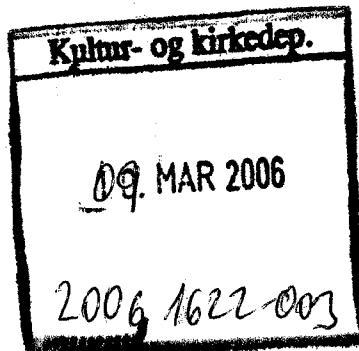


Kultur- og Kirkedepartementet
Ekspedisjonssjef Roy Kristiansen
Boks 8030 Dep
0030 OSLO

e-post: postmottak@kkd.dep.no



9. mars 2006

Høring revisjon av TV-direktivet.

Vi viser til høring om revisjon av TV-direktivet og høringsbrev av 03.02.06. lagt ut på departementets nettside.

Norske Dansekunstnere er medlem i FIA, Federation Internationale des Acteurs, som har fulgt opp EU-kommisjonens arbeid med TWF direktivet i lang tid. Vi vedlegger FIAs uttalelse til direktivet og beklager at det ikke er oversatt til norsk, men antar at det er uproblematisk.

Vi håper uttalelsen blir tatt med i Kulturdepartementets videre arbeid med direktivet.

Vennlig hilsen
Norske Dansekunstnere,
 forbundet for dansere, koreografer og pedagoger

Tone Øvrebø Johannessen
Forbundsleder

Vedlegg: Utskrift av Federation Internationale des Acteurs' uttalelse om TWF-direktivet.

Se også: http://www.fia-actors.com/en/policy_Broadcasting.html.

Vidhøg 2006/1622-003

New rules to regulate audiovisual media services in the EU

On December 13, 2005, the European Commission released a proposal for a new directive that shall set a level playing field for audiovisual services in the internal market and replace the so-called "Television Without Frontiers" directive.

FIA welcomes this initiative, which is much needed in light of the soaring pace of technological development and new content delivery channels. In particular, the delivery of video on-demand (or "non-linear services" as the Commission calls them) is still largely unregulated, regardless of the fact that, as the Commission also acknowledges, they can at least partially replace linear services in the immediate future.

Despite the Commission's best intentions, however, the new proposal is disappointing. It explicitly extends the country of origin principle to all new services, but falls short from making video on demand comply with any coherent obligation fostering the production and the distribution of European works. While "traditional" linear services continue to be subject to quotas and to the promotion of independent European production, "non-linear services" – i.e. video on demand – are only subject to a handful of minimum principles, such as the protection of minors and the prevention of racial hatred.

In its general principles, the new draft merely provides that "*member States shall ensure that media service providers under their jurisdiction promote, where practicable and by appropriate means, production of and access to European works*" and report to the Commission on a regular basis. However, articles 4 and 5 of the directive – which provide for a majority proportion of the broadcasters' transmission time in favour of European works and at least 10% of their transmission time or programming budget in favour of independent producers – remain untouched and do not apply to video on demand. The Commission considers that "*non-linear services are different from linear services with regard to choice and control the user can exercise (...) This justifies imposing lighter regulation on non-linear services*".

If quotas as such are clearly not suitable for the on-demand environment, investment obligations as well as minimum rules favouring the offer of European works are not only possible but even necessary to preserve audiovisual production in the EU and, ultimately, employment in the sector. As audiovisual content distribution massively moves to the non-linear world, even the basic obligations provided by the Television Without Frontiers directive for traditional broadcasters will soon lose their relevance if they are not extended, and adapted this new reality.

The new proposal also makes advertising rules more flexible, allowing broadcasters to choose the best moment to insert ads in programmes rather than being obliged – as they currently are – to allow at least 20 minutes between each break. However, the 12-minute/hour upper limit of all advertisement would remain. In addition, cinematographic films shall not be interrupted more than once every 35 minutes. The proposal also explicitly authorises product placement, to maximise the income that audiovisual media service providers can earn from their business. In this regard, the directive should also include a requirement aiming to safeguard the contractual freedom of performers and other talent involved in the production that may not wish their image to be associated with a given product.

FIA continues to believe that audiovisual media service providers should all be subject to equivalent rules, fostering the production and distribution of European works. In other terms, while the new directive should favour the internal market of audiovisual services, it should also strive to preserve and promote European content, including when content is made available on-demand.

Updating the "Television Without Frontiers" directive

The so-called Television Without Frontiers (TVWF) Directive is at the cornerstone of all European broadcasting regulation. This important piece of legislation has fostered the development of a true internal market for television broadcasts, namely by establishing the principle of the regulation by the country of origin – traditionally the member State where the broadcaster has its head office or where editorial decisions on programme schedules are taken. The directive also establishes minimum rules on advertising and limitations to the country of origin principle for the protection of minors and public order. Most importantly, this regulation provides for minimum obligations with regard to the promotion of distribution and production of television programmes. Where practicable and by appropriate means, broadcasters are expected to reserve a majority proportion of their transmission time – excluding time appointed to news, sports events, games, advertising and teleshopping – to European works. Furthermore, they are equally expected to reserve at least 10% of their transmission time or of their programming budget for European works created by independent producers.

The TVWF Directive has traditionally applied only to linear services, i.e. broadcasts – either by air, cable or satellite – not selected by the user at a time and place of his choice. The increasing success of on-demand services – favoured by technological development, media convergence, broadband and digitalisation – has prompted a revision of this text. Seemingly, the fall in advertising revenues has raised calls on the Commission to relax its regulation and allow new forms of audiovisual commercial communications. A radically new Directive is expected to regulate audiovisual media services as a whole, including basic provisions for non-linear services – i.e. on-demand. FIA believes that the following minimum conditions should be met for any revised legislation to be meaningful:

- The new Directive should strengthen measures aiming to foster the distribution and production of television programmes. New rules should clarify the notion of "independent producer" and of European work, increase the level of support to independent production and introduce prime time obligations. Furthermore, similar obligations should also extend to non-linear services, with all necessary adaptations.
- The new Directive should take all steps to avoid the artificial relocation of media service providers – when this is primarily made to escape tougher regulations provided for in the country where they are mostly transmitting.
- The new Directive should ensure that any possible relaxation in current advertising rules does not prejudice the intellectual property rights of performers and that product placement complies with the following principles:
 - (a) That it is clearly identified for the benefit of consumers;
 - (b) That the consent of performers – where directly or indirectly involved in the placement – is duly acquired and paid for.