

Questionnaire on the exercise of rights of performers and producers in the audiovisual sector

Fields marked with * are mandatory.

Context

The purpose of this consultation is to collect information and data on the exercise of the related rights of performers and producers in the audiovisual sector. The Commission will analyse these information and data in preparation of a report assessing the possible need for an extension of the term of protection of the rights of performers and producers in this sector as required by Directive [2011/77/EU](#). The consultation is addressed to those engaged in the management of rights in the audiovisual sector.

In the European Union, the related rights of performers and producers in the audiovisual sector expire 50 years after the first communication to the public or the first publication of a audiovisual work (according to Article 3 of Directive 2006/116/EC). The term of protection of copyright in audiovisual works expires 70 years after the death of the last of the following persons to survive: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the audiovisual work (Article 2(2) of Directive 2006/116/EC).

Directive [2011/77/EU](#) on the term of protection of copyright and related rights extended the term of protection of the related rights of performers and producers in the music sector from 50 years to 70 years under certain circumstances. The term of protection of the related rights of performers and producers in the audiovisual sector was not extended.

Article 3(2) of the same directive requires the Commission to assess the possible need for an extension of the term of protection of the rights of performers and producers in the audiovisual sector. The Commission would like to gather information and data on current market practices and on the exercise of rights of performers and producers in this sector. The consultation should, in particular, provide the Commission with information and data regarding the exploitation of audiovisual works and related revenue streams, during and after the expiry of the term of protection of the relevant related rights.

Part 1: General information concerning the respondent

* 1. I am responding as:

between 1 and 4 choices

It is possible to select several categories.

- An audiovisual performer or a representative organisation of audiovisual performers
- An audiovisual producer, a distributor, a sales agent or a representative organisation of audiovisual producers, of distributors or of sales agent

- A provider of audiovisual content (broadcaster, video-on-demand platform, cultural heritage institution) or a representative organisation of such providers
- Other

* 2. Please provide your first name and your last name and the name of your organisation, where relevant.

Yvon THIEC
EUROKINEMA.

* 3. Please indicate your country of residence or principal establishment

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czechia
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

* 4. Please indicate your preference for the publication of your response on the Commission's website:

- Under the name given: I consent to publication of all the information contained in my contribution and I declare that none of it is subject to copyright restrictions that prevent publication.

- Anonymously: I consent to publication of all the information contained in my contribution and I declare that none of it is subject to copyright restrictions that prevent publication.
- Please keep my contribution confidential (it will not be published, but will be used internally within the Commission).

* 5. **[If you are a representative organisation]** Is your organisation registered in the Transparency Register of the European Commission and the Transparency Register of the European Parliament?

- Yes
- No

If yes, please indicate your organisation's registration number in the Transparency Register.

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* Privacy Statement

- I agree with the Privacy Statement

Privacy statement

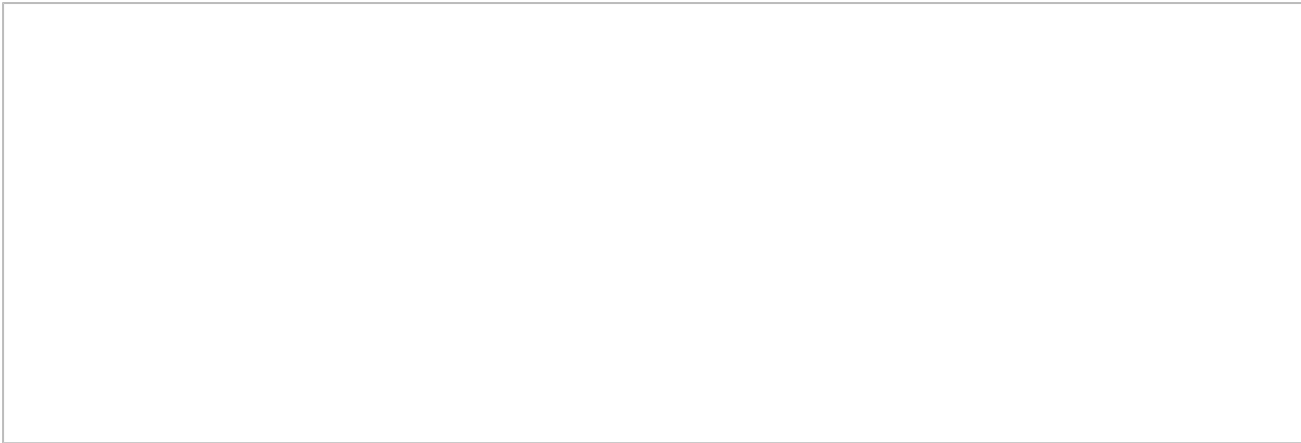
[Privacy Statement for survey.pdf](#)

Part 2: General information on the situation of producers

6. **[If you are a representative organisation of audiovisual producers/distributors/sales agents]** How many of your members are established in an EU Member State? Please indicate their distribution per Member State.

EUROCINEMA gathered this information from its French member, PROCIREP (Société des producteurs de cinéma et de télévision).
PROCIREP is a CMO that has 820 members, mainly French producers of cinematographic & other audiovisual works.

7. If you are a producer, distributor or a sales agent, please describe the type of audiovisual works you are producing/distributing/selling or the type of audiovisual works in your catalogue.



Part 3: Exercise of rights of audiovisual producers

The impact assessment accompanying the proposal for a Council Directive amending Council Directive 2006/116/EC as regards the term of protection of copyright and related rights notes that audiovisual producers are often in a specific situation concerning the assignment and transfers of their rights. In particular, audiovisual work producers in certain Member States are considered as co-authors of a audiovisual work (e.g. Ireland), others are considered as holders of so-called ‘related rights’ (e.g. in France), while others benefit from a presumption of rights transfer (e.g. pursuant to national implementations of Article 3(4)-(6) of Directive 2006/115/EC)[1]. Information on the specific situation of producers, the management of their rights and of the evolution of revenue streams are important factors when analysing the term of protection of related rights in the audiovisual sector.

[1] Impact assessment accompanying the proposal for a Council Directive amending Council Directive 2006/116/EC

General information

8. In your experience, how many audiovisual authors, performers[1] or other right holders are usually involved in an audiovisual work and what is their role?

Such as actors, singers, musicians and dancers. In certain Member States, secondary actors are not considered as right holders (e.g. L.212-1 of French Code of Intellectual Property which excludes the “artistes de complement”).

Although it is difficult to give a precise answer to that question as their number might vary a lot from one work (or type of work) to another, are in general involved in the production of an AV work (i) a couple of authors (a director, one or more screenwriters, the composer of the soundtrack, ...) , (ii) sometimes one or more co-producers (companies who are then rightholders in the AV works) and/or distributors or other rightholders contributing to the financing and distribution of the work, but (iii) hundreds of performers.

9. How do [you/your members] obtain the rights of audiovisual authors and of performers?

- Through a legal presumption or other legal mechanism (usually based on a work contract)
- Through a contract of transfer of rights
- Other
- I do not know

If Other, please specify.

Producers in France benefit from a legal presumption of transfer of rights from the authors (article L.132-24 of French Copyright Law = Code de la Propriété Intellectuelle – hereafter “CPI”) and from the performers (article L. 212-4 CPI), which has to be materialised through a contract. In addition to that, they benefit from a neighbouring right as “videogram producers” (article L.215-1 CPI) which (i) facilitates the proof of ownership in the AV work, notably in legal actions in cases of counterfeiting, and (ii) is the basis of the private copy remuneration that said AV producers are benefitting from under article L.311-1 and following of CPI.

10. Which rights do [you/your members] usually transfer/license to distributors, broadcasters and/or other providers of audiovisual content?

- Authors’ rights of audiovisual authors
- Related rights of audiovisual producers
- Related rights of performers
- Other
- I do not know

If Other, please specify.

Attached to the patrimonial rights transferred to them by Authors, as well as attached to the specific neighbouring rights that AV producers are benefitting from, are the reproduction and representation rights (or right of communication to the public). The distribution and/or “making available” rights are a combination of these reproduction and/or representation rights.

Those rights are licensed to distributors and/or broadcasters and/or other providers of AV content (video editors, VOD platform editors, ...) for specific exploitation media (theatrical release as far as feature films are concerned, DVD-BR edition, pay TV & VOD, free TV & VOD, ...) and windows (see also Q.12 hereafter).

11. According to your experience, what revenue schemes are usually provided for in contracts with distributors, broadcasters and/or other providers of audiovisual content?

- Lump-sums (one-off payment)
- Royalties (percentage-based remuneration)
- Up-front lump sums + royalties (percentage-based remuneration)
- Other
- I do not know

If Other, please specify.

Up-front lump sums + royalties (percentage-based remuneration) with distributors
Up-front lump sums with broadcasters

12. For how long are the rights usually transferred/licensed to the distributor or other provider of audiovisual content?

- For the entire term of protection
- For part of the term of protection
- I do not know

Please specify, where relevant.

For part of the term of the protection, for the negotiated windows specific to each exploitation media, in accordance with media chronology.

13. When concluding a contract with a distributor or another provider of audiovisual content, have you encountered any difficulties to prove that you have obtained the rights from audiovisual authors or performers?

- Always
- Often
- Sometimes
- Rarely
- Never

14. What are these difficulties about?

- Number of right holders involved in the audiovisual work
- Difficulty to identify right holders after a certain period of time
- Difficult to recover proofs of transfer
- Other

Please specify.

non applicable

15. If applicable, are these difficulties increasing over time?

Exploitation revenues over time

Exploitation revenues should be understood as the overall revenues generated by the audiovisual work.

16. Please describe the evolution over time of the revenues generated by [your audiovisual works/ audiovisual works of your members]?

	Revenues over time
% of total revenues are generated during the first year of exploitation of an audiovisual work	60% (see CNC study below)
% of total revenues are generated during the first 5 years of exploitation of an audiovisual work	90% (ibidem)
% of total revenues are generated during the first 20 years of exploitation of an audiovisual work	95% (see below)
% of total revenues are generated after the first 20 years of exploitation of an audiovisual work	5% (see below)
% of total revenues are generated after 50 years of exploitation of an audiovisual work	1% only (see below as well as Q.20)

If it is not possible to provide figures, please briefly describe the usual evolution of revenues generated by [your audiovisual works/audiovisual works of your members] over time.

The figures above are a combination of findings in a 2014 study made by CNC (based on French feature films, but % can only be higher in the first years regarding other types of AV works) and PROCIREP's own figures.

The study made by CNC under supervision of René Bonnell and presented in January 2014 gives a good idea of the sharp decrease in the revenues of a standard French feature film after the first 5 years of exploitation : based on the 160 French feature films (FIF) released in 2004, it was noted that 60% of the revenues were made in the first year of release, and 90% in the first 5 years.

This study was made in 2014 and covers a period of 10 years after production (= year of release) of the studied works, but the trend (see slide hereafter) is self explanatory : the revenues generated after 8 years are more and more marginal.

These figures & trends are confirmed by PROCIREP's own figures based on private copy remuneration split of revenues compared to the year of production of the works concerned (here feature films + TV fiction and documentaries), which is the following (see chart - annex1):

Whatever the year of distribution of rights concerned, it has to be noted that circa 80% of the revenues distributed by PROCIREP are generated by works produced in the last 8 years, and 95% by works produced in the last 20 years. As a consequence, revenues generated after 20 years are around an average of 5%. Last but not least, the % of works excluded from PROCIREP private copy revenues because they are older than 50 years, be it in number of works (see Q.19 below) or in potential revenues generated (see Q.20 below), is insignificant (slightly above 1%) : (see chart - annex1)

Whatever the year of distribution considered, the percentage of revenues potentially generated by works older than 50 years is just above 1% of total revenues generated by all copyright protected works included in that given year's distribution of revenues.

17. In your opinion, after how long does an audiovisual work normally stop generating revenues?

See Q.16 above : revenues become totally marginal (close to 0) when approaching 50 years after production.

18. Please indicate how many audiovisual works that you have produced before a certain year were still generating revenues in 2018 (please fill in with numbers)?

	Audiovisual works produced before a certain year
audiovisual works produced before 1970	16
audiovisual works produced before 1990	146 (including those produced before 1970)
audiovisual works produced before 2000	345 (including those produced before 1990)
audiovisual works produced before 2010	1211 (including those produced before 2000) (see Annex1)

Part 4: Exploitation of audiovisual works after 50 years from their release - Situation of producers

This part aims at gathering information on the exploitation of audiovisual works after 50 years from their release. The rights on which audiovisual work producers rely generally expire 50 years after the first release of the audiovisual work (except for authors' rights).

19. How many audiovisual works in [your catalogue/ the catalogues of your members] are still exploited 50 years after their release?

- Less than 5%** of the audiovisual works in [my catalogue/the catalogues of my members] are still exploited 50 years after their release
- Between 5 and 10%** of the audiovisual works in [my catalogue/the catalogues of my members] are still exploited 50 years after their release
- Between 10 and 25%** of the audiovisual works in [my catalogue/the catalogues of my members] are still exploited 50 years after their release
- Between 25 and 50%** of the audiovisual works in [my catalogue/the catalogues of my members] are still exploited 50 years after their release
- Between 50 and 75%** of the audiovisual works in [my catalogue/the catalogues of my members] are still exploited 50 years after their release
- More than 75%** of the audiovisual works in [my catalogue/the catalogues of my members] are still exploited 50 years after their release

20. On average, how much revenue per audiovisual work are generated by audiovisual works that are more than 50 years old?

See Q.16 above : marginal. Based on PROCIREP figures for private copy remuneration, it represents circa 1% only.

21. Regarding the audiovisual works in [your catalogue/the catalogue of your members] that are still exploited 50 years after their release, please specify in which form (e.g. in special screenings, cinemathèques, television broadcast, availability on video-on-demand platforms) and at what frequency are they still exploited?

Special screenings, cinemathèques, television broadcast, DVD/blue ray, availability on video-on-demand platforms.

22. Please provide any other information that you find useful regarding the exploitation of audiovisual works over time.

AV works' producers in France exploit AV works on the basis of the transfer of authors' rights as provided by article L.132-24 of the Intellectual Property Code. As such, they actually benefit, for each work in their catalogue, of a term of protection of 70 years after the death of the last co-author. Therefore, they do not really need any extension of the term of protection of any neighbouring rights in AV works.

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/Annex1_charts_Q16_evolution_revenues_generated_by_AV_works_EUROCINEMA-contribution.pdf

Contact

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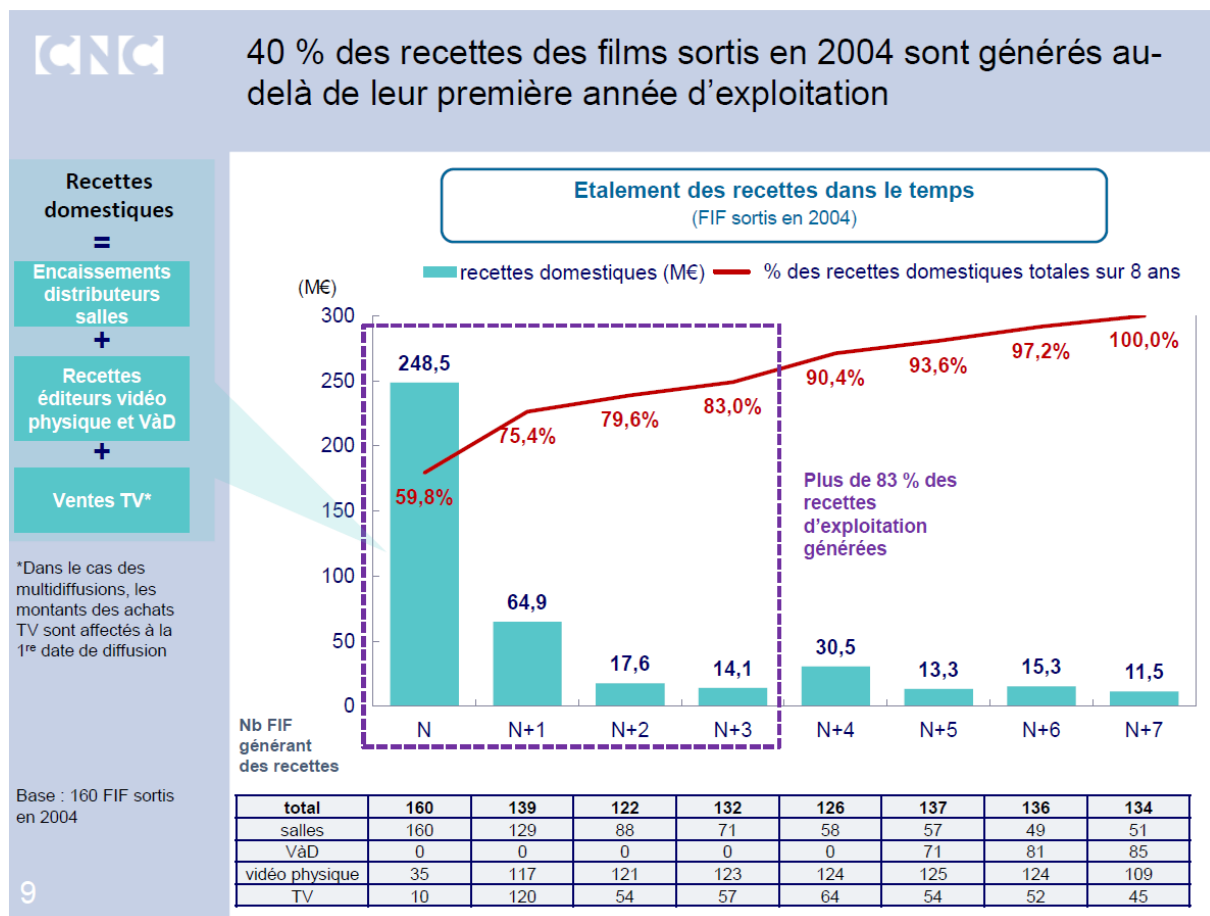
16. Please describe the evolution over time of the revenues generated by AV works of your members.

% of total revenues generated the 1st year of exploitation: 60% (see CNC study below)
 % of total revenues generated the 1st 5 years of exploitation: 90% (ibidem)
 % of total revenues generated the 1st 20 years of exploitation: 95% (see below)
 % of total revenues generated after the 1st 20 years of exploitation: 5% (see below)
 % of total revenues generated after the 50 years of exploitation: 1% only (see below as well as Q.20).

The figures above are a combination of findings in a 2014 study made by CNC (based on French feature films, but % can only be higher in the first years regarding other types of AV works) and PROCIREP's own figures.

[The study made by CNC](#)¹ under supervision of **René Bonnell** and presented in January 2014 gives a good idea of the sharp decrease in the revenues of a standard French feature film after the first 5 years of exploitation : based on the 160 French feature films (FIF)² released in 2004, it was noted that 60% of the revenues were made in the first year of release, and 90% in the first 5 years.

This study was made in 2014 and covers a period of 10 years after production (= year of release) of the studied works, but the trend (see slide hereafter) is self explanatory : the revenues generated after 8 years are more and more marginal.



¹ Les Etudes du CNC – Décembre 2013 – L'économie des films français

² Films d'Initiative Française

These figures & trends are confirmed by PROCIREP's own figures based on private copy remuneration split of revenues compared to the year of production of the works concerned (here feature films + TV fiction and documentaries), which is the following :

Year of distribution	Produced in last 5 years	Produced in last 8 years	Produced in last 20 years
2015	69,0%	78,3%	95,3%
2016	68,8%	79,7%	94,6%
2017	69,7%	80,7%	94,5%
2018	74,2%	83,7%	94,8%

Whatever the year of distribution of rights concerned, it has to be noted that circa 80% of the revenues distributed by PROCIREP are generated by works produced in the last 8 years, and **95% by works produced in the last 20 years**. As a consequence, **revenues generated after 20 years are around an average of 5%**.

Last but not least, the % of works excluded from PROCIREP private copy revenues because they are older than 50 years, be it in number of works (see Q.19 below) or in potential revenues generated (see Q.20 below), is insignificant (slightly above 1%) :

	2018	2017	2016	2015
Total # of works remunerated by PROCIREP *	11244	11627	12146	11809
Works older than 50 years (not remunerated) **	139	142	129	147
% of works	1,2%	1,2%	1,1%	1,2%
% of total remunerations	1,2%	1,2%	1,3%	1,1%
* : total number of feature films, TV movies & serials (1 season=1 work), documentaries & magazines (1 season = 1 work)				
** : not remunerated under neighbouring right but still copyright protected for producers as assignees of authors' rights				

Whatever the year of distribution considered, the percentage of revenues potentially generated by works older than 50 years is just above 1% of total revenues generated by all copyright protected works included in that given year's distribution of revenues.

Number of audiovisual works, fictions and documentaries produced (based on revenues distributed in 2018 by Procirep):

# Works produced before 1970	16	0%
# Works produced before 1990 (including those produced before 1970)	146	2%
# Works produced before 2000 (including those produced before 1990)	345	5%
# Works produced before 2010 (including those produced before 2000)	1211	19%
For comparison: Total # Works* in Distribution of year 2018	6309	100%

* where 1 Work = 1 movie or 1 TV fiction or 1 Documentary or 1 season of a serial work (actual number of titles including episodes as well as non-patrimonial works is therefore higher; on the contrary, works produced before 1990 are mainly unitary works).