

50th EPRA meeting

Athens, 23-25 October 2019

WGII: European Works & Prominence

Round Table debate: rethinking supervision and cooperation after the revised AVMSD?

Summary of the session and debate

Emmanuelle Machet, EPRA Secretariat

The Working group on European Works and Prominence focused on the concrete challenges for regulators of implementing the provisions on European works and prominence on video-on-demand services.

Preserving cultural diversity has always been one of the goals of EU coordination, but achieving a more level playing field between the different players in the audiovisual media market was a particular objective of the review of the Audiovisual Media Services Directive. The new AVMSD levelled up certain requirements for on-demand services in relation to the promotion of European works by obliging on-demand services to reserve at least 30% share for European works in their catalogues and to ensure adequate prominence of such works (Article 13). Article 13 also allows Member States to impose financial contributions (direct investments or levies allocated to national film funds) to on-demand services in their jurisdictions as well as, under certain conditions, to those established in a different Member State but targeting their national audiences.

The new obligations raise a wide range of technical and legal questions for regulators, some of them have been addressed during the spring session of this annual Working group which took place on Sarajevo in May 2019.

It came out of the discussion in Sarajevo that:

- The question of **verification is the biggest challenge for the regulators**. A starting point may be a database for European works but there was general agreement that, given the size of the VoD catalogues, the onus should be put on the on-demand service providers and practical methods should be encouraged.
- 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.
- Measuring effectively **prominence for SVoD is quite complex**, especially with the increasing use of algorithms by major providers.
- National legislation should give **adequate powers to audiovisual media regulators to seek information**, including on format and to put the onus on the service providers. Initiatives such as the LUMIERE VOD database are very useful for regulators but can never become a monitoring database.

- Further **work with stakeholders will be beneficial** such as a workshop to explore the methodology for collecting, counting and achieving prominence further.
- The discussion should continue at the next Working group session and would benefit from the issuance of the Commission's guidelines.

However, even though the [AVMSD Contact Committee](#) met on 1 July and on 9 September 2019 to discuss the draft Commission Guidelines on the calculation of the share of European works in providers' video on-demand catalogues and on the definition of low audience and low turnover further to Article 13(7) AVMSD, the Guidelines were still pending at the time of the working group in Athens. A continuation of the discussion focused on the calculation methodology was thus not timely.

In addition, even though discussions on the transposition of provisions relating to European works are currently taking place in several member States, it is still too early in the legislative process to initiate a fruitful discussion on concrete national provisions.

Owing to these constraints, the debate focused on the methods of supervision and control, and the cooperation with VoD service providers.

The Working group discussion benefited from the presence of two facilitators: *Sophie Valais* and *Agnes Schneeberger* from the European Audiovisual Observatory shared the Observatory's expertise on legal and market aspects of European works to provide some food for thought and some points of references for the debate. Their presentations are annexed to this summary.

Three key messages came out of the discussion:

➤ **Message 1: the nationality of European works can be difficult to assess in practice**

The nationality of European works can be difficult to assess in practice, because:

- *the **definition of "work"** differs among member States*
- *there are **differences between member States** as to the practical implementation, especially concerning the assessment of the nationality of co-productions*
- *There are also differences **at national level among stakeholders** on how they assess the nationality of European works: for instance, between public film/audiovisual funds and regulators*
- *Information on nationality is **often disseminated among many national sources**.*

An ongoing mapping report by the European Audiovisual Observatory, on behalf of the European Commission and including comparative analysis and national fact sheets will shed more light on these questions and identify concrete problems to be addressed. The mapping report is expected for May 2020. A Workshop bringing together industry stakeholders, broadcasting regulators and film funds will be held in June 2020. (see Annex 1 for more details)

Several EPRA members reported that they have initiated dialogue with stakeholders on these questions, even though the feedback that they collected may differ. It appears that collecting data on nationality is considered to be a challenge mostly for small VoD operators in the Netherlands, but not for major players based in the country (Netflix). In Ireland, however, the first preliminary discussions

seem to indicate that identification of Country of Origin is likely to be an issue and that a database where content could be easily verified would bring added value.

➤ **Message 2: (So far!) there is no revolution in methods of supervision in sight**

It transpired from the discussion that while there is some thinking going on in several regulatory authorities to modernise monitoring systems and approaches, there seems to be little appetite (at present!) among audiovisual regulatory authorities for embarking in very ambitious or innovative methods of supervision, such as Artificial Intelligence tools, for the compliance with the provisions on European works. The general understanding is that the onus should be on providers to deliver data and rely on declaratory systems as for linear media services, and on spot checks.

Against this backdrop, *Agnes Schneeberger* provided insight into the work of the European Audiovisual Observatory's Market and Information Department and in particular about the collection of raw data based on agreements with VoD players, film portals and associations and the processing of raw data. Matching the raw data with other existing internal and external databases and controlling the quality of the collected data on European works is a very time consuming and costly task. So far, the [LUMIERE VOD Database¹](#) only collects information on European films but the integration of European television content is envisaged from 2021. The database can provide a useful point of reference for regulators, but is not meant as a legal instrument. Agnes also conveyed the message that the Observatory is open to further discussion and cooperation with some EPRA members about the collection of data on European works should there is a need. (see Annex 2 for more details).

➤ **Message 3: Prominence matters**

Ensuring **prominence of European works on VoD** matters, because in the end of the day if quotas are fulfilled by hiding a lot of cheap content at the bottom of VoD catalogues, then it is not particularly helpful with regard to the regulatory objective of promoting European quality content.

This is why it is really important to engage in a constructive dialogue with VoD providers on what are the best ways to ensure prominence of European works. This is the route currently taken by the Belgian CSA. It was mentioned that ideally, to yield optimal results, regulators should not be too dogmatic or rigid by imposing a specific method, but leaving them the choice.

Finally, the discussion highlighted that quotas are one instrument among a wide range of other tools to promote diverse and culturally relevant European content and enhance the indigenous European production sector. One of these tools - and a key regulatory concern of our times - is the prominence of public service content in the online environment. It was reported that in the UK, as part of a broader review on the sustainability of public service broadcasters released on 4 July 2019, Ofcom has carried out an examination of the current audiovisual context to determine whether a new legal framework was necessary and if so, how to ensure the discoverability of public service content in the online world.

¹ This new directory of European **films**, which currently contains data taken from about 300 different **pay video on-demand services** (transactional and subscription VoD) available in 28 European countries, aims to help professionals, the public authorities and citizens to find information about European films and their availability on-line in VoD services throughout the EU. This project, managed by the EAO, is supported by the CREATIVE EUROPE programme of the EU: The Directory is currently in beta version until December 2019: <http://lumierevod.obs.coe.int/>

Ofcom's recommendations² for the Government emphasised that it is necessary to secure prominence of PSBs in online world with a new framework. PSBs, whether traditional or on-demand services, shall remain easy to find on all devices and, owing to the shift in the audiovisual landscape, there is no guarantee of prominence and discoverability of PSB content in the future. The new legislation “should aim to secure discoverability of PSB in a proportionate way as well as supporting continued consumer choice and innovation”.

² https://www.epra.org/news_items/prominence-of-public-services-broadcasters-in-the-online-world-ofcom-s-recommendations



European works & prominence:

How to assess the nationality of European audiovisual works?

50th EPRA Meeting, Athens, 24 October 2019

Sophie Valais

Legal Analyst

European Audiovisual Observatory



Overview

- 1. Genesis and purpose of the EAO mapping on the nationality of European AV works**
- 2. Scope, methodology and main challenges**
- 3. The way forward**

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1.

One step backward: before promotion, identification

Assessing nationality of European AV works is paramount for:

- Producers and public film funds / access to public financing
- Service providers and regulators / fulfilling and monitoring of quotas and prominence obligations

Assessing nationality becomes even more crucial in the context of implementation of the revised AVMSD

But, difficulties arise in practice...

1.

Main difficulties in assessing the nationality of European AV works

- **Different definitions of the concept of 'work' across the EU-28**
 - ✓ E.g. it may refer to different categories of AV works
- **Different practical implementation of this concept in the EU-28**
 - ✓ E.g. regarding the assessment of the nationality of co-productions
- **Differences at national level among stakeholders:**
 - ✓ E.g. between public film (or AV) funds and regulators
- **Information on nationality disseminated:**
 - ✓ E.g. among many – mostly national - sources

1.

The need for comparative data in the EU-28

Need for comparative data and analysis of:

- ✓ The legal definitions, and
- ✓ The current practices
- ✓ ... in place in the EU-28 concerning the nationality of European AV work

Project launched upon request from the European Commission

Schedule:

- ✓ From March 2019 to May 2020

Overview

1. Genesis and purpose of the EAO mapping on nationality of European AV works
- 2. Scope, methodology and main challenges**
3. The way forward

2. **Scope of the EAO mapping**

Mapping report of the legal frameworks and current practices in the EU-28 to define the nationality of AV works:

- To map the legal framework and the current practices in the EU-28 relating to the national definitions of the nationality of AV works
- To identify the current resources available to assess the nationality of AV works
- To determine the needs of stakeholders and of the involved institutions
- Common or separate approaches to the assessment of the nationality of AV works by public funds/audiovisual funds and regulators.

2.

Methodology

1.



National experts

An expert for each of the EU-28, Iceland, Norway and Switzerland

2.



A questionnaire

filled in by national experts

3.



National factsheets

cross-checked by EFADs

4.



Comparative analysis

done by an expert selected by the EAO

2.

State of play:

1.



National experts

An expert for each of the EU-28, Iceland, Norway and Switzerland

2.



A questionnaire

filled in by national experts

3.



National factsheets

cross-checked by EFADs

4.



Comparative analysis

done by an expert selected by the EAO

The questionnaire



- **Section 1** - Definitions of a 'work' adopted in each country, and identifying what categories of works are considered as AV works
- **Section 2** - How NRAs assesses that a work falls under one of situations covered by Article 1 paragraph 1 point (n) and Article 1 paragraphs 2 to 4 of the AVMS Directive (*European works*)
- **Section 3** - How the national film funds assess nationality of AV works
- and collection of information on relevant practices and legislation concerning the labelling in metadata of audiovisual content that qualifies as European works.

Overview

1. Genesis and purpose of the EAO mapping on nationality of European works
2. Scope, methodology and main challenges
- 3. The way forward**

3. The deliverables

1. **A mapping report, including comparative analysis and national fact sheets**
2. **A workshop of industry stakeholders with the aim to:**
 - ✓ Present the findings of the mapping research
 - ✓ Identify possible follow-up actions through:
 - Sharing of best practices between film/audiovisual funds and regulators;
 - Understanding the methodologies put in place by the organisations already providing data on the nationality of AV works
 - Identifying the needs of film funds, regulators and the industry re. the assessment of the nationality of AV works

THANK YOU!

For any queries: sophie.valais@coe.int



Observatoire européen de l'audiovisuel
European Audiovisual Observatory
Europäische Audiovisuelle Informationsstelle

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



WG II European works and prominence: Data identification and processing

EPRA meeting
Athens, 23-25 October 2019

Agnes Schneeberger

Market Analyst, Department for Market Information



Overview

1

- 1. Where does the data come from?**
- 2. How is the data processed?**
- 3. What are the next steps?**

Where does the data come from?

Data scraping model replaced by collaboration with

a) Film Portals

- ✓ JustWatch / 17 countries / 250 catalogues
- ✓ Filmtoro / CZ, PL, SK / 40 catalogues
- ✓ La Pantalla Digital / ES / 20 catalogues



b) VOD Services

- ✓ Netflix, Amazon, Apple / EU28
- ✓ Chilli / 5 countries



c) Associations

- ✓ EUROVOD / 15 catalogues



SLIDE 1: WHERE DOES THE DATA COME FROM?

Data scraping model/ purchase of 3rd party data (e.g. Ampere) replaced by collaboration with film portals and individual VOD services.

- European Audiovisual Observatory (EAO) track record: 5 years experience in analysis of VOD catalogues (scraping model + collaboration model)
- EAO gave up on scraping as it was binding too many resources (staff, IT expenses, data purchases, time)

Rationale for selection of portals: market relevance / scale – large coverage of services and countries / willingness/ability to cooperate / independent services through EUROVOD – everybody willing to join can do so / individual services are welcome (Netflix, Amazon, Chili, EUROVOD members, soon maybe Rakuten TV and Apple)

How contact was established: EC (i.e. Netflix, JustWatch, Amazon, Apple) / direct contact through mail / contact through LUMIERE VOD contact interface (visibility)

EXAMPLES FILM PORTALS:

1) JustWatch – The Streaming Search Engine (DE)

- Aggregator/ Search engine/ legal online availability of films and TV series
- provides data for 17 European markets / 250 catalogues (e.g. Amazon Prime, iTunes, Microsoft, YouTube Red, Sky Go, Viaplay etc.)
- 4 updates per year including film & TV series
- JustWatch received funding by the CREATIVE EUROPE programme in 2018 to “Enhance the overview, accessibility and visibility of European films and TV shows”

2) Filmtoro (CZ)

- CZ, PL, SK
- 40 catalogues (e.g. Amazon, iTunes, Google Play, HBO Go, Filmbox, Rakuten etc.)

3) La Pantalla Digital (ES)

- Guide of digital platforms available in Spain
- Data delivery includes 20 catalogues
- Supported by the Spanish Ministry of Education, Culture and Sports

EXAMPLES VOD SERVICES:

1) Netflix / Amazon / Apple (US) – SVOD

- EU28

2) CHILLI (IT) - TVOD

5 countries: AT, DE, IT, PL, UK

EXAMPLE ASSOCIATIONS:

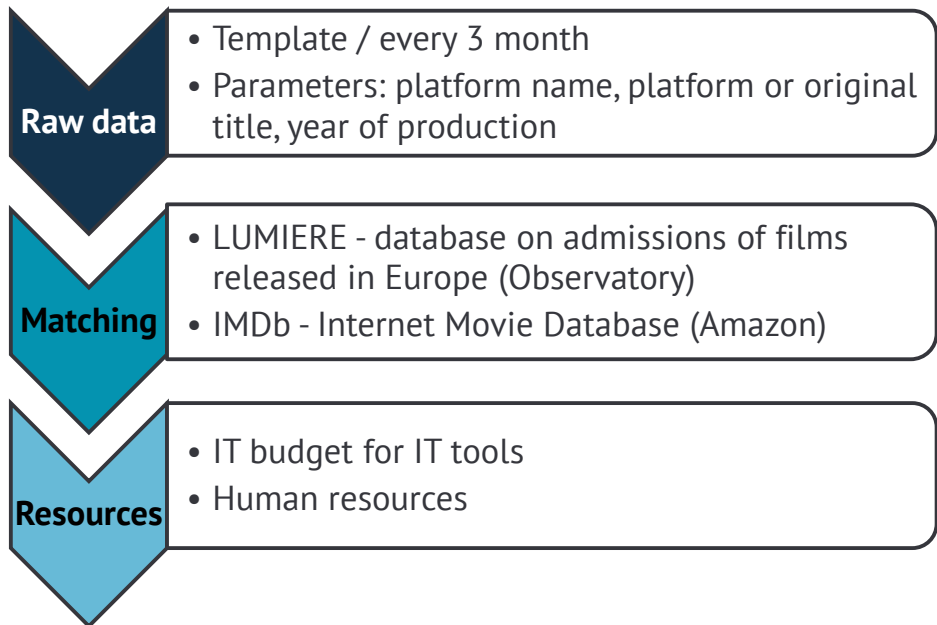
1) EUROVOD

- Association of European Video on Demand platforms
- Specialised in art-house, independent and European cinema
- Covers smaller European countries
- 10 – 15 catalogues

How is the data processed?

3

2.



SLIDE 2: HOW IS THE DATA BEING PROCESSED?

1. Raw data – example film

- Intervals of data delivery: every 3 month
- Mandatory EAO template parameters: platform ID, platform or original title, year of production
- Other EAO template parameters: name of platform / titles = platform title (language version) + original title / IMDd-ID / EIDR-ID / ISAN-ID / original release year / creator / producer / distributor
- Providers have struggled to adapt using a template – not used to extracting data upon request for a number of indicators (e.g. country of origin)
- Providers collaborating with EAO have adapted internal IT systems to standardise data extraction processes

2. Matching (of country of origin) + controlling of data quality – the most time consuming and costly task

- 2-step matching of FILM raw data first with
 - a) LUMIERE – database on admissions of films released in Europe / Parameters: Title / director / production year / year of exploitation / producing or co-producing country (i.e. country of origin)
 - b) then with IMDb-Internet Movie Database (Amazon): checking of

parameters: Country of origin, director if not in file, year of production if not in file etc.

- IDs are crucial for matching + standardisation of process (provider needs to stick to the same ID per title when delivering data; otherwise its back to zero)
- EAO has catalogues matched by country of origin
- EAO offers access to lists of European films; for access to full catalogues NRAs need to negotiate with providers

3. Resources needed

- Personnel: 1 IT specialists, 1 analyst
- Time spent on average JustWatch quarterly data file: 4 days (checking, correcting, uploading, matching, publishing)
- IT budget: development of IT tools

Output – analytics and reports

- Regular reports on audiovisual works in VOD catalogues
- Analyses by production region: EU / EAO countries / US

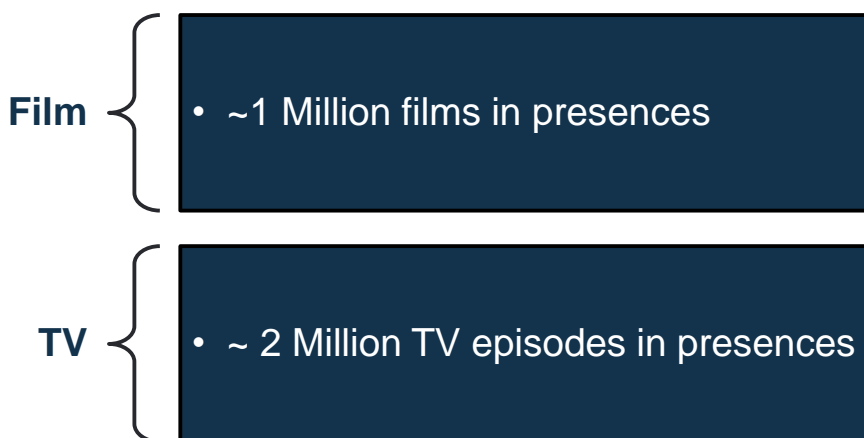
2.1



Data example

4

JustWatch data file = 170 MB



SLIDE 2b: DATA EXAMPLE

- Magnitude of data processing and matching
- Huge data files: Average quarterly JustWatch data file = 170 MB

Film - title:

- Volume film: ~ 1 Million films in presences (all VOD = SVOD+TVOD)
Definition of films in presences = cumulated presences/occurrences of a film title in several catalogues

TV – title – season – episode:

- TV content much more complicated than film data
- Virtually no information on older works (IMDb not as comprehensive on TV than it is on film)
- Volume TV content: ~ 2 Million TV episodes in presences (all VOD = SVOD+TVOD)
Definition of TV episodes in presences = cumulated occurrences of an episode in several catalogues
- TV title/programme = show (e.g. Breaking Bad (US), Stranger Things (US), The Crown (UK), Downton Abbey (UK), The new Pope (IT), Dark (DE))
- Significant differences: e.g Big Bang (US) = 50 episodes/season; The Crown (UK) = 10 episodes/season

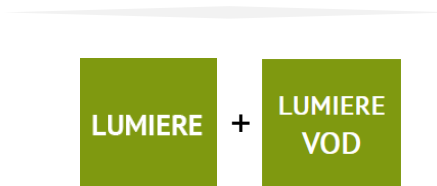
Key finding:

- There are more European TV titles than there are US titles but the latter are almost omnipresent (hence, the volume of US TV episodes in presences is far greater)

What are the next steps?

3.

1. Merging of LUMIERE & LUMIERE VOD back offices
2. Incorporation of TV content in LUMIERE VOD (2021)
3. Launch of a film and TV content library, with all programme related metadata (tbc)



SLIDE 3: NEXT STEPS

- Merging of LUMIERE & LUMIERE VOD back offices
- Integration of TV content in LUMIERE VOD (2021)
- Launch of a film and TV content library, with all programme related metadata (tbc)
- Free of charge database / Purpose: Tool to identify country of origin of films and TV works

Discussion points:

- Exploration of potential overlapping interests between EAO and NRAs / synergy effects
- EAO is open for discussion / an extended partnership with NRAs
- EAO can help with the matching and identification process (but cannot share catalogue data per se; NRAs would need agreement with JustWatch)
- EAO can help NRAs to approach JustWatch
- Possibility to mutualise costs if interest from NRA side?

For any queries:

→ agnes.schneeberger@coe.int



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Europäische Audiovisuelle Informationsstelle

