

## Cinema and television: Falling in Love Again?

It may appear paradoxical to put the question of the relations between cinema and television back on the agenda when the current industry focus is on the development of the internet as a new delivery vehicle for audiovisual works. More than ever, it is clear that the audiovisual system forms a complete unit and that recent changes in regulations and the practices of economic players and consumers are interacting in an increasingly faster and complex way, so we believe it is worthwhile reconsidering these relations at a time when the digital technologies are reaching maturity and producing ever more perceptible effects.

Contrary to the fears of cinema professionals in the 1960s-80s, television has not killed off cinema-going, nor does the rapid rise of the internet seem to have had a major impact on cinema attendances. According to the MPAA, the worldwide box office increased by 25% between 2006 and 2010. In Europe, even though attendances dropped in 2010 compared with 2009, the trend has actually been upwards since 2005. At the same time, they can be considered to have remained stable in the United States since then. The demographic studies carried out by the MPAA only identify one population category for which regular attendances dropped in 2010, namely women between 40 and 49. The members of the “Y generation”, who are big internet consumers, continue to go to the cinema whereas most studies on the development of the television audience tend to show they are consuming less television and more internet.

The range and consumption of films on television has changed. The appearance of pay film channels in the 1980s and 90s gradually led the general-interest channels, both public and private, to reduce the number of films shown, especially during prime time, in favour of audiovisual fiction and other entertainment programmes. However, this trend seems to have stabilised. The analysis carried out on behalf of the European Audiovisual Observatory by Infomedia on the fiction programming of 137 television channels in Europe (feature films, television films, series, animation and short films) shows that the market share of feature films in all fiction programming rose from 34.6% in 2007 to 35% in 2009.

### The wide range available

Film channels are, together with sports channels, the dominant genre in the pay-TV

packages, whether on cable, satellite platforms, IPTV networks or digital terrestrial television. At the beginning of 2011, the European Audiovisual Observatory’s MAVISE database listed no less 324 film channels in the European Union. They include 108 fully or partly controlled by American companies: 48 by News Corp. (Sky in the United Kingdom, Germany, Austria and Italy), 34 by Time-Warner (the TCM versions throughout the continent and HBO in Central Europe, and since 2010, in Nordic countries, Silver and Showtime) 18 by the Liberty Global group (in Belgium, the Netherlands and Central Europe) and 10 by Sony (MGM).

Among the European groups, Vivendi provides 16 film-only channels (Canal+ Cinéma and the Cinécinemas package in France, Canal+ in Poland and Kinowelt TV in Germany). The Swedish groups are particularly active on the pay-TV market by providing their services in various language versions in the Scandinavian and Baltic countries: MTG offers 39 channels (TV1000, Viasat), and the television group TV4 has taken over the company C More Entertainment, which provides the Nordic Canal+ channels. In Central Europe, the Czech group SPI proposes 15 services.

TV4 is not the only group to have diversified from general-interest television funded by advertising to pay film channels. Others include Mediaset in Italy (Joi and 4 Premium channels), ProSiebenSat.1 Media AG in Germany, (kabel eins classics), MTV in Finland and CME in Bulgaria and the Czech Republic. A number of public broadcasters have also launched film channels: RAI in Italy (2 channels), Channel 4 in the United Kingdom (Film Four), ERT in Greece and TV2 in Denmark. In order to compete with the satellite platforms or simply provide a national offering, the cable operators have often taken the initiative to create or take over film channels, such as ONO in Spain, Kabel Deutschland in Germany, Zon Multimedia in Portugal, Telenet and Voo in Belgium, Melita in Malta and Baltkom TV in Latvia. In countries where pay digital terrestrial television is developing, the services are spearheaded by film and sports channels. In Italy, for example, the DTT services offer no less than 15 pay film channels. As far as cable, satellite or IPTV is concerned, there are, especially in the United Kingdom and France, a number of channels aimed at immigrant cultural minorities, such as channels showing Indian, Chinese, Arabic, African or Russian films. A channel showing French films is available in the United Kingdom. Finally,

## Introduction

there are channels specialising in short films, some of them forming part of packages targeting consumers of mobile telephone video.

To all these film channels may be added other special-interest channel genres that show films, such as children's channels, women's channels and entertainment channels with a mixture of films and series. The spread of pay film channels has often prompted the large traditional general-interest channels to reduce the number of films they show, especially during prime time. In the United Kingdom, the number of films broadcast on pay channels and other channels in multi-channel packages rose from 38 865 in 2000 to 69 592 in 2009. At the same time, the number broadcast by the traditional terrestrial channels fell from 2 318 to 2 218. In France, the reduction in the number of films shown by the traditional channels during prime time left a gap that was identified by the new free-to-air channels set up for digital terrestrial television. They were able to mount their expansion by broadcasting library catalogue films, as illustrated by a recent study by Médiamétrie. The mass availability of a range of films tends to reduce the value of the programming and it is interesting to note that an incumbent pay-TV channel such as Canal+ is currently building its image more on the creation of lavish television series than on a premium film service.

The analysis of the film programming of 137 European television channels carried out in 2009 by Infomedia for the European Audiovisual Observatory shows that American films are still hugely dominant. In only two of the fifteen countries analysed (France and Finland) is the proportion of European films (including nationally produced films) above 50%, and in eight countries it is below 40%. In the United Kingdom, where the programming of 29 channels was analysed, it does not exceed 23.8%.

### **Broadcasters' investment obligations before the courts**

Apart from the place of European films in the programme schedules, the role of television channels in funding national film production is still an important issue for debate. There are various approaches and models: quantified obligations (laid down by the authorities, as in France, by establishing a set of conditions or negotiated with the producers' federations), levies on the channels' revenues transferred to film production support funds or direct contributions to the budget of the film institutes (as it is the case in various Nordic countries). Although the broadcasters' role in the provision of support for

film production is generally recognised in Europe, two court cases have recently illustrated that the question remains contentious.

In Germany, cinema operators condemned their alleged unequal treatment compared with the broadcasters. In order to provide funding for the Federal Film Board (Filmförderunganstalt – FFA), the provisions of the Film Support Act (Filmförderungsgesetz – FFG) in force until July 2010 imposed a statutory fixed scale on cinema operators and the video industry, whereas the broadcasters were free to negotiate the amount of their contribution. Following the complaint made by the cinema operators, the Federal Administrative Court, in February 2009, expressed reservations about the constitutionality of this difference in the method of levying the charge and referred the matter to the Federal Constitutional Court. With the aim of responding to the Federal Administrative Court's concerns and providing a sound legal basis for funding the FFA, the federal legislature passed in July 2010 an amendment to the FFG that introduces the obligation for broadcasters to pay a film tax, the amount of which is also laid down by law and is in proportion to the number of films in their programming. Finally, in judgments delivered on 23 February 2011 the Federal Constitutional Court established that the film tax was constitutional and dismissed the appeal lodged by several cinema operators, pointing out in that connection that there was no doubt about the legality of imposing a film tax on cinema operators, video distributors and broadcasters, who derived economic advantages from showing German films produced in Germany with subsidies from the FFA. Consequently, the court considered it justified to ask these players to contribute to the provision of support for the production of audiovisual works.

In Spain, proceedings brought by the private broadcasters could produce contrary outcomes. A law dating from 1999 made it compulsory for broadcasters to invest in film production and this was to be confirmed in a new general law on the audiovisual industry. UTECA, a national association set up by six private broadcasters, lodged an appeal against the General State Administration challenging this obligation, which it considered unconstitutional, even though its members had been complying with it for ten years. The Supreme Court held that the obligation imposed on television operators by the Spanish law to earmark 5% of their revenues for the funding of Spanish and European film productions was contrary to the principle of free enterprise guaranteed by Article 38 of the Spanish constitution, especially as the television operators were obliged

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to invest the money in film and not television production. The Supreme Court did not discount the possibility of encouraging the broadcasters to contribute to film productions (especially by means of tax incentives) even though it held there was no reason to impose an obligation on the television sector or to require it to make any “sacrifice” that would reduce its economic freedom and thus benefit other parties, such as film production companies. The new law passed in March 2010 finally upheld the principle of an obligation to invest in production. The Constitutional Court should now decide if this principle is in conformity with the Constitution as argued by the Supreme Court.

### **The emergence of on-demand services is changing the relations between the cinema and television**

The emergence of on-demand audiovisual services is an important aspect of the development of the relations between the cinema and television. A number of broadcasters have embraced the strategic option of positioning themselves on this emerging market by taking advantage of their knowledge of the rights market and audiences, their relations with the distribution platforms and their brand awareness, and in many cases also of their experience on the physical video market. Players on the pay-TV market, such as Canal+, CanalSat, BskyB, Viasat and C More offer catch-up TV services for some of their film channels and/or VoD services in the proper sense. Major free-to-air television broadcasters, such as TF1, the ProSiebenSat.1 Media AG group, Mediaset and RTL (in Germany and the Netherlands) have also set up VoD services that include library catalogue films. Among the public broadcasters, Channel 4 and ARTE (only in France) also offer VoD services with their own catalogues of films.

The development of the VoD market is bringing with it a change in the chronology of distribution windows. The recent development of the idea of a premium VoD service that involves films being made available before they are broadcast on pay-TV is beginning to take hold in the United States, albeit not without some controversy: the announcement by four studios (Warner Bros., Sony, Universal and Fox) of an agreement with DirecTV for a premium VoD service enabling the user to access a film for \$30 two months after its cinema release provoked a fierce reaction by cinema operators.

The example of the situation in Germany shows that the principle of compulsory investment is only

legitimate if it is applied to the different types of exploitation (cinemas, video, television). The emergence of new distribution channels (especially the distribution of films on the internet and/or as part of on-demand audiovisual services) poses the problem of extending the obligation to pay contributions to include the new economic players, namely the operators of internet services (providers of on-demand services, video exchange services, etc). The extension of the contribution principle to the providers of video-on-demand services was made official in France by the Decree of 12 November 2010 and in Germany by the new Film Support Act passed in July 2010. In Belgium’s French-speaking Community, the cable operators’ obligation to make investments has been extended to include internet access providers when they act as distributors of audiovisual services. However, the implementation of such regulations quickly becomes highly problematic once cross border services, such as iTunes, XBoxLIVE or Zune, are set up in countries with no such provisions for the payment of levies. Similarly, the idea put forward in France of taxing Google’s advertising revenues to finance the creation of works quickly came up against the problem of the location of the service in another European country.

At a time when all the major groups are refining their strategy with the arrival of connected TV – which will permit access on a television instead of only a computer screen to audiovisual content available on the internet – the problems posed by the deterritorialisation of on-demand services are one of the key concerns for the supporters of systems of funding film production by means of levies on the various forms of exploitation.

Finally, the change in the piracy practices of the peer-to-peer networks to embrace streaming (which is easier and makes users feel less guilty) is a further challenge. The rapid availability in the pirates’ offerings of both blockbusters and library catalogue films at no cost is tending to gradually erode the value of broadcasting on television. The boom in pay-TV channels in the last few years has shown that, whatever may be said, the public are always prepared to pay to watch films on their television screen, but what will happen when connected TV also enables pirated films distributed over the internet to be watched on the television screen?

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