

EUROKINEMA
*Association de producteurs
de cinéma et de télévision*

FIAD



Independent
Film & Television
Alliance

IVF
International Video Federation

Michel Barnier
European Commissioner for Internal Market and Services
European Commission
BERL 10/034
B - 1049 Brussels

September 9, 2010

European Cultural Heritage – Orphan Works

Position of the European Cinematographic and Audiovisual Industries

Dear Commissioner Barnier,

We are writing to you in the context of a possible forthcoming Commission initiative on orphan works.

The members of the undersigned organizations are businesses active in all segments of the film, television and audiovisual content sector in Europe. Their activities include production and co-production of films and audiovisual content as well as distribution thereof in the theatrical, video, television and online channels. Certain member companies are also active in international sales. Many of our members are pursuing the offer of cinematographic and audiovisual works online, either directly to end-users or working in cooperation with service providers or content aggregators deploying different business models (e.g. time-limited viewing, streaming or digital delivery of permanent copies). Such new services bring wider choice to consumers as they involve an increasing variety of content, both on the Internet, but also through other types of networks.

We are keen supporters of the EU's goals to promote the digitization of cultural works in order to preserve Europe's heritage, to the benefit of European citizens. This commitment has led our sectors to participate in the development of the Memorandum of Understanding on Diligent Search Guidelines for Orphan Works in 2008 by 27 signatories, including libraries, archives, audiovisual archives, and right holders in the presence of Commissioner Reding. During the elaboration of the MoU and the related guidelines, all participants recognized that the scope and amplitude of the perceived problem of orphan works vary from sector to sector. We therefore proceeded with developing sector-specific guidelines agreed by the relevant stakeholders for each content sector, and we continue to support a sector-specific approach.

Joint Letter – EUROKINEMA/FIAD/FIAPF/IFTA/IVF

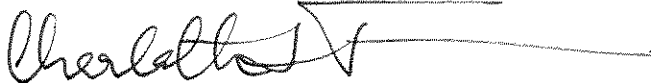
We take the view that legislative intervention to address orphan works and the availability of content in the cinematographic sector – and even in the wider audiovisual sector – is unnecessary, as the existence or extent of a real problem of orphan works remains to be demonstrated. As such, there is a risk that a legislative solution in search of a problem is being contemplated. In order to justify and validate legislation, the problem and efficacy of the proposed remedy need to be clearly and empirically proven.

We are not aware of an Impact Assessment undertaken by the Commission which covers the cinematographic or indeed the wider audiovisual sector – this would of course be a prerequisite to any intervention. Should the Commission feel it necessary to review the issue of orphan works in the context of the cinematographic and audiovisual sectors, we suggest considering adding a provision to the forthcoming draft legislative instrument providing for an in-depth study by the Commission of the extent of orphan works in the cinematographic and audiovisual sectors to determine whether future legislative action is appropriate and proportionate.

In order to preserve and protect the cultural heritage, we continue to believe that voluntary agreements and public-private partnerships are the way forward. Should a public sector archive/library wish to provide access to copyrighted content online, it should do so through licensing arrangements with rights holders in the same way as is common practice for physical content and always in a manner not interfering with the normal exploitation of the work by the right holders, as foreseen by European and international law.

We look forward to continuing the dialogue on this crucial issue and remain at your disposal for further information.

Yours sincerely,



Charlotte Lund Thomsen

Director General

INTERNATIONAL VIDEO FEDERATION

On behalf of:

EUROKINEMA - FIAD – FIAPF – IFTA - IVF

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EUROCINEMA Association of Producers was founded in July 1991 at the initiative of all professional associations representing film producers in France. Faced with growing intervention by the European Community in the audiovisual sector, and the importance of the decisions being taken, it appeared to the promoters of EUROCINEMA to be most urgent that some means should be set up to promote a genuine Community policy for the film industry.

The International Federation of Film Distributors Associations (FIAD) gathers the national organisations of film distribution companies. Film distributors are the intermediates between film producers and cinema exhibitors and cover the entire range of companies: small and medium-sized companies specialized in art house films as well as larger companies specialized in mainstream films. FIAD's members operate in 16 European countries where they achieve from 90% to 100% of the theatrical market.

The International Federation of Film Producers Associations (FIAPF) is a trade organisation dedicated to the defence and promotion of the legal, economic and creative interests of film and audiovisual producers throughout the world. FIAPF's members are 26 national producers' organisations from 23 countries across the globe from Europe, Asia, Pacific, North America, and Latin America.

The Independent Film & Television Alliance (IFTA) represents international film production and distribution companies operating in the EU, the US and the rest of the world, independently from the Hollywood majors. Its European membership includes some of the most senior companies involved in the development, production and international sales of many award-winning European films as well as films from the rest of the world.

The members of the International Video Federation (IVF) comprise companies, which are involved in all areas of the film industry (development, production, distribution, etc.) as well as entities dedicated to, and specialized in, distribution of audiovisual content on digital media and/or over digital networks, including the Internet.

CC: Mr. Olivier Guersent, Head of Cabinet; Mrs. Kerstin Jorna, Acting Head of Cabinet