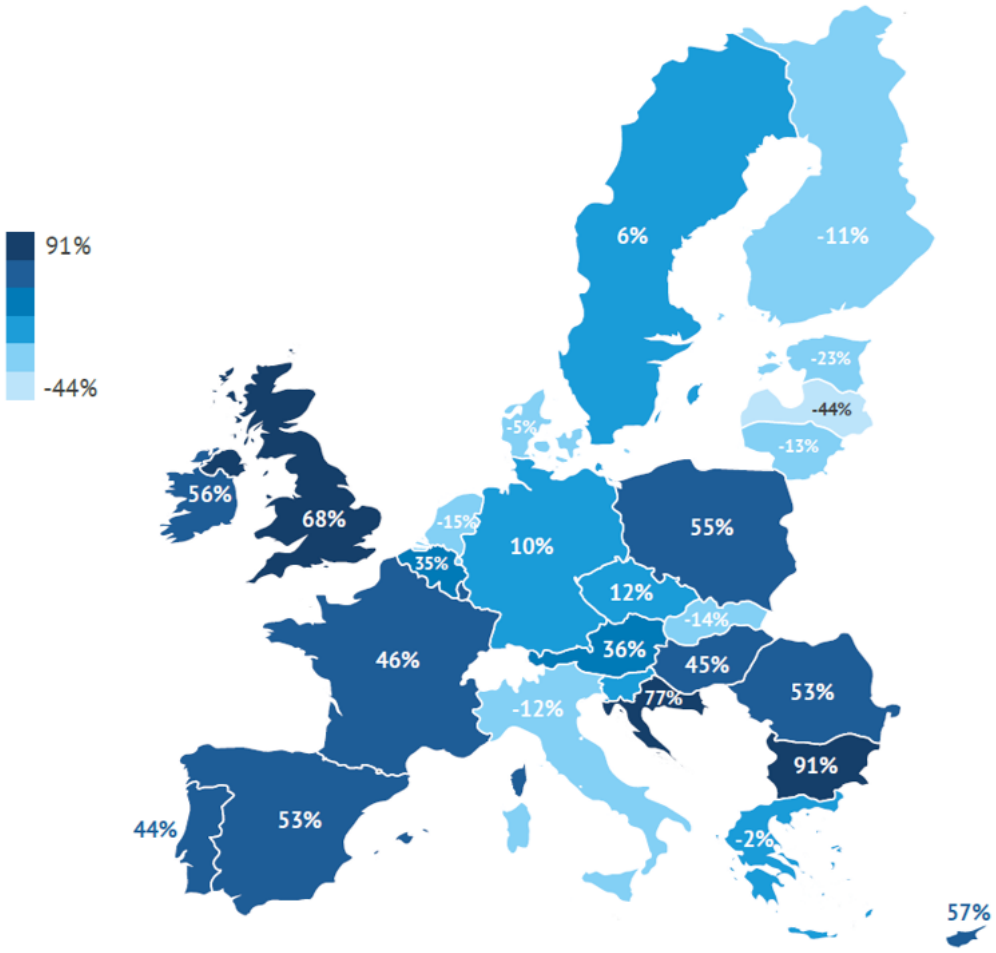
Figure 4. Yearly increase in cinema attendance in the EU and the UK (2021/2020)



Source: Key Trends 2022/2023, European Audiovisual Observatory

1.1.3. Release windows post-COVID

The economic upheaval caused by the COVID pandemic had an impact on the regulation of release windows in Europe. Even if all restrictions have been lifted and the sector has reverted to a normal mode of functioning, release windows have not returned to what they were at the beginning of 2020, and there is an ongoing debate at industry and political level in different European countries. We present below the cases of France, Italy, and Spain.[15]

[15] For detailed information on the current regulation of release windows in Europe see Chapter 3 of this publication and its annex.

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1.1.3.1. France

In France, the negotiations on a new industry agreement on release windows have been particularly animated, with SVOD platforms requesting a relaxation of the broadcasting windows and access to the audiovisual support account managed by the CNC for independent productions of series ordered by the platforms.[16] On 24 January 2022, a new agreement was adopted by the French industry[17] (with the exception of Disney and Amazon but also of the SACD).[18] Despite the signing of this agreement, the discussion around release windows continued throughout 2022.[19] Indeed, Netflix's co-CEO Ted Sarandos declared in July 2022 that, although they signed the agreement "in a constructive approach", they could not be satisfied in the long term with a 15-month deadline and would like, at the very least, to reduce it to 12 months, calling the French system "not sustainable".[20] Disney, which had not signed the agreement, decided in June 2022 not to release its animation film *Strange World* in French cinemas, declaring the French release windows system "unfair, restrictive and unsuited to the expectations of our audiences".[21] In turn, free TV broadcasters TF1, M6 and France Télévisions accused SVOD providers of blackmailing the entire sector. According to an op-ed published in the French press, "as soon as the new chronology came into force, the American studio Disney, which had not wished to sign the text, reinterpreted it as it saw fit in order to remove the exclusivity of free television exploitation and thus strengthen its strategy of exclusivity for its own subscription service. In support: blackmail and threats to withdraw its films from cinemas. Netflix, which had signed the agreement, took advantage of this American wind of protest to turn around and call it into question in a show of solidarity."[22] A further

[16] See UGGCAVOCATS, "Delay in the adoption of the media chronology reform: Netflix takes the offensive", 1 October 2021, https://www.uggc.com/en/delay-in-the-adoption-of-the-media-chronology-reform-netflix-takes-the-offensive/.

[17] See Blocman A., "[FR] New media chronology completes audiovisual reforms", IRIS 2022-3:1/10, https://merlin.obs.coe.int/article/9423. See also section 3.2.2. of this publication.

[18] See Rogard P., "Chronologie des médias: le bunker de la dernière rafale", 29 September 2022, https://www.rogard.blog.sacd.fr/2022/09/chronologie-des-medias-le-bunker-de-la-derniere-rafale/.

[19] See Piquard A., Dassonville A., Vulser N., "Le secteur de l'audiovisuel se déchire de nouveau sur la chronologie des medias", 4 October 2022, https://www.lemonde.fr/economie/article/2022/10/04/le-secteur-de-l-audiovisuel-se-dechire-de-nouveau-sur-la-chronologie-des-medias_6144395_3234.html.

[20] Gröndahl M-P., Basini B., "EXCLUSIF. « Netflix investit 200 millions dans la création française », selon son co-PDG Ted Sarandos", 9 July 2022, https://www.lejdd.fr/Economie/exclusif-ted-sarandos-le-co-pdg-du-service-de-video-a-la-demande-netflix-demeure-le-champion-mondial-4122454.

[21] See Madelaine N., Benedetti Valentini F., "Disney prive les salles de cinéma françaises de son prochain dessin animé de Noël", 8 June 2022, https://www.lesechos.fr/tech-medias/medias/disney-prive-les-salles-de-cinema-francaises-de-son-prochain-dessin-anime-de-noel-1411791 and Vulser N., "Disney prive les salles d'un film à Noël pour mieux renégocier la chronologie des medias", 10 June 2022, https://www.lemonde.fr/culture/article/2022/06/10/disney-prive-les-salles-d-un-film-a-noel-pour-mieux-renegocier-la-chronologie-des-medias_6129663_3246.html

[22] Ernotte D., Pélisson G., de Tavernost N., "Nous, responsables de télévisions gratuites, demandons aux pouvoirs publics de ne pas céder au diktat des plates-formes payantes", 28 September 2022, https://www.lemonde.fr/idees/article/2022/09/28/nous-responsables-de-televisions-gratuites-demandons-aux-pouvoirs-publics-de-ne-pas-ce-der-au-diktat-des-plates-formes-payantes_6143477_3232.html.

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threat by Disney not to release in French cinemas *Black Panther: Wakanda Forever* was finally not carried out. Disney explained this decision by declaring that the public authorities had "clearly recognised the need to modernise the media chronology, and a precise timetable has now been set to discuss this", mentioning also that it would continue the discussions "during the next meetings with all the players in the industry, organised under the aegis of the National Centre for Cinema and the Moving Image, in order to define, as of February 2023, a new framework that it hopes will be fair, flexible and provide an incentive for the release of films in cinemas. In the meantime, the group will continue to decide on the release strategy for its films on a case-by-case basis."[23]

According to press reports,[24] on 6 December 2022 the CNC held a meeting as part of the review of the current media chronology. At the request of the *Syndicat des éditeurs de vidéo à la demande* (Sevad), the TVOD window would be reduced, by way of derogation, from four to three months, subject to the distributor's agreement and the price would take into account success in theatres. Moreover, following discussions in late 2022 between Disney and the TF1, M6 and France Télévisions groups, the broadcasters would agree to broadcast films produced by SVOD platforms, with a budget of more than EUR 25m, two months later than foreseen by the agreement. In return, they would have two months of exclusivity, during which the SVOD platform could no longer broadcast the film. These amendments to the rules on release windows are part of a review clause and are currently being drafted by the CNC, before being submitted to the industry.

1.1.3.2. Italy

In Italy, release windows apply only to films that are supported by public funding but for non-Italian films releases are handled on a case-by-case basis. For example, films produced by Netflix like Jane Campion's *The Power of the Dog* and Paolo Sorrentino's *The Hand of God* were released in Italian cinemas in November 2021 before being made available on the SVOD platform a few weeks later.[25] However, during 2022, there was talk of modifying these rules further in order to help cinema theatres,[26] which were struggling

[23] See Vulser N., "Le prochain Disney, « Black Panther : Wakanda Forever », sortira en salle le 9 novembre", 17 October 2022, https://www.lemonde.fr/economie/article/2022/10/17/le-prochain-disney-black-panther-wakanda-forever-sortira-en-salle-le-9-novembre_6146122_3234.html.

[24] See Boxofficepro.fr, "Vers un apaisement dans la chronologie des médias? Deux avancées dans les négociations", 7 December 2022, https://www.boxofficepro.fr/clause-de-revoyure-et-chronologie-des-medias-deux-avancees-dans-les-negociations/ and Marchand Ménard C., "Chronologie des médias: Un accord se dessine entre Disney et les chaînes gratuites", 7 December 2022, https://www.telerama.fr/ecrans/chronologie-des-medias-un-accord-se-dessine-entre-disney-et-les-chaines-gratuites-7013345.php.

[25] See Roxborough S., "Europe's Theatrical Window Standoff Gives Studios Pause Over Strategy", 23 June 2022, https://www.hollywoodreporter.com/business/business-news/european-theatrical-window-standoff-gives-studios-pause-over-strategy-1235170587/.

[26] Vivarelli N., "Italy to Widen Theatrical Window Following Box Office Debacle", 3 May 2022, https://variety.com/2022/film/news/italy-theatrical-window-box-office-debacle-1235256876/.

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to attract audiences back,[27] but the October 2022 government change and a court decision have put these proposed changes to rest. However, the new Culture Minister has declared the Government's intention to establish a 105-day window for all films, both Italian and foreign, even those not receiving state benefits.[28]

1.1.3.3. Spain

The *Federación de Cines de España* (Spanish Cinema Theatres Federation - FECE) believes one of the main problems Spanish cinemas face in terms of recovering pre-pandemic figures is the reduction in the time that elapses between the theatrical and further release windows.[29] Before the pandemic, the usual practice was to respect a minimum of 112 days from theatrical release to the next window, but in 2022, in 94% of the cases analysed by FECE, releases that did not comply with those 112 days rose by a factor of six, from 6% to 38%, while the number of films complying with the 112-day window decreased by more than 30 points, from 94% in 2019 to 62% in 2022. This change is much more pronounced in US majors. Whereas before the pandemic there were no releases under the 112-day window, this is now the most common practice. Some 62% of their releases are under 109 days, and within this group, more than half, 56%, are under 60 days. In the case of independent distributors, although the number of launches below 109 days has also increased, from 9% in 2019 to 24% in 2022, launches above 112 days remain common in 76% of the cases analysed by FECE.

1.2. Circulation of works

For audiovisual works, films and TV content, crossing the home-country border can entail challenges that are independent from the exploitation window – theatrical, broadcast or on-demand.

A theatrical release for a film in its home country does not guarantee that the film will be released in cinemas in another country, as on average 67% of European feature films are only released in their home market.[30] A work broadcast on a linear TV channel in

[27] Del Brocco P., Letta G., "La «sala è centrale» ma i cinema sono vuoti", 29 April 2022, https://www.corriere.it/opinioni/22_aprile_29/sala-centrale-ma-cinema-sono-vuoti-661b8eec-c7d9-11ec-8e7f-1a021a80175d.shtml.
[28] See Section 3.5.4. of this publication.
[29] FECE, "Las salas de cine encadenan dos años consecutivos con un incremento del 45% en la asistencia a cines", 15 March 2023, https://www.fece.com/news/np-federacion-de-cines-de-espana-dossier-salas-de-cine-datos-2022/
[30] Simone P., *The circulation of European films in non-national markets*, European Audiovisual Observatory, Strasbourg, 2021, https://rm.coe.int/export-2020-en-final-online-version/1680a1e35f.

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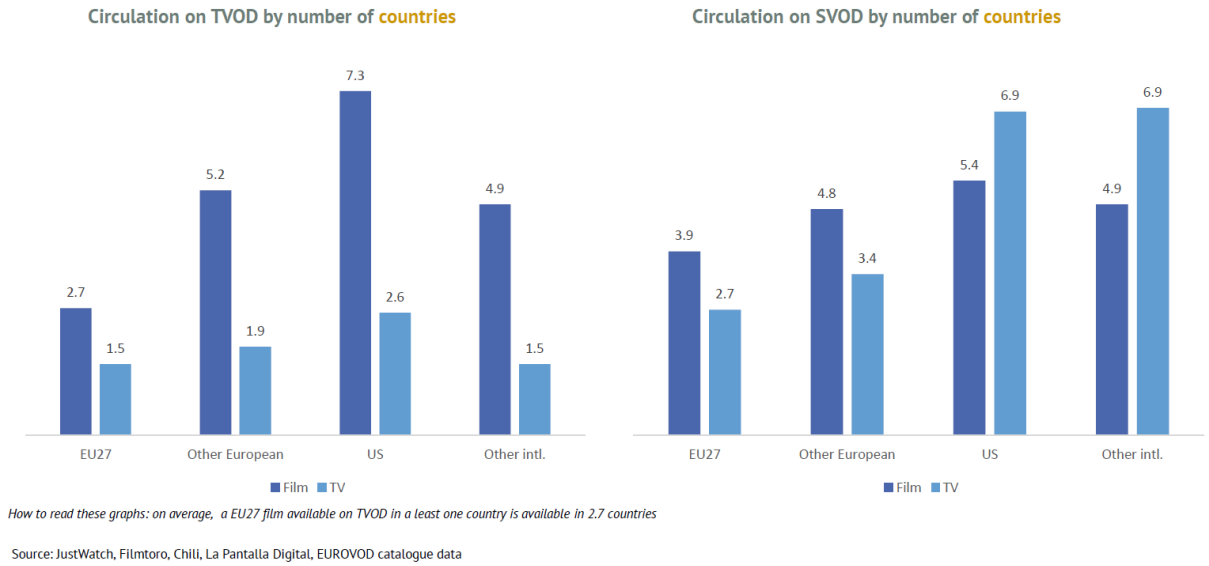
its production country must convince a broadcaster in another country that it will find an audience in a different market.[31]

Figure 5. Circulation of films and TV seasons in countries on TVOD and SVOD services, *in average number of VOD country availability*



Source: JustWatch, Filmtoro, Chili, La Pantalla Digital, EUROVOD catalogue data

So, what makes an audiovisual work travel beyond its production country? There is no easy answer, as a multitude of factors influence the 'attractiveness' to audiences of audiovisual works – story, talent (actors, directors), production budget, production country, language, genre and many more.

As is the case for all cultural goods, films and TV content have to stimulate an interest in the viewer to entail consumption and this interest can be based on one or a multitude of factors which cannot always be explained by hard data.

With these limitations in mind, let's take a deeper look at one aspect of circulation: the availability and circulation of European theatrically released non-national films on VOD services.

[31] Except in the case of an international co-production where each of the producers may have secured a broadcaster in their country.

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1.2.1. Circulation of European films on VOD and in cinemas – what can be measured?

In the report *"Circulation of European films on VOD and in cinemas*[32]*"*, the European Audiovisual Observatory looked at the circulation and availability[33] of European theatrical films on VOD.[34]

The report's two aims were to determine how many European non-national films European citizens had access to in cinemas and on VOD and to explain which observable factors could have influenced the later availability of European films released in theatres on pay VOD services (SVOD and TVOD services) after their release.

The report identified five observable metrics of European films[35] with a theatrical release in 21 European countries[36] from 1996 to 2020 and produced in Europe in this 25-year period which could explain the later availability of films in VOD catalogues and their circulation in several European countries.

The five identified metrics are:

- Commercial success measured by theatrical admissions
- Significance of theatrical exploitation measured by the number of theatrical release markets
- Perceived quality measured by IMDb ratings and film awards
- Recentness of films measured by year of production
- Origin of films observed by country of production

Of course, other metrics impact and can also explain the later VOD availability of European theatrical films such as production budget, marketing budget, TV broadcasts, home entertainment sales, word-of-mouth promotion, etc. However, the lack of data on

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[32] Grece C., *Circulation of European films on VOD and in cinemas*, European Audiovisual Observatory, 2022, https://rm.coe.int/circulation-of-european-films-on-vod-and-in-cinemas-in-europe-2021-edi/1680a5779d.

[33] While the report considers all films released in the 21 European countries in the 25-year time period, VOD availability is only measured via a snapshot of films available on the 15 May, 2021.

[34] The report examines only an aspect of the circulation of European works, namely theatrically released films and their later availability on VOD services. However, understanding the circulation of European works (films and TV content) requires more data on all exploitation windows: cinema, television, home entertainment and VOD. For cinema, the European Audiovisual Observatory tracks exploitation in its LUMIERE database, for VOD in its LUMIERE VOD database. No database of works broadcast on TV or available to buy in home entertainment is available. Therefore, with available data on several of these exploitation windows limited, fully understanding and explaining the circulation of European works remains a challenge.

[35] European films are defined as having as a primary production country a member state of the European Union and/or the Council of Europe.

[36] 20 EU27 countries: Austria (AT), Belgium (BE), Czech Republic (CZ), Germany (DE), Denmark (DK), Estonia (EE), Spain (ES), Finland (FI), France (FR), Hungary (HU), Ireland (IE), Italy (IT), Lithuania (LT), Latvia (LV), the Netherlands (NL), Poland (PL), Portugal (PT), Romania (RO), Sweden (SE), Slovak Republic (SK) and the United Kingdom (GB), hereafter EUR20+1.

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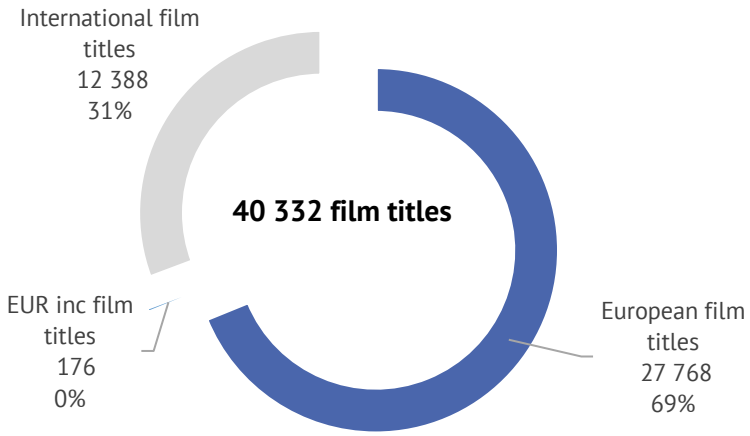
these metrics certainly influences the circulation and availability on VOD of theatrically released films. Therefore, this study focuses on observable metrics only.

The report has several limitations due to the lack of data on these metrics and the partial coverage of exploitation windows[37] and thus provides only a partial picture on the circulation and availability of European theatrical films on VOD – which should be taken into consideration when interpreting the results.

1.2.2. Availability of European theatrically released films on VOD

In the period from 1996 to 2020, 40 332 film titles were released in cinemas in the 21 European countries, of which 27 944 film titles (or 69%) were of European origin.[38] Out of these 27 944 film titles, 16 515 titles (or 59%) were available on VOD in at least one of the 21 countries[39] in May 2021.

Figure 6. Theatrically released film titles in EUR20+1, 1996-2020, *in number of film titles*



Source: LUMIERE, European Audiovisual Observatory

[37] Tracking of theatrically released films in the LUMIERE database only since 1995, partial coverage of VOD availability in the LUMIERE VOD database, lack of broadcast data on TV, no data available on the physical home video market.
[38] Grece C., *op.cit*; All following data and graphs are taken from this report.
[39] The report also found that in addition to these 27 944 theatrically released European film titles, 13 580 European film titles produced between 1996 and 2020 without a theatrical release and 12 702 European film titles produced before 1996 were also available on VOD services. However, the analysis on the drivers of VOD availability pertains only to European films with a theatrical release in the 21 European countries between 1996 and 2020.

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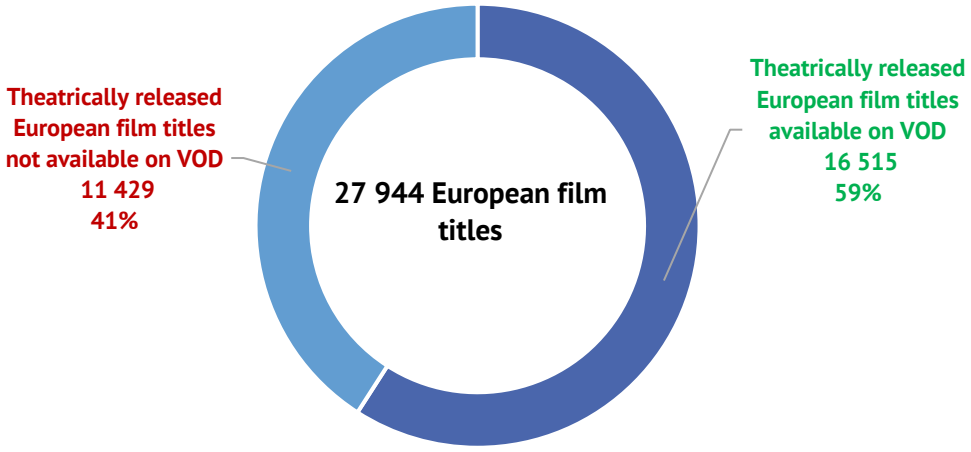
Figure 7. Availability of theatrically released European film titles 1996-2020 on VOD in May 2021 in EUR20+1, in number of film titles



Source: JustWatch, LUMIERE, LUMIERE VOD

Taking a closer look at the country level: On average 1 949 European non-national films were released in the 21 countries in cinemas in the 25-year period while on VOD, on average, 3 336 European non-national theatrically released films were available in each country to consumers in May 2021.

This means that for European non-national theatrically released films, VOD increased the offering by 71% on average compared to the offering of European non-national films in cinemas.

1.2.3. Drivers of VOD availability for European non-national theatrically released films

1.2.3.1. Commercial success

Out of the five metrics, commercial success in cinemas, measured by admissions, has the highest impact on later VOD availability of European films. European non-national films available on VOD had on average 73% more admissions than average admissions to European non-national films in cinemas while European non-national films not available on VOD had on average 77% fewer admissions.

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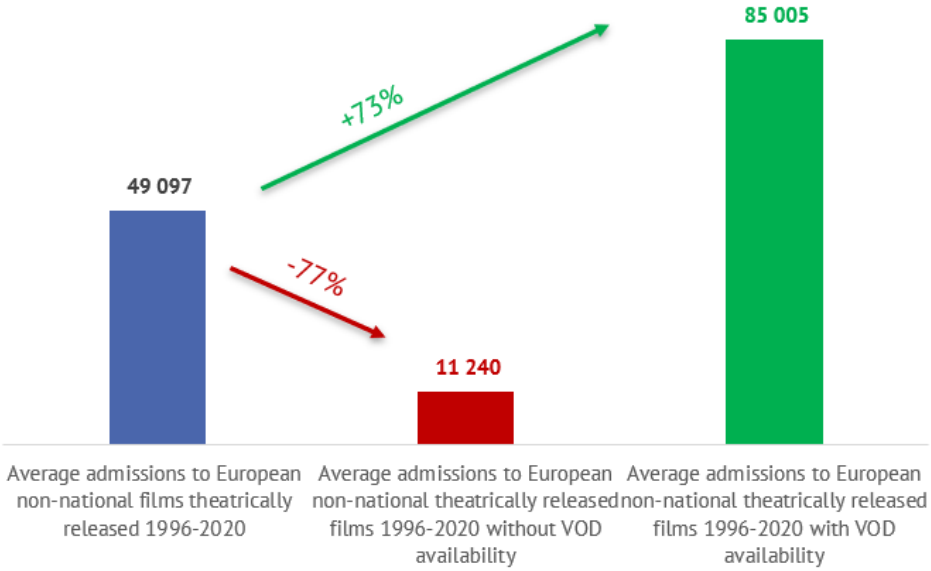
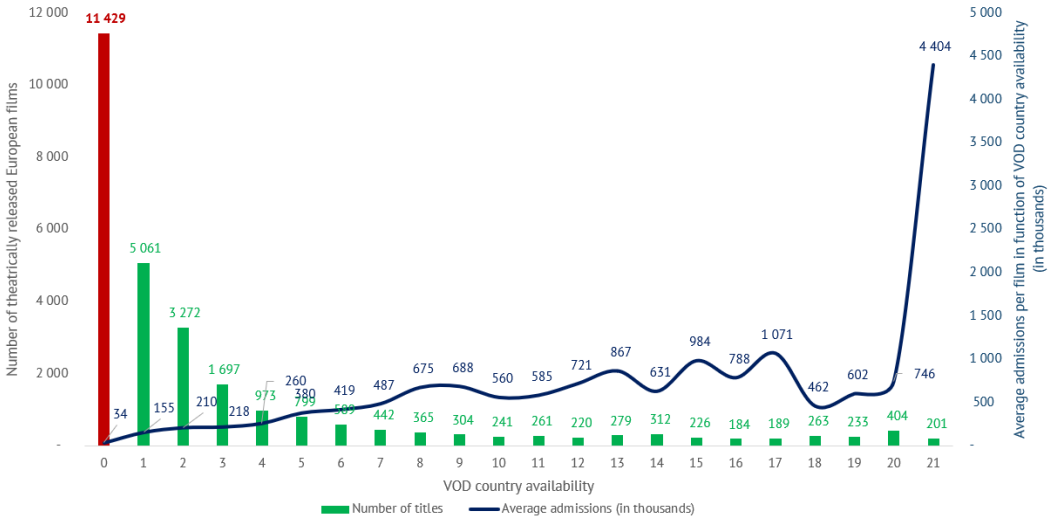
Figure 8. **Average admissions of European non-national films by VOD availability, in admissions per non-national film**



Source: JustWatch, LUMIERE, LUMIERE VOD, European Audiovisual Observatory

Furthermore, the higher the admissions to the film, the more countries the film was available in on VOD services. In fact, admissions seem to correlate to VOD country availability. On average, higher admissions for a European film during its theatrical exploitation mean a higher number of countries in which the film will be made available on VOD services.

Figure 9. **European films' VOD country circulation by number of films and average admissions**



Source: JustWatch, LUMIERE, LUMIERE VOD, European Audiovisual Observatory

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Indeed, VOD availability increases with admissions. While only 31% of theatrical films with fewer than 1 000 admissions were available on VOD, most of the films with more than 25 000 admissions were available on VOD and for films with more than 250 000 admissions, more than 88% were available. This increases to 96% for films with more than a millionadmissions and 99% for films with more than five million.

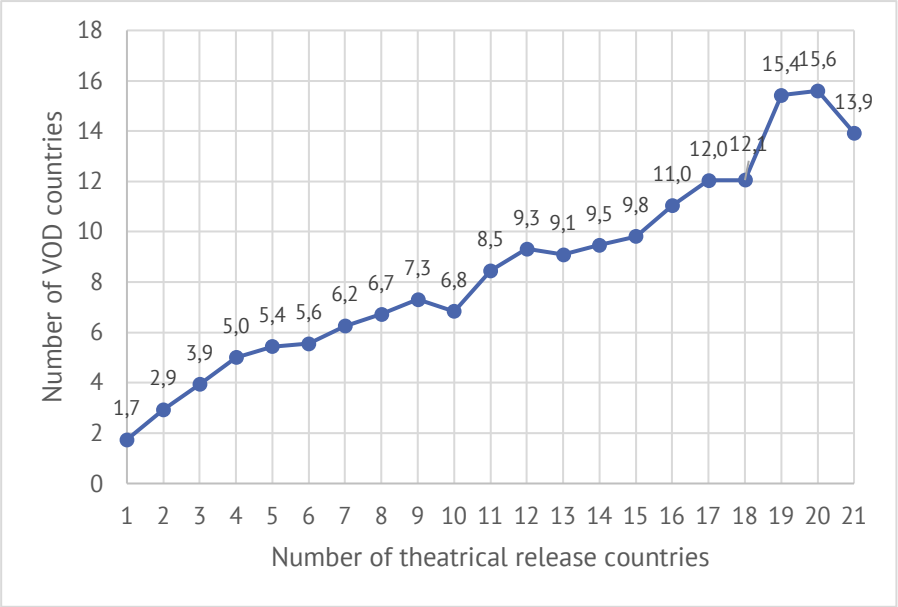
1.2.3.2. Significance of theatrical exploitation

In addition to admissions, the number of theatrical release markets appears to also be one of the main explanations for future VOD availability of European films and commercial success, as distributors aim for bigger releases.

VOD country availability numbers and theatrical release markets are correlated**.** The more theatrical release markets, the higher the VOD country availability number (in an almost linear function). VOD appears to also improve circulation for films with fewer than six theatrical release markets by making them available in slightly more countries.

For films without VOD availability, the number of theatrical release markets could explain this absence. A total of 82% of European films without a later VOD availability had only one release market (in 72% of the cases, their national one), 11% had two release markets and only 7% had more than three release markets.

Figure 10. Average VOD market availability, in function of number of theatrical release markets, for all theatrical European films 1996-2020, in number of release markets in EUR20+1



Source: JustWatch, LUMIERE, LUMIERE VOD, European Audiovisual Observatory

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1.2.3.3. Other observable metrics

1.2.3.3.1. Perceived quality – IMDb ratings and awards

Our research did not find a relationship between IMDb ratings and future VOD availability. However, IMDb ratings impact future VOD country availability numbers. Once a film has made it to VOD distribution, the higher the rating, the higher the number of countries in which the film will be available on VOD.

On the other hand, awards were found to boost circulation. On average, award-winning films were available in 3.5 more countries than non-award winning films (and with a theatrical release in 7.4 more countries than non-award winning films). Furthermore, awards ensured future VOD availability as 84% of all award-winning European theatrically released films in the period were available on VOD.

1.2.3.3.2. Recentness of European non-national films

The age of production of a European non-national film impacts its VOD availability - the more recent, the higher its future VOD availability. While only 41% of films produced between 1996 and 2000 were available in May 2021 on VOD in EUR20+1,[40] for films produced from 2011 to 2014 the share rises to 66% and for films produced from 2015 to 2018 to 69%; 62% of films produced in 2019 and 2020 were available on VOD.

1.2.3.3.3. Origin of European non-national films

According to our research, films produced in high- and mid-volume film-producing countries account for the largest share of European non-national films available on VOD.

High-volume film production countries represent more than half of all European films exploited in cinemas and available on VOD. Films of the main production countries (Germany, France, United Kingdom, Italy and Spain) accounted for 59% of all European titles released in cinemas across EUR20+1 and 64% of all European titles available on VOD in EUR20+1. The top 10 production countries represented 78% of all European non-national films available on VOD while the bottom 28 European production countries accounted for 22%.

Furthermore, high-volume and mid-volume film production countries have a higher share of theatrical films making it to VOD than low-volume production countries. While more than two thirds of all theatrical films produced in GB (78%), DK (78%), IE (77%), FR (68%), DE (68%) and AT (66%) were available on VOD in at least one EUR20+1

[40] The study covers 20 EU countries (AT, BE, CZ, DE, DK, EE, ES, FI, FR, HU, IE, IT, LT, LV, NL, PL, PT, RO, SE, SK) and the United Kingdom, hereafter EUR20+1.

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country, fewer than one third of theatrical films produced in HU (27%), LV (16% and EE (16%) were available on VOD in at least one EUR20+1 country.

But the impact of language and cultural proximity make for heterogenous distribution of European non-national films available on VOD across EUR20+1 by country of origin. The origin of European non-national films on VOD in countries is, contrary to the other metrics, quite varied across EUR20+1 countries. These differences may stem from shared languages and closer cultural proximity between EUR20+1 countries.

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2. International

2.1. Territoriality and copyright

The principle of territoriality in copyright law means essentially that, within the framework of international treaties and relevant EU directives, each country can regulate copyright in its own way. Therefore, copyright rules may vary from one member state to another. More importantly for the purposes of this publication, according to this principle, rightsholders have the right (but are not obliged) to grant territorial licences to different licensees in different countries.

2.1.1. The Single Market and the freedom to provide services

The EU Single Market is based on the so-called "four freedoms" included in the EU Treaties: the free movement of people, goods, services and capital. Of all these, the freedom to provide services (coupled with the right of establishment) is the most relevant one for the audiovisual sector.

Article 56 of the Treaty on the Functioning of the European Union (TFEU)[41] contains a general prohibition concerning restrictions on the freedom to provide services within the Union in respect of nationals of member states who are established in a member state other than that of the person for whom the services are intended. Article 49 TFEU contains a general prohibition on restricting the freedom of establishment of nationals of a member state in the territory of another member state. It is also prohibited to restrict the setting up of agencies, branches or subsidiaries by nationals of any member state established in the territory of any other member state.

The Services Directive (SD)[42] is the main EU legal instrument used to implement the freedom to provide services and the right of establishment. It aims at achieving the full potential of service markets in Europe by removing legal and administrative barriers

[41] Consolidated version of the Treaty on the Functioning of the European Union: http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:12012E/TXT.
[42] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006L0123.

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to trade. However, the Services Directive does not apply to "audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting" (Article 2(2)(g) SD).

With regard to copyright in general, the rules on the freedom to provide services included in Article 16 SD[43] do not apply to, among other things, copyright and neighbouring rights (Article 17 (11) SD), confirming thereby the principle of territoriality in copyright law. Moreover, member states are allowed to impose requirements with regard to the provision of a service activity for reasons of public policy, public security, public health or the protection of the environment (Article 16(3) SD). Recital 40 SD includes, in a long list of "overriding reasons relating to the public interest", the protection of intellectual property, cultural policy objectives, the need to ensure a high level of education, the maintenance of press diversity and the promotion of the national language, as well as the preservation of national historical and artistic heritage.

The Services Directive also protects the rights of recipients of services. Article 20 SD prohibits discriminatory requirements based on the nationality or place of residence of the recipient of the service. Furthermore, member states must ensure that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient. However, differences in the conditions of access are allowed where those differences are directly justified by objective criteria. According to the European Commission,[44] an objective reason that would justify the refusal to provide a service to consumers in a given territory is the absence of the required authorisation from the rightsholders for the territory in question. Other reasons, in particular those not related to copyright, would have to be justified on a case-by-case basis. But, as mentioned before, the Services Directive does not apply to audiovisual and cinematographic services.

2.1.2. The principle of territoriality in EU copyright law

Since the late 1980s, the European Union has engaged in harmonising certain aspects of copyright and related rights by introducing directives on several copyright-related issues,[45] the most relevant of which for the exploitation of audiovisual works is the directive on the harmonisation of certain aspects of copyright and related rights in the information

[43] Article 16 SD lists the principles to be respected by member states when enabling access to or exercise of a service activity in their territory (non-discrimination, necessity and proportionality). It also includes a list of prohibited requirements for providers established in another member state.
[44] Commission Staff Working Document with a view to establishing guidance on the application of Article 20(2) of Directive 2006/123/EC on services in the internal market ('the Services Directive'), http://ec.europa.eu/internal_market/services/docs/services-dir/implementation/report/SWD_2012_146_en.pdf.
[45] See The EU legal framework ("acquis"), https://ec.europa.eu/digital-single-market/en/eu-copyright-legislation.

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society (InfoSoc Directive).[46] The InfoSoc Directive aims to adapt legislation on copyright and related rights to reflect technological developments and to transpose into EU law the main international obligations arising from the WCT and WPPT.[47] It harmonises the rights of reproduction, distribution and communication to the public, as well as the legal protection of anti-copying devices and rights management systems. Another important piece of legislation is the Satellite and Cable Directive (SatCab Directive),[48] which aims to facilitate the cross-border transmission of audiovisual programmes, notably via satellite and retransmission by cable.

EU law limits the principle of territoriality in copyright law only in respect of two aspects. Firstly, the SatCab Directive introduces the "country of origin" principle for communications to the public by satellite. Yet, the application of this principle can be (and usually is) overruled via contractual licensing practices and signal encryption techniques.[49] Secondly, the InfoSoc Directive introduces the "exhaustion" principle for the distribution right.[50] This principle applies only to the distribution of the work incorporated in a tangible medium, that is, it does not apply, for example, to the right regarding communication to the public of works and the right regarding the making available of works.[51] As a result, the territoriality principle mostly prevails and any service provider offering, for example, copyrighted works online in more than one member state will have to clear licences covering all of these countries. This is not a problem if all rightsholders involved in the creation of the work retain the required rights for all countries in question. Nothing in national or EU law precludes for example a film or a music producer from providing a multi-territorial licence for more than one country, as long as he or she holds these rights. This is the theory, of course. In practice, rights in audiovisual works are usually pre-sold by producers to national distributors in order to finance the production of the work in question and, in the case of musical works, rights are exercised by national collective management organisations (CMOs), which play a fundamental role.

In particular, rightsholders in musical works entrust the management of their rights to CMOs, which enter into reciprocal representation agreements with each other, so

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[46] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32001L0029.

[47] For more information on the principle of territoriality of copyright in international treaties see Section 2.1.2.1. of IRIS Plus 2019-3.

[48] Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31993L0083.

[49] See Hugenholtz P.B., "SatCab Revisited: The Past, Present and Future of the Satellite and Cable Directive" in "Convergence, Copyrights and Transfrontier Television", IRIS Plus, European Audiovisual Observatory, Strasbourg, 2009, https://rm.coe.int/1680783415.

[50] This principle, known as the "first sale doctrine" in US law, means that the right of distribution is exhausted by the first sale or other transfer of ownership of a copy of the work made by the rightsholder or with their consent (Article 4(2) InfoSoc Directive).

[51] See Article 3(3) and Recitals 28 and 29 of the InfoSoc Directive.

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that each CMO can provide multi-repertoire licences in its territory of establishment.[52] At EU level, the adoption of the Directive on collective management[53] is the latest attempt to date to overcome national barriers to the free provision of copyrighted works online.[54] It aims to improve the way all CMOs are managed by establishing common governance, transparency and financial management standards. Other objectives of the Directive are to set common standards for the multi-territorial licensing by authors' CMOs of rights in musical works for the provision of online services and to create conditions that can expand the legal offering of online music.[55]

2.1.3. Latest legislative developments

In recent times, some legislative developments to improve the circulation of works within the European Union have raised concerns among rightsholders about a dismantling of the principle of territoriality in EU copyright law.

[52] As these agreements forbade collective management societies from granting EU-wide licences, the European Commission took an antitrust decision in 2008 prohibiting 24 European collecting societies from restricting competition by limiting their ability to offer their services to authors and commercial users outside their domestic territory. CISAC appealed to the General Court, which concluded that the Commission did not prove the existence of concertation between the collective management societies as regards the territorial scope of the mandates which they grant each other and that the parallel conduct of the collective management societies at issue was not the result of concertation, but rather of the need to fight effectively against the unauthorised use of musical works. See Judgment of the General Court (Sixth Chamber) of 12 April 2013, Case T-442/08, *International Confederation of Societies of Authors and Composers (CISAC) v European Commission*, http://curia.europa.eu/juris/document/document.jsf?text=&docid=136261&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=357698.

[53] Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.084.01.0072.01.ENG.

[54] The European Commission had already adopted in 2005 a recommendation on the management of online rights in musical works. The recommendation put forward measures for improving the EU-wide licensing of copyright for online services. See Commission Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services, http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32005H0737&from=EN.

[55] See European Commission, "Directive on collective management of copyright and related rights and multi-territorial licensing – frequently asked questions" of 4 February 2014, http://europa.eu/rapid/press-release_MEMO-14-79_en.htm.

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2.1.3.1. Portability regulation

The Regulation on cross-border portability of online content services in the internal market (the "Portability Regulation")[56] was adopted on 14 June 2017 and came into force on 1 April 2018. It aims at ensuring that EU citizens who buy or subscribe to online content services in their home country are able to access this content when they travel or stay temporarily in another EU country.[57] According to Article 3 of the Portability Regulation, the provider of an online content service provided against payment of money must enable a subscriber who is temporarily present in a member state to access and use the online content service in the same manner as when in their member state of residence, including by providing access to the same content, via the same range and number of devices, for the same number of users and with the same range of functionalities.

In order to reconcile this aim with the principle of territoriality, on which EU copyright law is based, the Portability Regulation contains in its Article 4 a legal fiction whereby the provision of the service to a subscriber who is temporarily present in a member state, as well as the access to and the use of that service by the subscriber, will be considered as happening in the subscriber's member state of residence. Moreover, Article 7 envisages that any contractual provisions that are contrary to the Portability Regulation, be they with regard to service provider and rightsholders or service provider and subscribers, shall be unenforceable.[58]

2.1.3.2. Directive on copyright and related rights applicable to certain online transmissions

While the Portability Regulation has not been met with substantial opposition from the audiovisual industry, the Proposal of the Commission for a Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes caused a backlash throughout the audiovisual industry.

The proposal for a Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and

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[56] Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market (Text with EEA relevance) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02017R1128-20170630.

[57] Digital Single Market – Portability of online content services, https://europa.eu/rapid/press-release_MEMO-18-2601_en.htm.

[58] One year after its entry into force, on 9 July 2019, the European Audiovisual Observatory published for the European Commission a first feedback report on the implementation of the new rules by free online video services. See Jiménez Pumares M., "First feedback from the implementation of the Portability Regulation by free online video services", European Audiovisual Observatory, Strasbourg, July 2019, https://rm.coe.int/first-feedback-from-the-implementation-of-portability-regulation-by-fr/168095f331.

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retransmissions of television and radio programmes (Regulation Proposal), adopted by the European Commission on 14 September 2016, aimed at introducing the principle of the country of origin (COO) for certain types of online transmissions of TV and radio programmes, such as simulcasting and catch-up services, with the goal of facilitating the licensing of content online by broadcasters and, ultimately, of increasing cross-border access to broadcasters' online services in the Digital Single Market. It also introduced a mandatory collective management system for the clearance of rights for retransmissions of TV and radio programmes provided by means other than cable, on equivalent closed networks, with the objective of facilitating the use of programmes by third-party platforms.

Under the proposed rules, for the purpose of clearing rights for some online transmissions by broadcasters, the rights of communication to the public, making available and reproduction would be deemed to take place solely in the member state in which the broadcasting organisation is established. In this way, the broadcasting organisation would only have to clear the rights necessary for the member state in which it has its principal establishment. However, the licences granted under the COO principle would have to take into account all aspects of such online services, including the audience and the language versions of the programmes.

In the end, after much political wrangling, the text adopted in 2019 was turned into a directive[59] and, most importantly, significantly watered down. The adopted rules on the COO principle (Article 3) apply to all radio programmes, but only to television programmes that are: (i) news and current affairs programmes, or (ii) fully financed own productions of the broadcasting organisation. It expressly excludes from its scope the "broadcasts of sports events and works and other protected subject matter included in them". Moreover, Article 3(3) provides that the COO principle shall be without prejudice to the contractual freedom of the rightsholders and broadcasting organisations to agree, in compliance with Union law, to limit the exploitation of such rights.

Articles 4 and 5 concern the retransmission of television and radio programmes and extend the system of mandatory collective management, which is currently applicable to cable retransmissions only, to retransmission services provided through other means (such as Internet Protocol television (IPTV), and satellite, digital terrestrial or online technologies).

Article 8 concerns the transmission of programmes through direct injection, and clarifies that when broadcasters transmit their programme-carrying signals by direct injection exclusively to distributors, and the latter transmit these to the public, there is an

[59] Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC (Text with EEA relevance), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2019.130.01.0082.01.ENG.

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"act of communication to the public", in which both the broadcaster and the distributors participate, and for which they need to obtain authorisation from rightsholders.

2.1.3.3. Geo-blocking

In the EU, the Geo-blocking Regulation,[60] adopted in 2018, outlaws unjustified discrimination vis-a-vis customers buying goods or services. It ensures that customers' nationality, place of residence or place of establishment cannot be used to refuse access to an online shop (e.g. for electronics or clothing) or to a service provided online and consumed off-line (e.g. car rental) in the EU, including where this discrimination is related to means of payment. Very importantly, while the Geo-blocking Regulation applies to a wide range of goods and services, materials protected under copyright, such as e-books and audiovisual products, are excluded from its scope.

The Regulation also includes a Review clause under Article 9, which provides that by 23 March 2020 and every five years thereafter, the European Commission must report on the evaluation of the Regulation. As such, on 30 November 2020, the European Commission published the conclusions of its first short-term review of the Geo-blocking Regulation.[61] The Commission's report analysed the first 18 months of implementation of the current Regulation as well as the possible effects of the extension of its scope. The report considered the possible extension of the scope of the legislation, including with regard to copyright-protected content (such as audiovisual content, music, e-books and video games). It highlighted potential benefits for all consumers in Europe, notably in the availability of a wider choice of content across borders if the Regulation were to be extended to cover audiovisual content. The Report also identified the potential impact that such an extension of the scope would have on the overall dynamics of the audiovisual sector, but concluded that it needs to be further assessed, especially in the broader context of accompanying the industry in its recovery and transformation in the Commission's Media and Audiovisual Action Plan.[62][63]

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[60] Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (Text with EEA relevance), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0302&from=EN.

[61] Press release of the European Commission, "Commission publishes its short-term review of the Geo-blocking Regulation", 30 November 2020, https://digital-strategy.ec.europa.eu/en/news/commission-publishes-its-short-term-review-geo-blocking-regulation.

[62] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation, COM/2020/784 final, 3 December 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0784.

[63] At the time of writing (June 2023), the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO) was preparing a draft report to assess the extent to which the implementation of

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2.1.3.4. Access to and availability of audiovisual content across the EU

Following a high-level roundtable with Commissioner for the Internal Market Thierry Breton,[64] the Commission decided to engage with stakeholders in a dialogue to identify how to foster better circulation of audiovisual content across the EU, while proposing actions to support the industry's recovery. The Commission held a series of stakeholder meetings, gathering representatives of the audiovisual sector and consumer organisations, with the aim of identifying concrete industry-led solutions to increase the number and diversity of audiovisual works available online in each member state and facilitate consumers' access to audiovisual content across the EU.[65]

In the third of the stakeholders' meetings (held on 10 December 2021),[66] the Commission asked participants to explore industry-led solutions which would allow consumers, under specific circumstances, to access audiovisual content offered in other member states:

- Consumers' representatives showed support for the option of allowing cross-border access to audiovisual content and services, where such content or services are not available in the consumers' countries.
- Users' representatives proposed exploration of the idea of setting up a non-commercial TVOD service to ensure the distribution of publicly funded films in unlicensed territories.
- Representatives of the audiovisual sector explained that any such option would in their view undermine the sustainability of the industry.

The Commission encouraged participants to be more ambitious and to obtain feedback from their members on how to improve availability and access to AV content.

In May 2022, the Commission announced during the Observatory conference at the Cannes Film Festival its intention to invite stakeholders to provide further ideas on improving access to European works after the summer.[67] In a letter to stakeholders of 10

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the Geo-Blocking Regulation has contributed to the integration of the Internal Market and thus to better deals for consumers and more opportunities for businesses. The rapporteur is Ms Beata Mazurek (ECR), who will present the draft report at the committee meeting on 28-29 September 2023. Deadline for amendments is 12 July 2023. See https://www.europarl.europa.eu/committees/en/implementation-of-the-geo-blocking-regul/product-details/20230613CDT11821.

[64] Press release of the European Commission, "Media and Audiovisual Action Plan: Commission prepares dialogue on circulation of films, TV series and audiovisual content", 22 October 2021, https://digital-strategy.ec.europa.eu/en/news/media-and-audiovisual-action-plan-commission-prepares-dialogue-circulation-films-tv-series-and.

[65] See https://digital-strategy.ec.europa.eu/en/policies/access-and-availability-audiovisual-content.

[66] See Third meeting of the dialogue on access to and availability of audiovisual content across the EU – 10 December 2021, Summary Report, https://ec.europa.eu/newsroom/dae/redirection/document/82261.

[67] See the video of the Observatory Cannes Conference "Circulation of European films: Is availability enough?", 21 May 2022, https://youtu.be/lUaAsOHBcq8?t=4017.

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June 2022,[68] the Commission invited them to submit proposals for concrete actions or a roadmap presenting the steps they intended to take in order to contribute to improving the online availability of and cross-border access to audiovisual works across the EU.[69]

2.1.4. Territoriality and competition law

Title VII, Chapter 1, Section 1 TFEU contains the EU competition rules applying to undertakings. Article 101 TFEU contains a general prohibition on agreements between undertakings which restrict competition. This provision covers both horizontal and vertical agreements. A limited exception is provided for regarding agreements and other actions which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit. Article 102 TFEU prohibits the abuse of a dominant position, for example by imposing unfair purchase or selling prices, limiting production, markets or technical development to the prejudice of consumers, placing competitors at a competitive disadvantage or making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of such contracts.

The Antitrust Regulation (AR)[70] implements Articles 101 and 102 TFEU. The Antitrust Regulation replaced the centralised notification and authorisation system by an enforcement system based on the direct application of Articles 101 and 102 TFEU in their entirety. According to Article 11(6) AR, the initiation of proceedings by the European Commission relieves the competition authorities of the member states of their competence to also apply EU competition rules to the practices concerned. Article 16(1) AR provides that national courts must avoid handing down decisions which would conflict with a decision contemplated by the Commission in proceedings it has initiated.

The European Commission has traditionally defined the geographic scope of broadcasting markets for the licensing/acquisition of audiovisual TV content (film and other content) as national or relating to linguistically homogeneous areas.[71] Particularly

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[68] See https://communia-association.org/wp-content/uploads/2022/09/220610Letter-from-Giuseppe-Abbamonte-to-Stakeholders.pdf.

[69] See Chapter 4 of this publication for a stakeholders' answer to this letter.

[70] Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003R0001. See also Commission Regulation (EC) No. 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32004R0773.

[71] See Capito R., "EU" in Susanne Nikoltchev, Ed., IRIS Special: Converged Markets - Converged Power? Regulation and Case Law, Strasbourg, European Audiovisual Observatory, 2012, https://rm.coe.int/1680783bf4.

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as regards broadcasting rights to premium films, the market investigation in the *NewsCorp/BskyB* case[72] confirmed that these rights are only rarely negotiated simultaneously for different territories. According to stakeholders, broadcasting rights are generally negotiated and concluded on a country-by-country basis, with the only exceptions appearing to be licensing in relation to a linguistic area (for example rights for Germany, Austria and the German-speaking parts of Switzerland and Luxembourg) or in relation to areas with a particular common socio-cultural background (for example Scandinavia). Further factors mentioned by stakeholders which prevent cross-border negotiation/licensing include: the availability of materials in each language; differences in the availability dates for content in different territories; and the fact that each country and region reflects local preferences in programming.

The fact that licensing agreements are generally concluded on a country-by-country basis does not mean that they cannot have anti-competitive effects and be considered an obstacle to the completion of the Single Market. The most prominent example of this was the CJEU judgment in the so-called Premier League cases concerning the issuing of licensing restrictions granting broadcasters an exclusive live broadcasting right for Premier League matches on a territorial basis, generally corresponding to the territory of a member state.[73] Following this judgment, in 2012, the Commission conducted a fact-finding investigation to examine whether licensing agreements for premium pay-TV content contain absolute territorial protection clauses which may restrict competition, hinder the completion of the Single Market and prevent consumers' cross-border access to premium sports and film content.[74] In January 2014, the European Commission opened formal antitrust proceedings to examine certain provisions in licensing agreements between several major US film studios (Twentieth Century Fox, Warner Bros., Sony Pictures, NBCUniversal, Paramount Pictures) and the largest European pay-TV broadcasters, such as BSkyB of the UK, Canal Plus in France, Sky Italia in Italy, Sky Deutschland in Germany and DTS in Spain.[75] The Commission's aim was to investigate whether these provisions prevent broadcasters from providing their services across borders, for example by turning away potential subscribers from other member states or blocking cross-border access to their services. As a result of these antitrust proceedings, on 23 July 2015, the European Commission sent a Statement of Objections to Sky UK and

[72] European Commission, Decision D/C(2010) 9684, Case COMP/M.5932 - NewsCorp/BSkyB, 21 December 2010, http://ec.europa.eu/competition/mergers/cases/decisions/m5932_20101221_20310_1600159_EN.pdf.

[73] This judgment is described in detail in Chapter 5 of this publication.

[74] See Report from the Commission on Competition Policy 2012 (COM(2013) 257 final), Commission Staff Working document, 7 May 2013, SWD(2013) 159 final, http://ec.europa.eu/competition/publications/annual_report/2012/part2_en.pdf.

[75] See press release of the European Commission, "Antitrust: Commission investigates restrictions affecting cross border provision of pay TV services", 13 January 2014, http://europa.eu/rapid/press-release_IP-14-15_en.htm.

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six major US film studios: Disney, NBCUniversal, Paramount Pictures, Sony, Twentieth Century Fox and Warner Bros.[76]

After the Commission's Statement of Objections, in April 2016 Paramount offered commitments to address the Commission's competition concerns. The commitments were accepted and made legally binding in July 2016. In December 2018, the General Court of the European Union fully upheld the Commission's decision to accept commitments from Paramount (Case T-873/16 Groupe Canal+), confirming thereby that the Broadcaster and Studio Obligations contained in Paramount's film licensing contract with Sky infringed Article 101 TFEU by eliminating cross-border competition between pay-TV broadcasters. Finally, towards the end of 2018, Disney, NBCUniversal, Sony Pictures, Warner Bros. and Sky offered commitments aimed at addressing the Commission's concerns, which were made legally binding under EU antitrust rules in March 2019.[77] In 2020, however, the CJEU contradicted to a certain extent the judgment of the General Court of the European Union mentioned above. In its judgment of 9 December 2020,[78] the CJEU found that the General Court erred in law in its assessment of the proportionality of the adverse effects on the interests of third parties (in the case at hand, Canal Plus). After this judgment, the Commission deemed it appropriate to withdraw the 2019 Decision, since the scope of the commitments made binding by that Decision were essentially identical to those of the 2016 Decision.[79]

[76] See press release of the European Commission, "Antitrust: Commission sends Statement of Objections on cross-border provision of pay-TV services available in UK and Ireland", 23 July 2015, http://europa.eu/rapid/press-release_IP-15-5432_en.htm.

[77] See the press release of the European Commission, "Antitrust: Commission accepts commitments by Disney, NBCUniversal, Sony Pictures, Warner Bros. and Sky on cross-border pay-TV services", 7 March 2019, https://europa.eu/rapid/press-release_IP-19-1590_en.htm. For more information on this case, see Chapter 5 of this publication.

[78] Judgment of the Court of Justice of the European Union (Second Chamber), 9 December 2020, Case C-132/19 P, Groupe Canal + v European Commission, https://curia.europa.eu/juris/document/document.jsf?text=&docid=235566&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=50975. For more information on this case see Chapter 5 of this publication.

[79] For information on the Commission antitrust enquiry concerning the e-commerce sector see section 2.1.4. of IRIS Plus 2019-3.

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2.2. Release windows

2.2.1. Audiovisual Media Services Directive

In order to understand the development of the current rules contained in the AVMSD one needs to look at the Council of Europe's work in this particular area.[80] In its Recommendation No. R(87)7,[81] the Committee of Ministers of the Council of Europe considered that, as the rapid development and growth of new technologies was generating a variety of types of film distribution, a need had arisen to harmonise these in order to make films as widely available as possible. Accordingly, it recommended, among other things, that the governments of member states:

> *[…]*
> *3. Encourage the conclusion of agreements aimed at taking into account the diversification of types of film distribution and ensure, within the limits of their authority, that priority in film distribution is given to cinemas, which alone are capable of exhibiting films to the best advantage, and respect the following general hierarchy of distribution channels:*
> *- cinema,*
> *- videogram,*
> *- television;*
> *4. Where local conditions permit, encourage the conclusion of agreements designed to ensure that broadcasting stations do not schedule cinema films on days and at times when cinemas are most likely to attract large audiences*
> *[…]*

Two years later, the European Convention on Transfrontier Television (ECTT)[82] was adopted. This ground-breaking legal instrument provided for a rule concerning release windows in its Article 10, paragraph 4:

> *No cinematographic work shall […] be transmitted in [broadcasting] services, unless otherwise agreed between its rightsholders and the broadcaster, until two years have elapsed since the work was first shown in cinemas; in the case of cinematographic works co-produced by the broadcaster, this period shall be one year.*

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[80] A more in-depth description of the evolution of the rules at European Union and Council of Europe level is available at Kuhr M., "Media Windows In Flux - Challenges for Audiovisual Media Chronology, IRIS Plus 2008-4, https://rm.coe.int/16807833f4.

[81] Recommendation No. R (87) 7 of the Committee of Ministers to member states on film distribution in Europe adopted on 20 March 1987, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804dbf22.

[82] European Convention on Transfrontier Television, 5 May 1989, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/132.

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This rule was mirrored in a corresponding provision of the original Television without Frontiers Directive (TwFD) of 1989.[83] Article 7 imposed on member states the obligation to ensure that:

> *Television broadcasters under their jurisdiction do not broadcast any cinematographic work, unless otherwise agreed between its rightsholders and the broadcaster, until two years have elapsed since the work was first shown in cinemas in one of the Member States of the Community; in the case of cinematographic works co-produced by the broadcaster, this period shall be one year.*

This somewhat stringent rule survived until the revision of the TwFD in 1997, which 'liberalised' the system of release windows in the European Union. The new Article 7 simply obliged member states to:

> *ensure that broadcasters under their jurisdiction do not broadcast cinematographic works outside periods agreed with the rightsholders.*

This amendment was duly incorporated into the revision of the ECTT in 1998.[84] Also, the successive modifications of the TwFD[85] and its transformation into the Audiovisual Media Services Directive[86] did not have an impact on this rule. As such, the current rule in Article 8 of the 2018 AVMSD simply provides that:

> *Member States shall ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rightsholders.*

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[83] Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31989L0552.

[84] Protocol amending the European Convention on Transfrontier Television, 1 October 1998, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/171.

[85] Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31997L0036.
Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Text with EEA relevance), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32007L0065.

[86] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (Text with EEA relevance), https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32010L0013.
Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, https://eur-lex.europa.eu/eli/dir/2018/1808/oj.

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Recitals 76 and 77 of the 2010 AVMSD do not provide further information on this matter:

> *(76) It is important to ensure that cinematographic works are transmitted within periods agreed between rightsholders and media service providers.*
> *(77) The question of specific time scales for each type of showing of cinematographic works is primarily a matter to be settled by means of agreements between the interested parties or professionals concerned.*

2.2.2. Competition law

Any system of release windows is based on exclusive copyrights. Whereas this fact in itself does not go against the EU internal market rules or the EU competition rules, its application in a concrete case may create effects prohibited under the said EU rules.[87] This was already explained by the Court of Justice of the European Union (CJEU)[88] in the *Coditel* case:[89]

> *Although copyright in a film and the right deriving from it, namely that of exhibiting the film, are not as such subject to the prohibitions contained in Article 85, the exercise of those rights may, nonetheless, come within the said prohibitions where there are economic or legal circumstances the effect of which is to restrict film distribution to an appreciable degree or to distort competition on the cinematographic market, regard being had to the specific characteristics of that market.*

Both the CJEU and the European Commission have stated that systems of release windows may restrain the freedom to provide goods and services and distort competition in the audiovisual sector.[90] Such systems can nevertheless be acceptable under EU law given their ultimate aim of promoting film production.[91]

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[87] See iMinds (SMIT), *Analysis of the legal rules for exploitation windows and commercial practices in EU member states and of the importance of exploitation windows for new business practices, study carried out for the European Commission*, page 16, https://ec.europa.eu/futurium/en/system/files/ged/analysisofthelegalrulesforexploitationwindows.pdf.
[88] All mention of the CJEU in this publication will be made using its current name.
[89] Judgment of the Court of 6 October 1982. Coditel SA, Compagnie générale pour la diffusion de la télévision, and others v Ciné-Vog Films SA and others, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61981CJ0262. See also Judgment of the Court (Grand Chamber) of 4 October 2011, Joined Cases C-403/08 and C-429/08, Football Association Premier League Ltd and others vs QC Leisure, and Murphy vs Media Protection Services Ltd, http://curia.europa.eu/juris/document/document.jsf?text=&docid=110361&doclang=EN.
[90] Kuhr M., *op.cit*, IRIS plus 2008-4, provides a useful overview of the competition law issues.
[91] For more information see Chapter 5 of this publication.

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3. National rules on release windows

The purpose of this chapter is to provide a comparative analysis of how release windows are organised in the EU member states plus Switzerland, Norway, and the United Kingdom. It also provides more detailed information about those countries in which legislative measures (general or related to public funding) have been introduced. This analysis is based on information taken from a table summarising the rules in these countries, which can be found as an annex at the end of this publication.[92]

3.1. Types of frameworks

As mentioned in Chapter 2 of this publication, Article 8 of the AVMS Directive provides only for a general obligation for member states to "ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rightsholders" and refers in its recitals to agreements within the industry.

While several countries have implemented this minimum requirement as per Article 8 AVMSD, leaving release windows as a contractual matter, some countries have established more elaborate release window frameworks, either through specific legislation or through national/regional film support schemes (which in some countries are also enshrined in legislation).

3.1.1. Legislation

Only two countries within the European Union have opted for specific legislative provisions to define the release window framework: Bulgaria and France. However, that is where the similarities end. Bulgaria has a simple framework with a window for video, DVD, Internet and pay TV which opens three months after the theatrical premiere (except when otherwise agreed in the distribution contract), and a second one for free TV which

[92] The table was created by Europa Distribution, the International Federation of Film Distributors' & Publishers' Associations (FIAD), the International Video Federation (IVF), and the International Union of Cinemas (UNIC), based on a survey sent to their members in December 2022 and additional research in April-May 2023.

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opens six months following the theatrical premiere. The French system, on the other hand, is quite complex and has a long list of windows which span 36 months.

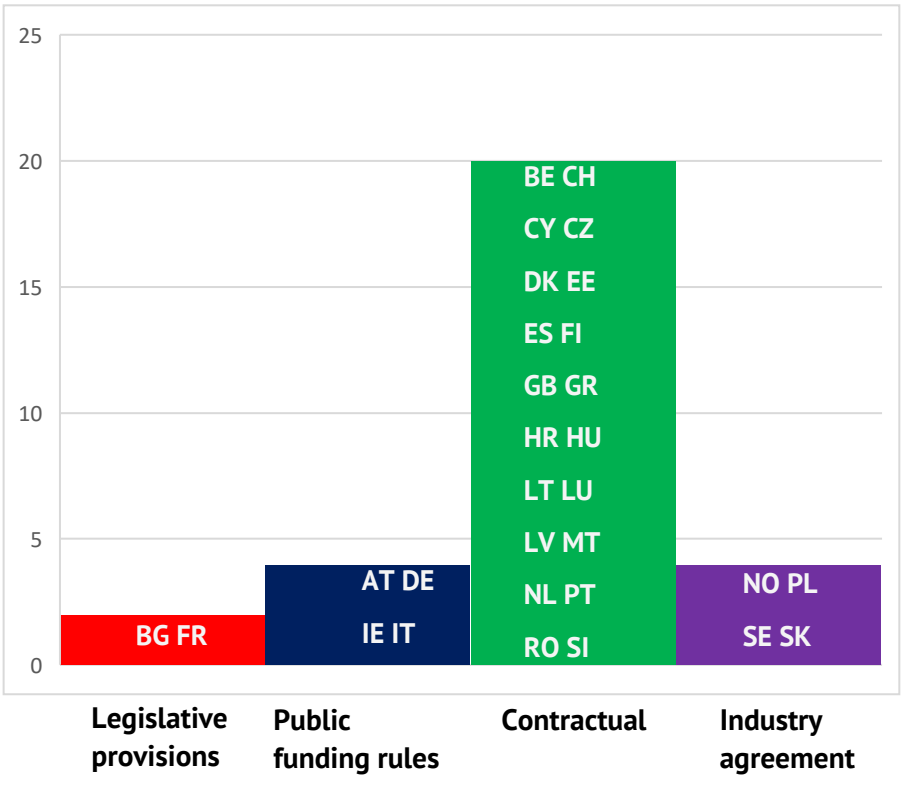
3.1.2. Public funding rules

The organisation of release windows can also be regulated or partially regulated by film support schemes. Here, too, there are different approaches: in some member states, film support is granted on the condition that release windows are respected, without further specification of the length and modalities of the windows, while in others there are more elaborate rules, in some cases even enshrined in legislation (e.g. Italy, Austria or Germany).

3.1.3. Industry agreements/contractual arrangements

Finally, many countries at EU level have opted to leave it to the industry to organise release windows. Most of the countries in question leave it to the parties to decide contractually on a case-by case basis, while in four countries the industry has agreed on a common framework that applies to all actors.

Figure 11. Types of rules



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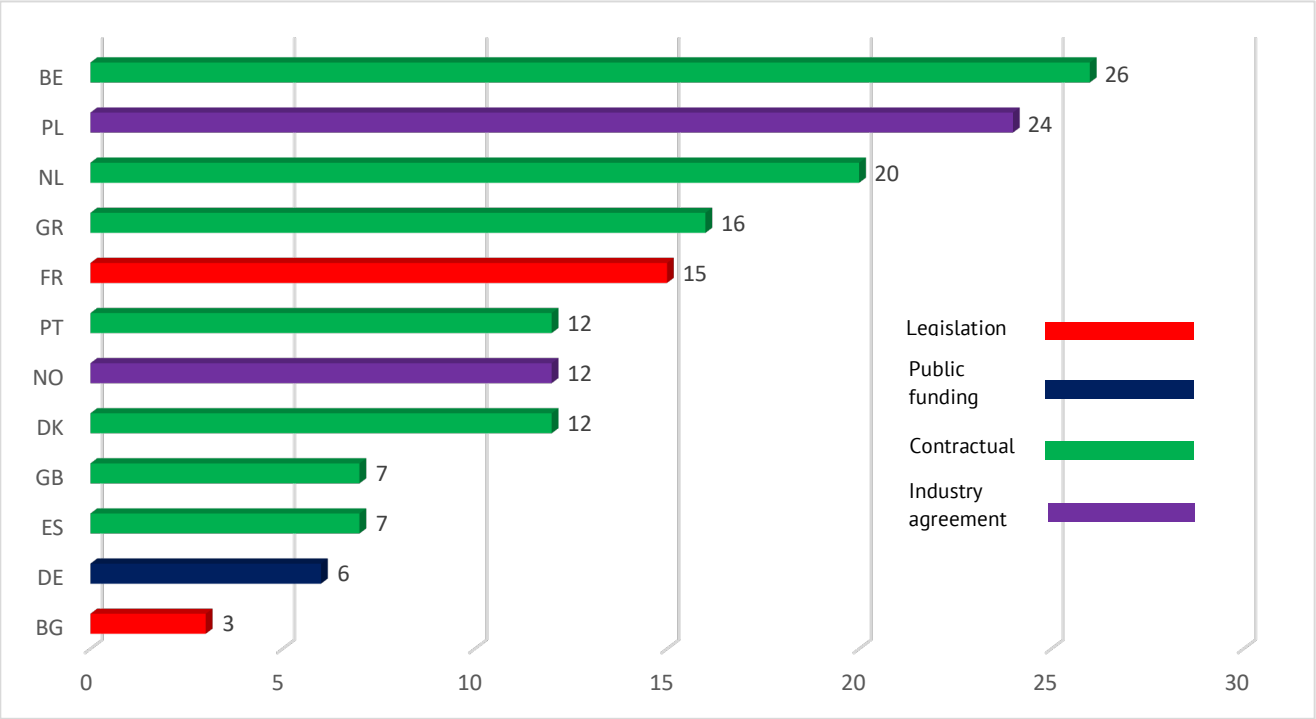
3.2. The SVOD window

As can be seen from the next graph, we have concrete figures for only half of the countries included in the annexed table, and the differences between them are considerable: from three months in Bulgaria to a minimum of 26 months (up to 30) in Belgium. Another issue to consider is the nature of the rules. Legislation and industry agreements lay down hard rules for each work, while public funding rules apply only to films that have received public funding. In countries where windows are regulated by contractual provisions on a case-by-case basis (the majority), the figures given reflect market practice but do not represent mandatory rules for all films.

Figure 12. SVOD window (minimum - in months)



The length of the SVOD window as such has not substantially changed in most countries between 2019 and 2023 (excluding the COVID parenthesis). It was reduced in particular in France (halved from 36 to 15-17 months) and became less flexible in Belgium (from 7-36 to 26-30 months).

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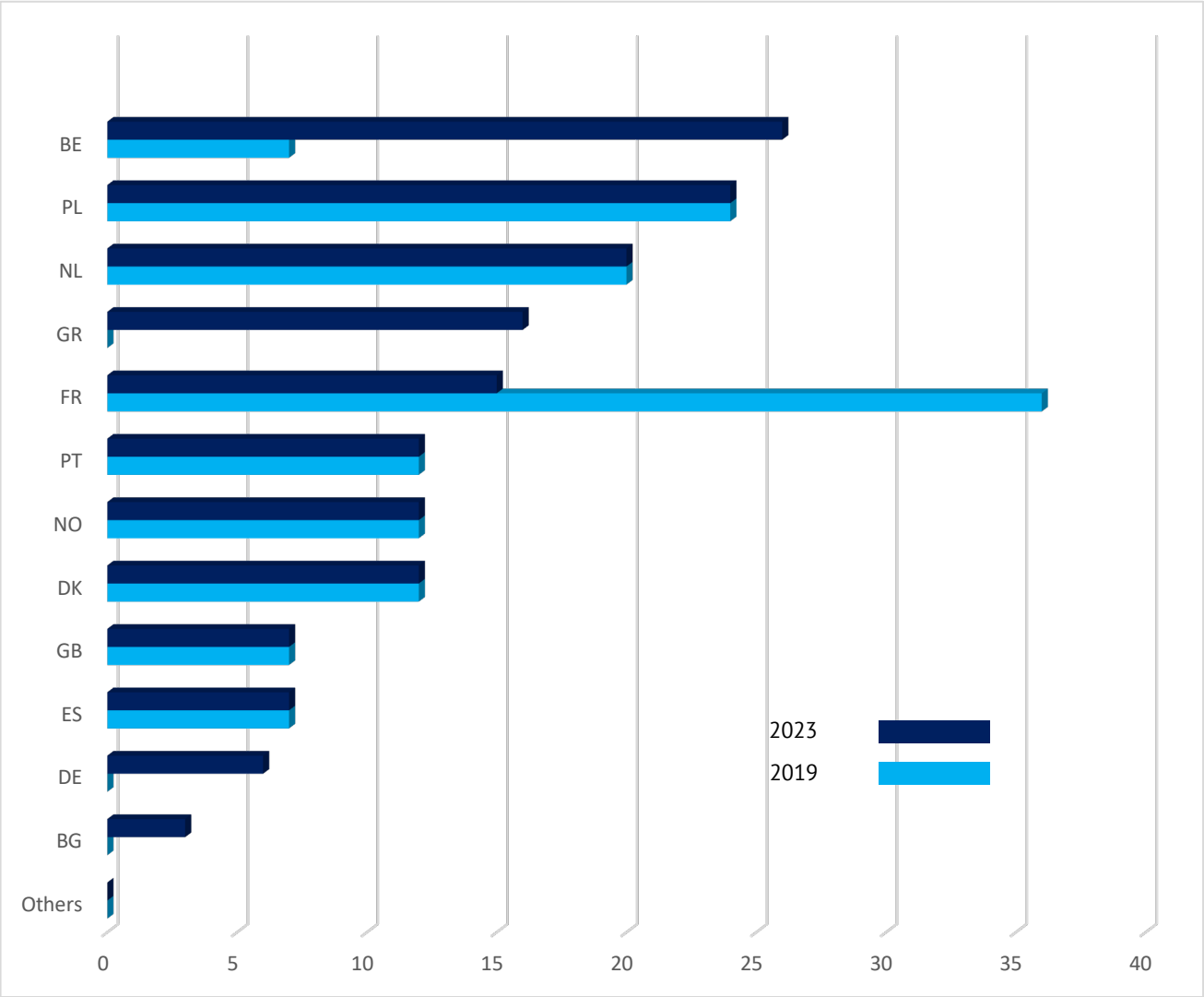
Figure 13. SvoD window – difference in length, between 2019 and 2023 (minimum - in months)



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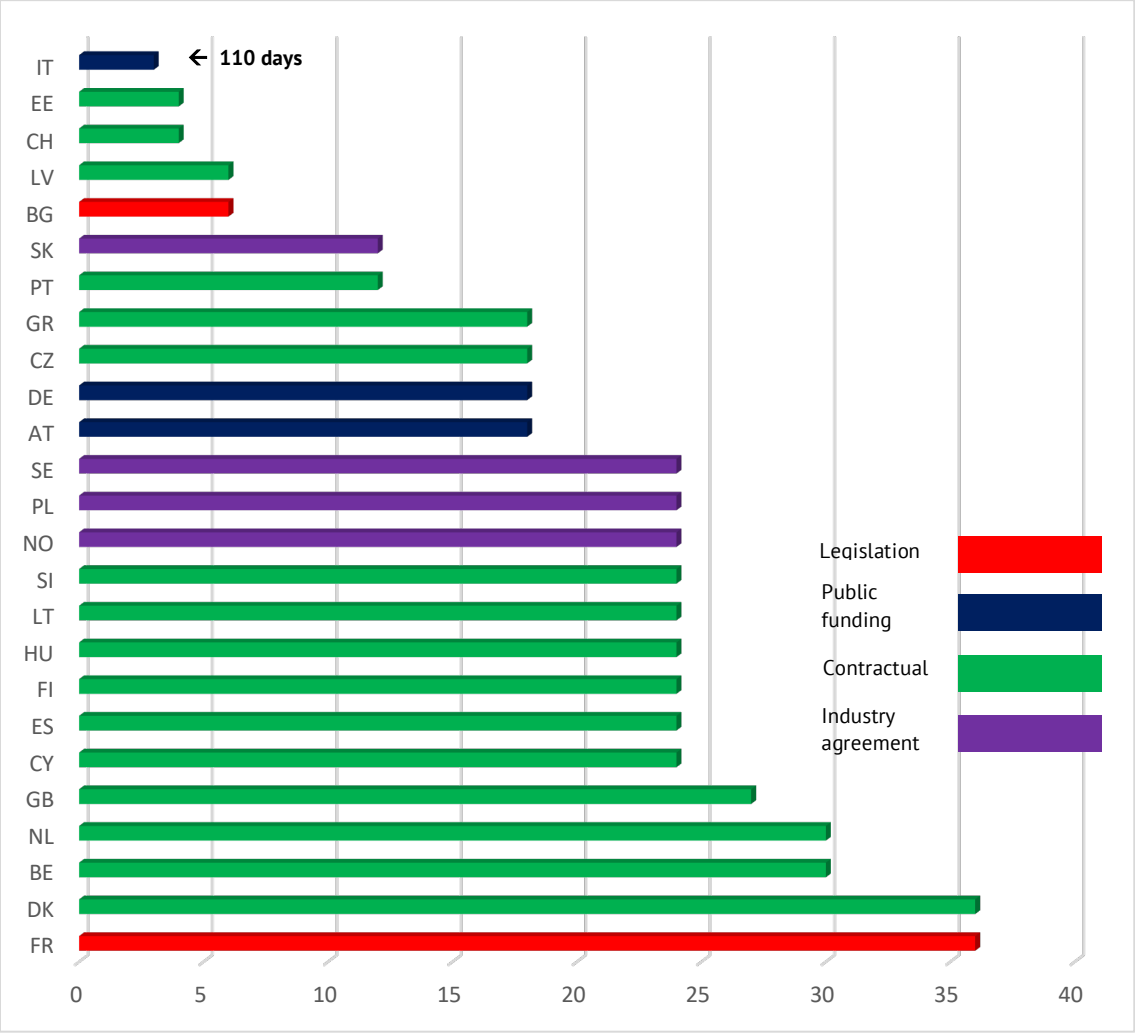
3.3. Maximum length of last window

As mentioned in Chapter 1 of this publication, the last window is usually free TV (although the position of this window can be interchangeable or simultaneous with SVOD). Indeed, both windows have the same length in Belgium, Greece, and Portugal, and they are almost the same length in Norway (12-24 SVOD v 14-24 free TV), Poland (24 SVOD v 18-24 free TV), and Spain (but with more flexibility for SVOD). The SVOD window can be longer in Denmark (12-36 SVOD v 24 free TV). In the case of France, the last window is free VOD (36 months).

Regarding the length of the last window itself, in most countries it ranges between 18 and 24 months, with 36 being the longest (RO DK FR) –only in France, though, is the window provided for by legislation.

Figure 14. Maximum length of last window



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3.4. Legislative measures

3.4.1. BG - Bulgaria

According to Article 45 of the Film Industry Act,[93] the following release windows must be observed:

- **Video, DVD, Internet and pay TV:** three months following the theatrical premiere, except when otherwise agreed in the distribution contract.
- **free TV:** six months following the theatrical premiere.

Furthermore, Article 50 of the Film Industry Act provides that the distribution of films in violation of the said release rules carries a fine or a pecuniary sanction in the amount of BGN 5 000 to BGN 10 000. In case of a repeated violation, the fine or pecuniary sanction shall be from BGN 10 000 to BGN 20 000.

3.4.2. FR - France

Based on the legislative framework provided by the French Cinema Code,[94] the professional agreement organising the release windows of cinematographic works was reformed and modernised in December 2018, renewing the previous agreement which was more than 10 years old, and which had been signed before SVOD platforms appeared in the audiovisual landscape. The professional agreement was endorsed by Ministerial Order on 25 January 2019 and published in the Official Journal on 10 February 2019; it entered into force and became mandatory across the whole industry for three years from that date.[95]

In December 2020, Article 28 of Ordinance no. 2020-1642 created a new framework for agreements on release windows.[96] On 2 December 2021, after negotiations

[93] Закон за филмовата индустрия (Film Industry Act), https://www.lex.bg/laws/ldoc/2135474936.
[94] *Code du cinéma et de l'image animée*, see Articles L231-L234-2, https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000020908868/LEGISCTA000020908001/#LEGISCTA000020908523.
[95] *Arrêté du 25 janvier 2019 portant extension de l'accord pour le réaménagement de la chronologie des médias du 6 septembre 2018 ensemble son avenant du 21 décembre 2018, Version consolidée,* https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=41564E9F4949FFBA842A5EF0C2CF45B4.tplgfr34s_1?cidTexte=JORFTEXT000038109708. For more details see section 3.2.2. of IRIS Plus 2019-2.
[96] *Ordonnance n° 2020-1642 du 21 décembre 2020 portant transposition de la directive (UE) 2018/1808 du Parlement européen et du Conseil du 14 novembre 2018 modifiant la directive 2010/13/UE visant à la coordination de certaines dispositions législatives, réglementaires et administratives des Etats membres relatives à la fourniture de services de médias audiovisuels, compte tenu de l'évolution des réalités du marché, et modifiant la loi du 30*

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had stalled for months, causing the Ministry of Culture to threaten regulatory intervention (as provided for in the Decree of 26 January 2021),[97] the Canal Plus group, the primary funder and broadcaster of French films, and industry representatives (BLIC, BLOC, ARP) announced that they had reached an agreement.[98] Finally, on 24 January 2022, a new agreement was adopted by the French industry[99] (with the exception of Disney and Amazon).

According to its preamble, changes in usage and the regulatory framework, in particular the transposition of the AVMSD, led the Government to propose to the parties to the 2019 agreement a renegotiation of the release windows system in place. In February 2022, a new Ministerial Order endorsed the professional agreement of 24 January 2022 and published in the Official Journal on 9 February 2022.[100] The stipulations of the agreement are therefore compulsory for three years since the date of publication of the Ministerial Order for any company in the film sector, for any publisher of on-demand audiovisual media services and for any publisher of television services. This agreement is subject to an evaluation at the end of each 12-month period of application.

The current French system of release windows for the exploitation of cinematographic works[101] is quite complex (the agreement itself is more than 3 500 words long) but can be summarised as follows (starting with the date of release in cinemas):[102]

septembre 1986 relative à la liberté de communication, le code du cinéma et de l'image animée, ainsi que les délais relatifs à l'exploitation des œuvres cinématographiques,
https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042722588.

[97] *Décret n° 2021-73 du 26 janvier 2021 fixant le délai prévu à l'article 28 de l'ordonnance n° 2020-1642 du 21 décembre 2020 pour la conclusion d'un nouvel accord rendu obligatoire portant sur les délais applicables aux différents modes d'exploitation des œuvres cinématographiques,*
https://www.legifrance.gouv.fr/jorf/texte_jo/JORFTEXT000043059857.

[98] See Blocman A., "[FR] Canal Plus and French cinema industry sign media chronology agreement", IRIS 2022-1:1/6, https://merlin.obs.coe.int/article/9362.

[99] See Blocman A., "[FR] New media chronology completes audiovisual reforms", IRIS 2022-3:1/10, https://merlin.obs.coe.int/article/9423.

[100] *Arrêté du 4 février 2022 portant extension de l'accord pour le réaménagement de la chronologie des médias du 24 janvier 2022*, https://www.legifrance.gouv.fr/loda/id/JORFTEXT000045141748/2023-03-09/.

[101] Short-length cinematographic works within the meaning of article D. 210-2 of the Code du cinéma et de l'image animée do not fall within the scope of this agreement, see Article 1.9 of the agreement.

[102] For information about possible amendments to these rules see Section 1.1.3. of this publication.

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Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[103]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV
4 (or 3 if fewer than 100 000 admissions in 4 weeks)	4 (or 3 if fewer than 100 000 admissions in 4 weeks)	4	Cinema Pay TV 8 but with the possibility of a 6-month period window only for films with fewer than 100 000 admissions: for first Pay TV window	15-17 15 months for SVOD platforms having signed the 2022 agreement 17 for the streamers not having signed the agreement	Free-to-air TV and standard pay TV 22 but with the possibility of a 20-month window only for films with fewer than 100 000 admissions

3.5. Public support rules

Some countries have specific rules regarding film support related to release windows. In these countries, films that receive public support are compelled to respect the release windows, whereas those that have not received such support are not.

3.5.1. AT - Austria

According to Article 11a of the Law on Film Funding (Filmförderungsgesetz – FifoeG),[104] release windows are set down in the Austrian Film Institute's Funding Guidelines (*Förderungsrichtlinien*, hereinafter referred to as the ÖFI guidelines).[105]

[103] Online Distribution Transactions: Permanent or time-limited access (TVOD).
Permanent: On-demand transmission of an AV work in an encoded file for download via DRM technology / Consumer is authorized to have permanent access to the work (unlimited playback).
TVOD: On-demand content transmission for limited viewing period via DRM technology / No permanent access for the consumer / Content received via live streaming or as self-erasing download.
[104] Bundesgesetz vom 25. November 1980 über die Förderung des österreichischen Films (Filmförderungsgesetz), https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009500.
[105] Förderungsrichtlinien (Filminstitut's Funding Guidelines), https://filminstitut.at/foerderung/richtlinien.

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Article 11 of the ÖFI guidelines provides that, in order to ensure the protection of the individual exploitation stages of a film, whoever receives funding is not permitted to exploit or allow others to exploit the funded film through picture carriers in Austria or in German-language versions (including synchronised or subtitled versions) abroad, in television transmissions, or in any other manner prior to the expiry of the following release windows following the regular first theatrical exploitation in Austria ("regular first run"):

- **DVD, Blu-ray:** six months / four months upon reasoned request to the Film Institute / three months in exceptional cases upon decision of the Supervisory Board of the Film Institute based on a detailed and specially developed exploitation concept by the producer.
- **VOD, near-VOD, and pay-per-view:** six months / four months upon reasoned request to the Film Institute / three months in exceptional cases upon decision of the Supervisory Board of the Film Institute. In order to gain experience concerning innovative multimedia-based exploitation concepts, the Supervisory Board may still further reduce this period in very exceptional cases and in line with the project if this is necessary for the best possible exploitation of the film and if it does not endanger the cinema exploitation.
- **Pay TV:** 12 months / eight months upon reasoned request to the Film Institute / six months in exceptional cases upon decision of the Supervisory Board of the Film Institute.
- **Free TV**: 18 months / 12 months upon reasoned request to the Film Institute / six months in exceptional cases upon decision of the Supervisory Board of the Film Institute / four months in exceptional cases for films which have been produced with the participation of a television provider, and in the event of a particularly high financial participation from the television provider.

Release windows may no longer be reduced if the exploitation of the film had already started prior to the decision on the reduction of the release window in the exploitation stage applied for. Furthermore, if the release windows are violated, the funding pledge isrevoked. Funds already disbursed shall be reclaimed.[106]

[106] In individual cases, and following a reasoned request by the applicant, the Supervisory Board may refrain partially or entirely from reclaiming funding if this appears justified when taking into account the protective purpose of the holdback periods with a view to the manner and time of exploitation and the precautions taken to ensure compliance with the holdback periods.

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3.5.2. DE - Germany

Article 53 of the German Film Law on film funding (*Filmförderungsgesetz* – FFG)[107] sets out that films supported according to the FFG have to respect certain release windows ("blocking periods") and establishes the general rule concerning the different release windows that the film has to respect after its first theatrical release, whereas Article 54 provides for certain cases where a window reduction is possible, following application by the producer, provided it is not contrary to the interests of the film industry.

According to these rules, release windows are as follows in Germany:

- **Picture carrier exploitation (DVD, Blu-ray…), TVOD, pay per view:** six months after the regular premiere / may be reduced to five or four months in exceptional cases.
- **Pay-TV and SVOD services:** 12 months / may be reduced to nine or six months in exceptional cases.
- **Free TV and free VOD services:** 18 months / may be reduced to 12 or 6 months in exceptional cases.

As a general rule, individual projects whose economic success requires a different sequence of exploitation may benefit from the reduction or waiving of release windows. At the request of the producer, the regular release windows for films co-produced with a television broadcaster may be shortened to six months after acceptance by the television broadcaster co-producer. An application to shorten the release window may only be made before the start of regular cinema exploitation. The release windows may no longer be shortened if the exploitation of the film at the requested exploitation stage had already begun before the decision to shorten the release window was taken.

The 2022 version of the FFG 2022 introduced further flexibility. According to Article 8 FFG, the Board of Directors (*Verwaltungsrat*) shall, with the consent of the members of the cinema associations, adopt guidelines pursuant to § 55a FFG concerning deviation from the regulations on release windows. Moreover, according to Article 55b FFG, in cases of force majeure, the regular first screening or the continuation of a theatrical exploitation that has already begun may be replaced by an exploitation on paid video-on-demand services if the exploitation of the film in the cinema is not possible nationwide for a not inconsiderable period of time. The cinema industry must be significantly involved in the exploitation on paid video-on-demand services until the end of the regular blocking period.

[107] *Gesetz über Maßnahmen zur Förderung des deutschen Films (Filmförderungsgesetz - FFG) in der Fassung der Bekanntmachung vom 16. Juli 2021 (BGBL. 3019),* https://www.ffa.de/filmfoerderungsgesetz-2.html?file=files/ffa/ffg-filmfoerderungsgesetz/FFG%202022_Druckfassung_final.pdf&cid=5742.

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Since 1 January 2023, applications for release window reductions for films that have received funding within the framework of the BKM's cultural film funding can be submitted to the FFA. A separate application to the BKM is no longer required.[108][109]

3.5.3. IE - Ireland

According to the Screen Ireland Production Funding Guidelines 2023,[110] Screen Ireland requires "viable theatrical windows for all projects especially those involving Broadcaster support".

- Documentaries: a minimum 12-month theatrical window from the date of first festival screening.
- Feature films: 24-month theatrical window from the date of the first theatrical screening.

3.5.4. IT - Italy

Italy first set theatrical windows by law in 2018, through Ministerial Decree No. 531 of 29 November 2018,[111] adopted pursuant to Law No. 220/2016 on cinema and audiovisual works.[112] Compliance with the regulatory framework on release windows is a prerequisite for being eligible for public funding (including tax credits) in Italy. In addition, in case of violations of the provisions on release windows, the productions may not be approved for tax credit or other fiscal or financial benefits for cinematographic productions. [113] These rules provide as follows:

- **All platforms:** 105 days after the first theatrical release

[108] https://www.ffa.de/verkuerzung-der-sperrfristen.html.
[109] On May 2023 an industry-wide agreement was signed for a shortening and more flexible windows for FFG-funded theatrical German films (from 6 to 4 months). After the writing of this report, the new regulation was transposed into a directive by the Administrative Board of the German Federal Film Board (FFA), see *D.5 Richtlinie Sperrfristen und Verkürzungen (Stand: 15.06.2023),* https://www.ffa.de/richtlinien.html?file=files/ffa/ffg-richtlinien/D.5%20RL%20Verkürzung%20Sperrfristen_2023-06.pdf.
[110] https://www.screenireland.ie/images/uploads/general/Production_Funding_Guidelines_February_2023.pdf.
[111] *Decreto ministeriale n. 531, 29 novembre 2018*, https://www.beniculturali.it/mibac/multimedia/MiBAC/documents/1544799193923_registrato_d.m._29_novembre_2018_rep._531.pdf.
[112] Legge 14 novembre 2016, n. 220, "Disciplina del cinema e dell'audiovisivo", https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2016-11-14;220.
[113] See Pellicano F., "[IT] New rules on theatrical windows for Italian movies", IRIS 2019-1:1/27, https://merlin.obs.coe.int/article/8458.

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- 60 days if the work is released in fewer than 80 theatres and obtains fewer than 50 000 theatrical admissions after the first 21 days of programming; the reduction is then only allowed if, during the programming period, there is no launching and promotion activity on the subsequent availability of the work through audiovisual media service providers.
- 10 days if the work is scheduled for only three (or less) working days, with the exception of Friday, Saturday and Sunday.

In 2022, the Ministerial Decree of 29 March 2022,[114] adopted pursuant to Law No. 220/2016 on cinema and audiovisual works,[115] reduced the release window rules to 90 days.

On 13 July 2022, the Senate debated and approved, with amendments, four motions on the cinema crisis.[116] Among them, the motion (1-00485) by Sen. Gasparri (FIBP), Zanda (PD), De Petris (Misto-LeU), Quagliarello (Misto), Di Nicola (Ipf-CD), commits the Government to provide for a window of at least 90 days for all films, both Italian and foreign, to protect their theatrical release for the next three years; to extend the tax credit to 60%for distribution, in order to facilitate investments in promotion and consequent visibility of the products; to re-modulate the tax credit for production at 40% for works with priority film exploitation; to introduce clear regulations on three-day event releases which, in the absence of clear rules, have been used to circumvent the window period; to promote initiatives to protect and support the film sector in the entirety of its technological evolution.[117]

The October 2022 change of government, however, put these proposals to rest. Moreover, in April 2023 the Regional Administrative Court of Lazio[118] annulled the Decree of 29 March 2022 (and therefore the 90-day window mentioned above) on the grounds

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[114] *D.M. 29 marzo 2022 rep. 120 – Modifiche al decreto ministeriale 14 luglio 2017, recante "Individuazione dei casi di esclusione delle opere audiovisive dai benefici previsti dalla legge 14 novembre 2016, n. 220, nonché dei parametri e requisiti per definire la destinazione cinematografica delle opere audiovisive"*, https://cinema.cultura.gov.it/wp-content/uploads/2022/05/DM-29-marzo-2022-Modifiche-al-DM-14-luglio-2017-destinazione-cinematografica-opere-signed.pdf.

[115] *Legge 14 novembre 2016, n. 220, "Disciplina del cinema e dell'audiovisivo"* (Law of 14 Novembre 2016 on cinema and audiovisual Works, https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2016;220~art15#:~:text=Alle%20imprese%20di%20produzione%20cinematografica,di%20opere%20cinematografiche%20e%20audiovisive.

[116] *Senato della Reppublica, Mercoledì 13 Luglio 2022 - 452ª Seduta pubblica,* https://www.senato.it/leg18/3818?seduta_assemblea=25085&active_slide_51906=11.

[117] See e.g. https://www.opinione.it/politica/2022/07/06/laura-bianconi_sale-cinematografiche-crisi-senato-gasparri-franceschini/.

[118] *Tribunale Amministrativo Regionale per il Lazio (Sezione Seconda Quater), N. 05634/2023 REG.PROV.COLL. N. 07403/2022 REG.RIC., 28 febbraio 2023,* https://www.giustizia-amministrativa.it/portale/pages/istituzionale/visualizza/?nodeRef=&schema=tar_rm&nrg=202207403&nomeFile=202305634_01.html&subDir=Provvedimenti.

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that the Ministry of Culture, after the COVID-19 health emergency had ended and without the prior and mandatory opinion of the *Consiglio Superiore del Cinema e dell'Audiovisivo* (High Council of Cinema and Audiovisual), should have restored the compulsory programming windows to 105 days and not to 90, thus effectively penalising a sector already heavily affected by the pandemic in the two-year period 2020/2021.[119] After the release of this judgment, Culture Minister Gennaro Sangiuliano declared that the 105-day window was reasonable, and that it was the Government's intention to establish "for all films, both Italian and foreign, even those not receiving state benefits, a window not exceeding 105 days, without prejudice to the possibility of derogation and therefore of extension on the basis of certain peculiarities of specific types of works".[120]

[119] See Cinecittà news, "Il TAR del Lazio annulla le "finestre" a 90 giorni", 04 April 2023, https://news.cinecitta.com/IT/it-it/news/53/93635/il-tar-del-lazio-annulla-le-finestre-a-90-giorni.aspx.
[120] See Agenziacult, "Cinema, Sangiuliano: ritengo congruo limite di 105 giorni per finestre temporal", 12 April 2023, https://www.agenziacult.it/notiziario/cinema-sangiuliano-ritengo-congruo-limite-di-105-giorni-per-finestre-temporali/.

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4. Views from the industry

4.1. Territoriality and circulation of European works

In various press releases and position papers, the European film and audiovisual sector has expressed its attachment to the territoriality of copyright and made proposals for improving the circulation of European works.

4.1.1. Geo-blocking

On 30 November 2020, representatives of the film/audiovisual sector welcomed the EC review of unjustified geo-blocking and called for an audiovisual action plan that boosts European cooperation on financing and distribution, including through co-productions, to increase circulation of content.[121] The signatories[122] expressed their support for the Commission conclusions set out in the first review of the so-called Regulation on unjustified Geo-Blocking,[123] pointing to the findings of several studies on the role of territoriality in the film and audiovisual sectors.[124] According to their press release, the current system of exclusive territorial licensing drives investment in content production and a wide range of distribution business models. Erosion of the freedom to agree territorial exclusivity supported by the use of geo-blocking would likely reduce cultural

[121] Press release of 30 November 2020, "Film/Audiovisual Sector welcomes EC review of unjustified geo-blocking in line with latest studies supporting territoriality", https://www.acte.be/publication/film-audiovisual-sector-welcomes-ec-review-of-unjustified-geo-blocking-in-line-with-latest-studies-supporting-territoriality/.
[122] The signatories represent key stakeholders in the film and audiovisual creation, production, and distribution value chain. See the press release for a full list of signatories.
[123] See Section 2.1.3.3. of this publication.
[124] See Oxera and O&O, "The impact of cross-border access to audiovisual content on EU consumers - Prepared for a group of members of the international audiovisual industry", May 2016, https://www.oxera.com/wp-content/uploads/media/oxera_library/downloads/2016-05-13-Cross-border-report-(final).pdf and Oxera, "The impact of including AV in the EU Geoblocking Regulation: Evidence from industry prepared for a group of AV businesses active in Europe", 4 March 2020, https://www.oxera.com/insights/reports/the-impact-of-including-av-in-eu-geoblocking-regulation/. See also Oliver & Ohlbaum Associates Ltd, "The impact of potential changes to geo-blocking regulation on sport - a report for SROC", January 2020, https://www.oando.co.uk/insight/the-impact-of-potential-changes-to-european-geo-blocking-regulation-on-sport.

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diversity both in content produced and in distribution channels across Europe as a result of a weakening in the financial position of many producers, publishers, distributors, cinema operators, broadcasters and online distribution platforms. Consumers, particularly those in lower-income member states, would end up with less access to content and/or have to pay higher prices for film and audiovisual services. Undermining exclusive territorial licensing and commercial freedom to agree individual and tailor-made financing and distribution would thus have adverse impacts on the film/AV industry and on consumer welfare. Furthermore, the signatories encouraged the Commission in its future actions to focus on European cooperation on financing and distribution, including through co-productions and/or pre-sales, as a key way of supporting the film and audiovisual sector's ambition to grow diversity of content and distribution options in each EU member state territory for the benefit of consumers.

4.1.2. Access to and availability of audiovisual content across the EU

In June 2022 the Commission wrote to the dialogue participants, asking them to submit proposals for concrete actions or a roadmap presenting the steps they intend to take in order to contribute to improving the online availability of and cross-border access to audiovisual works across the EU.[125] The Commission services have so far received the following contributions:

4.1.2.1. Joint Roadmap from 18 stakeholders' associations

On 23 September 2022, 18 representatives of the film/audiovisual sector published a Film and Audiovisual Sector Joint Roadmap for further improvement of access to and availability of audiovisual content across the EU.[126] In their Joint Roadmap, the signatories[127] reaffirmed their:

- continued commercial interest in and commitment to increasing the offer of culturally and linguistically diverse content through multiple offline and online distribution channels in each territory of the European Union rooted in actual audience demand and demonstrable economic logic

[125] See section 2.1.3.3. of this publication.
[126] Film and Audiovisual Sector Joint Roadmap for further improvement of access to and availability of audiovisual content across the EU, 23 September 2022, https://ec.europa.eu/newsroom/dae/redirection/document/90652.
[127] The signatories represent film and audiovisual producers, cinema exhibitors, distributors and publishers of film and audiovisual content online, sales agents, online distribution platforms, commercial broadcasters and sports rights owners. See the press release for a full list of signatories.

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- interest in developing together with public authorities at EU, national and regional level strong support for cultural diversity in production and in distribution through market-led industry initiatives and partnerships to drive further and increased access to and availability of content across the EU, in particular by way of:
    - Co-productions: Fostering and enhancing conditions for co-productions to thrive, including in particular in small/medium production capacity member states.
    - Distribution across all offline and online channels: Incentivising pre-sales/acquisition of future international and local distribution rights, promoting a diverse and competitive ecosystem of world sales agents, national distributors and showcasing operators across all channels offline and online in all EU member states. In particular supporting risk-taking in acquisition/renting of rights in and promotion of non-national European films through theatrical release and various forms of online distribution under the MEDIA Programme and various national and regional programmes:
        - This could take the form of increased title-specific support at European and national level, dedicated to the acquisition, promotion and showcasing of films theatrically and online.
        - When not covered by distribution support, develop increased support dedicated to localisation costs (subtitling and dubbing) where rights are handled by the producer or the sales agent.
        - Increased support for technical preparation of content (encoding).
    - Circulation and promotion of European film heritage: Dedicated funding in the MEDIA programme and in national programmes for the restoration and digitisation of European film heritage as well as support for localisation, encoding and promotion/distribution in national and non-national territories.
    - Access in unlicensed territories: Where commercial distribution is not present or expected, rightsholder option on a voluntary basis, and in full respect of commercial and contractual freedom, to offer access to audiences resident in such unlicensed territories via bespoke TVOD services relying on public support complemented by market place investment where this does not undermine business fundamentals, IP rights and/or competition rules, noting that such services have so far struggled to reach profitability and to attract private investment as mentioned above.
    - Discoverability tools: Further development and promotion of meta data tools and digital prints as well as discoverability tools at national level, including title-based search tools, accompanied by increased consumer awareness-raising initiatives. Discoverability services should cover as many distribution channels as possible (cinema, broadcasting services,

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physical carriers (DVD/Blu-ray) and various forms of online distribution OTT, transactional/subscription, and advertisement-based models).

- Effective legislative remedies to address piracy: As indicated above, digital piracy remains an existential concern for the film and AV sector, and the absence of effective legislative remedies represents an increasing barrier to investment in content and services. The representatives stand ready to address the matter in cooperation with the European Commission and EU decision-makers in general. With the 'horizontal' Digital Services Act now in place, there is an ideal opportunity to pursue a legal instrument addressing online piracy, in particular for the takedown of illegal live and time-sensitive content. They call upon the European Commission to address this matter with the utmost urgency, in order to deliver an adequate legal framework for the protection of films and AV content against rampant online piracy.

Finally, the signatories recalled that recent figures of the European Audiovisual Observatory demonstrate a substantial increase of film and AV works available across Europe. Further progress could be accelerated by reinforced cooperation between the industry and European, national, and regional authorities as outlined above, aimed at promoting cultural diversity policy goals and responding to actual and demonstrable audience demand for content and access/services. Such progress could be benchmarked by building on regular reports by the European Audiovisual Observatory on current market developments.

4.1.2.2. EUROVOD

EUROVOD believes that if the threshold for buying and exploiting digital rights for films older than two years was reduced by removing minimum guarantee requirements so that these titles can be distributed on a revenue-share basis, interest in exploiting European audiovisual works would be significantly increased. Accordingly, they proposed the following:[128]

- Films, series and other audiovisual works that have received EU funding or national funding, with territories unsold after 24 months, must be made available on verified VOD streaming platforms on a non-exclusive revenue-share basis.
- New types of audiovisual format – additional content for mini-series and/or short formats for attracting new and younger audiences – should be encouraged.
- A European Identifier System for European audiovisual works should be introduced.

[128] EUROVOD response to stakeholder dialogue on Cross-Border Availability of and Access to Audiovisual Content across the EU, 21 September 2022, https://ec.europa.eu/newsroom/dae/redirection/document/90657.

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4.1.2.3. SAA

The Society for Audiovisual Authors (SAA) made reference in its answer[129] to the Commission's letter to their contribution of 28 January 2022 to the stakeholder dialogue, and recalled that the SAA has been supportive of the objective of improving the availability and exploitation of audiovisual works across the EU and has been calling on the market players and public authorities to explore all possible means in that regard which respect the principles of fair and proportionate remuneration for the authors and of territoriality of rights, which in their view form the basis of the European audiovisual licensing model.

Therefore, the SAA opposes a passive sales concept applied to on-demand audiovisual service access, as it would weaken the value of the rights and jeopardise the legal certainty of the licensing model. The SAA suggests that any solution build on the principle of proportionate remuneration for authors as provided by Article 18 of the DSM Directive[130] and explore the licensing opportunities offered by the DSM directive: Articles 8 (out-of-commerce works), 9 (cross-border uses), 12 (collective licensing with an extended effect), 13 (negotiation mechanism) and 17 (use of protected content by online content-sharing service providers).

In its contribution to the stakeholders dialogue, the SAA highlighted inspirational good practices facilitating access to and availability of European audiovisual works, in particular online. The SAA regretted in its response letter to the Commission that the Commission had not proactively explored or discussed these good practices with the stakeholders, and that it had excluded from the beginning of the dialogue possible use of the MEDIA programme to support innovative licensing mechanisms.

4.1.2.4. COMMUNIA

The Association for the Public Domain COMMUNIA made a proposal[131] to ensure the EU-wide availability of publicly funded audiovisual works produced in the European Union though a TVOD service. This proposal was aimed at overcoming the widespread reality of geo-blocking of online access to AV productions, which COMMUNIA regards as a negative externality of territorial copyright licensing that underpins much of the European AV production value chain. The proposal did not reflect an intention to change the territorial nature of exclusive rights and the exclusive territorial licensing practices that are built

[129] SAA answer to the European Commission, 23 September 2022, https://ec.europa.eu/newsroom/dae/redirection/document/90656.
[130] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Text with EEA relevance), https://eur-lex.europa.eu/eli/dir/2019/790/oj.
[131] COMMUNIA, Proposal for a fallback TVOD service for publicly funded AV works (not dated), https://ec.europa.eu/newsroom/dae/redirection/document/90653.

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upon this reality. The proposal was developed with publicly funded cinematographic AV works in mind.

According to the proposal, AV works that receive public funding for production or distribution should be legally available to anyone in the EU under reasonable conditions. A not-for-profit TVOD service could be set up to provide access to publicly funded AV productions in those EU member states where the works are not available via individually licensed online distribution channels. The service would operate on the basis of standardised multi-territorial licensing agreements, respecting the existing practice of territorial licensing agreements. This platform would provide access (against a fee) from all unlicensed member states after a specific milestone in the distribution of publicly funded works has been passed (for example x months after the VOD release in the first licensed member state, or x months after the cinema release or a combination of these factors). In its initial iteration, access would be provided to the films in their original version, that is to say, without subtitles or dubbing (although it should also be possible to provide subtitles for other languages). Availability of the works should not be conditional on the existence of subtitles — at a later stage it is imaginable that subtitling could be provided as a service of the platform based on demand indicators. The platform would geo-block access from those member states where other licensed online distribution channels exist. Ideally, it would point members of the public attempting to access a work from a member state where another online distribution channel exists to that channel. The platform would need to be dynamic in the sense that access to works is removed if works become available via another distribution channel in a member state.

4.1.2.5. Europa Distribution and FIAD

In their joint response to the Commission's letter,[132] Europa Distribution and FIAD called on the Commission to recognise and support the fundamentals of territorial exclusivity that underpin the financing and distribution of diverse films across Europe. Moreover, they called on the Commission to acknowledge that the increased availability of films online across the European Union changes the debate from accessibility of films to boosting the visibility and findability of films within a territory. In their view, the focus should move from the accessibility of titles towards their findability and visibility, suggesting the introduction of supporting tools and actions that would increase the visibility and findability of local players. They are confident that the positive market evolution will continue and film distributors will play a critical role in this. Also, more transparency on how a film performs would, in their view, be necessary, to provide film distributors with the information to decide on future acquisitions and sales. The need is, they suggest, especially high for film distributors, as these are fragile and high-risk enterprises.

[132] Europa Distribution and FIAD answer to the European Commission (not dated), https://ec.europa.eu/newsroom/dae/redirection/document/90648.

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4.1.2.6. EBU

In its letter to the Commission,[133] the EBU presented a long list of ways in which its members collaborate on the exchange, production and acquisition of content, sometimes independently, sometimes with EBU support. Notably, co-productions amongst members enable them to join forces and finance ambitious projects which are cross-border by nature: increasing both the availability of and access to audiovisual content. The EBU is helping members cooperate more and has developed a co-production network. It also launched a collective prebuy network in September 2021. This network aspires to involve as many members as possible, so that they can pool financial resources to acquire broadcasting rights to content while it is in development, pre-production or an early stage of production. Moreover, when it comes to each EBU member's own offering, many are retransmitted on a variety of platforms, from cable and IP TV, to satellite and OTT operators. In a significant number of these instances, retransmission has been negotiated to ensure that a given public service media organisation is present in foreign markets on top of its own country. On the basis of Article 4 of the SatCab II Directive[134] the retransmission system can also be applied to IPTV and other services. This enlarges considerably the presence of EBU member services in Europe on the different platforms. At the same time, the country-of-origin rule of the SatCab II Directive is very much limited in scope. As this text is still being transposed in many EU countries, the possibilities it offers are still being implemented and their use will require more time. Additionally, portability is offered, or in the course of being offered, to domestic citizens by 15 public service media organisations across Europe for their online services.

4.1.2.7. FERA

As a federation representing cinema, broadcasting and streaming directors across Europe, FERA said it was not in a position to commit to concrete actions on behalf of the individual professionals they speak for, as their work precedes the commercial process.[135] Nevertheless, FERA believes that industrial strategies to improve the access for audiences must be built on strong cultural policies and public-private partnerships, to ensure that the European copyright framework, in particular as regards authors' moral and economic rights, is fully implemented and respected. As such, FERA called on the European Commission to ensure that concrete actions or any roadmap proposed in the context of

[133] EBU answer to the European Commission, 23 September 2022, https://ec.europa.eu/newsroom/dae/redirection/document/90654.
[134] Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC (Text with EEA relevance), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2019.130.01.0082.01.ENG.
[135] FERA answer to the European Commission, 23 September 2022, https://ec.europa.eu/newsroom/dae/redirection/document/90651.

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the stakeholder dialogue are fully in line with the European Union's ambitious media regulation and copyright frameworks, as they remain essential to ensuring the cultural and creative diversity of the sector.

4.1.2.8. EPC

In its answer to the Commission,[136] the European Producers' Club (EPC) expressed its strong belief that the availability of European audiovisual works may be improved in many ways at EU level, while respecting the principle of territoriality as well as some basic practicalities, such as responding to audience demands, supported by appropriate marketing measures. The EPC called for the following measures:

1. The removal of the 60% limit of state aid intensity for co-productions
2. Establishing a terms-of-trade agreement between independent producers and commissioning media service providers
3. Matching existing bilateral funds
4. Enhancing co-development support
5. Support covering the technical costs of making available online content at the earliest stage of the production process, subtitles, and encoding
6. Marketing support for the second phase of the exploitation of works
7. Support for producers' initiatives on self-publishing content on AVOD services
8. Clearance of music licence rights across Europe
9. Establishing a consultation group looking at the contracts between sales agents and producers: examination of actual exploitation of the rights attached, with the objective of revocation of the rights not exploited.
10. Supporting the creation of catalogues grouping producers from low-capacity countries in order to enhance their bargaining power and share costs
11. Creation of a programme to inform and educate AV professionals in the use of AI tools.
12. Supporting tools identifying content
13. Supporting the establishment of algorithms favouring European content
14. Creation of a tool measuring the diversity of content available

4.1.2.9. NL Filmfond and EYE Filmmuseum

In their response[137] to the Commission's letter, Eye Filmmuseum (a member of ACE, the Association des Cinémathèques Europeénnes) and the Netherlands Film Fund (a member of EFAD, European Film Agencies Directors) proposed the introduction of compulsory

[136] EPC answer to the European Commission (not dated), https://ec.europa.eu/newsroom/dae/redirection/document/90655.
[137] Eye Filmmuseum and the Netherlands Film Fund's answer to the European Commission, 4 October 2022, https://ec.europa.eu/newsroom/dae/redirection/document/90649.

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licensing as part of funding conditions, presenting the example of the Netherlands, where the Netherlands Film Fund can stipulate in its (grant) contracts that film producers, after a certain amount of time (to be established, between five and seven years after the premiere), are obliged to make their films available to the public, for instance via Eye's video-on-demand platform ("Eye Film Player") and for all territories where no rights are sold – thereby hugely increasing the cross-border availability of the works.

Furthermore, the route of out-of-commerce works may offer a solution for older films and/or films without an active producer: declaring these films out-of-commerce (this involves a legal administrative procedure) may allow such films to easily be made public (online) without the need for prior consent from the rights holder(s), on condition that the films are made public by a cultural heritage organisation.

4.1.2.10. EFAD

In its answer to the Commission,[138] the European Film Agencies (EFAD) reminded the Commission of their concerns and proposals made during the stakeholders dialogue, and explained what EFAD members do to promote European works online. EFAD also proposed the following commitments:

- Tracking and monitoring the online circulation of supported films:
  - EFAD members will be encouraged to reinforce or put in place a 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.
  - EFAD will closely monitor the availability in Europe of a selection of European films.
- Support for online distribution:
  - EFAD will continue to organise regular exchanges and the collection of best practices and experiences amongst its members regarding initiatives to foster access to and promotion of European films online.
  - Based on the results of the monitoring exercise and discussion with distributors, EFAD members will explore how to develop or adjust their national online distribution support (technical costs, subtitles etc.) 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 European funding according to these objectives (for example with regard to improving the availability of European films with international potential).
- Explore feasibility to broaden the access to publicly-funded online platforms:
  - Some EFAD members have already set up their own online platforms and are willing to explore the possibility of expanding the geographical

[138] EFAD answer to the European Commission, 11 October 2022 (updated version of November 2022), https://ec.europa.eu/newsroom/dae/redirection/document/91831.

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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 showcasing of national projects.
- The Netherlands Film Fund will explore the possibility of fostering online access to NFF-supported works via the online platform managed by Eye, the EYE Film player.
- The HAVC (HR) and VAF (BE NL) expressed a willingness to explore the feasibility of launching a VOD platform accessible in several territories, subject to financial capacity and support from the EU.

4.2. Release windows

As explained in Chapter 1 of this publication, and in contrast to the territoriality issue, there is no common ground across the European audiovisual ecosystem regarding the release windows issue.

According to the International Union of Cinemas (UNIC),[139] territoriality of copyright and theatrical exclusivity are the "key principles on which our industry depends".[140] In its 2022 updated manifesto,[141] UNIC explains that "a 'window' of exclusivity for cinema operators is vital for the health of the film and cinema industry and a proven business model that ultimately benefits the entire film value chain, from financing, to marketing, to distribution throughout each film's life-cycle". This system allows "the widest possible audience to discover and enjoy as broad a range of film content as possible, offering unique cultural and social experiences and creating unparalleled excitement around releases". It adds: "Box-office revenues in turn drive performance and audience awareness across all other platforms and markets, contributing significantly to the financing and diversity of European works and supporting European distributors and producers." Furthermore, in its Annual Report 2022,[142] UNIC underlines the importance of transparency in box office figures, "in stark contrast to the position on streaming data and actual revenue created by VOD platforms, who mostly base success on subscriptions" and warns against reducing window lengths since this "would put hundreds of thousands of jobs at risk and inevitably lead to a reduced rather than greater diversity of films and cinemas". Also, it recalls that specific business practices introduced during the pandemic

[139] https://www.unic-cinemas.org/en/.
[140] https://www.unic-cinemas.org/en/policy/key-policy-positions/.
[141] https://www.unic-cinemas.org/en/resources/news/news-blog/detail/unic-manifesto-2022-edition/.
[142] https://www.unic-cinemas.org/fileadmin/user_upload/Publications/2022/UNIC_Annual_Report_2022.pdf.

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"should not represent benchmarks for what the future holds, and the industry should commit to create the best conditions for the whole sector to recover as soon as possible". Seeing online platforms as a substitute for the theatrical experience "only results in disappointed cinema audiences, rampant piracy and – crucially – reduced overall revenues".

Arthouse films would be particularly affected by reduced or inexistent theatrical windows, according to the International Confederation of Arthouse Cinemas.[143] During its 2022 General Assembly, the need for a "pragmatic media chronology" was highlighted, and a study was presented[144] that would show that "arthouse films are very rarely seen on platforms and confirm that cinematographic works need the cinema to exist".[145]

According to the International Federation of Film Distributors' and Publishers' Associations (FIAD),[146] the business model based on release windows "is the most efficient and effective means of distribution", and cinemas "are the most important window where the majority of marketing takes place". They add: "The success of a film in the cinema has important spillover effects into the following windows. Attempts to overhaul release windows can therefore have negative consequences on the industry. The market is the best place to assess which business models are the most effective which is why FIAD proposes that the decision should be left to the market."[147]

As explained elsewhere in this publication,[148] SVOD services have in many prominent cases displayed reticence regarding acceptance of theatrical exclusivity and long release windows.

[143] https://cicae.org/.
[144] IFOP, "Les films et les séries sur les plateformes de streaming", Online survey conducted for the Association Française des Cinémas Art et Essai (AFCAE), https://www.ifop.com/wp-content/uploads/2022/06/Film-series-et-plateforme-de-streaming-etude-Ifop.pdf.
[145] https://cicae.org/upload/download/2022/PR_Assembl_e_g_n_rale_de_la_CICAE_Cannes_EN.pdf.
[146] https://www.fiad.eu/.
[147] https://www.fiad.eu/positions.
[148] See Chapter 1 of this publication.

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5. Case law

5.1. Territoriality of copyright

5.1.1. From *Coditel* to *Sportradar*: Territoriality reaffirmed

The Court of Justice of the European Union (CJEU) has, in several judgments, confirmed the principle of territoriality in copyright law. The first two of those judgments were handed down before the onset of the harmonisation process of copyright law in the European Union, namely in the Coditel cases,[149] which concerned territorial exclusivity in broadcasting from a competitive and internal market perspective.

Further judgments confirmed the principle of territoriality regarding the application of different copyright-related directives. In particular, in the Lagardère case (C-192/04),[150] the Court confirmed the territorial nature of certain remuneration rights harmonised under Directive 92/100/EEC on the rental right and lending right. In the *Stichting De Thuiskopie* case (C-462/09),[151] the CJEU delivered a preliminary ruling concerning the territorial implementation of the private copying exception included in Article 5(2)(b) of the InfoSoc Directive. In the *Donner* case (C-5/11),[152] the CJEU defined the

[149] Judgment of the Court of 18 March 1980, Case C-62/79, *SA Compagnie générale pour la diffusion de la télévision, Coditel, and others v Ciné Vog Films and others (Coditel I),* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61979CJ0062; and Judgment of the Court of 6 October 1982, Case C-262/81, *Coditel SA, Compagnie générale pour la diffusion de la télévision, and others v Ciné-Vog Films SA and others (Coditel II),* http://curia.europa.eu/juris/liste.jsf?language=en&num=C-262/81.

[150] Judgment of the Court (Third Chamber) of 14 July 2005, Case C-192/04, *Lagardère Active Broadcast v Société pour la perception de la rémunération équitable (SPRE) and Gesellschaft zur Verwertung von Leistungsschutzrechten mbH (GVL),* http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=lst&docid=60584&occ=first&dir=&cid=488130.

[151] Judgment of the Court (Third Chamber) of 16 June 2011, Case C-462/09, *Stichting de Thuiskopie v Opus Supplies Deutschland GmbH and Others:* http://curia.europa.eu/juris/document/document.jsf?docid=85089&doclang=en.

[152] Judgment of the Court (Fourth Chamber) of 21 June 2012, Case C-5/11, Criminal proceedings against Titus Alexander Jochen Donner, http://curia.europa.eu/juris/document/document.jsf?text=&docid=124189&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=494654.

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scope of the concept of "distribution to the public", under Article 4(1) of the InfoSoc Directive, from a geographical point of view. In the *Sportradar* case (C-173/11),[153] the CJEU confirmed the principle of territoriality for the *sui generis* right related to the protection of databases.[154]

5.1.2. From the *Murphy* case to the pay-TV case: Territoriality revisited

The limits of the principle of territoriality in copyright law have been challenged in recent years by EU courts and competition services through the re-assessment of exclusive territorial licences for the distribution of copyright-protected content from an internal market and competition perspective.

5.1.2.1. The *Murphy* case concerning the satellite transmission of Premier League football matches

In 2011, the CJEU opened a first breach in the principle of territoriality concerning the satellite transmission of Premier League football matches in the *Murphy* judgment (also referred to as the "Premier League" judgment).[155] In this case, the Court held that a system of licences for the broadcasting of football matches, which granted broadcasters territorial exclusivity on a member state basis and which prohibited television viewers from watching the broadcasts with a decoder card in other member states, was contrary to EU law. In its ruling, the Court held, in relation to the system of territorial exclusive licence agreements put in place by the Football Association Premier League (FAPL), that clauses that forbid the broadcaster from supplying decoding devices that would enable access to the rightsholder's subject matter (protected against use outside the territory under the licence agreement) constitute a restriction on competition as prohibited by Article 101 TFEU.

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[153] Judgment of the Court (Third Chamber) of 18 October 2012, Case C-173/11, *Football Dataco Ltd and Others v Sportradar GmbH and Sportradar AG,* http://curia.europa.eu/juris/document/document.jsf?docid=128651&doclang=en.

[154] For further details on this case law, please see: Cabrera Blázquez F., Cappello M., Grece C., Valais, S., "Territoriality and its impact on the financing of audiovisual works", *IRIS Plus*, European Audiovisual Observatory, Strasbourg, 2015, p. 55 and following, https://rm.coe.int/168078347f.

[155] Judgment of the Court (Grand Chamber) of 4 October 2011, joined cases C-403/08 and C-429/08, *Football Association Premier League Ltd and Others v QC Leisure and Others* (C-403/08) and *Karen Murphy v Media Protection Services Ltd* (C-429/08), http://curia.europa.eu/juris/document/document.jsf?docid=110361&doclang=en. For further details on the Premier League judgment, please refer to Cabrera Blázquez F., Cappello M., Grece C., Valais, S., "Territoriality and its impact on the financing of audiovisual works", *op. cit.*

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The Court recognised the right of the copyright owner to receive remuneration as part of the essential function of copyright, and pointed out that, in negotiating "appropriate remuneration", the rightsholder was not prevented from asking "for an amount which takes into account both the actual audience and the potential audience in the Member State in which the broadcasts are also received".[156] However, the Court held that the rightsholder in this case sought to receive remuneration that went beyond what was necessary to achieve the objective of protecting the copyright in question. The premium payment the Premier League received in exchange for the guarantee of absolute territorial exclusivity resulted, according to the Court, in artificial price differences which tended to restore the divisions between national markets.[157] However, partitioning markets with the sole aim of creating artificial price differences between member states and thereby maximising profits (price discrimination) is irreconcilable with the Treaty.[158]

Although the consequences of this judgment were initially limited to changes in contractual conditions introduced by the Premier League with regard to customers,[159] it seems to have marked a turning point in the application of the principle of territoriality, which would be reflected a few years later in other audiovisual fields.

5.1.2.2. The Canal+ pay-TV case concerning film licensing contracts for pay-TV

Three years after the *Murphy* case, the European Commission extended its review of the exclusive territorial licensing of copyright-protected content through the opening, in January 2014, of an investigation into possible restrictions affecting the provision of pay-TV services in the context of film licensing agreements. The investigation resulted in the EU Competition services formally sending, in July 2015, a Statement of Objections to the then six major Hollywood studios (20th Century Fox, Warner Bros., Disney, NBCUniversal, Sony, and Paramount) and the broadcaster Sky UK on the cross-border provision of pay-TV services.[160]

Traditionally, film copyright holders often license contents on a country-by-country basis (or to a few member states with a common language). According to the Commission's preliminary assessment, the bilateral contractual agreements between the studios and the broadcaster were in breach of Article 101 TFEU prohibiting anti-competitive agreements. The core of the problem was, in the Commission's view, the geo-

[156] *Ibid*., paragraph 112.
[157] *Ibid*., paragraph 139.
[158] *Ibid*., paragraph 115.
[159] Licensees were no longer allowed to offer an optional English language feed to their consumers. They could only transmit Premier League matches with the commentary in the language of that country. The English language feed is now limited to UK and Irish licensees. Non-UK licensees were no longer allowed to transmit more than one live Premier League match on Saturday afternoons.
[160] "European Commission, Antitrust: Commission sends Statement of Objections on cross-border provision of Pay-TV services available in the United Kingdom and Ireland", Press release 23 July 2015, https://europa.eu/rapid/press-release_IP-15-5432_en.htm.

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blocking provisions contained in the licensing agreement between Sky UK and each of the six studios, under which Sky UK enjoyed absolute territorial exclusivity.[161] The Commission was concerned that these clauses would eliminate cross-border competition between pay-TV broadcasters and lead to the artificial partition of the European Union's single market along national borders.

In April 2016, Paramount offered commitments to address the EU competition services' concerns covering both satellite broadcasting and online transmissions.[162] The Commission accepted the commitments and made them legally binding in July 2016.[163] More than two years later, in October 2018, Disney also offered commitments to the European Commission in response to the pay-TV investigation.[164] In December 2018, the General Court delivered a judgment in the *Groupe Canal+ v. European Commission* case, dismissing the appeal brought by the main French pay-TV broadcaster against the Commission's decision to make Paramount's commitments binding (Case T-873/16).[165] In that judgment, the General Court confirmed the Commission's preliminary assessment that the obligations of the broadcaster and the studios contained in Paramount's film licensing agreement with Sky violated Article 101 TFEU by eliminating cross-border competition between pay-TV broadcasters. In particular, the General Court held that where the agreements concluded by the copyright owner contain clauses under which the owner is required to prevent broadcasters in the European Economic Area (EEA) from making "passive sales" to consumers outside the member state for which it grants them an exclusive licence, these clauses confer absolute territorial exclusivity and therefore infringe Article 101(1) TFEU.

Following the *Murphy* ruling, the General Court held that where a licence agreement is intended to prohibit or limit the cross-border provision of broadcasting services, it is deemed to have the purpose of restricting competition unless other circumstances falling within its economic and legal context justify the finding that such an agreement is not liable to impair competition.[166] As regards the economic and legal

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[161] These clauses (a) required Sky UK to block access to the studios' films through its online pay-TV services (so-called "geo-blocking") and/or through its satellite pay-TV services to consumers outside its licensed territory (UK and Ireland); and (b) required some of the studios to ensure that broadcasters outside the UK and Ireland be prevented from making their pay-TV services available in the United Kingdom and Ireland. Such clauses restrict the ability of broadcasters to accept unsolicited requests (so-called "passive sales") for their pay-TV services from consumers located outside their licensed territory.

[162] "European Commission, Antitrust: Commission seeks feedback on commitments offered by Paramount Pictures in PayTV investigation", Press Release, 22 April 2016, https://ec.europa.eu/commission/presscorner/detail/en/IP_16_1530.

[163] Case AT.40023 - Cross-border access to Pay-TV, https://ec.europa.eu/competition/antitrust/cases/dec_docs/40023/40023_5273_5.pdf.

[164] "European Commission, Antitrust: Commission seeks feedback on commitments offered by Disney in Pay-TV investigation, Press Release, November 9, 2018, https://europa.eu/rapid/press-release_IP-18-6346_en.htm.

[165] Judgment of 12 December 2018, Case T-873/16, *Groupe Canal + SA v European Commission* (EU:T:2018:904), http://curia.europa.eu/juris/document/document.jsf?text=&docid=208860&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=11733088.

[166] *Ibid*. paragraph 48.

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context of the relevant clauses, the General Court specified that the commitments made legally binding under the Commission's decision did not affect the granting of exclusive territorial licences as such, but aimed to put an end to absolute territorial exclusivity intended to eliminate all competition between broadcasters concerning works covered by these rights under a set of reciprocal obligations. In the direct follow-up to this judgment, in December 2018, the remaining studios and Sky UK proposed commitments.[167]

After a market test, in March 2019, the Commission considered that the commitments proposed by Disney, NBCUniversal, Sony Pictures and Warner Bros addressed its concerns and made them legally binding on the studios, as follows:

- When licensing its film output for pay TV to a broadcaster in the EEA, each committing studio will not (re)introduce contractual obligations that prevent such pay-TV broadcasters from providing cross-border passive sales to consumers that are located in the EEA but outside of the broadcasters' licensed territory (no "Broadcaster Obligation").
- When licensing its film output for pay TV to a broadcaster in the EEA, each committing studio will not (re)introduce contractual obligations that require the studios to prevent other pay-TV broadcasters located in the EEA from providing passive sales to consumers located in the licensed territory (no "Studio Obligation").
- Each committing studio will not seek to enforce or bring an action before a court or tribunal for the violation of a Broadcaster Obligation and/or Studio Obligation, as applicable, in an existing agreement licensing its output for pay TV.
- Each committing studio will not enforce or honour any Broadcaster Obligation and/or Studio Obligation in an existing agreement licensing its output for Pay TV.

Similarly, in light of the results of this market test, the Commission was satisfied that the commitments offered by Sky addressed its concerns, and made them legally binding on Sky, as follows:

- Sky will neither (re)introduce Broadcaster Obligations nor Studio Obligations in agreements licensing the output for pay TV of Disney, Fox, NBCUniversal, Paramount Pictures, Sony Pictures and Warner Bros.
- Sky will not seek to enforce Studio Obligations or honour Broadcaster Obligations in agreements licensing the output for pay TV of Disney, Fox, NBCUniversal, Paramount Pictures, Sony Pictures and Warner Bros.

The commitments apply throughout the EEA for a period of five years. They cover both online and satellite pay-TV services and, to the extent that they are included in the licence(s) with a pay-TV broadcaster, they also cover subscription VOD services. The

[167] "European Commission, Antitrust: Commission seeks feedback on commitments offered by NBCUniversal, Sony Pictures, Warner Bros, and Sky in Pay-TV investigation", Press release, 20 December 2018, https://europa.eu/rapid/press-release_IP-18-6894_en.htm.

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commitments also contain a non-circumvention clause, as well as clauses on the review of the commitments and the appointment of a monitoring trustee. All current and future subsidiaries of the committing parties are covered by the commitments.[168] The commitments are without prejudice to rights conferred on the committing studios under the "Portability Regulation" or under copyright law. Nor do they affect the rights of the studios or a pay-TV broadcaster to decide unilaterally to employ geo-filtering technology.[169]

After having market-tested the above commitments, the Commission announced, in July 2019, the closing of the antitrust proceedings against Disney, NBCUniversal Sony Pictures, Warner Bros., Fox, Canal +, DTS Distribuidora de Televisión Digital, Promotora de Informaciones, S.A. (PRISA), Sky Deutschland and Sky Italia concerning cross-border access to pay TV in France, Spain, Germany and Italy, initiated five years earlier.[170]

In its judgment of 9 December 2020,[171] the CJEU, while agreeing with the General Court's finding that the relevant clauses could validly raise competition concerns for the Commission as regards the whole of the EEA and that that such agreements could jeopardise the proper functioning of the single market, found that the General Court erred in law in its assessment of the proportionality of the adverse effects on the interests of third parties (in the case at hand, Canal Plus). The CJEU held that the Commission's decision to make binding an operator's commitment not to apply certain contractual clauses vis-à-vis its contracting partner, in this case Groupe Canal +, when that contracting partner did not consent to it, constituted an interference with the contractual freedom of that contracting partner. The CJEU concluded that, by adopting the 2016 Decision, the Commission rendered the contractual rights of Groupe Canal+ meaningless, and thereby infringed the principle of proportionality, with the result that the decision at issue had to be annulled.

After this judgment, the Commission deemed it appropriate to withdraw the 2019 Decision, since the scope of the commitments made binding by that Decision were essentially identical to those of the 2016 Decision. On 21 January 2021, the Commission informed each of the studios and Sky of its intention to propose that the Commission withdraw the 2019 Decision. Between 26 January 2021 and 6 February 2021, Disney, NBCUniversal, Sony Pictures, Warner Bros. and Sky confirmed that they had no

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[168] This means that the commitments also apply to Fox after its acquisition by Disney, in March 2019.
[169] See "European Commission, Antitrust: Commission accepts commitments by Disney, NBCUniversal, Sony Pictures, Warner Bros, and Sky on cross-border Pay-TV services", Press release, 7 March 2019, https://europa.eu/rapid/press-release_IP-19-1590_en.htm.
[170] Closure of Proceedings, 26 July 2019, https://ec.europa.eu/competition/antitrust/cases/dec_docs/40023/40023_10719_5.pdf.
See also Summary of Commission Decision of 7 March 2019, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2019.132.01.0008.01.ENG&toc=OJ:C:2019:132:TOC.
[171] Judgment of the Court of Justice of the European Union (Second Chamber), 9 December 2020, Case C-132/19 P, *Groupe Canal + v European Commission*, https://curia.europa.eu/juris/document/document.jsf?text=&docid=235301&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=947621.

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observations on the proposed withdrawal, which was formalised by Commission Decision of 31 March 2021.[172]

5.2. Release windows

5.2.1. CJEU

In its *Cinéthèque* case[173] of 11 May 1985, the Court of Justice of the European Union (at the time, the European Court of Justice) had to decide on the interpretation of Articles 30, 34, 36 and 59 of the EEC Treaty with a view to enabling the Tribunal de Grande Instance of Paris to determine their compatibility with the provisions of French legislation concerning the exploitation in the form of video cassettes and video discs of films distributed simultaneously in cinemas.

Article 89 of Act No. 82-652 of 29 July 1982 on Audiovisual Communication[174] provided that no cinematographic work shown in cinemas may simultaneously be exploited in the form of recordings intended for sale or hire for the private use of the public, in particular in the form of video cassettes or video discs, before the expiration of a period of between six and 18 months, to be determined by decree. It also provided that the period was to run from the granting of the performance certificate and that it could be waived on conditions to be determined by decree. The interval provided for was fixed at one year by Decree No. 83-4 of 4 January 1983.[175] The chronological order for the showing of films was thus as follows: first in cinemas, then on video cassettes and video discs and finally on television. Despite this, the minister for culture had the power to waive the period of one year acting upon the opinion of a committee composed of eight members, including two members representing video cassette and video disc producers. A

[172] Commission Decision C(2021) 2076 final of 31 March 2021 withdrawing Decision C(2019) 1772 final of 7 March 2019 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement – Case AT.40023 – Cross-border access to pay-TV, (Text with EEA relevance) (Only the English text is authentic), https://ec.europa.eu/competition/antitrust/cases/dec_docs/40023/40023_10990_9.pdf.

[173] Judgment of the Court of 11 July 1985 - *Cinéthèque SA and others v Fédération nationale des cinémas français*. Joined cases 60 and 61/84, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61984CJ0060&from=FR.

[174] Loi n° 82-652 du 29 juillet 1982 sur la communication audiovisuelle. A consolidated version up to 3 May 1985 is available (in French) at: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068759&dateTexte=19850503.

[175] Décret n° 83-4 du 4 janvier 1983 portant application des dispositions de l'article 89 de la loi n° 82-652 du 29 juillet 1982 sur la communication audiovisuelle, https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000858045&categorieLien=id.

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dispensation could be granted in the light of the results of the commercial exploitation of the cinematographic work in cinemas.

The Tribunal de Grande Instance of Paris referred to the CJEU for a preliminary ruling in the two cases in order to determine whether the abovementioned provisions of French law were compatible with the provisions of Articles 30 and 34 of the EEC Treaty on the free movement of goods, with Article 59 of the EEC Treaty on freedom to provide services and with Article 36 of the EEC Treaty laying down derogations from Articles 30 and 34 of the EEC Treaty.

The dispute between the parties centred on the effect of the national legislation in question on the imports of video cassettes and on the marketing of imported video cassettes in the national territory. The French government stated that the prohibition laid down by French law did not extend to exports of video cassettes since the specific purpose of the law was not frustrated if video cassettes of films shown in cinemas in France were exported to other member states.

The plaintiffs and the interveners emphasised that legislation of the type applied in France had the effect of restricting intra-community trade since its application prevented certain products from being made available for sale in the national territory even though they could circulate freely in the territories of other member states.

The defendant in the main proceedings contended that the legislation in question applied to imported and national products alike, that it was adopted in the absence of community legislation in a field falling within the exclusive competence of the member states, and that it was justified by the mandatory requirements of general interest, namely the protection of the cinema as a means of cultural expression, which was necessary in view of the rapid development of other modes of film distribution. The French government adopted a similar point of view, observing that the legislation in question formed part of a body of rules intended to establish a chronological order between the different methods of exploiting a cinematographic work in order to ensure priority for its exploitation in cinemas. Such an arrangement was necessary in order to ensure the continued creation of cinematographic works since their exploitation in cinemas produced the bulk of their revenue (80%) and income from other forms of exploitation was at the time very small. The French government added that a system of self-regulation would not have sufficed to meet the growing power of the video industry or the risk of the development of such an imbalance in contractual relations that the contract could no longer have a regulatory effect.

The Commission stated that the national legislation in question undeniably had the effect of hindering the imports of video recordings lawfully produced and marketed in another member state and in free circulation there, and the possibility of obtaining exemption on the basis of the aforementioned decree of 4 January 1983 could not affect this. However, cultural aims could justify certain restrictions on the free movement of goods, provided that those restrictions applied to national and imported products without distinction, that they were appropriate to the cultural aim which was being pursued and

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that they constituted the means of achieving them which least affected intra-community trade.

The CJEU observed that such a system, if it applied without distinction to both video cassettes manufactured in the national territory and to imported video cassettes, did not have the purpose of regulating trade patterns; its effect was not to favour national production over the production of other member states, but to encourage cinematographic production as such. Nevertheless, the application of such a system could create barriers to intra-community trade in video cassettes because of the disparities between the systems operated in the different member states and between the conditions for the release of cinematographic works in the cinemas of those states. In those circumstances, a prohibition of exploitation laid down by such a system is not compatible with the principle of the free movement of goods provided for in the treaty unless any obstacle to intra-community trade thereby created does not exceed that which is necessary in order to ensure the attainment of the objective in view and unless that objective is justified with regard to Community law. In the case at hand, the French system was justified because it aimed at encouraging the creation of cinematographic works, irrespective of their origin, by giving priority, for a limited initial period, to the distribution of such works through the cinema.

The CJEU concluded that Article 30 of the EEC Treaty did not apply to national legislation which regulated the distribution of cinematographic works by imposing an interval between one mode of distributing such works and another by prohibiting their simultaneous exploitation in cinemas and in video cassette form for a limited period, provided that the prohibition applied to domestically produced and imported cassettes alike and that any barriers to intra-community trade to which its implementation may give rise do not exceed what is necessary for ensuring that the exploitation in cinemas of cinematographic works of all origins retains priority over other means of distribution. Concerning the issue of whether the French system was in breach of the principle of freedom of expression as recognised by Article 10 of the European Convention on Human Rights (ECHR) for the protection of human rights and fundamental freedoms and was therefore incompatible with Community law, the CJEU admitted that it was its duty to ensure observance of fundamental rights in the field of Community law, but it had no power to examine the compatibility with the ECHR of national legislation which concerns, as in this case, an area which falls within the jurisdiction of the national legislator.

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5.2.2. Decisions of the European Commission in competition cases

In the *Nederlandse Federatie voor Cinematografie* case,[176] an industry agreement of 1992, signed by almost all Dutch cinema producers, distributors and operators, prohibited the simultaneous exhibition of films in cinemas and videos within certain time limits ("Windows"). Under the terms of the agreement, each film was first to be provided to commercial cinemas and then, after six months, to be available for distribution in the form of videos and in art cinemas. At the end of 12 to 21 months, the film was to become available for pay-TV distribution. After 24 months, the film would be available for distribution on free television. The contract also provided for possible derogations on a case-by-case basis. Art films were subject to a fairly similar regime (with the exception of a clause imposing minimum prices).

According to the parties, this agreement did not restrict competition. It simply delayed competition between different exploitation modes. The result was therefore the sequencing - not the elimination - of competition over time. Moreover, according to the parties, the agreement had no impact on intra-Community trade.

The Commission did not agree with this conclusion and considered that the agreement did restrict competition since the distributors refrained from competing on the different exploitation windows simultaneously. The agreement would also have an effect on intra-Community trade because the majority of films distributed were of foreign origin in the country in question. Finally, the fixing of minimum prices for art films clearly constituted a restriction of competition. Despite these restrictions on competition, the Commission considered that, pursuant to Article 85(3) EC Treaty (currently Article 101(3) TFEU), an exemption could apply to the agreement. The reasons for this exemption were threefold. Firstly, it ultimately achieved the same result as the regulatory solution in force in other member states applicable to the issue of media chronology. Moreover, the Television without Frontiers Directive contained similar rules. In addition, the CJEU had already endorsed the principle of a media chronology in the *Cinémathèque* case mentioned above. Secondly, the NFC agreement made it possible to maximise cinema revenues, thus freeing up funding for the film industry, and ultimately stimulating film production. Finally, the agreement made it possible to maintain a privileged link between the cinema (guaranteed to benefit from the first release of the films) and the viewer.

[176] Decision of the European Commission, *Nederlandse Federatie voor Cinematografie*, Case 34.927, closed by comfort letter of 30 August 1995. The decision is not available online but it is described (in French) in the European Commission's contribution to the OECD's paper on competition policy and film distribution, OCDE/GD(96)60, 1996, https://one.oecd.org/document/OCDE/GD(96)60/en/pdf, see pp. 62-63.

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6. State of play

As presented in previous chapters of this publication, the issue of territoriality in copyright law appears to be a never-ending story. The European Audiovisual Observatory published its first report on the topic eight years ago.[177] At the time, the legal principle of territoriality in copyright law was at the heart of the discussions at EU level regarding the audiovisual sector and was presented by the European Commission as an obstacle to the circulation of audiovisual works in the EU, on the basis of the reasoning that territorial licences prevented users from having access to audiovisual works distributed in other countries.

In response to this, the European audiovisual industry argued almost univocally that removing the principle of territoriality in copyright law would have a devastating effect on the way European films and other audiovisual works are financed, and that it would mainly benefit major platforms, and lead to more concentration in the audiovisual sector. All this would be to the detriment of cultural diversity.

Let's now fast-forward to 2019, when the Observatory completed an update of the report.[178]

Much water had flown under the bridge since the drafting of our 2015 publication: new regulatory instruments having an impact on EU copyright law (notably the Portability Regulation and the revised Sat-Cab Directive) were adopted, but these copyright measures did not appear to have had a big impact on the principle of territoriality in EU copyright law. Then, on 30 November 2020, the European Commission published the conclusions of its first short-term review of the Geo-blocking Regulation. The Commission's review considered the possible extension of the scope of the legislation, including with regard to copyright-protected content (such as audiovisual, music, e-books and games). It highlighted potential benefits for all consumers in Europe, notably in terms of the availability of a wider choice of content across borders if the Regulation were to be extended to cover audiovisual content. The Commission's review also identified the potential impact that such an extension of the scope would have on the overall dynamics

[177] Cabrera Blázquez F., Cappello M., Grece C., Valais, S., "Territoriality and its impact on the financing of audiovisual works", *IRIS Plus*, European Audiovisual Observatory, Strasbourg, 2015, https://rm.coe.int/168078347f.

[178] Cabrera Blázquez F.J., Cappello M., Fontaine G., Talavera Milla J., Valais S., "Territoriality and financing of audiovisual works: latest developments", *IRIS Plus*, European Audiovisual Observatory, Strasbourg, November 2019, https://rm.coe.int/iris-plus-2019-3-territoriality-and-financing-of-audiovisual-works-lat/16809a417c.

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of the audiovisual sector, but concluded that it needed to be further assessed, especially in the broader context of accompanying the industry in its COVID recovery and transformation in the Commission's Media and Audiovisual Action Plan.

Then came the stakeholders' dialogue to identify how to foster better circulation of audiovisual content across the EU, while proposing actions to support the industry's recovery. As previously noted in this publication, the Commission held a series of stakeholder meetings gathering representatives of the audiovisual sector and consumer organisations, with the aim of identifying concrete industry-led solutions to increase the number and diversity of audiovisual works available online in each member state and facilitate consumers' access to audiovisual content across the EU.

After the stakeholders' dialogue, the Commission invited stakeholders in a letter of 10 June 2022 to submit proposals for concrete actions or a roadmap presenting the steps they intended to take in order to contribute to improving the online availability of and cross-border access to audiovisual works across the EU. As you can read in Chapter 4 of this publication, stakeholders provided a number of answers to the Commission's request.

Yet, in parallel to these events, another fight was fought in the competition law arena. It was a fight that was rather long, and even if it has ended (at least for the time being), it is not quite clear who has come out on top. The CJEU judgement did not clarify definitively whether geo-blocking clauses used in licensing agreements infringe competition law or not. And the whole case related to a British broadcaster (Sky), which makes it also less relevant in the post-Brexit age.

Summarising, the principle of territoriality in copyright is a story whose last chapter does not appear to be written yet, as the Commission is keeping its options open vis à vis the Geo-Blocking Regulation for the future, and the CJEU case law regarding competition law seems inconclusive at best.

Release windows are a different matter. The current status quo described in Chapter 3 of this publication and its accompanying Annex is the result of the balancing act between those who consider the system of release windows fundamental for the good health and sustainability of the European audiovisual industry and those who would minimise (or even get rid of) said rules. On top of this, the COVID pandemic led to temporary changes in the way films were distributed during this period. Now that the worst seems to be over and things are slowly returning to normal, lessons have been drawn from this extraordinary upheaval of the audiovisual sector, and adjustments have been made to release windows in different European countries – without drastic changes for the moment. Otherwise, *andere Länder, andere Sitten*, goes the German saying, which means that each country has its own way of doing things. And indeed, the research provided in this publication shows that every country included does indeed do things differently.

In a way, it could be argued that, like the principle of territoriality in copyright law, the system of release windows is a story whose last chapter does not appear to have been written yet, since the topic is still being discussed at the political level and is renegotiated every time a film distribution deal is closed.

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Maybe both territoriality and windows are simply never-ending stories because they are constants in the complex equation that is the European audiovisual sector.

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7. Annex – Survey of release windows trends in EU member states (June 2023)

This table was realised by Europa Distribution, the International Federation of Film Distributors' & Publishers' Associations (FIAD), the International Video Federation (IVF), and the International Union of Cinemas (UNIC), based on a survey realised to their members in December 2022 and additional research in April-May 2023.

All subsequent time periods are calculated in months (unless otherwise specified) from the date of theatrical release in the particular territory.

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
AT	**Public funding rules**	**6 (Possibility to shorten it to 4 months and in exceptional cases to 3 months)**	**6 (same as physical)**	**6 (Possibility to shorten it to 4 months and in exceptional cases to 3 months)**	**12 (Possibility to shorten it to 8 and in exceptional cases to 4 months)**		**18 (Possibility to shorten it to 12 and in exceptional cases to 6 months. If the broadcaster contributed financially very significantly to the production of the film in exceptional cases the window can be shortened to 4 months.)**	The law on Film Funding also points to these guidelines and sets down as a general rule that the film funding guidelines have to set a minimum 6-months window for uses other than cinema after the first theatrical release. A window reduction is possible following application by the producer. (But this possibility is limited). No difference between local, European and US content.

[1] Online Distribution Transactions: Permanent or time-limited access (TVOD).
Permanent: On-demand transmission of an AV work in an encoded file for download via DRM technology / Consumer is authorized to have permanent access to the work (unlimited playback).
TVOD: On-demand content transmission for limited viewing period via DRM technology / No permanent access for the consumer / Content received via live streaming or as self-erasing download.

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
BE	**Contractual**	**4** **Depending on individual title**	**4 with HD Permanent Access options 2 weeks earlier; TVOD = 3-4 (typically on 9 months license)** **Depending on individual title**	**4**	**7-12 (typically on 12 months license)**	**26-30 months**	**26-30 months**	Second Pay window = 20-24 (typically, 6-months license) In general, films in Dutch are released on similar trends to the Netherlands. For films in French and released in the French-speaking part of Belgium releases typically take place on similar trends to those in France. Trends can vary from distributor to distributor and/or from film to film. For French speaking (co)productions, a minimum window of 4 months for SVOD is legally recommended (but not mandatory) in the French speaking part of the country. In the absence of regulation, individual contracts provide for holdbacks depending on the title. No Premium VOD. Not tied to public funding. No difference between local, European and US content.

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
BG	**Legislative provision**	**3**	**3**		**3**	**3**	**6**	On 15 November 2018, the Bulgarian Parliament adopted new amendments to the Film Industry Act in order to bring the existing state film aid scheme into line with the European Commission's Communication on State Aid for Films and Other Audiovisual Works (2013/C 332/01). Article 45 on the distribution of films remained unchanged and provides as follows concerning release windows: 3 months exclusive theatrical window, followed by a video, DVD, Internet and pay TV window. The free TV window starts at 6 months after the theatrical premiere.
CH	**Contractual**	**4**	**4**					DVD/BR, online distribution, TV: day and date with France/Italy/Germany
CY	**Contractual**	**2-4**	**2-4**	**-**	**12**		**24**	Online distribution window is contractual and some producers have indicated day-and-date of online distribution

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
								transaction with DVD/BD in the near future.
CZ	**Contractual**	**4**	**4**	**3-6**	**9-12**		**12-18**	Market practice is 4 months for online distribution or free TV.
DE	**Public funding rules**	**4*** **(for films receiving national subsidies by FFA)** **upcoming changes, see comments*	**4*** **(for films receiving national subsidies by FFA)** **upcoming changes, see comments*	**9** **(Possibility to shorten it to 5 or in exceptional cases 4 months)**	**12** **(Possibility to shorten it to 9, and in exceptional cases to 6 months.)**	**6** **(Possibility to shorten it to 5 or in exceptional cases 4 months**	**18** **[Possibility to shorten it to 12 and in exceptional cases to 6 months, in particular if the broadcaster has contributed to the financing of the production.)**	Regulation laid down by legislation which is applicable to productions (films exceeding 79 min and 59 min for children's films) which have received state subsidy by the German Federal Film Board (FFA). The information stated in the table is only valid for German films and co-productions that receive funding as established in the FFG (German Film Funding Act) or guidelines referring to statutory windows, such as the DFFF (German Federal Film Fund) All other films do not have to follow these release periods. In such cases, Window 1 is typically 45-50 days, although bigger

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
								blockbusters tend to have longer release windows. Shorter release periods are possible following application by the producer. * *On May 2023 an industry-wide agreement was signed for a shortening and more flexible windows for FFG-funded theatrical German films (from 6 to 4 months). The new regulation was transposed into a directive by the Administrative Board of the German Federal Film Board (FFA), see section 3.5.2. of this publication.*
DK	**Contractual**	**3-4**	***(Online distribution options normally same release trends as physical)*** **Most distributors distinguish**	**This format does not exist in the Nordic countries with regards to film – only with regards to sports**	**10-12**	**12-36**	**24**	Current practice: 4 months, very few releases below 3 months. Exceptions: 1) approx. 40 «discount days» per year granted to each distributor (depending on the number of films released) which can be used to shorten the window on specific films; 2) independent negotiation with cinemas for

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
			between permanent access and time-limited access online distribution models. On bigger titles, early release on permanent access (up to 10 days prior to release on physical carriers)					few prints-films; 3) independent negotiation with distributors that are not in the national distributors' association. Not tied to public funding. No difference between local, European and US content. No general agreement made, individual agreement from film to film.
EE	**Contractual**	**3-4**	**3-4**					A shorter window for online distribution transactions is possible (case by case).
ES	**Contractual**	**112-124 days**	**permanent access options: 112-124 days** **2-3 weeks prior to DVD/BD release + occasionally day**	**Day and date with Window 1**	**8-10**	**Decided on an individual basis; 12-24 months for some titles** **7-8 months after the**	**24**	Release windows are agreed on a title-by-title basis. However, the average release window remains 3-4 months. Discussions have been taking place around windows in late 2022.

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
			and date with DVD/BD release.			**theatrical release date (in case this is a License substituting traditional Pay TV license) or after the first Pay TV window and/or Free TV window (depending of the negotiations between Distributor and Licensee)**		
FI	**Contractual**	**4**	**4**		**12-24**		**24**	Not tied to public funding. No difference between local, European and US content.
FR	**Legislative provision**	**4** **(or 3 if less than 100 000 admissions in 4 weeks)**	**4** **(or 3 if less than 100 000 admissions in 4 weeks)**	**4**	**Cinema Pay TV 8** **but with the possibility of a 6-month period window only**	**15-17** **15 months for SVOD platform having signed**	**Free-to-air TV and standard pay-TV 22** **but with the possibility of a**	By Government decree of 9 February 2022, the Minister of Culture decided to make the agreement for the reorganisation of the media chronology, signed by

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
		A 4-month theatrical exploitation window remains the main provision under the new French decree of 2/2022			**for films with less than 100 000 admissions: for 1st Pay TV window**	**the 2022 agreement 17 for the streamers not having signed the agreement**	**20-month period window only for films with less than 100 000 admissions**	professional film organisations and representatives of broadcasters on 24 January 2022, applicable to all entities concerned in the French territory. The release period from theatrical release to the next exploitation window is mandated by law. The agreement is valid for a period of three years and will be reviewed every 12 months at least. The cinema window remains the same, with an exclusivity of 4 months which can be reduced to 3 months if the film has registered less than 100k admission in its first 4 weeks. Netflix has signed the agreement, which allows them to stream a film 15 months after its release in cinema – when the previous agreement was set at 36 months. Other services which have not signed

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
								the agreement have to respect a 17-month window.
GB	**Contractual**	**4 (For limited releases occasionally 1-2 months)**	**Permanent Access Options: generally day and date release with physical or 2- weeks prior to physical release (3 weeks in a few cases) Time-limited Access options (TVOD): day-and-date with physical occasionally 2 months from theatrical (and sometimes Premium VOD day-and-date with theatrical).**	**day-and-date with physical generally 4 months**	**Varies from 4-6 months from theatrical**	**instances from 7 months on a title-by-title basis**	**Starts after Pay TV first window has ended. If there is no Pay TV, 12 months from theatrical is usual. In any case, no later than 27 months from theatrical.**	From an average window of around 108 days in 2019, decisions are now taken entirely on a film-by-film basis, with most major titles currently observing a window of between 45 and 50 days.

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
			Most major titles have currently a window between 45 and 50 days.					
GR	**Contractual**	**2-4**	**2-4**	**-**	**4-6**	**16-18 (12 months after Pay TV)**	**16-18 (12 months after Pay TV)**	Online distribution window is contractual and some producers have indicated day-and-date TVOD with DVD/BD in near future.
HR	**Contractual**							
HU	**Contractual**	**4**		**-**	**6-9 to 12**		**24**	The trend is towards shorter windows, especially around seasonal markets (Christmas, Easter)
IE	**Contractual**							Agreement on a film-by-film basis by contractual agreement. In 2017, the average DVD release window was 110 days, unchanged from the previous year. Screen Ireland provides funding for Irish feature-length films intended for theatrical

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
								release and requires viable theatrical windows for all projects especially those involving Broadcaster support. In the case of documentaries, Screen Ireland requires a minimum twelvemonth theatrical window from the date of first festival screening. In the case of feature films, Screen Ireland requires a twenty-four-month theatrical window from the date of the first theatrical screening. No difference between local, European and US content.
IT	**Public funding rules**	**105 days (Blockbusters titles often 16 weeks)**	**105 days (some titles are released after a shorter period, e.g. 14 weeks)**	**105 days**	**3 months from window 1**	**Between day-and-date of on-demand and day-and-date of Pay TV depending on contractual arrangements between SVOD providers and**	**3 months from Pay TV for Italian films; Non-Italian films typically 6 months**	In March 2022, the existing 105-day theatrical window for Italian films subsidised by the government was shortened at 90 days, but in April 2023 this decree has been annulled because it is considered illegitimate and the theatrical window for state-subsidised films is now back at 105 days. Negotiations are ongoing

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
						producers/film distributors.		whether to extend this 105-day window to all films distributed in cinemas. The window can be reduced to 60 days for works that are distributed on less than 80 screens and obtain less than 50,000 spectators after 21 days of programming.
LT	**Contractual**	**3-6**	**2 months since the last day in the cinemas**	**9**	**12**		**24**	Foreign releases maintain shorter windows, dubbed animations and local films take longer periods (up to 4-6 months).
LU	**Contractual**	**DEPENDING ON RELEASES IN NEIGHBORING COUNTRIES**						
LV	**Contractual**	**2-3** **6+ for DVD**	**-**	**-**	**-**		**3**	Shorter window for online distribution transactions (case by case). Covid impacted theatrical windows.
MT								

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
NL	**Contractual**	**3-4**	**3-4 with HD Permanent access options 2 weeks earlier; TVOD = 3-4 (typically on 9 months license)**	**4-6**	**8-12 (typically on 12 months license)**	**20-22**	**26-30**	Shorter windows may be agreed for economical or strategic purposes, e.g. SVOD after 6 months. Second Pay window = 20-24 (typically 6 months license) Agreement on a film-by-film basis: approx. 4 months. Not tied to public funding. No difference between local, European and US content.
NO	**Industry agreement**	**3-4 months**	**3-4 months**		**10-12 months**	**12-24 months**	**14-24 months**	Agreement: approx. 3 months. Not tied to public funding. No difference between local, European and US content.
PL	**Industry agreement**	**4**	**75 days (exceptionally shortened to 45)**	**N/A**	**9-12**	**24**	**18-24**	Informal agreement: minimum 75 days before release to online distribution. Some distributors shorten cinema window to 45 days.
PT	**Contractual**	**3**	**3**	**4**	**6**	**12**	**12**	As distributors hold "all rights" there are no mandatory windows (limited, obviously, by the contractual holdbacks). The

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
								data provided is an "average" (there can be significant variations from title to title). Windows can be reduced upon negotiation between right holders and TV/DVD distributors or in case the TV broadcasters co-producer of the film.
RO	**Contractual**							The release dates on different platforms are set individually by each distributor and by the original studios. Especially after the pandemic, more films have been released day and date in cinemas and on streaming platforms. Some distributors still prefer to keep a window of 1 month or less, others the more classic 3 or 6 months, depending on the film potential.
SE	**Industry agreement**	**90 days**	**Permanent Access options same as physical release.**	**N/A**	**12**		**24**	SVOD is growing with Netflix, HBO, Filmnet, etc. In the current agreement, public funding is no longer tied to the primary theatrical release. No

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Country	Type of rules	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD)	Online Distribution Transactions[1]	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
			Time-limited access options (TVOD) 14-28 days after release on physical carriers and Permanent Access options					difference between local, European and US content.
SI	**Contractual**	**3-4**	**(Same as physical)**	**12**	**12**		**18-24**	
SK	**Industry agreement**	**3-4**	**4**	**-**	**12**		**4**	Market agreement is 4 months for online distribution or free TV. Online distribution window is contractual.

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