



FÉDÉRATION  
WALLONIE-BRUXELLES

Brussel,

25 OCT. 2012

**Ms. Neelie Kroes**  
European Commission  
Commissioner in charge of the Digital Area  
(BERL 10/224)  
1049 Brussel

Our ref : FD/JB/ep/25/ *6027*  
Edith Pirlot  
02/413.20.77  
[edith.pirlot@cfwb.be](mailto:edith.pirlot@cfwb.be)

**Subject: European Film Agency Directors- Taxation of Internet Service Providers**

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Dear Ms. Kroes,

On behalf of the European film agency's directors (EFAD), please find enclosed a letter regarding the taxation of Internet Service Providers.

We are looking forward to discussing this very important issue with you and would like to thank you for the attention you will pay to this common position.

Yours sincerely,

Cc: Mr. José Manuel Barroso, President  
Mr. Joaquin Almunia, Vice-President, Commissioner in charge of competition  
Ms. Androulla Vassiliou, Commissioner in charge of Education, Culture, Multilingualism and Youth

Frédéric Delcor  
General Secretary



To:  
Neelie Kroes, Vice-President, Commissioner in charge of the Digital Agenda

From:  
Eric Garandeau Président du Centre National du Cinéma et de l'Image Animée (France)  
Frédéric Delcor, Directeur du Centre du Cinéma et de l'Audiovisuel de la Communauté Française de Belgique

**Re: EFADs urge the European Commission to consider ISPs as full audiovisual players, therefore liable to parafiscal taxes aimed at financing European audiovisual creation.**

*The EFADs (European Film Agency Directors – see list of signatories below) was set up in 2001 to constitute the interlocutor of European institutions on all the film aspects of EU policies. They represent the directors of national film agencies in all the EU countries, as well as in Iceland, Norway and Switzerland.*

Dear Ms. Kroes,

At their latest meeting in San Sebastian on September 24<sup>th</sup>, the EFAD decided to set up a specific working group to reflect upon how best to finance audiovisual creation in Europe in the digital era, embracing the related fiscal and taxation issues.

This decision was triggered by a common lack of understanding of the European Commission's position in relation to the notification of the French TST ("taxe sur les services de télévision", one of the three parafiscal taxes that fuel the French audiovisual support system).

European cinema cannot rely on market forces only.

If Europe can still take pride on a vivid and diverse cinema, it is of course thanks to its talents, the richness of its cultures and a pool of innovative SMEs and micro-enterprises. But it is also largely thanks to a set of public interventions, spanning from direct public financial support – which is channeled through State and local aids and financed through different mechanisms including State budget support, resources from lottery as well as parafiscal taxes – to obligations set on broadcasters to promote and invest in European audiovisual works and to binding release windows (a.k.a. "chronologie des medias"), developed in conformity with the provisions laid down under the AVMS directive, as an answer to the need for European audiovisual works to be pre-financed.

This system is currently being seriously challenged.

With the digital revolution, the sector was hit by the consequences deriving from the so-called "convergence" of communication means. New players, and in particular Internet operators (such as portals and search engines) and ISPs, some of them being established in the EU, other not, entered the sector and gave public access to audiovisual works. These works are made available through linear and non linear services. They may be part of "marketed offers" (such as multiple play offers proposed

by ISPs); but they can also be accessed from the very moment that the end-consumer gets connected to high-speed Internet through a variety of processes, such as fixed or mobile Internet applications, that enable effective consumption of audiovisual works.

Hence an increasing number of audiovisual players do not contribute to financing audiovisual creation, even though they derive substantial added-value and revenues from the publishing or distribution of audiovisual works. Indeed, these new market-players are not submitted to parafiscal taxation and hardly submitted to --if not exempt from-- legal obligations pertaining to promotion of and investment in European creation.

These systemic changes are taking place against a backdrop of financial and economic crisis prompting national authorities' attempts to reduce public spending.

In this context, for almost one year now, the French authorities have been waiting for the Commission's green light to a change that was introduced in the TST's legal base with a view to ensuring a level playing field in the market and the rules applicable to film financing. The Commission's preliminary scrutiny, carried out by DG Connect and the Legal Service, led it to believe that any tax levied on ISPs would be prohibited in application of the so called "authorization directive" of the telecom package. As far as we understand, DG Connect is also of the view that ISPs should not be taxed on the same lines as traditional audiovisual players, because this would allegedly prevent Europe from seizing the opportunities of the digital revolution and its related growth opportunities.

Should this twofold assessment indeed reflect the Commission's collective view, we would then have to share our profound disagreement with what we hold as "positive discrimination" in favor of ISPs. In our view, DG Connect's interpretation of the telecom package's prevalence over all other Community rules and Treaty principles is neither legally nor politically sound. It rather seems to contradict the principle of technological neutrality, go against subsidiarity --especially when it comes to Member States' fiscal prerogatives-- and render ineffective the provisions of UNESCO's Convention on Cultural diversity, according to which Member States must remain free to finance culture through what they believe constitutes the most appropriate means.

Should it be confirmed, DG Connect's approach would be all the more damageable to European cinema as France has a long-standing history of co-production with the rest of Europe, which might be directly impacted by a curtailing of public resources geared towards audiovisual creation. France is annually co-producing circa 120 feature films with over 35 countries. And it just launched a World Cinema Support Scheme which will grant an additional € 6 million annually to support 40 to 60 feature films originating from third countries.

It can't be overstressed that other European countries are currently thinking of introducing similar taxes on ISPs. At least one EU Member State has recently proposed a similar system and faced the same opposition from DG Connect. Outside Europe, Brazil voted a tax on mobile phones which is expected to provide for several hundreds of millions of USD to the Brazilian film industry.

By potentially opposing a proportionate taxation of ISPs to support European audiovisual creation, the European Commission would hamper the adaptation of audiovisual public support systems to the reality of the digital world -- thus contradicting its own "Europe 2020" strategy and its overarching objective of boosting a "smart, sustainable and inclusive growth" in Europe. This is all the more worrying at a time when the European Commission is also attempting to dramatically change the rules applicable to the assessment of the euro-compatibility of national support schemes to the audiovisual sector and is thereby threatening the sustainability of public support to the audiovisual sector. Other

Commission's initiatives are not less worrying: release windows are for instance being increasingly questioned at Community level, on account that they supposedly act as barriers to the circulation of European films and the emergence of innovative business models.

The undersigned members of the EFADs would therefore like to draw the Commission's attention on the potentially dramatic and systemic consequences of all the above mentioned initiatives. They are calling on the Commission's collective goodwill to enrich its understanding of the audiovisual sector, share it across the different DGs and thus develop a truly comprehensive approach of the best ways to adapt this sector to a changing environment.

Of course, each and every Member State has to lend a helping hand in that process and do its own part, e.g. by rethinking the way to secure resources aimed at fuelling audiovisual creation in a cost-effective, sustainable and non-discriminatory way. In this regard, we hold the view that the French TST reform constitutes a fair try that should be put to the test – and not killed in the nest.

We readily stand at the Commission's disposal, should you and your services care to further this discussion.

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**Ms. Androulla Vassiliou**  
European Commission  
Commissioner in charge of Education, Culture,  
Multilingualism and Youth  
200, rue de la Loi  
(BERL 10/ 110)  
1049 Brussel

Our ref : FD/IB/ep/25/ 6026  
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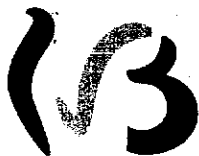
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These systemic changes are taking place against a backdrop of financial and economic crisis prompting national authorities' attempts to reduce public spending.

In this context, for almost one year now, the French authorities have been waiting for the Commission's green light to a change that was introduced in the TST's legal base with a view to ensuring a level playing field in the market and the rules applicable to film financing. The Commission's preliminary scrutiny, carried out by DG Connect and the Legal Service, led it to believe that any tax levied on ISPs would be prohibited in application of the so called "authorization directive" of the telecom package. As far as we understand, DG Connect is also of the view that ISPs should not be taxed on the same lines as traditional audiovisual players, because this would allegedly prevent Europe from seizing the opportunities of the digital revolution and its related growth opportunities.

Should this twofold assessment indeed reflect the Commission's collective view, we would then have to share our profound disagreement with what we hold as "positive discrimination" in favor of ISPs. In our view, DG Connect's interpretation of the telecom package's prevalence over all other Community rules and Treaty principles is neither legally nor politically sound. It rather seems to contradict the principle of technological neutrality, go against subsidiarity --especially when it comes to Member States' fiscal prerogatives-- and render ineffective the provisions of UNESCO's Convention on Cultural diversity, according to which Member States must remain free to finance culture through what they believe constitutes the most appropriate means.

Should it be confirmed, DG Connect's approach would be all the more damageable to European cinema as France has a long-standing history of co-production with the rest of Europe, which might be directly impacted by a curtailing of public resources geared towards audiovisual creation. France is annually co-producing circa 120 feature films with over 35 countries. And it just launched a World Cinema Support Scheme which will grant an additional € 6 million annually to support 40 to 60 feature films originating from third countries.

It can't be overstressed that other European countries are currently thinking of introducing similar taxes on ISPs. At least one EU Member State has recently proposed a similar system and faced the same opposition from DG Connect. Outside Europe, Brazil voted a tax on mobile phones which is expected to provide for several hundreds of millions of USD to the Brazilian film industry.

By potentially opposing a proportionate taxation of ISPs to support European audiovisual creation, the European Commission would hamper the adaptation of audiovisual public support systems to the reality of the digital world -- thus contradicting its own "Europe 2020" strategy and its overarching objective of boosting a "smart, sustainable and inclusive growth" in Europe. This is all the more worrying at a time when the European Commission is also attempting to dramatically change the rules applicable to the assessment of the euro-compatibility of national support schemes to the audiovisual sector and is thereby threatening the sustainability of public support to the audiovisual sector. Other

Commission's initiatives are not less worrying: release windows are for instance being increasingly questioned at Community level, on account that they supposedly act as barriers to the circulation of European films and the emergence of innovative business models.

The undersigned members of the EFADs would therefore like to draw the Commission's attention on the potentially dramatic and systemic consequences of all the above mentioned initiatives. They are calling on the Commission's collective goodwill to enrich its understanding of the audiovisual sector, share it across the different DGs and thus develop a truly comprehensive approach of the best ways to adapt this sector to a changing environment.

Of course, each and every Member State has to lend a helping hand in that process and do its own part, e.g. by rethinking the way to secure resources aimed at fuelling audiovisual creation in a cost-effective, sustainable and non-discriminatory way. In this regard, we hold the view that the French TST reform constitutes a fair try that should be put to the test – and not killed in the nest.

We readily stand at the Commission's disposal, should you and your services care to further this discussion.

Österreichisches Filminstitut (Austria)  
Centre du Cinéma et de l'Audiovisuel de la Communauté Française (Belgium)  
Vlaams Audiovisueel Fonds (Belgium)  
Cultural Services of the Ministry of Education and Culture (Cyprus)  
Ministry of Culture (Czech Republic)  
Danish Film Institute (Denmark)  
Estonian Film Foundation (Estonia)  
Filmförderungsanstalt (Germany)  
Finnish Film Foundation (Finland)  
Centre National du Cinéma et de l'Image Animée (France)  
Ministero per i Beni e le Attività Culturali – Direzione Generale per il Cinema (Italy)  
Nederlands Fonds v.d. Film (Netherlands)  
Instituto do Cinema e Audiovisual (Portugal)  
Centrul National al Cinematografiei (Romania)  
Instituto de la Cinematografía y de las Artes Audiovisuales (Spain)  
Slovak Audiovisual Fund (Slovakia)  
Slovenian Film Centre (Slovenia)  
Swedish Film Institute (Sweden)  
Norwegian Film Fund (Norway)  
Iceland Film Centre (Iceland)