



49th EPRA meeting

Sarajevo, 29-31 May 2019

Working group 2 – European Works & Prominence – Discussing definitions and Methodology

Summary of the session and debate

Michael O’Keeffe, BAI (IE)

Working Group 2 was a small but neatly formed group. Its purpose was to support a better understanding of technical and practical issues of implementation of the new Article 13 provisions of the [AVMS Directive](#) and to facilitate an exchange of views and greater co-operation between regulators.

In her introductory remarks, Chairperson **Celene Craig** spoke of the importance of the objective of Article 13 to promote diverse and culturally relevant European content and to enhance the indigenous European independent production sector. She emphasized that the question of levies was not in scope on this occasion as the discussion seems at an early stage for the moment. Rather the focus would be on various mechanisms and tools to facilitate the delivery of quota obligations for VOD players. The European Commission hopes to finalise guidance arising from the Article 13 provisions late in Q3/early in Q4 2019.

The point of departure for the practical debate within the working group is the recognition of the acute challenge, as identified by the recent [ERGA report on the AVMS Directive](#), to “*come up with a consistent approach at European level considering the various quota calculation methodologies currently being used in Europe (...), while respecting the numerous national disparities (...)*”.

Following this introduction, **Maja Cappello**, Head of the Department for Legal Information at the European Audiovisual Observatory (EAO), shared some of the [key findings](#) of the European Film Agency Directors (EFADs) Mapping Report, which the EAO had been commissioned to undertake. The [full report](#) is available on the Observatory’s website (See [Annex 4](#) below for relevant resources from the EAO). Maja set out the regulatory ecosystem, the inventory of different approaches and, most importantly, the key findings of the report. These centered on the differences in the financial obligations, quotas and prominence requirements between broadcasters and VOD players. Unsurprisingly, the report concludes that the contrast between linear and non-linear was quite stark under each of these areas. This contrast points at the scale of the task for broadcasting regulators to implement the mandatory provisions concerning VOD catalogues introduced by Article 13, especially for those NRAS in countries where the obligations for VOD providers were not specific.

The working group then moved on to discuss concrete challenges of the implementation of European works and prominence on VOD services. Issues discussed included how to collect, identify and count European works and how best to measure their prominence. The discussions were supported by interventions from **Christian Grece**, VOD analyst at the EAO’s Department for Market Information,

Lucile Petit, Head of Department On-demand, distribution and new services at the CSA (FR) and **José Ángel García Cabrera**, Deputy Director of Audiovisual at the CNMC (ES).

With regard to collection, Christian referenced the “Scraping tool” (automated tool) used by the Observatory to collect data from VOD catalogues, describing it as costly and time consuming. He emphasized the need to enter into strategic partnerships with VOD providers and develop a common template. In France, quotas of European works for VOD providers have been in place for eight years (See [Annex 2 below](#)). Lucile spoke of the requirement on VOD players to make statements to the CSA (for the past year) and the need for the CSA to impose a unique method to get a standardized statement. From 2013 onwards, the statement focused only on two days in the past year, selected randomly each year. She described the approach as “quite traditional” and acknowledged that a move to a more digitalized approach would be desirable. Given the size of catalogues, it was emphasized that the VOD services must become involved to a greater extent. Christian observed that tech giants do not always know the country of origin of their content. José set out the approach adopted by the CNMC where a formal requirement is issued to VOD players (See [Annex 1 below](#)). In Spain, quotas of European works for VOD providers have been in place since 2010. In general, operators are delivering and José noted that identifying and collecting are integral – not separate tasks.

With regard to the counting of works, the discussion centered on the different impacts on quotas of single titles versus hours of broadcast or numbers of episodes. In Spain, episodes of series rather than titles are counted, as in France since each single video is deemed to be an undivided part of the catalogue. Christian pointed out the different approach to series between US and European producers where there were much greater number of episodes in the US – a factor that should be taken into account.

Prominence was the next topic considered and José advised that (prior to transposition of the revised AVMSD) it is not required by law in Spain but the CNMC requests information from providers. This is quite complex, especially with the increasing use of algorithms by all major providers. Christian suggested that a measure for TVOD could be the number of promotional spots (this is the approach taken by the Observatory) and acknowledged the complexity of measuring prominence in overall terms. Lucile advised that the CSA has a system in place based on calculating prominence on the providers’ main page (that is a legal obligation) but accepted it can be difficult to apply, to track and to control. From the floor, Bernardo Herman of the Belgian CSA, advised that they were putting more focus on prominence rather than quotas and indicated that they advised providers to set out how they would give prominence to European works (See [Annex 3 below](#)). Claudia Agrisani, Senior Economist Officer at AGCOM Italy¹, spoke of a voluntary procedure using a points criteria and that legislation in the current year will make prominence obligatory. Verification was acknowledged as being a “tricky exercise”.

There followed a discussion on the various issues arising. Firstly, in relation to challenges, the question of verification was deemed to be the biggest challenge. Maybe a starting point would be a database for European works but there was general agreement that the onus should be put on the provider and practical methods should be encouraged.

¹ For further information about Italy, see also: <https://merlin.obs.coe.int/iris/2019/2/article15.en.html> and <https://merlin.obs.coe.int/iris/2019/3/article21.en.html>

The key question regarding the calculation methodology was whether you count episodes or hours or titles and the implications for each of the individual regulators in this regard.

National legislation should give adequate powers to regulators to seek information, including on format and to put the onus on the providers. Maja pointed out that initiatives such as the [LUMIERE VOD database](#) are very useful but can never become a monitoring database. Further work with stakeholders will be beneficial including perhaps a workshop to explore the methodology for collecting, counting and achieving prominence further.

There were significant contributions from all members of the working group which concluded with agreement that the topic should continue to be discussed and the next session, on 24 October 2019 in Athens, would benefit from the issuing of the guidelines by the Commission.



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Annex 1: CNMC experience

José Ángel García Cabrera, CNMC (ES)

FORMAL REQUIREMENTS SENT BY CNMC TO THE VOD PROVIDERS IN ORDER TO ENSURE FULFILLMENT OF QUOTA OR EUROPEAN WORKS OBLIGATIONS

Brief introduction to the whole set of obligations to promote European Works in Spain, according to the [2010 Law](#).

- **Financial investment obligations to linear and VOD providers:**
 - annual contribution to the pre-financing of European cinematographic films, films and series made for television, documentaries and animated films and series, amounting to 5% (6% for public broadcasters) of the revenues raised in the previous financial year;
 - In 2017, the investment in European works verified by the CNMC was three times higher than the obligations set to linear and VOD providers established in Spain (from €133 million euros to €450 million euros). This was due mainly to the investment in series.
- **Quotas of European works for linear AVMS providers:**
 - Broadcasters shall reserve at least 51% of their transmission time (excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping) for European works;
 - Broadcasters shall reserve at least 10% of their transmission time (excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping) for European works created by producers who are independent from broadcasters;
 - Quotas of European works reached by the main broadcasters are largely above the required 51 %.
- **Quotas of European Works for VOD providers:**
 - VOD services shall reserve 30% of their catalogue for European works. In force since 2010, so exactly the same obligation as in the new Directive, but ten years ahead of its transposition;
 - 50% of this quota shall be assigned to European works in any of Spain's official languages;
 - No prominence obligations with the current Law;
 - Quotas of 30 % of European Works on the catalogues of VOD providers have also been met.

Details of the formal requirement of information

Quotas of European Works for VOD providers:

- Nature of the services: SVOD / TVOD, catch-up, geographical restrictions
- % of European works actually consumed in terms of hours
- % of European works in the catalogue in terms of titles and in terms of hours
- % of European works which are produced in official languages in Spain
- Split of European works included in the catalogue by type of work (films, series, documentaries)
- Average time of European works in the catalogue

Measuring prominence (although not an obligation under the current Spanish Law, it is monitored by CNMC)

- % of European works in the main page
- % of works where the country of origin is identified
- Is it possible to search for country of origin?
- Are there specific tools to find European Works?
- Are there specific sections in the catalogue for the European works?
- % of trailers promoting European works
- Average time of European works in the catalogue
- Average time of European works in the main page



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Annex 2: French CSA experience

Lucile Petit, CSA (FR)

Requirements on promotion of works on on-demand audiovisual media services in France (included catch-up TV, AVOD, TVOD and SVOD)

Legal requirements, according to [the 2010 Decree](#)

- **Financial investment obligations to on-demand services providers:**
 - annual contribution to the pre-financing or financing of European works, amounting to 15% of the revenues raised in the previous financial year and of French-speaking works, amounting of 12% of these revenues;
 - only if the revenues on the service are over 10m€.
- **Quotas of European and French-speaking works for on-demand services providers :**
 - each catalogue must contain a share of 60% of European works and 40% of French-speaking works at any time, as long as it contains at least 20 works.
- **Prominence of European and French-speaking works for on-demand services providers (catch-up TV, AVOD, TVOD and SVOD):**
 - the quantity of European and/or French-speaking works on the home page of the service must be “substantial”, as long as the catalogue of the service contains at least 20 works.

Details of the formal requirement of information

- For quotas and prominence, the statement focuses on two days in the past year, selected randomly each year

Quotas of European and French-speaking works:

- % of European works and % of French-speaking works in the catalogue in terms of titles (or in terms of episodes for series)
- supporting documents to prove the figures (e.g. list of the works available in the catalogue for each of the two days, mentioning the qualification of French-speaking and / or European works)

Prominence:

- % of European and French-speaking works on the home page
- supporting documents to prove the figures (e.g. screenshot or description of the method applied to ensure the prominence)



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Annex 3: Belgian CSA experience

Bernardo Herman, CSA (BE)

With regards to VOD services, the Belgian CSA issued on 24 June 2010 a [Recommendation on the prominence of European works](#) to ease the enforcement of the AVMS Directive and the concept of “prominence”². To implement this Recommendation, the CSA.be developed a structured methodology in collaboration with VOD providers. According to this methodology, media service providers are invited to transmit a detailed list of tools that they are using to implement prominence of European works, as well as the information on the consumption of the films in their catalogues. Various strategies have also been exposed.

Two aspects of promotional methods are analyzed. The first aspect relates to the global positioning of EU works among the works that are being promoted in providers’ catalogues. This aspect requests to evaluate the proportion of European works in the total number of promoted audiovisual works. The second aspect relates to the way these European works are promoted on individual or collective scale. Providers’ data allow to analyze the consumption, and, to a certain extent, to identify efficient tools and strategies.

The aim to measure the promotion level of European works and the potential impact of this prominence on the consumption of European works is challenging. If the promotion level can be quite easily determined through calculating the proportion of European works among the promotion occurrences, the effectiveness of prominence on film consumption is more complicated to assess.

The first step was to consider all types of media used for the prominence. Different media have different qualities and assets, considering different usages by the viewers. After an observation period, the CSA concluded that the providers’ Internet site can be considered as a reference and matrix for prominence strategies since its structure and content are reproduced on other types of media/promotional support. Thus, the analysis of the Internet site was sufficient to obtain a satisfying overview of the promotion level of European works.

A second step was to enforce the practical guidance that the Belgian legislator provided in listing in our Media decree several actions that can be assimilated to prominence. Such legal clarification of the concept of prominence proves to be very helpful for distinguishing this concept from quotas and financial contribution which aim at a different objective in our view. Along these lines and for the sake of clarity, the recommendation of the CSA offered examples of prominence which are even extending the legal list as following:

- Advertising inserts on home page of the Electronic Programme Guide (EPG) or website
- Specific categories dedicated to EU works
- Barker channel prominence
- Mentions of EU works in folders and magazines
- Prominence under different headings (“new”, “last chance”, “favourites” etc.)
- Presence of EU works in promotional campaigns for the VOD service

² CSA Be recommendation 24 June 2010:
http://www.csa.be/system/documents_files/1313/original/CAC_20100624_recommandation_VOD.pdf?1299596442

- Other influential parameters: position of the works in the catalogue, duration, diversity in term of genres etc.

Moreover, in its dialogue with VOD providers, the CSA.be requests them to transmit detailed information regarding their catalogue (titles of the films on a certain date, position of the film in the catalogue, origins of the films, production dates, beginning and end dates of the rights, and, if possible, the amount of views on a certain date).

Further, the CSA proceeds to a monitoring exercise, comparing the two main VOD providers on managed platforms and measuring following parameters:

- The proportion of European works available in their catalogue of which the composition has to be provided once a year,
- The proportion of European works in promotional occurrences in different media: CSA analyzed promotional initiatives as well as occurrences on the providers' website: position of the works on the website as well as the number of tabs containing the work,
- The proportion of European works from audiovisual works most widely consumed by the user: the providers have agreed to provide the ranking of the 50 most consumed films.

Through the continued dialogue with the regulator, providers agreed to list the detailed promotional measures they use to ensure prominence of European works, such as:

- Lists of thematic selections available: Belgian films, European films, festivals, etc.
- Use of barker channels
- Newsletters presenting new arrivals
- Promotional offers as a monthly free film or reductions (allow the users to discover the VOD process and to limit the financial obstacle while discovering major Belgian and European films)
- Various contests
- Editorial work allowing to create emphasis on European works and to ensure a more in-detailed promotion.
- Use of social media

Against this background, it is important to highlight providers' adherence to the shared belief that prominence and promotion of audiovisual works must be a part of a global approach and part of a multi-channel marketing strategy. They confirm that the direct efficiency of a global approach of digital promotion is easier to assess for a less mainstream film (or less recent) which has not benefited from an important promotional campaign while being distributed in cinemas (or have not been distributed in cinemas).

In addition, the monitoring exercise relating to the promotion of European works includes social media accounts of the providers, allowing to analyze the communication related to the promotion of VOD services and the place of European works. Scrutinizing these platforms helps learning how modern marketing tools are used to promote European works.

From a global point of view, the collaboration between the providers and the regulator can be considered rather positive. The partnership induced by the regulatory necessity resulted in the development of methodology on both sides, followed by the creation of verification techniques by the CSA. The VOD services provided a rather positive feedback and demonstrated spirit of goodwill during the collaboration.



1. Recent Reports of relevance

1.1. Legal

- **Mapping of national rules for the promotion of European works in Europe:** EAO, 2019 (EFADs mapping report) The report covers the initiatives and rules designed to promote European works currently in place in 31 countries (EU-28, Iceland, Norway and Switzerland)
<https://rm.coe.int/european-works-mapping/16809333a5>
- **Key findings of the EFADs report**, presentation of Maja Cappello in Sarajevo:
<https://www.epra.org/attachments/sarajevo-working-group-2-european-works-prominence-keynote-presentation-by-maja-cappello>
- **VOD, platforms & OTT: which promotion obligations for European works?**
IRIS Plus 2016-3: Francisco Javier Cabrera Blázquez, Maja Cappello, Christian Grece, Sophie Valais,
<https://rm.coe.int/1680783489>

1.2. Market

- **The visibility of audiovisual works on TVOD;** Edition 2018; Gilles Fontaine:
This report on the visibility of audiovisual works on TVOD services is based on the analysis of the promotional spots of 42 TVOD services from 5 countries during 4 weeks in Oct. 2018.
<https://rm.coe.int/the-visibility-of-audiovisual-works-on-tvod-edition-2018/16809462a3>
- **TV content in VOD catalogues** – Edition 2018, Christian Grece, Marta Jiménez Pumares
This report is based on the analysis of 29 SVOD catalogues and 32 TVOD catalogues. The data was collected during November and December 2018 and the TV titles were matched through databases with their countries of production. This report analyses contents both in terms of TV content Titles and of TV contents Episodes.
<https://rm.coe.int/tv-content-in-vod-catalogues-edition-2018/168094628b>
- **Films in VOD catalogues, Origin, Circulation and Age**, Edition 2018, Christian Grece
This report is based on the analysis of 77 TVOD catalogues and 45 SVOD catalogues. The data was collected in December 2018, and January, May & August 2019. The film titles were matched through databases with their countries of production. This report analyses for the first time the notion of Age of films and its repercussions on circulation.
<https://rm.coe.int/films-in-vod-catalogues-origin-circulation-and-age-edition-2018/168094627a>

2. Other resources

- **Lumiere VOD:** <http://lumierevod.obs.coe.int/>

This project, managed by the Observatory, is supported by the CREATIVE EUROPE programme of the European Union. LUMIERE VOD is:

- a database of European films available on pay-video on-demand services (transactional and subscription VOD). It provides a list of films available at a given moment from a sample of on-demand services active in the European Union.
- primarily designed for audiovisual industry professionals: authors, producers, distributors, film funds and regulators in order to help them track the exploitation of films on VOD and to assess the composition of the VOD catalogues. It is not intended to facilitate the rental or purchase of films, nor the subscription to a service.
- managed on a best-effort basis by the European Audiovisual Observatory. The Directory is currently in beta version and includes about 250 VOD catalogues. The number of catalogues tracked and the frequency of updates will gradually increase.
- collects the data from a number of partners, including VOD services and film portals.