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The Response of the Federation of Screenwriters in Europe to the Reflection Document of DG INFSO and DG MARKT (published 22 October 2009) on “Creative Content in a European Digital Single Market: Challenges for the Future”.

The Federation of Screenwriters in Europe (FSE) brings together twenty five writers organisations across Europe from twenty one countries.

The FSE welcomes the opportunity to add our voice to the discussion on the development of a more effective European market for creative content online that would be legal, attractive to consumers and fair to creators.

We welcome the statement contained in the conclusion section of the document which asserts that the Commission intends to take a proactive role 'in order to ensure a culturally diverse and rich online content market for consumers, while creating adequate possibilities for remuneration and improved conditions in the digital environment for rightholders'.

The correct balance between access for consumers; the capacities of intermediaries to make a profit from the distribution of creative content; and the pre-existing and underlying legal, moral and proprietary rights of creators is not an easy one to manage.

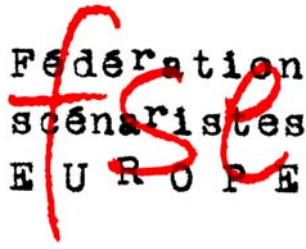
The members of the FSE are convinced by the argument that over-complex copyright and related rights access is a significant disincentive to the development of an effective European market but we are not convinced that the development of such a market will be of benefit financially or otherwise to Europe's writers. Nor are we yet convinced that constructing a market for existing audiovisual product will be of benefit to the production of new cultural work if the price to the consumer of pre-existing material is built on a business model of very low prices.

One consistent error in examining the market for audiovisual product is the assumption that all material is identical when clearly the truth is that each and every production is of varying interest to audiences.

It is the common experience of the members of the FSE that the distributors of audio-visual content online are always in favour of any proposal which will minimise the cost that they pay for the acquisition of licences to distribute content. The most common business plan for the development of VOD services seen by FSE members is one constructed around the idea that content is free to the distributors and that pricing relates only to the minuscule cost of online distribution.

Fédération des Scénaristes d'Europe // Federation of Screenwriters in Europe

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In this context it would be our view that those solutions which give legal certainty to the basic principle that creators should be compensated and should share in the economic life of the work they have created are to be preferred to those which depend on an inequitable negotiation between individual creators and producers or distributors.

We would consequently support those aspects of the various proposals put forward in the Commissions reflection document which would give legal certainty and clarity to the process of bringing audiovisual product online.

While we believe that trying to achieve further harmonisation of exceptions and limitations to copyright legislation is very unlikely to be achievable, other elements of strengthening the legislative base on which creators are compensated for the use of their work such as the proposal to establish an unwaivable right to equitable remuneration in respect of rental and lending rights could be of substantial value in establishing a more secure base for the principle that creators should be compensated for use of other work. The idea of the extension of the Cable and Satellite Directive might also be interesting but some caution and careful consideration would be necessary as a principle developed in one situation cannot necessarily be easily transferred.

The FSE is pleased that the Commission's reflection document acknowledges that creative content is dependent for its existence on creators, who in turn need to be consulted on their rights in respect of the creation and on their compensation if their work is to be used.

Christina Kallas
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