Broken Hollywood, Fragmented Europe.

On the surface, the global film market is doing well: according to the most recent MPAA report, the number of cinema screens worldwide has increased by 6% to over 142 000 and the global box office is up by 1.4% to USD 36.4 billion, a rise of 15% over five years. Global film production increased by 2.5% to an estimated total of over 6 500 films produced in 2014 with the EU contributing over 1 600 feature films.

These few positive indicators cannot hide the concerns of the professional world, which run so deep that the American magazine *Variety* recently ran a feature under the title *Broken Hollywood*, in which 22 of the top audiovisual executives in the United States expressed their fears about the future of an industry in which the structural upheavals are considered more serious and worrying than ever. The global box office may be up but the number of attendances in the United States and receipts on the North American market are down. The typical filmgoer now only buys an average of 5.5 tickets a years, compared with 5.9 in 2013. The average attendances of filmgoers over forty years of age rose but those of younger age groups fell. This drop in attendances in the United States was accompanied by a decline in the audiences of the networks and the cable channels and the exhaustion of the physical video market. Online audiovisual consumption, whether advertising-financed services, pay-per-view VoD or subscription VoD (not to mention video piracy, which strikes at the heart of the most costly projects), has become the dominant practice and poses a challenge to all the principal balancing factors in the system.

The same conclusion can be found in the statements of various studio directors: no measuring tools are available that would enable a precise analysis of the development of consumption practices and public tastes on the new distribution platforms to be carried out, with the result that it is becoming more and more difficult to create and market films. In the United States, collecting data on successful box office films, TV audience ratings and even video sales and rentals has always been a commercial activity in its own right and essential for a business approach in which the offer made involves a fairly sophisticated quantitative knowledge of previous successes, thus enabling the presumed demand to be gauged. The fragmentation of audience practices and, clearly, the fact that operators of on-demand services are keen to hold on to the data gathered on the successes of works provided by those services leads to the paradoxical situation that, in the era of big data, studios are finding it harder than ever to find out who is actually watching their films. The big subscription VoD operators (Netflix, Amazon) refuse to disclose their rating data while at the same time celebrating their own ability to obtain an in-depth knowledge of their customers' practices, which means they can adopt an even bolder approach and have a bigger competitive edge over the traditional market players.

The troubles experienced by Hollywood are no less serious in Europe but take on other forms. For the first time, the 2013 revenues of the entire audiovisual sector in the European Union (broadcasters, pay-TV distribution platforms, exhibition, physical video, online VoD services and video games) recorded a drop (-0.4%). The rise in online VoD revenues (+46.1%) has not compensated for the prolonged decline in the physical video market (-11.3%) and the fall in box office receipts (-4.4%). In five years, between 2009 and 2013, the proportion of European audiovisual companies on the global market fell from 20.7% to 15.4%: the stagnation of the advertising market and of the revenues of the public service broadcasters weakened the positions of the big European groups, whereas the American groups took advantage of the growth areas on the Old Continent (cable and satellite pay-TV; online video on demand). According to estimates made by the European Audiovisual Observatory, the revenues of subsidiaries of US companies in the European Union rose from EUR 31.8 billion in 2008 to 40.1 billion in 2012. These subsidiaries have strengthened their positions not only with regard to the traditional activities of programme distribution but also pay-TV, TV broadcasting, production, post-production and, of course, on-demand audiovisual services.

The risks posed by the development of on-demand services for the funding of European works have not yet been recognised as clearly in Europe as in the United States. Since the financing of European films is less dependent than the Hollywood film industry on rises in sales and rentals of videos and VoD, it has perhaps initially suffered less from recent developments brought about by the growth of the internet, but in Europe that growth risks producing a much more disastrous effect: the inexorable breakdown of one of the funding support mechanisms, namely the regulated transfer of revenues from distribution and exhibition for the benefit of production. In at least ten EU countries, distributors of pay-TV services and/or operators of video-on-demand services are required by law to contribute to the funding of production, either through contributions to support funds or by means of direct investments in production [(1)]. These arrangements (which, depending on the case, are laid down in film support legislation, tax law or the transposition of Article 13 of the Audiovisual Media Services Directive) are generally complementary to and extend provisions requiring contributions from exhibitors, broadcasters and video distributors: all distribution activities must contribute to the funding of production. In such countries as France, Germany, Poland, Spain, Belgium, Portugal and Croatia, these compulsory contributions are the very backbone of the public support policies and accordingly provide a large proportion of the funding of film production. The development of pan-European on-demand services, such as iTunes, Netflix, Amazon Instant Video or YouTube, established in countries that do not require this type of compulsory contribution may jeopardise all these arrangements. In the long run, it appears hard to imagine lawmakers being able to compel operators established in their country to pay compulsory contributions to which their competitors established abroad are not subject. In two countries (Germany and France), the lawmakers have, incidentally, recently extended the principle of these contributions to services established abroad but targeting their national market. The European Commission is currently examining whether the provisions of the new version of the German law on film funding comply with European law, especially the Audiovisual Media Services Directive. It is not for me to comment in legal terms on this delicate issue, but it seems clear that at stake is the ability of national lawmakers to maintain mechanisms for requiring contributions to the funding of production from all industry players.

The revision of the European Audiovisual Media Services Directive, due to be set in motion shortly by the European Commission, was supposed to provide an opportunity to re-examine the role of on-demand audiovisual services in the promotion of European works, in connection with the question of the territorial jurisdiction over the services. Although the European Audiovisual Observatory's recent report provides interesting information on the importance of the European works in the catalogues of some VoD services, it highlights major difficulties in collecting basic data on the main services: some – and not the least important among them – even refuse to disclose data on the number of films available in their catalogues. In particular, data on the proportion of European works offered by these services are impossible to obtain. Similarly, data on the revenues of services broken down by territory or type of content, are not made public. Although measurement companies in the United States, such as Nielsen or Rentrak, have announced the forthcoming availability of audience measurements for all on-demand services, including subscription services, no mention at all is made of Europe in this area.

In these circumstances, analysing the impact of VoD services on the film market and the funding of works in Europe remains very much a hit or miss affair and there are not many studies that examine this role. The analysis recently carried out by EY for Unifrance [(2)] is one of the few available. In 2013, the revenues of French films exploited on the French transactional and subscription VoD market were estimated at EUR 61 millions. This is a relatively low figure and represents barely a quarter of the French VoD market, which is estimated at EUR 259 million, and the equivalent of 16% of the gross box-office receipts on the French national market. The study highlights the potential for French films on the European and international markets. Nine markets (United States, United Kingdom, Germany, Italy, Spain, Poland, Japan, China, Brazil) are said to have the potential to generate EUR 45 million a year by 2020. Digital sales currently account for just under 5% of the export revenues of the producers

(1) See European Audiovisual Observatory, "The role of providers of VOD services and distribution platforms in the financing of film and audiovisual production" in *The development of the European market for on-demand audiovisual services, Report for the European Commission*, 7 April 2015, http://ec.europa.eu/digital-agenda/en/news/development-european-market-demand-audiovisual-services

(2) http://www.unifrance.org/actualites/13706/unifrance-films-devoile-un-rapport-sur-les-marches-numeriques-pour-les-films-francais-et-europeens

interviewed. The study mentions "the potential of an alternative international platform for SVoD of European origin" that would draw on existing European actors and adopt "as its distinguishing feature an approach focusing on the promotion of arthouse films, cultural-popular films or series of European origin". EY assesses its "potential at 5% of the total market of EUR 20 billion" for VoD/SVoD by 2020, i.e. "potential revenues of EUR 1 billion".

The study emphasises that producers and rightholders still have reservations about VoD, especially with regard to export strategies. The most common practice is to sell all rights (VoD and SVoD) to local distributors and include these rights in a minimum guarantee. Direct sales to platforms (Netflix, Amazon, iTunes, Hulu, Google Play, internet access providers) are in the minority and are reserved for blockbusters that "sell themselves". It emerges from conversations with professionals that SVoD sales are often more difficult and financially less advantageous. The VoD platforms generally offer revenue-sharing of around 50% of the selling price, or even 70% for new productions, for example on iTunes. It may even happen that a minimum guarantee is negotiated – from EUR 3 000 to EUR 60 000 over the entire life of the feature film – whereas in the case of SVoD the practice is more likely to be a "flat fee of EUR 3 000 to EUR 10 000 over a period of 12 to 18 months" and even "EUR 500 for a less attractive film or shorter period", such as 3 to 12 months.

The territorialisation of rights, as applied by producers for distribution on VoD and as in the case of the other forms of exploitation, is often criticised by the big international operators because it results in the practice of "geoblocking" and is one of the factors preventing online services from developing their full potential. Some of them say this territorialisation is an obstacle to the circulation of European works and stress that it encourages consumers to circumvent the rules, for example by using VPNs. The subject of the territorialisation of rights, which was brought up by the new European Commission at its orientation debate on 25 March 2015, and by the provisional report by the MEP Julia Reda on the Digital Single Market, is a new matter for concern for European professionals. The organisations of producers, distributors and exhibitors, the European Film Agency Directors (EFAD), the Society of Audiovisual Authors (SAA), and a group of twenty well-known European scriptwriters and directors recently expressed their concern following statements made by the Commission Vice-President Andrus Ansip criticising the practices of geoblocking. The present system of the territorialisation of rights is perceived as workable with regard to funding practices, which are still organised on a mainly national basis, and with regard to the distribution situation, which is mainly based on national market approaches. For the professional organisations, considering the territorialisation of rights as the principal obstacle to the circulation of works shows ignorance of the specific nature of the European audiovisual market, which was culturally and linguistically fragmented before the introduction of the regulations. Far from increasing the range available to European consumers, the elimination of the territorialisation practices would, they say, only benefit the big international platforms, which are more anxious to promote blockbusters and American series than European variety and diversity. Accordingly, rather than taking on the European rightholders the Commission is urged to consider the inclusion of these big platforms in the contributory tax system.

This opposition between advocates of a big European rights market and professionals committed to the preservation of national ecosystems is not new. In fact, it existed as far back as 1984, when the European Commission published its Green Paper "Television Without Frontiers". Since then, many films have been produced, circulated and watched, but it is regrettable that discussions are still taking place in which dogmatic a priori assumptions are made instead of analyses backed up by figures and based on a detailed knowledge of the conditions of production and the circulation of works. In view of Hollywood's insatiable appetite for statistics, the difficulties that the European film and audiovisual industry faces in developing and establishing its own standards of economic transparency will remain a great mystery to me.

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