

MIA

FILM
DOC
TV SERIES

MERCATO
INTERNAZIONALE
AUDIOVISIVO

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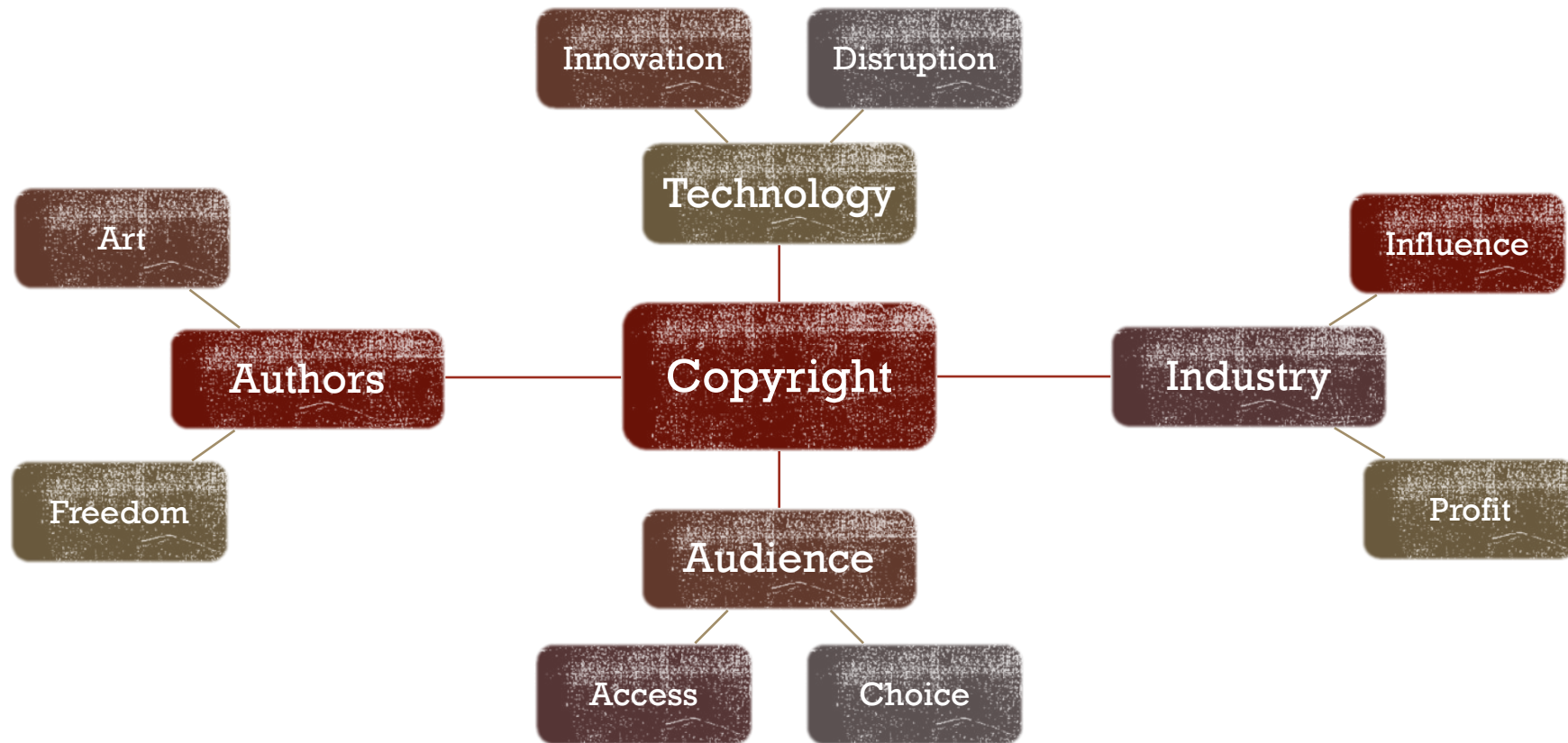
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THIS CONFERENCE

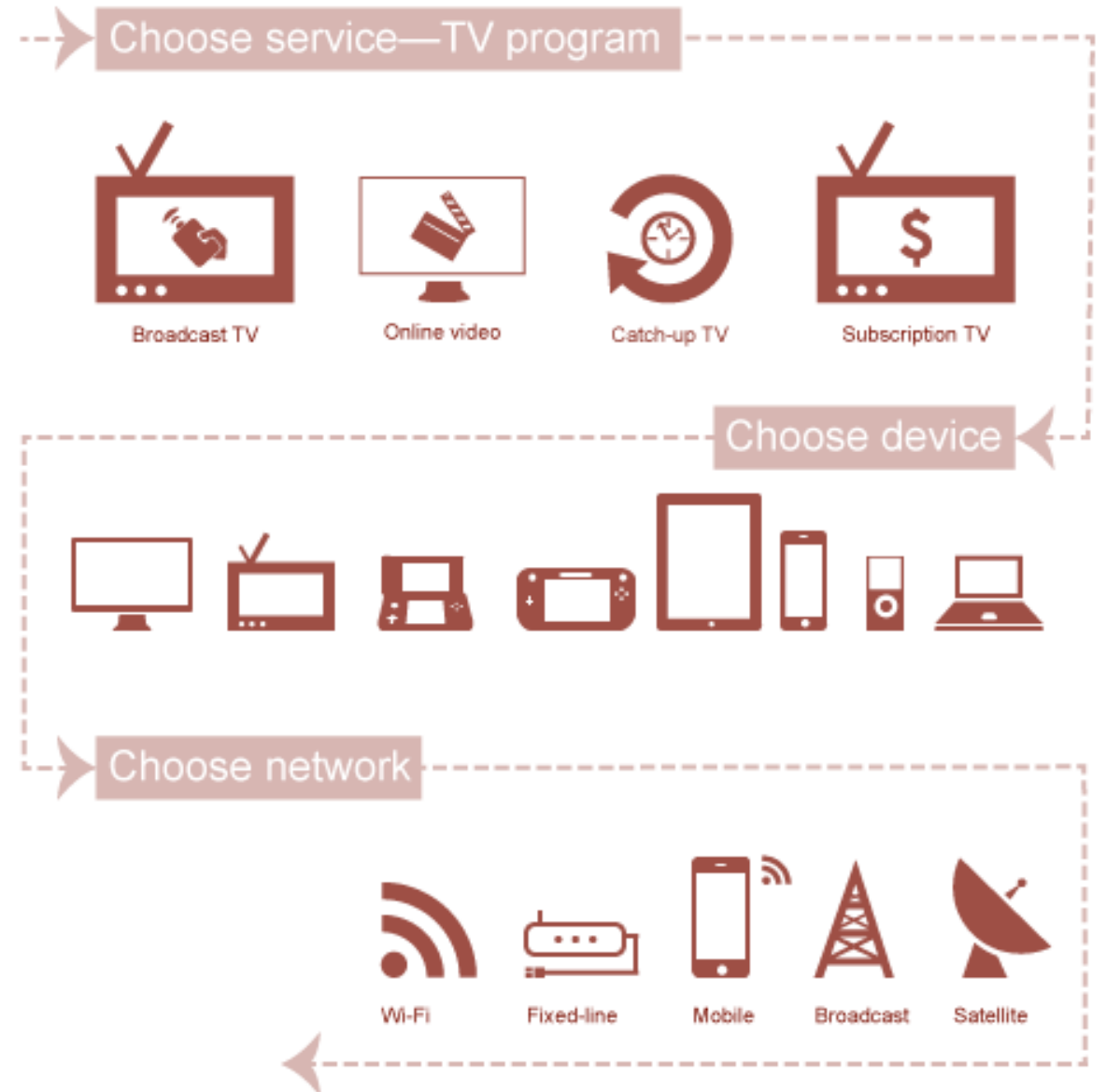
- «In this age of **technology**, with the growing **influence** of the audiovisual **industry** over increasingly **diverse audiences**...
- ...l'Autori reflects on the role that **copyright** can play in the foreseeable future to **protect creative freedom**.
- This translates into protecting the right to **plurality** and **quality** for audiences.
- The challenge is to **lead the market**, a place of **commercial** exchanges *par excellence*, to reflect on...
- ...the **borderline** that protects **creativity**, **art** and **culture** from mere **profit**, in the name of which almost everything is sacrificed these days».

THIS CONFERENCE



THIS CONFERENCE

- **Broadcasters** and **retransmission** service providers are increasingly **investing** in the development of **digital and online services** for the distribution of **radio and television programmes**.
- The **online offerings** of broadcasters include notably **simulcasting** services (TV/radio channels which are transmitted **online** alongside traditional broadcasting by **satellite, cable** or, **terrestrial**), **TV catch-up services** and **podcasts**.
- Despite the growing variety of online services, broadcasters' programmes often remain **unavailable** online to European citizens living in other Member States.
- In addition, the **variety** of TV and radio channels from **other Member States** provided by retransmission services **differs** across the EU.



PRINCIPLES

- **Digital content** is one of the main **drivers** of growth in the digital economy
- There is a need:
 - to **wider online access to content** for users, including audiovisual, music, books and other sectors...
 - ...and to a **market and regulatory environment** that continues to be **conducive** to **creativity**, its **sustainable financing**, and **cultural diversity**.
 - to **update copyright rules** in accordance with digital realities, to ensure that **European creative industries** remain **competitive**...
 - ...and to maintain a **good balance** between **copyright** and other **public policy objectives** such as **education, research, innovation** and the needs of **persons with disabilities**.
 - to allow EU residents to **travel with the digital content** they have purchased or subscribed to at home.

MODERNISATION OF EU COPYRIGHT RULES

- Rationale:
 - A well-functioning, modern **copyright framework**...
 - **...balances...**
 - ...the **protection** of creators and cultural industries...
 - ...with **access** for citizens to culture, knowledge and education, **also across borders**.



EU COPYRIGHT DIRECTIVES (1991-2014)

Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, OJ L 122, 17 May 1991, p. 42 (repealed and replaced by Directive 2009/24/EC)

Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, OJ L 346, 27 November 1992, p. 61 (repealed and replaced by Directive 2006/115/EC)

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, OJ L 248, 6 October 1993, p. 15

Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights, OJ L 290, 24 November 1993, p. 9 (repealed and replaced by Directive 2006/116/EC)

Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, OJ L 77, 27 March 1996, p. 20

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, OJ L 167, 22 June 2001, p. 10

Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art, OJ L 272, 13 October 2001, p. 32

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L 157, 30 April 2004, with Corrigendum in OJ L 195, 2 June 2004, p. 16

Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, OJ L 373, 27 December 2006, p. 28

Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version), OJ L 372, 27 December 2006, p. 12

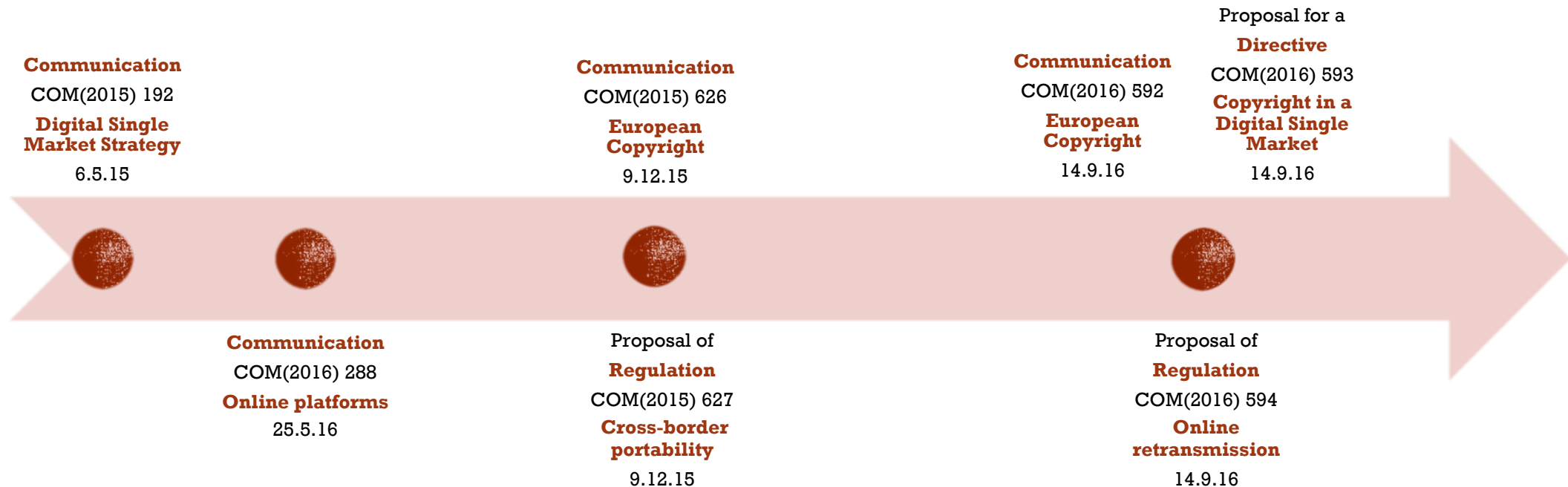
Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (codified version), OJ L 111, 5 May 2009, p. 16

Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights, OJ L 265, 11 October 2011, p. 1

Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works, OJ L 299, 27 October 2012, p. 5

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 on-line use in the internal market, OJ L 84, 20 March 2014, p. 72

TIMELINE OF MOST RECENT DOCUMENTS



MODERNISATION OF EU COPYRIGHT RULES

- The Commission has proposed **two directives** and **two regulations** to **adapt** the **EU copyright rules** to the realities of the **Digital Single Market**, on 14 September 2016.
- 1. A **directive** on **copyright** in the Digital Single Market and a **regulation** will ensure:
 - **better choice and access** to content online and across borders
 - improved copyright rules on **research, education and inclusion** of disabled people
 - a **fairer and sustainable marketplace** for **creators**, the **creative industries** and the **press**.
- 2. The **Marrakesh treaty** for people with **print disabilities** will be implemented in EU law via a **directive** and **regulation**.

DEFINITIONS

Impact Assessment

- Before the EC proposes a new initiative, it **assesses** the need for EU action and the potential economic, social and environmental impact of **alternative** policy options in an **Impact Assessment**.

Communication

- A **Communication** is a policy document with **no mandatory authority and no legal effect**.
- The Commission takes the initiative of publishing a Communication when it wishes to set out its own thinking on a topical issue.

Directive

- A **Directive** is a legislative instrument that is **binding** on the Member States to whom it is addressed as regards the result to be attained, but leaves them free to determine the form and methods.
- Once adopted, a Directive has to be **transposed** by each of the Member States, that is to say they must be **implemented** by national laws.

Regulation

- A **Regulation** is a **legislative** act, **binding** in its entirety and **directly applicable** in all Member States.

DATA

- On average, **European films** only reach **2.8** EU Member States...
- ...compared to **6.8** EU Member States for **US films**.
- In **cinemas**, the gap between **European films (2.6)**...
- ...and **US films (9.7)** is even wider
- **47%** of **EU films** released in EU **cinemas** between 2005 and 2014 are **available on at least one VOD service** (5,046 films out of 10,828)...
- ...while **87%** of **US films** released in the same period in EU **cinemas** are available on at least one VOD service (2,404 films out of 2,748)
- **Co-productions** circulate better than average European films:
 - European **films** are on average available in **2.8** countries...
 - ...while European **co-productions** are available in **3.6** countries

CREATIVE EUROPE



KEY ISSUES

- In Italy:
 - Definition of «**Independent Producer**»
 - **Labour** Contract
- Across EU:
 - **Transparency** (reporting from producer about revenues and remuneration due)
 - **Unwaivable right to remuneration** for the online use of the works (collective management societies) - not part of the EC proposals at this stage
 - **Territorial licensing** (country of origin principle)

THE TERRITORIAL LICENSING ISSUE

- The current version of the Regulation jeopardizes **the principle of territorial licensing** in broadcasting
- This would **undermine** the **value** of **premium content**
- This would also put in danger both **local productions** and **local operators**
- The possibility for **consumers** to shop where the price is lower (e.g. Greece vs UK) would push **multinational operators (M.O.)** to **protect themselves** and adopt **new strategies**:
 - The M.O. could **buy** the rights for the **whole EU** and **sell** them at a high price only to the **high-spender** countries.
 - Otherwise, they could **sell** them **also** to the low-purchase power countries but at a **price higher** than today.
 - M.O. could also opt for **expanding** themselves all over Europe, in order to **avoid the risk** that **local operators** could acquire premium contents at a **lower price** for local distribution and **then sell them to a wider European audience**.
- Hence, the weakening or elimination of the principle of territorial licensing would surely **undermine local operators**, and also the distribution of attractive contents for **consumers** living in countries with a lower purchase power.

THE TERRITORIAL LICENSING ISSUE

- The draft Regulation extends the «**country of origin principle**» to the clearing of rights for **broadcasters' online services** ancillary to their initial broadcast (e.g. catch-up TV)...
- ...that's the most challenging proposal of the package for the sector, as it effectively attacks the principle of **territorial licensing** in broadcasting.
- This would undermine the value of premium content by allowing **citizens** to shop around among the different EU providers for broadcasts and events.
- Consumers' focus would narrow on **popular** AV content in EU countries, and **access it** wherever that content is sold **more cheaply** because of lower purchasing power.
- In the mid-term, it could mean **less local operators hosting varied** (and **less commercially-attractive**) **content**.
- It could benefit **consumers** by easing access to entertainment, but also could have the opposite effect, with right-holders **not selling** their products to markets they deem less profitable.

THE COUNTRY OF ORIGIN PRINCIPLE

- The «**country of origin principle**» is a principle in the law of the European Union for resolving conflict of laws between Member States.
- The principle states that, where an action or **service** is **performed in one country but received in another**, the **applicable law** is the law of the country where the action or service is **performed**.
- The opposing principle is the «**country of reception principle**».
- For example, if a sale of goods is made over the Internet from a website in France to a purchaser in Italy, the **country of origin principle** would be said to apply if **French law** applied to the transaction, and the **country of reception principle** if **Italian law** prevailed.
- For **satellite** broadcasting the clearance of rights has been facilitated by the application of the «**country of origin principle**» enshrined in the **Satellite and Cable Directive** (Directive 93/83/EEC), allowing broadcasters to **clear the rights only in one Member State**.
- That Directive does **not** apply when a **broadcaster** clears rights for its **online services**.

THE COUNTRY OF ORIGIN PRINCIPLE

- The **proposal for a Regulation** COM(2016) 594 concerns the facilitation of the **clearance of rights for ancillary online services** by broadcasting organisations by introducing a «**principle of country of origin**», according to which...
- ... **the copyright relevant act takes place solely in the Member State where the broadcasting organisation is established.**
- It also facilitates the clearance of rights for retransmission services provided over **closed networks** (other than cable), by introducing rules on **mandatory collective management**.
- The aim of the proposal is to take account of, inter alia, the changes in technology which necessitate adaptation of the previously harmonised legal framework.
- The proposed instrument is a **regulation** given the need to ensure that the rules achieve the objective in a **uniform manner** and are **directly applicable**.

THE COUNTRY OF ORIGIN PRINCIPLE



In favour

- Consumers
- Public Service Broadcasters
- Commercial Radios

Against

- Commercial Broadcasters
- Right-holders
- Collective Management Organizations