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# ANALYSIS OF THE LEGAL RULES FOR EXPLOITATION WINDOWS AND COMMERCIAL PRACTICES IN EU MEMBER STATES AND OF THE IMPORTANCE OF EXPLOITATION WINDOWS FOR NEW BUSINESS PRACTICES

## **FINAL REPORT**

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# Table of Contents

- Executive Summary .....1
- 1.1 Purpose, scope and method .....1
- 1.2 Release windows as a guiding organisational principle in the EU film sector .....2
  - The justifications for release windows.....2
  - A diversity of frameworks to organise release windows in the EU.....3
- 1.3 Digital evolutions and their impact on release windows in the EU .....3
  - A trend towards shorter windows.....4
  - The reshuffle of EU release windows systems .....5
  - Towards more flexibility? Testing new release strategies in the EU and beyond .....6
- 1.4 Introducing changes to the release windows system in the EU: opportunities and challenges  
7
  - Developing attractive VoD offers in the EU: the role of release windows.....7
  - Increasing European cross-border circulation: the role of release windows.....8
- 1.5 Conclusions .....9
- Introduction.....11
- Release windows as a guiding organisational system in the EU film sector: overview .....13
  - 1.1 The justifications for release windows .....13
    - The versioning principle .....13
    - Finding the equilibrium between different windows.....14
  - 1.2 A diversity of frameworks to organize release windows in the EU .....15
    - The EU legal framework .....16
    - The mix of policy and sector frameworks at the national level .....18
- Digital evolutions and their impact on release windows in the EU .....25
  - 2.1 A trend towards shorter windows .....25
    - Arguments in favour of shorter windows .....27
    - Arguments in favour of retaining current windows and their exclusive lengths .....28
  - 2.2 The reshuffle of the release windows system in the EU.....29
    - The overall organisation of the release windows .....30
    - The theatrical window.....34
    - The VoD window .....36
    - Conclusions.....46

2.3	Towards more flexibility? Testing new release strategies in the EU and beyond .....	47
	A closer look at some US and other film cases .....	55
	A closer look at some EU film cases .....	56
	Conclusions and lessons .....	60
	Introducing changes to the release windows system in the EU: opportunities and challenges.....	62
3.1	Developing attractive VoD offers in the EU: the role of release windows .....	62
	First availability of content in the on-demand window(s) .....	62
	Parallel availability of content in different windows .....	63
3.2	Increasing European cross-border circulation: the role of release windows .....	65
	Cross-border VoD services .....	65
	Cross-border circulation of content .....	66
	Conclusions.....	68
	Bibliography.....	70
4.1	Sources referred to in the report.....	70
4.2	Sources used for the overviews of frameworks and experiments .....	71
	Personal communications .....	71
	Studies and articles .....	72
	Press articles, company information and other sources:.....	72
	Documents and legislation EU institutions / Council of Europe .....	74
	Case law 74	
	National Legislation .....	75
	Annexes .....	76
4.3	Interviews .....	76
	Interviews with stakeholders .....	76
	Interviews with VOD services in Europe .....	79
4.4	Information Sheets for every Member State's release windows system.....	80

# Executive Summary

## 1.1 Purpose, scope and method

This report aims at providing an overview of the release windows system in the EU and its possible evolution. In Europe, audiovisual markets have developed following a largely national or linguistic trajectory, which is reflected in the set-up of different release windows systems across the EU. With the sector in the midst of a digital transition, the characteristics of this organisational principle are being reconfigured as new stakeholders and new audiovisual delivery models enter the market (notably Video on Demand). Digital technology also has the potential to allow for a more integrated market for audiovisual works in the EU. Indeed, new content delivery offers may develop in multiple territories and/or European works may increase their presence in non-national markets through digital (on demand) platforms.

In the report, we assess the relation between the release windows system and the supply and/or demand for audiovisual works in Europe (with a focus on feature films).

Two research questions lie at the core of this study:

- 1) What is the current state of play regarding the functioning of release windows in the EU?
- 2) What is the impact of the release windows situation in the EU on the development of digital audiovisual supply and consumption, and vice versa? What is the potential of introducing change in the release windows configuration?

The report is based on both desk research and interviews. Desk research included the review of existing studies and reports on release windows conducted at national, regional and/or EU level, as well as in the US; completed with further insights from recent newspaper, magazine and academic journal content on release windows and their evolution. An updated overview of release windows trends in the EU, prepared by the International Video Federation (IVF, November 2012), was crucial in order to complete comparative tables on release window and was complemented by the International Union of Cinemas (UNIC). IVF and UNIC regularly consult their members at the national level on release windows trends. Thanks to their collaboration, the input of both exhibitors and video (on demand) publishers is reflected in this report. Insights and information received from other interviewees completed the picture. For countries with legislation on media chronology, we consulted the original legislative texts. When the combination of all these sources did not seem to paint a full picture for a country, we directly contacted national stakeholders (film funds, sector organisations) and private operators (VoD services, exhibitors, distributors) to double-check our information. The Information Sheets for each country provide details as to which sources were used for each of them.

Interviews were conducted with 15 key stakeholders in the EU film industry, representing different parts of the film value network, including producers, distributors, cinema exhibition operators, telecom operators and consumers. Attention was paid to include various perspectives and the viewpoints of new and old stakeholders in the debate. In addition and due to the specific emphasis on Video on Demand, we have interviewed 9 VoD service providers, whose services are available in at least one MS in the EU.

In annex of this report, we include information sheets summarizing the information on the organization of the release windows system in each EU Member State.

## 1.2 Release windows as a guiding organisational principle in the EU film sector

### The justifications for release windows

Section 2 provides an overview of the organization of the release windows system, its context and evolution, with a focus on the EU. The release windows system, i.e. the chronological organisation of film exploitation in "windows", is a longstanding organisational principle in the film sector, both in Europe and in the US. *Versioning* is the economic concept that supports release windows. Feature films may be accessed in various ways (e.g. in theatres, on a rented DVD, on Pay TV, etc.). Every one of these is categorized as a version, and the existence of different versions for the same content allows movie suppliers to price discriminate, i.e. to sell the same content at different prices<sup>1</sup>. In general, the sequence follows the order of highest revenue generated over the least amount of time, or the principle of "second-best alternative". Each version is normally provided exclusively for a limited time period. This system of sequential exclusivity is supposed to allow every version to maximize the revenues derived by the right holders. In addition, the positioning and the exclusive character of the different exploitation windows can be related to the level of contribution of various players (e.g. television broadcasters) to the financing of films, as it influences their negotiation power. Throughout the years, the number and type of version markets for films have expanded. Currently, the main version markets are the cinema theatre (with a distinction sometimes made between the domestic and the international release), DVD (rental/sales), VoD, Pay-Per-View (PPV), Pay TV and Free TV.

The optimal sequence and length of the release windows requires a continuous balancing exercise between the sometimes opposing expected impact a release in one window may have on another window. Establishing the ideal length of the time intervals between different versions or markets is thus the subject of a trade-off between both tendencies. On the one hand, the release of a film in one window may *cannibalize* the (success of) its release in a different window, as consumers *substitute* one version for another, typically lower-priced, one. On the other hand, the release of a film in one window may reinforce, or *complement*, (the success of) its release in a different window. Different effects may play a role in this, including the *perishability* of audience demand, the *success-breeds-success* effect or the possibility of *multiple purchasing*.

In planning the release strategy, producers and distributors have to take all these and other factors into account in order to arrive at an optimal situation. This assessment is influenced by the characteristics of their own organisation: vertically integrated players are more able to internalize the effects of possible cannibalisation between the different media and therefore more prone to use flexible and / or shorter windows.

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<sup>1</sup> Please note that the various language versions of a film may also be considered distinct "versions". Yet given the subject of this study, versioning in this report will relate only to different access versions, corresponding to the various theatrical and non-theatrical channels in which a film can be viewed.

## A diversity of frameworks to organise release windows in the EU

Legislative and other frameworks also influence the boundaries within which this trade-off takes place. In the EU, a diversity of frameworks, from contractual and industry agreements to laws and regulation, can be identified. This follows the fact that film distribution and licensing practices are traditionally aligned with territorial, cultural and/or language borders. EU law does not really govern the organisation of release windows, which is dealt with at the national level. Nevertheless with the obligatory transposition of the AVMS Directive, the importance of contractual agreements has been emphasised and is reflected in the various national media (or other) legislations in the EU. It is up to the MS to further elaborate a release windows framework, its form and modalities. As a result, the position, duration and chronology of different release windows vary across territories. Local audience preferences, different technological infrastructures, consumer spending on different content versions and the historical development of the audiovisual sector and related regulations in each country all play a role in this. The organization (and the number) of the windows also depends on who the stakeholders in each territory are and what their relative strengths are, for instance in terms of their contribution to production financing.

In general, we can identify different models in the EU MS, based on one or a combination of the following elements:

- a) Legislative provisions<sup>2</sup>: only a few countries have specific legislation fixing the windows structure: Bulgaria, France (see Box 1) and Portugal. Exceptions to the structure exist in all cases, and only France seems to provide specific enforcement measures (i.e. through fines for players who would not respect the law).
- b) Regulation, in particular established by film support schemes in the framework of their activities. Here we can distinguish two main variants:
  - a. The countries where film support is granted on the condition that a theatrical release takes place, but without other specifications on the length and character of the release windows;
  - b. The countries with more elaborate rules regarding film support related to release windows. A particular mix of legislation and regulation can be identified in the few cases when such rules are reinforced through legislation, as is the case notably in Germany and Austria.
- c) Agreements at industry level or on a case-by-case contractual basis. Most EU member states leave the matter of windows up to the industry. To what extent representatives of the interested parties (producers, distributors, exhibitors) engage in structured negotiations on this matter proved however difficult to ascertain for each EU country. The boundaries between explicit and implicit sector agreements are moreover not easy to draw.

### 1.3 Digital evolutions and their impact on release windows in the EU

Section 3 looks at the current characteristics of the windows throughout the EU, focusing on how digital trends are influencing their evolution. Digital changes have namely changed the

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<sup>2</sup> Please note that many other countries have stressed the importance of contractual agreements just like the AVMS Directive does at the EU level. In the three countries mentioned, legislation is more elaborate and notably fixes specific time periods.

context within which the trade-off between the substitution and complementarity of windows is made. The insertion of on-demand offers as new versions of the film continues to have an impact on the overall organisation of the system.

### A trend towards shorter windows

Our overview shows that across the EU, every window tends to get closer to the initial release in theatres. This coupled with the insertion of one or several VoD windows (for the different types of VoD) leads to an overall reduction of the length of all windows, both in the different EU MS as well as in the US. In other words the different organisational frameworks all seem to have similar results in practice. We can identify both proponents and opponents of the trend towards shorter windows. Most controversial has been the shortening of the window between the theatrical and subsequent markets. Initially, this trend took off as the DVD market proved capable of generating higher income in less time, but today the discussions surrounding this issue centre increasingly on the position of the VoD window. Generally speaking, we can pit cinema theatres and traditional television players (Pay TV, Free TV) on one side of the equation, with VoD players on the other side. Each of these parties' attitude is moreover influenced by their own background. Those that are part of a vertically integrated company for instance may have different attitudes from non-integrated players, i.e. vertically integrated players seem more prone to use flexible and/or shorter windows, in particular since it is easier to coordinate various channels when they are part of the same entity.

Arguments in favour of a reduction of windows include

- a) the positive marketing impact that could be created, in particular given the ever-shorter theatrical lifespan of films with emphasis on opening weekend;
- b) the need to off-set piracy by developing attractive legal offers.

Taken together, these arguments point towards benefits in reducing the windows from at least three perspectives:

- 1) The VoD platforms will be able to develop an attractive offer, including recent titles, as well as benefit from the cumulative marketing efforts for each of the titles in their catalogue;
- 2) Rights holders (producers, distributors) can increase the impact of their marketing efforts and potentially increase their legal audience share;
- 3) Consumers, at one moment in time, have more options (that will in addition be more different in terms of experience and price) of consuming the film in a legal way and/or they may access the films sooner in their preferred window.

At the same time, these arguments are to some extent in conflict with the benefits that players active in one window individually derive from exclusive access to (certain types of) content for as long as possible. In other words: the ideal balance from an overall and/or consumer perspective is not necessarily the ideal business situation for each of the individual stakeholders, such as cinema theatres or television broadcasters.

Arguments in favour of retaining the current exclusive windows put forward the need to preserve the unique experience and marketing power the theatrical window offers, as well as the importance of preserving the existing financing relationships with television broadcasters that underpin the European film landscape. Therefore these players are alarmed by the perspective of an abrupt elimination of all borders between the different windows that would



put all platforms in direct competition with each other. They fear that such a drastic evolution would destabilise the sector as a whole and its (financing) relationships. At the same time, all parties increasingly see change in the windows system as inevitable. The main debate then becomes centred on the exact characteristics of the changes.

### The reshuffle of EU release windows systems

Our detailed discussion of the organisation of the release windows system in the various EU countries, including elements of divergence or convergence between them, sheds more light on a number of key issues:

- a) In terms of the overall organisation of the release windows: The definitions and level of detail in the release windows framework tend to vary, in particular with regards to online distribution and the different variants of Video on Demand (e.g. TVoD, SVoD, Free VoD, see Box 2 in the report), which does not contribute to sector transparency at EU level.
- b) In terms of the theatrical window: The length of the exclusive theatrical window tends to shorten to around 3-5 months, both in the EU and the US. It is generally followed by the DVD window, often aligned with the online (Transactional VoD) window.
- c) In terms of the VoD window: There is a general acceptance today that the VoD window should coincide with the DVD window. Whereas DVD revenue is dropping, the VoD window is seen as a growth market. However, rights holders in the EU tend to remain focused in first instance on established windows (television, theatrical), whereas the latter continue to carve out exclusive access to content. As a result, VoD services generally do not have exclusive access to content. More problematic is the observation that they are confronted with time holdbacks or "freeze" practices, which means that content disappears from their platform, to the advantage of subsequent (television) windows. Non-transactional VoD models such as SVoD or Free VoD, which may be particularly attractive to audiences, are either not explicitly treated or - when they are - tend to get access to films years after the theatrical release. This may negatively impact the ability of VoD to offer a true alternative to copyright-infringing services.

All in all, our review of the features of the release windows system in the various EU MS shows that there is a certain level of convergence between the countries in terms of

- a) The priority given to a cinema release;
- b) The acceptance of VoD as the main alternative for a shrinking DVD market;
- c) The difficult positioning of VoD vis-à-vis Pay and Free television players who remain for the time being more valuable (in terms of revenue and financing) for rights holders.

At the same time, there is also an important level of divergence between the countries, with differences both in terms of the detail of the framework and the length of the windows.

There is therefore not so much room for manoeuvre to apply release windows in a flexible way, either at the level of the MS or across the EU. While it is not surprising that some of the main incumbent parties (cinemas, television broadcasters) are trying to protect their acquired windows rather than taking the risk of losing part of their audiences and revenue, this makes it difficult to make a trade-off between the different arguments pro and contra a change in the windows' organisation.

## Towards more flexibility? Testing new release strategies in the EU and beyond

Despite the reluctant attitude of some players, however, a number of tests and alternative release strategies have been set up in recent years. They have approached the sequencing windows with more flexibility. Starting out as experiments, we can today distinguish a number of distinct alternative release strategies that impact the theatrical window in particular:

1. Day-and-date strategies, i.e. a release in different channels and/or markets on the same day. In this report, it refers to a simultaneous release on VoD and in theatres.
2. Reverse windowing or “ultra” release models, i.e. with a release on VoD before the release in theatres.
3. Premium VoD releases, i.e. a release on VoD during the theatrical window, but at higher (premium) prices than during the later VoD window.

Our analysis of 45 cases, mainly in the EU and in the US, shows a diversity in terms of the type of films involved, the distributors and the type of release strategy followed. Nevertheless, while the first experiments still concerned the simultaneous release on DVD and in theatres, the rise of VoD becomes clear over time, with day-and-date releases and ultra-releases in VoD and theatrical markets today most prominent. They often occur for smaller, independent films and/or documentaries, for which a wide theatrical release is supposedly less evident. In contrast, major distributors have been the ones attempting to establish a Premium VoD window for some mainstream blockbusters.

We also present more detailed data on the economic success of certain of these release strategies (9 US/global cases and 7 EU ones), although it is clear that there is a lack of concrete market data available, in particular for the European markets. The MEDIA-driven Preparatory Action will hopefully provide more detailed data regarding the economic results of a number of experiments with such new release strategies.

While the studied examples are diverse in their set-up and impact, a number of common conclusions can be drawn:

- Day-and-date or ultra-release strategies have been more successful than Premium VoD, although this may also be due in part to the even stronger protest (and often boycott) by cinema owners for the latter type of experiment.
- Alternative strategies are being developed in countries with a variety of windows systems, including those with legislation. Moreover, both small and large companies within the EU and the US have been involved, but we do see that some parties are more often engaging in these type of releases than others, notably some vertically integrated firms (e.g. Magnolia in the US, Curzon in the UK). Even if concrete numbers are sometimes lacking, the simple observation that these players continue to set up such releases is one indication of their success.
- The engagement of key partners is important. Cinema theatres have often prevented experiments to be fully rolled out by boycotting films that did not adhere to traditional (theatrical) windows. In contrast, the involvement of vertical integrated players has in many cases made it possible to opt out from traditional market practices and release strategies.

- Many small films (documentaries, auteur films, low-budget titles) have been among those to be released in non-traditional ways. On the one hand, the risks that come with experimentation may be lower here (e.g. as theatres may be less interested to begin with and thus less inclined to boycott). On the other hand, this may point towards the value of such releases for this type of content. If so, European films, a large part of which are considered art house titles, may be able to benefit from increased flexibility.

## **1.4 Introducing changes to the release windows system in the EU: opportunities and challenges**

Section 4 provides an analysis of the challenges and opportunities related to changing the system, in particular in terms of introducing more flexibility in its application.

### **Developing attractive VoD offers in the EU: the role of release windows**

The set-up of a strong VoD offer seems not only attractive in terms of potential additional revenue, but first and foremost a necessity in view of changed audience expectations. The competition of US-based VoD players (such as Apple and Netflix) provides an additional and international dimension to this emerging market and the goal of developing attractive European offers. There are two ways in which release windows can play a role in the set-up of such attractive EU VoD offers.

Firstly, release windows are important as they determine when VoD catalogues can first offer film and other titles. It is now generally accepted that the Transactional VoD window usually coincides with the DVD window. Yet there may be further room for a reduction of the theatrical window (currently at circa 4 months), as this means that most films are not - or barely - legally accessible for weeks or even months. Theatre exhibitors are reluctant towards a shortening of their window in favour of VOD because they feel that their own contribution to raising awareness of a film would benefit the VOD exploitation without them getting any benefits in return. One possible solution could be to reconfigure the existing revenue sharing deals between film distributors and exhibitors: a higher share for the cinema exhibitor may entice him to accept a shorter exclusive theatrical window. With regard to SVoD and Free VoD, the situation is more problematic, in the sense that these players usually have to establish an attractive offer based only on titles that are at least a couple of years old. The expected expansion of Netflix' SVoD service in the EU plays an important role in the need to reassess European windows for this type of VoD model. In all this, the question of how to increase audience awareness, information and attraction should not be ignored. Simply making content available on on-demand platforms will not suffice in a digital context of abundance. Instead, the development of appropriate marketing and promotion tools to guide consumers to their platform of choice will be crucial in making such legal offers more attractive.

Secondly, release windows influence whether VoD platforms can offer these films in parallel with other windows. This notion of parallel availability of titles in different windows appears to pose a number of questions and issues to resolve in the EU. There are two areas within the release windows cycle where the potential parallel existence of a VoD offer has led to tensions:

1. During the theatrical window. It seems crucial here to gain more insights into the level of substitution between these types of consumption and the possible ways in which the theatrical and VoD experience can be differentiated. Several alternative release strategies are currently being tested, with the respective forms seemingly more appropriate for different types of content (e.g. small titles versus mainstream ones). With vertically integrated players naturally more inclined to approach film releases in a more flexible and case-specific manner, a closer relation between distributors and exhibitors on specific projects may prove to be beneficial. The sharing of VoD revenues forms one possible element of such collaboration.
2. During the Pay and/or Free TV window. Some operators are able to exert their power position (linked to their role in the prefinancing of films) to acquire important "freezes" in the VoD window. Importantly, this does not simply concern SVoD or Free VoD, which are very similar to the offers of Pay and Free TV, and thus may engender a strong substitution effect. Titles are also taken out of Transactional Rental offers, which however more closely resembles the DVD window that is today disappearing. It is therefore important that competition authorities look into the type and length of these freezes.

### Increasing European cross-border circulation: the role of release windows

The impact of release windows on the establishment of pan-European VOD services and on the cross-border circulation of film content in the EU is still unclear.

When discussing the possibility for VoD services to be present across borders, we have focused on VOD service providers developing distinct activities in different countries (rather than the idea of a platform providing the same offer all across Europe). A cross-border presence does not prevent players to develop diversified content offers or country-specific marketing and distribution strategies. Release windows divergences do not seem to hamper the possibility of such cross-border brands to be set-up. Geo-localisation technologies seem to be an accepted tool to manage these catalogue differences. From the perspective of the audiences however, it may lead to frustrations if certain titles are listed as "not available in this territory". On top of that, many of the VoD brands known across different EU countries tend to be related to US companies, including players like iTunes and Netflix. Possible counter-strategies from EU players could include the set-up of regional cross-border services (as is already being done e.g. in the Nordic countries) and/or to increase cross-border networking by EU-based players, such as is developed by the EuroVOD network.

Another way of looking at the cross-border question relates to the circulation of content itself. In other words rather than having a VoD platform available in different EU countries, to increase the presence of non-national European titles on territory-based platforms. We identify two main ways in which release windows may impact this.

First of all, the different release traditions and sometimes variable theatrical release dates may hamper the possibility for distributors to achieve economies of scale through a simultaneous VoD release in different countries. Some interviewees perceive a tendency to over-estimate the potential level of cross-border demand; in fact the majority of EU players seem unwilling or unable to take risks in this respect as they see such demand as uncertain. At the same time, the theory of the long tail has drawn attention to the potential of titles that are situated outside of mainstream demand. Moreover, the continued existence of a parallel

illegal circuit that does not adhere to geographical or other borders, may also point towards underserved audience segments.

Second, there may be room for the set-up of day-and-date releases that combine a theatrical release in some territories with a VoD release in others. This may help to expand the audience reach, in particular for small titles that are not widely released in theatres. Such releases would not cannibalise theatrical revenues, as the VoD release would only occur in areas where no theatrical screenings could be confirmed.

Nevertheless, in order for such strategies to be successful, economies of scale may turn out to be crucial. Two types of stakeholders could in our view successfully take up a role in this regard. Firstly, there are already some European actors whose activity consists in aggregating rights at the European level, and then licensing such rights to big VOD services, such as iTunes. Secondly, rights holders, in particular producers, may be best placed to take on a more intensive promotional role in those territories where it has not reached local distribution deals for the exploitation of a given title, e.g. through innovative platforms such as Vimeo-on-Demand or Voddler's Liveshelf.

## 1.5 Conclusions

Section 5 wraps up the main conclusions of the study. They can be situated at two levels:

- 1) The continued applicability of the general idea of release windows;
- 2) The changes to be expected in the windows systems in practice.

At the general level, we identify two main considerations that relate to the validity of release windows in a digital context. Firstly, digitisation brings along increased room and potential for differentiation, flexibility and diversity. The one-size-fits-all idea behind release windows clashes with this trend. We see for instance how shorter windows may benefit certain types of content in specific contexts: non-mainstream titles could in particular benefit from the added marketing impact associated with closer or simultaneous windows. Yet also in terms of the different distribution environments, it becomes increasingly crucial to differentiate between the experiences each can offer an audience. This differentiation becomes less and less rooted in price and time, the two traditional dimensions of the release windows system. Therefore it seems important to increase room for diverging strategies. For those systems that fix release windows in legislation and/or regulation, it will become more and more necessary to provide increased flexibility in that regard, e.g. through derogations.

Secondly, however, it is important to keep in mind that release window flexibility cannot be seen as distinct from the broader industry context. While it is important to reassess the current financing and revenue models, including the potential of new revenue sharing models between cinemas, distributors and even VoD platforms; all modifications to traditional systems will have to take the sometimes divergent interests of the different stakeholders into account. Especially as many stakeholders are alarmed about the perspective of sudden and radical changes that in their view risk undermining other pillars of the European film sector, in particular the financing of European film production.

Turning to the potential modification of windows systems in practice, another three main points come to the fore. They relate both to the film sector in general and to the EU industry in particular. A first area that will undoubtedly be the area of further evolutions, is that of the theatrical window and its exclusive length. Experiments with alternative release strategies

seem to offer the best way to further increase the knowledge of what the impact of various release modalities is on the various parties involved. It is therefore important that legislative provisions as well as industry practices offer sufficient room for this.

A second area relates to the problem, between non-theatrical windows, of exclusivity requirements and corresponding time holdbacks or "freezes". This seems an issue fit for competition authorities at both national and EU level.

A third area concerns the link between release windows modifications and the increased access to content for consumers. From a cross-border perspective, day-and-date releases on VoD and in theatres could help spread European films in areas where they would otherwise not benefit from a theatrical release. In such cases, the cannibalisation risks seem low or inexistent, given that the films are only released on VoD if they are not viewable in theatres. Yet the modalities of such alternative release models are not evident and need to be further explored (e.g. who takes care of the VoD release - including (marketing) costs - in the territories without a theatrical distribution deal?). This is another area where experimentation should be encouraged. However, such experiments should be part of a broader exercise in order to have a reasonable chance of success. Most of all, it requires increased knowledge of the elements that shape audience demand for cross-border content and services in a digital era.



## Introduction

This report reflects the work done within the research project SMART2012/0025 on the analysis of "legal rules for exploitation windows and commercial practices in Member States (MS) and of the importance of exploitation windows for new business practices". It aims at providing an overview of the functioning of the release windows system in the EU and its evolving shape in a digital context. In Europe, audiovisual markets have developed following a largely national or linguistic trajectory, which is reflected in the set-up of different release windows systems across the EU. With the sector in the midst of a digital transition, the characteristics of this organisational principle are being reconfigured as new stakeholders and new audiovisual delivery models enter the market (notably Video on Demand). Digital technology also potentially allows for a more integrated market for audiovisual works in the EU. Indeed, new content delivery offers may develop in multiple territories and/or European works may increase their presence in non-national markets through digital (possibly on demand) platforms.

The topic is clearly under debate across the EU Member States, both in policy and sector circles – see e.g. the attention paid to the issue in the May 2013 Lescure Report (Lescure, 2013) or during the drafting of a new German Film Law (Blaney, 2012). In view of the often common concerns and trends, a comparative and EU research approach is particularly opportune.

The aim of this final report is to provide an in-depth analysis of release windows modalities in the EU and how they relate to current digital evolutions. In other words, we will assess the relation between the release windows system and the supply and/or demand for audiovisual works in Europe. The focus of the study lies on feature films. Yet where appropriate, mention may be made of specific other types of audiovisual works such as TV series.

The research work has been organised according to two work packages, each corresponding to a key research question:

1) What is the current state of play regarding the functioning of release windows in the EU?

Work Package 1 provides a description of the functioning of release windows, including an assessment of their different configurations across the EU and an analysis of the justifications behind their current shape. As most of the analysis took place before July 1, 2013, Croatia was not yet included in the research, which is focused on the EU27 countries instead. Because of its influence in the European feature film market, we also looked briefly at the situation in the United States.

2) What is the impact of the release windows situation in the EU on the development of digital audiovisual supply and consumption, and vice versa? What is the potential of introducing change in the release windows configuration?

Work Package 2 provides an analysis of current trends in the release windows system, in particular the impact of introducing more flexibility in its application in different markets and/or across the EU. The focus lies on the emerging VoD market and its insertion in the release windows system. Next to a general assessment, we also address the potential of increased cross-border presence and circulation of respectively on demand services and audiovisual works.

Section 2 provides an overview of the organization of the release windows system, its context and evolution. It analyses the justifications behind its establishment based on the versioning principle, and explores the equilibrium between the different windows. In this section, we put forward the diversity of related frameworks, from contractual and industry agreements to laws and regulation, that can be identified in the EU. In doing so it also looks at the relation between release windows and the rules and financing conditions of MS' film support mechanisms. Section 3 looks at the current characteristics of the windows throughout the EU, focusing on how digital trends are influencing their evolution. Generally we can identify both proponents and opponents of the trend towards shorter windows. In this section, we also provide more detail on the organisation of the release windows system in the various EU countries in order to identify elements of divergence or convergence between the different Member States. This section moreover includes an overview of release experiments being conducted all across the world. Section 4 provides an analysis of the challenges and opportunities related to changing the system, in particular in terms of introducing more flexibility in its application. It considers the impact of current rules and future trends on the EU VoD landscape in general, while also looking at the potential development of a cross-border VoD presence (in terms of services and/or audiovisual works). Section 5 wraps up the main conclusions of the study.

This draft final report is based on both desk research and interviews. Desk research included the review of existing studies and reports on release windows conducted at national, regional and/or EU level, as well as in the US; completed with further insights from recent newspaper, magazine and academic journal content on release windows and their evolution<sup>3</sup>. An updated overview of release windows trends in the EU, prepared by the International Video Federation (IVF, November 2012), was crucial in order to complete comparative tables on release windows, as were further insights and information received from other interviewees, including UNIC. For those countries for which recent information was lacking, we gathered information directly from relevant national organisations and funds<sup>4</sup>. Where possible we tried to double-check information by looking up original legislative and regulatory texts.

Interviews were conducted with 15 key stakeholders in the EU film industry, representing different parts of the film value network, including producers, distributors, cinema exhibition operators, telecom operators and consumers. Attention was paid to include various perspectives and the viewpoints of new and old stakeholders in the debate. In addition and due to the specific emphasis on Video on Demand, we have interviewed 9 VoD service providers, whose services are available in the EU (one or more MS). We have included the topic and question list for the various interviews in annex, as well as the list of interviewed persons.

In annex of this report, we furthermore include information sheets summarizing the information on the organization of the release windows system in each EU Member State.

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<sup>3</sup> Cf. a detailed list in the bibliography.

<sup>4</sup> This was in particular the case for Estonia, Bulgaria and the US, cf. Excel table sent separately.



# Release windows as a guiding organisational system in the EU film sector: overview

In this part of the report we provide an overview of release windows as an organising principle. Section 2.1 analyses justifications that underpin the release windows systems, with a focus on the idea of versioning. It also supposes the attainment of an equilibrium between the different windows constituting the sequential system. Section 2.2 explains how this principle is applied in the various EU countries at the industry, legislative and/or regulatory level.

## 1.1 The justifications for release windows

### The versioning principle

The release windows system, i.e. the chronological organisation of film exploitation in "windows", is a longstanding organisational principle in the film sector, both in Europe and the US. In essence, the same product (i.e. film) is sold in different markets for a different price (Dally et al., 2002: 56). Even when the only "screen" for films was the movie theatre once, distributors developed sequencing systems based on different tiers of movie theatres. Already by the 1930s, the Hollywood studios had set up a "run-zone-clearance" system centred on releasing a movie exclusively in first-run (urban) theatres. After a certain time window, movies were pushed forward through second-, third-, and further-run theatres at a lower price (Gomery, 2005: 73-74). Hence it can be said that the release windows system was invented in the US.

One particular economic concept that supports release windows is the one of *versioning* (Calzada & Valletti, 2012; Ranaivoson, 2010). Feature films may be accessed through various channels and under diverse conditions, e.g. in terms of terms of access, comfort, price, etc. For example they can watch the film in a theatre, they can rent it on DVD, they can watch it on their TV set via their Pay TV, etc.). Every one of these is categorized as a version<sup>5</sup>, and the existence of different versions for the same content allows movie suppliers to price discriminate, i.e. to sell the same content at different prices (Cichon, 2007: 61; Varian, 1989). In other words, it relates to the idea of *intertemporal price discrimination* (August et al., 2013: 5). Consumers vary in terms of their impatience to see the film and the sum they are willing to pay for it. From an economic efficiency perspective, they should not be able to choose between different price options for similar viewing options at the same moment in time (Lescure, 2013: 91). Film versions arguably also differ in terms of quality (technical quality, comfort, etc.), with e.g. different viewing conditions in theatres, at home, on a smartphone etc. Throughout the years, the number and type of version markets for films have expanded. Currently, the main version markets are the cinema theatre (with a distinction sometimes made between the domestic and the international release), DVD (rental/sales),

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<sup>5</sup> Please note that the various language versions of a film may also be considered distinct "versions". Yet given the subject of this study, versioning in this report will relate only to different access versions, corresponding to the various theatrical and non-theatrical channels in which a film can be viewed.

VoD, Pay-Per-View (PPV)<sup>6</sup>, Pay TV and Free TV. Between the theatrical and home video release, films are also made available to hotels and airlines (Currah, 2007: 78; Vogel, 2007: 118).

In general, the sequence follows the order of highest revenue generated over the least amount of time, or the principle of "second-best alternative". Each version is normally provided exclusively for a limited time period. This system of sequential exclusivity is supposed to allow every version to optimize its relative profits. Added together, the revenues derived by the right holders from the whole exploitation are thus theoretically maximised (Calzada & Valletti, 2012: 649; Lescure, 2013: 91; Nikoltchev, 2008). In addition to this, the positioning and exclusive character of the different exploitation windows can be related to the level of contribution of various players (e.g. television broadcasters) to the financing of films, as it influences their negotiation power (Lescure, 2013: 9, 92).

### Finding the equilibrium between different windows

The optimal sequence and length of the release windows is not static, but requires a continuous balancing exercise between the sometimes opposing (expected) impact a release in one window may have on another window. Establishing the ideal length of the time intervals, if any, between different versions or markets is thus the subject of a trade-off between both tendencies.

On the one hand, the release of a feature film in one window may cannibalize (the success of) its release in a different window. Different versions of the same title are in this case competing against each other, i.e. there can be *cannibalization* between different markets (Frank, 1994; Gambaro, 2004; Hennig-Thurau et al., 2007; Lehmann & Weinberg, 2000; Prasad et al., 2004). Typically, consumers in such a scenario *substitute* one version for another, typically lower-priced, one (August et al., 2013: 2). For example, if a movie is released on free-to-air television at the same time as (or very close to) its release in theaters it might well reduce the number of viewers in theaters. To our knowledge, Frank (1994) is the first author who has studied phenomena of cannibalization between video and theaters but the issue of cannibalisation has an older history in general (see e.g. Dobson & Kalish, 1988). Additionally, August et al. refer to the impact of the *congestion* of movie theatres: when consumers anticipate sold-out screenings or crowded theatres for a high-profile title, they may opt to wait for its release in a subsequent window (August et al., 2013: 2-3).

On the other hand, the release of a feature film in one window may reinforce (the success of) its release in a different window. Different windows are *complementary*, and the new window benefits from e.g. marketing expenses made for the previous window. If one waits too long to release a title in subsequent windows, audience awareness and/or other elements contributing to the demand for this title (the buzz, sense of newness, etc.) may have *perished* (Frank, 1994; Hennig-Thurau et al., 2007; Lehmann & Weinberg, 2000; Prasad et al., 2004). Related to this argument is what Hennig-Thurau *et al.* name the "*success-breeds-success*" effect

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<sup>6</sup> The difference between VoD and Pay-Per-View is not always clear and may sometimes be used to designate the same type of offers. There is no common harmonised definition of these terms. In a trade context, however, PPV appears to find its roots in older (analogue) forms of "on demand" viewing, often corresponding to a form of Near Video on Demand (with pre-designated schedule times). In broader terms, pay-per-view may designate a particular type of Video on Demand, where the consumer accesses a certain title on a temporary basis (rental on a transactional basis), as opposed to e.g. Subscription-based VoD services.

(2007, p.66). The more successful a movie in the theaters, the more successful in the following versions (De Vany & Lee, 2001; De Vany & Walls, 2002; Elberse & Eliashberg, 2003; Hennig-Thurau et al., 2006; Liu, 2006; Prasad et al., 2004). Hennig-Thurau *et al.* (2007) make a distinction between two kinds of such an effect. First of all, the initial viewing in the theaters may make the consumer want to see the movie on the subsequent versions. In other words, the consumption of a film in one window does not necessarily preclude its consumption in a different one (*multiple purchase* factor) (August et al., 2013: 3; Calzada & Valletti, 2012: 650). Secondly, success breeds success because the success of a movie in the theaters stands as an indicator of the quality of the movie (Gambaro, 2004). This seems true for consumers and most of all for actors of the industry such as the broadcasters.

In planning the release strategy, producers and distributors have to take all these and other factors into account in order to arrive at an optimal situation. On top of this, the assessment of these trade-offs differs depending on the type of player involved, in particular its level of vertical integration. Calzada and Valletti (2012) have pointed out that versioning strategies are more likely to occur when there is vertical separation between the producer and the channels. When the producer and the channels do not belong to the same entity, the different channels are more likely to conflict and the power relations between each of the channels and the producer thus become more important. As a result, each channel becomes more isolated from the other ones, with a stronger emphasis on exclusive windows.

"[W]ith vertical separation there is a coordination problem, as the prices of the two versions are set by competing channels instead of a single firm that internalizes cannibalization" (Calzada & Valletti, 2012: 659).

As new ways of consuming audiovisual content are introduced, the context within which this trade-off occurs evolves as well. Over the years, the release windows system has expanded every time a new way of watching films (a new version/market) was introduced (e.g. DVD, Pay-TV). This has rendered the balancing act increasingly complex. In Section 3 we will turn to the insertion of digital, on demand, versions/markets in the release window system. Legislative and other frameworks influence the boundaries within which this trade-off takes place. In the next subsection, we turn to the existence of such contextual (policy and industry) borders in the EU.

## **1.2 A diversity of frameworks to organize release windows in the EU**

The organisation of release windows can be structured in various ways. Policymakers can directly impose windows through legislation or regulation, but there may also be indirect influence through e.g. the provision of the various film support mechanisms. At the industry level, release windows may be agreed upon at sector level and/or on the basis of case-by-case contracts. There are finally "mixed" cases, e.g. where rules for supported films are enshrined in law.

Different organisational frameworks can be identified across the EU. This follows the fact that film distribution and licensing practices are traditionally aligned with territorial, cultural and/or language borders. As a result, the position, duration and chronology of different release windows vary across territories. Local audience preferences, different technological infrastructures, consumer spending on different content versions and the historical development of the audiovisual sector and related regulations in each country all play a role in this. The organization (and the number) of the windows also depends on who the

stakeholders in each territory are and what their relative strengths are, for instance in terms of their contribution to production financing. For example in France, Pay TV plays a central role in the financing of local film production, which is reflected in the release windows organisation (see also Box 1).

In Section 2.2 we will address in greater detail what the level of convergence and or divergence is between the different systems within the EU.

### The EU legal framework

EU law governs the organisation of release windows at the national level only indirectly. In principle, it is up to the MS and/or the rights holders to determine the need for such a system, its form, and the temporal restrictions that it contains.<sup>7</sup> The mere fact that the organisation of a system of release windows is based on exclusive rights does not in itself trigger the application of the EU internal market rules (i.e. the free movement of goods and services) or the EU competition rules.<sup>8</sup> Nonetheless, the actual application of such a system, in other words the exercise of the exclusive rights, may create effects prohibited by the Treaty on the Functioning of the European Union (TFEU).

In its *Cinéthèque* judgment (1985), the Court of Justice stressed that the disparities between the operated systems in the different countries are capable of hindering intra-Community trade. The Court found, however, that national legislation prescribing the different windows can be justified as long as the system is proportional to the legitimate objective of encouraging the production of films and is non-discriminatory (i.e. applies to both domestic and imported works).<sup>9</sup> In light of subsequent market evolutions and in particular the integration of an on demand (digital) window into the system (see Section 3.), it has been questioned whether the Court would reach the same conclusion today. For example, the French government had argued that the imbalance of power in contractual relations might undermine the effectiveness of self-regulation. Legislative provisions defining the media windows were therefore considered necessary. Kuhr (2008) doubts that the Court would still accept this argument since most EU member states now leave the matter up to the industry (cf. infra). In this judgement (*Cinéthèque*), however, the Court made clear that it is for the member states to determine not only the need for a window release system, but also its form (i.e. based on contractual, administrative or legislative provisions).<sup>10</sup> The Lescure report further points out that the derogations that were foreseen in the French release windows system (e.g. shorter windows for titles that were unsuccessful in cinema theaters) proved difficult to apply for physical video. Moreover, they are not foreseen for the VoD market (Lescure, 2013: 97). When considering the proportionality of the French legislation, the Court made no reference to the availability of derogations. Hence, the fundamental principle of the *Cinéthèque* judgment may still remain valid: national legislations concerning release windows are compatible with the free movement rules as long as their implementation does

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<sup>7</sup> ECJ (Joined Cases 60/84 and 61/84) *Cinéthèque* (1985) ECR 2605, para 20.

<sup>8</sup> See e.g. ECJ (Case 262/81) *Coditel SA and others v Ciné-Vog Films SA and others* (1982) ECR 3381, para 17; (Joined Cases C-403 & 429/08) *Football Association Premier League Ltd and others v QC Leisure and others and Karen Murphy v Media Protection Services Ltd* (2011) (not yet published) para 137.

<sup>9</sup> ECJ (Joined Cases 60/84 and 61/84) *Cinéthèque* (1985) ECR 2605, paras 21-23.

<sup>10</sup> *Idem*, para.20.

not go beyond what is necessary to protect the profitability of the theatrical release. The biggest hurdle today would be to demonstrate that the legislative fixation of subsequent exclusive release windows is equally essential today in order to encourage the production of films.

Industry-wide standards on release windows have also been scrutinized under the EU competition rules. In its NFC (Nederlandse Federatie voor Cinematografie) decision, for example, the European Commission observed that an industry agreement related to release windows in the Netherlands had an anti-competitive effect because it eliminated competition between cinema and other forms of exploitation. The Commission, however, exempted the agreement under Article 101(3) TFEU (ex Article 85 EEC). The Commission acknowledged that the industry agreement stimulated the production of films by preserving the theatrical window and preserved the revenue generated from cinema tickets.<sup>11</sup> Again, it remains to be seen whether nowadays the same or similar pro-competitive benefits could be claimed for a fixation of such exclusive exploitation periods.

Alongside these cases, in an attempt to address disparities between the release windows across the EU, Article 7 of the 1989 Television Without Frontiers (TWF) Directive EU prescribed a window of two years for the broadcasting of cinema films. For co-productions with a broadcaster, this period was reduced to one year:

“Member States shall ensure that the television broadcasters under their jurisdiction do not broadcast any cinematographic work, unless otherwise agreed between its rights holders and the broadcaster, until two years have elapsed since the work was first shown in cinemas in one of the Member States of the Community; in the case of cinematographic works co-produced by the broadcaster, this period shall be one year”<sup>12</sup>

A similar provision was inserted in the first version of the Convention on Transfrontier Television, adopted under the auspices of the Council of Europe a few months prior to the TWF Directive.<sup>13</sup> In practice, however, contractual agreements frequently prevailed over this legislative provision (Kuhr, 2008: 4-5).

Following its 1997 amendment, Article 7 of the TWF Directive was modified and now stipulates that the MS “should ensure that broadcasters under their jurisdiction do not broadcast cinematographic works outside periods agreed with the rights holders”.<sup>14</sup> The European Commission welcomed this change because it permitted a flexible approach to the use of rights for different media windows. It stressed that there was widespread agreement from commentators that this sufficiently safeguarded the principle of media chronology at the EU level and that deadlines for film exploitations should be left to contractual arrangements between the parties involved.<sup>15</sup> Apart from the replacement of the notion “broadcaster” with

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<sup>11</sup> *Nederlandse Federatie voor Cinematografie* (Case 34.927) closed by comfort letter of 30 August 1995.

<sup>12</sup> Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (1989) OJ L 298/23.

<sup>13</sup> Article 10 para 4.

<sup>14</sup> The 1998 update to the Convention on Transfrontier television, amended Article 10 para 4 accordingly (Council of Europe, 2002, Article 10 para 4: “The Parties shall ensure that a broadcaster within their jurisdiction does not broadcast cinematographic works outside periods agreed with the rights holders”).

<sup>15</sup> Commission, “Communication on certain legal aspects relating to cinematographic and other audiovisual works” COM(2001) 534 final, p 22.

“media services providers” (to accommodate the emergence of e.g. VOD services), the 2007 Audiovisual Media Services (AVMS) Directive retained the same rule (Article 8).

### The mix of policy and sector frameworks at the national level

With the obligatory transposition of the AVMS Directive, the importance of contractual agreements has normally been included in the various national media (or other) legislations in the EU. Aside from this minimum safeguard, we have seen that it is up to the MS to determine the need for a more elaborate release windows framework, its form and modalities. In the EU, we can identify different models based on one or a combination of the following elements:

- a) Legislative provisions<sup>16</sup>;
- b) Regulation, in particular in relation to film support schemes. In some countries, this is enshrined in legislation. They in other words have adopted a mix of legislative and regulatory provisions.

Table 1 gives an overview of the main characteristics for each EU27 country and the US.

**Table 1: Comparison of the frameworks organising release windows in EU27 and the US**

Country	Are there specific legislative measures on release windows?	Are there rules regarding film support related to release windows?
France	Yes	No
Bulgaria	Yes	No
Portugal	Yes	No
Germany	No	Yes
Austria	No	Yes
Latvia	No	Yes
Spain	No	Yes
Denmark	No	No
United Kingdom	No	No
Netherlands	No	No
Slovakia	No	No
Italy	No	No
Sweden	No	No (dropped from 2013)
Belgium	No	No
Ireland	No	No
Hungary	No	No
Estonia	No	No

<sup>16</sup> Please note that many other countries have stressed the importance of contractual agreements just like the AVMS Directive does at the EU level. We refer here to those countries that have a more elaborate framework that notably fixes specific time periods.

Greece	No	No
Luxembourg	No	No
Romania	No	No
Cyprus	No	No
Czech Republic	No	No
Finland	No	No
Lithuania	No	No
Malta	No	No
Poland	No	No
Slovenia	No	No
United States of America	No	No

As is clear from the table, this issue is generally not dealt with at the legislative level. Within the EU, only a few countries have specific legislation fixing the windows structure that goes further than a reference to contractual agreements as is also present in the AVMS Directive. They are Bulgaria, France and Portugal (see Table 2) and usually have adopted such measures in the context of a broader film legislative framework, different from the audiovisual media law that transposes the AVMS Directive. Table 2 gives an overview of the main provisions in these three MS. France's release windows framework is the most elaborate and complex, as it provides specific enforcement measures (i.e. through fines for players who would not respect the law). Laws in Bulgaria and Portugal are less binding (although in Bulgaria the fact that broadcasting on TV cannot happen before 6 months after the theatrical release is a binding condition). France's debates on the future adaptation of its framework (as reflected in e.g. the Lescure Report) are followed closely by industry stakeholders throughout the EU. We discuss this case in more detail in Box 1.

**Table 2: Main legislative provisions on release windows in Bulgaria, France and Portugal**

Country	Legislative text	Main provisions
Bulgaria	Art. 45 of Film Industry Act	Start of the non-theatrical windows no less than 3 months after the theatrical release (exceptions are possible if the distribution contract provides otherwise);  Broadcasting on television no less than 6 months after the theatrical release.
France	Code du Cinéma et de l'Image Animée, Accord interprofessionnel du 6 juillet 2009 (Décret 2010-397), Loi Création et Internet du 12 juin 2009	Chronological order of a film release: - Cinema release; - After 4 months: DVD and Transactional VoD (reduction to 3 months possible if the film makes less than 200 admissions within the first 4 weeks of release); - After 10 months (12 months if there is no professional agreement): 1st Pay TV diffusion; - After 22 months (24 months if there is no professional agreement): 2nd Pay TV diffusion; Free TV and other services contributing at least 3,2% of their turnover to co-production; - After 30 months: Free TV and other services not contributing more than 3,2% of their turnover to co-production; - After 36 months: Subscription VoD; - After 48 months: Free VoD.



Portugal	Art. 61 of Decree-Law No. 227/2006 of 15 November (Cinematographic Art and Audiovisual)	<p>Start of the Pay TV window at 4 months after the theatrical release;</p> <p>Start of the Free television window at 12 months (after theatrical);</p> <p>Reduction by half of the television windows in case the broadcaster is a co-producer;</p> <p>Video window cannot start until 2 months after the theatrical release;</p> <p>Films that are first released in the home video window, may be released on pay-TV and free TV at resp. 2 and 9 months;</p> <p>The rules can be amended through agreements;</p> <p>If there is no theatrical release, a film can be released immediately on television or video.</p>
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Secondly, Table 1 also shows which countries have specific rules regarding film support related to release windows. In these countries, movies that receive public support are constrained to respect the release windows whereas those that have not received such support (often notably including imported films) do not have to respect these. Only in a handful of countries film support schemes have established more detailed rules regarding release windows: Austria, Germany, Latvia and Spain (see Table 3 below and the respective Information Sheets in the Annex). A particular mix of legislation and regulation can be identified in the few cases when such rules are reinforced through legislation. Our review found that this is the case notably in Germany and Austria.

However, there are other ways in which film support funds in other countries are putting traditional, cinema-centred release windows strategies forward. In some of these, the support rules explicitly state that a theatrical release should take place, but without other specifications on the length and character of the release windows (see the Information Sheets for some examples). This is notably also the case at the European-level Eurimages fund. Its co-production support links a release in cinemas to the payment of the last instalment of support<sup>17</sup> (Eurimages, 2013).

In addition, support scheme regulations may make it clear that a traditional cinema release is expected in even less explicit ways. In an opinion piece, Danish film director Annette Olesen for instance denounced *that "the requirements for a studio's application for production subsidy include an obligation for the studio to supply the following: 'A distribution agreement concerning cinema distribution in Denmark'"* (Olesen, 2012).

Opponents of such rules state that funding should not dictate release windows and furthermore that it does not make sense to discriminate against publicly-funded films. Even the more basic requirement for a theatrical release can be problematic, for example for young directors, or generally for smaller (niche, low budget) films. The current situation at some public funds is thus seen by some as outdated in the context of increased potential online access to films. One interviewee even suggested a reverse situation, i.e. public funding should be linked to the availability first online, then in cinemas (i.e. reverse windowing).

As a result, some public funds are reconfiguring their support rules, with Sweden mentioned as a specific example by a few interviewees. A few interviewees informed us that Sweden

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<sup>17</sup> Only for documentaries, an exception can be made and selection in at least one significant film festival may lead to the payment of the last instalment of funding.



gave up such rules recently. Indeed, the new Swedish Film Agreement 2013-2015 opens up support to films to be shown on non-theatrical platforms (Pham, 2013).

**Table 3: Main provisions with regard to release windows in the support regulation of Germany, Austria, Latvia and Spain**

Country	Support regulation	Main provisions
Germany	Art. 30 of the Filmförderungsgesetz (Film Support Act - FFG) stipulates that state subsidies received for the production of a film must be paid back if certain blocking periods for various types of media are not respected.	<p>Blocking period (source: IVF)</p> <ul style="list-style-type: none"> <li>- DVD: 6 months;</li> <li>- Streaming/EST: 6 months (Possibility to shorten it to 5 or in exceptional cases to 4);</li> <li>- Pay per view: 9 months (or 6 if the DVD distributor agrees);</li> <li>- Pay TV: 12 months (Possibility to shorten in to 9, and in exceptional cases to 6);</li> <li>- Free TV and Free VoD: 18 months (Possibility to shorten it to 12 and in exceptional cases to 6).</li> </ul>
Austria	Art. 11a of the Filmförderungsgesetz (Film Support Act - FFG) defines the blocking periods. These can be reduced significantly according to Art. 11a paras. 2 and 3 FFG, provided it is not contrary to the interests of the film industry. These release windows are set down in the guidelines on film funding. If the film received film subsidy they have to be respected.	<p>Blocking period (source: IVF)</p> <ul style="list-style-type: none"> <li>- DVD, Online distribution, Pay per view: 6 months (Possibility to shorten it to 5 and in exceptional cases to 4);</li> <li>- Pay TV: 12 months (Possibility to shorten it to 9 and in exceptional cases to 6);</li> <li>- Free TV: 18 months (Possibility to shorten it to 12 and in exceptional cases to 6. If the broadcaster contributed financially very significantly to the production of the film in exceptional cases the window can be shortened to 4 months).</li> </ul>
Latvia		The DVD window for films that have received funding from the National Film Centre of Latvia stands at 18 months (source: IVF).
Spain		Films which have received public funding adhere to a mandatory 3 months window for theatrical exclusivity (source: IVF; UNIC).

All in all, despite some countries' regulatory and/or legislative frameworks, it is clear from Table 1 that most EU member states leave the matter of windows up to the industry. Such negotiations can then take place either at sector level or on a case-by-case contractual basis. To what extent representatives of the interested parties (producers, distributors, exhibitors) engage in structured negotiations on this matter proved however difficult to ascertain for each EU country. The boundaries between explicit and implicit sector agreements is moreover not easy to draw.

It is also possible for sector agreements to feed into the policy framework. This is the case in France, where industry negotiations play a large role in the set-up of legislative provisions (see Box 1).

The main advantage of having structured and explicit sector-wide agreements seems to be that they lead to practices that are more or less stable. They may lessen the individual power battles that otherwise take place during negotiations between smaller and bigger individual firms. It could be argued that together, small production companies can put more pressure on e.g. a dominant exhibitor company. Nevertheless, these industry-wide negotiations also reflect the power relations between different groups of stakeholders and larger players may still have a dominant negotiating position (e.g. huge contributors to film financing, like Pay TV in France). When enshrined in legislation, a sector agreement gets a (more visible) public

face and may be more protective for some of the most vulnerable actors in the value network. Moreover, its enforceability increases, and can even involve fines for infringers in the French law – whereas there is usually a lower degree of formal constraint in industry agreements. At the same time, sector agreements, especially when enforced by law, are inherently a compromise solution. They may not provide enough room for experiment and derogation, and moreover take more time to adapt (due to the sometimes lengthy negotiations). At the same time, some interviewees pointed out that time for reflection may be necessary when approaching fast-changing technological environments - something that is of benefit to the market players that are protecting their position (cinema theatres, television broadcasters) rather than the ones challenging them (VoD players).

In any case, both at sector and individual level, the film financing puzzle associated with European film production undoubtedly affects the outcome of the discussions. In particular broadcasters have taken up a role as film co-producers and/or investment partners in Europe, often within nationally set obligations (Nikoltchev, 2006). They and other investors may attach particular (release windows) conditions to their financing, in order to safeguard their own revenue from the film's exploitation (see e.g. Garandea, 2012). Loosing out on these substantial investments from existing markets may be too much of a risk in the eyes of rights holders when looking into the potential of emerging markets and alternative release strategies. Thus these players are more inclined to preserve the status quo and not taking risks to experiment with new options.

#### The French release windows system

Worldwide, the initial motion picture industry, based on screenings in cinemas, evolved over the years and decades into the multi-tier, multi-window system it is today. In the 1950s, France, like European countries in general, rolled out its television markets by setting up public service broadcasting monopolies. In the 1980s, private operators entered the market throughout the EU. By this time, a home video market had been established as well.

Despite common general trends, the particularities of the development of the television and other film markets may differ and have their roots in the specific context of each country, including its regulatory and legislative framework. The modalities of the French audiovisual (policy) landscape in this way influence the characteristics of its release windows system. The French release windows system stands out within the EU for at least two reasons: its regulatory/legislative framework and the importance of its Pay TV market.

Firstly, as noted, France is one of the only European countries in which legislation plays such a crucial role in setting the boundaries of each window. This is consistent with its generally elaborate policy framework for the audiovisual sector (Littoz-Monnet, 2003: 262), including the strong support tradition administered by the Centre National du Cinéma et de l'image animée (CNC). At the same time, interprofessional negotiations play an important role. Currently, the "Code du cinéma et de l'image animée" states that the windows for television and audiovisual media services ought to be fixed by professional agreements. These agreements may then be rendered generally applicable by Ministerial Decree. The DVD window is in any case established by law, with derogations foreseen for less successful titles (less than 200 admissions in the first four weeks of the theatrical release) (Lescure, 2013: 89-90). Currently, the professional agreement of 2009 and the Law "Création et Internet" (2009) fix the respective time intervals for audiovisual media and home video (see Table 2).

Secondly, historical evolutions have contributed to the important impact Pay TV operators have on the application of release windows in practice. In the 1980s, France was the only country in the world to start de-monopolizing television by granting a new private operator, Canal Plus, a terrestrial frequency to broadcast Pay TV (Bomsel et al., 2007). As a result, French Pay TV has benefitted of two major advantages:

1) A total coverage of the territory allowing to cherry pick high-revenue subscribers nearly ten years before the launch of Direct broadcast satellite services.

2) A maximum differentiation with free-TV programs still under state monopoly. Pay-TV obtained an exclusive release window to broadcast motion pictures one year after their theatrical release. It was also allowed to broadcast adult movies.

As a result, Canal Plus has remained a key player of the AV industry in terms of revenues. Moreover, in counterpart of this, it has taken up an important role in the financing of French film production (Benhamou et al., 2009). Its large role in French film financing has in turn given it a strong negotiation position in terms of e.g. release windows.

On the one hand, several stakeholders see the French system as an example. It combines a strong policy engagement with negotiations that involve all interested parties. The release windows framework has also not hindered the development of many VoD offers on the French audiovisual scene, including those of incumbents (e.g. Canal Play) but also other initiatives such as Universciné. It can also not be isolated from the general French audiovisual support and policy framework, which is believed to be a crucial stronghold of cultural diversity. Yet precisely because it is rooted in the general French audiovisual context, the interviewees noted that it is difficult to transpose it to other countries.

On the other hand, some interviewees (in particular those active in new (VoD) markets) denounced the complexity of the system, which makes it difficult to adjust some of its elements without impacting the whole. Focused on balancing the different sector players' interests, the consumers risk to be the losing party. Moreover, the system is fit for the typical French production, prefinanced by (pay) television, but does not provide sufficient leeway for titles that have a different financing structure and/or release strategy. Also, as the system builds upon negotiations that involve strong incumbent players (in particular Pay TV), it has come to include some barriers to the development of new business models that are perceived to threaten the models of these strong players, such as SVoD.

With the rise of a digital audiovisual era, as in other countries, the release windows system has come under debate in France. Only a couple of years after the Hadopi report first reduced the DVD/VoD window from 6 to 4 months (Law "Création and Internet"), these and other issues have been discussed again in the recent Lescure Report (May 2013). Covering "Act II of the cultural exception" and prepared by Pierre Lescure for the French Government, it includes a number of recommendations on release windows. It considers that the current French system is under pressure as it faces important challenges, which are more and more situated at the international level (Lescure, 2013: 95).

The main recommendations with regard to release windows in the Lescure Report are the following (Lescure, 2013: 95-104):

1) To decrease the period before films are available on VoD. In particular it calls for a reduction of the Transactional VoD window to 3 months after the theatrical release. Alternatively, this reduction could be reserved to VoD services taking up a role in the

financing of creation and the dissemination of diversity. Next to that it proposes to create room for experiment and flexibility. This includes experiments with day-and-date releases, premium releases and geo-localisation solutions. The report proposes to offer a framework and definitions to make such experiments possible. After a couple of years and upon evaluation, these experiments may be turned into derogations. A derogation is proposed for films that are released on few copies and that do not receive financing by a French television broadcaster. A similar exception to the release windows rules is proposed for films that have an unexpected lack of theatrical success. In both cases the (Transactional) VoD window could open as soon as two weeks after the theatrical release. A commission of experts would authorize experiments and derogations on a case-by-case basis.

2) To shorten the window for Subscription VoD from 36 to 18 months, thus placing it between the pay TV (10 months) and the free TV windows (22 months). In return, the VoD services should contribute to the financing of film production. Those that do not, can offer the films only after 22 or 36 months.

3) To allow for the "leap-frogging" of a window, in the case of smaller films, if that window did not contribute to the prefinancing. For instance, the free television window could be opened already at 10-12 months if no pay television broadcaster has contributed to the given title.

4) To avoid the closing of the VoD window when the television one opens ("freezing" of rights). They should either be prohibited or be strictly regulated, fixing in particular their maximum length).

5) To increase harmonisation between the system legislating the physical video window and the other windows, which are based largely on professional agreements.

**Box 1: The French release windows system**

## Digital evolutions and their impact on release windows in the EU

In this Section we take a closer look at the current debates surrounding the insertion of digital windows in the EU release windows systems. In subsection 3.1., we look at the main arguments for and against a reduction in the time intervals between the various windows, in particular the on demand window versus the theatrical and/or DVD window. In subsection 3.2., we make a more detailed comparison of the current trends in the EU27 markets and the US in order to assess the level of convergence or divergence between the different systems in practice. Subsection 3.3 then looks at some recent trends towards flexibility by providing an overview of experiments with release windows around the globe, with a focus on peculiar problems encountered in the EU.

### 2.1 A trend towards shorter windows

Our overview shows that across the EU, every window tends to get closer to the initial release in theatres. This coupled with the insertion of one or a few VoD windows leads to an overall reduction of the length of all windows (see Table 4 and also further in this Section). This trend was confirmed by all interviewees, and has led to continued debates between the different stakeholders involved. Crucially, this trend is visible across the EU, as well as in the US: in other words the different organisational frameworks (see 1.2) all seem to have similar results in practice (see Table 4 for examples of window reductions in recent years). Technological advances play a role in this, alongside a more crucial and general challenging of the idea of sequential versioning as such. As August et al. note: *"Is it profit-maximising for a release window between sequential distribution channels always to exist?"* (August et al., 2013: 1).

As we will see, the idea of capturing different audience segments with different versions of the same title remains key in the digital era. Yet spreading out the release of these different versions through a relatively long time period becomes increasingly difficult to reconcile with the expectations of an impatient audience, with the presence of illegal versions that do not adhere to the same rules, and with the need to generate high levels of marketing impact in a context of abundance and increased choice.

The global nature of the Internet and the borderless availability of illegal content offers definitely contribute to the increasingly simultaneous theatrical release of titles across territories. These types of simultaneous releases ("day-and-date" release) clearly do not cannibalise on each territory's theatrical audience. More controversial has been the shortening of the window between the theatrical and subsequent markets. Initially, this trend took off as the DVD market proved capable of generating higher income in less time (Hennig-Thurau et al., 2007: 63; Vogel, 2007), but today the discussions surrounding this issue centre increasingly on the position of the VoD window. Crucially, this engenders a new equilibrium amidst the different trade-offs that we already introduced in section 1.1. In doing this, rights holders have to take into account the diverging interests of their different business partners. Generally speaking, we can pit the cinema theatres and traditional television players (Pay TV, Free TV) on one side of the equation, with VoD players on the other side. When elaborating the release strategy, rights holders do not only look at the overall profit maximisation strategy,

but also have to take into account the different (financing) relationships with each of the individual parties. Each of these parties' attitude is moreover influenced by its own background. Those that are part of a vertically integrated company for instance may have different attitudes from non-integrated players (see 1.1).

Overall and taking this complexity into account, we can identify the main arguments in favour of collapsing windows, but also a number of arguments against this evolution.

**Table 4: Examples of recent changes in the organization of release windows in a set of MS and in the US (based on a comparison between IVF 2012 data and KEA, 2010, unless noted otherwise)**

Country	Time period observed	Changes identified
Austria**	Comparison of practices in 2010 and 2012	DVD from 6 to 4/6 months Online and PPV from 12 to 6 months Pay TV from 18 to 12 months Free TV from 24 to 18 months
Denmark	Comparison of practices in 2010 and 2012	DVD from 4.5/6 to 4 months VoD (streaming) from 7 months to day-and-date with DVD PPV from 15 to 4 months Free TV from 27 to 24 months
France*	Changes introduced in 2009 Decree	DVD from 6-12 to 4 months VoD from 33 weeks to 4 months PPV from 9 to 4 months Pay TV from 12/24 to 10-12/22-24 months Free TV from 24/36 to 22/30 SVOD from 36-37 months to 36 months
Germany**	Comparison of practices in 2010 and 2012	PPV from 12 to 9 months Pay TV from 18 to 12 months Free TV from 24 to 18 months
Italy	Comparison of practices in 2010 and 2012	DVD from 3/6 months to 15 weeks Online from DVD + 4 months to day-and-date with DVD PPV and Pay TV from 12 months to day-and-date with respectively streaming and EST Free TV from 24 to 15 months
Poland	Comparison of practices in 2010 and 2012	DVD from 6 to 4 months Free TV from 24 to 18/24 months
Spain**	Comparison of practices in 2010 and 2012 (sources for 2012: IVF & UNIC)	DVD from 4/6 to 3/4 months Online from 5 to 3/4 months
USA	Comparison between 2000 and 2012 (source: NATO)	The average number of days to video (et al.) release has decreased from 166 days in 2000 to 119 in 2012

\*Countries in which there is a general legislation on release windows

\*\*Countries in which there are rules regarding film support related to release windows

## Arguments in favour of shorter windows

As we already noted, the length of the waiting period before subsequent releases may first of all negatively impact the effect of marketing efforts (Lehmann & Weinberg, 2000: 19; Ulin, 2010: 118; Vogel, 2007: 189-190), since consumers are likely to 'forget' about the film. As a result, the opening of the following window requires renewed marketing investments. From this perspective, shortening windows leads to a more powerful exploitation of works. The shorter the windows, the greater the positive impact on subsequent windows. An additional factor in this regard is the increasingly short lifespan of films in a theatrical environment. The opening weekend and first weeks of exploitation have become more and more important. The Lescure Report refers to 2008 data by the CNC that show that 90% of theatrical admissions are gathered in the first five weeks of theatrical exploitation; 95% of admissions occur within the first eight weeks of release. This appears to be particularly true for films with a higher commercial success and that are released on more copies. US blockbusters have a more "hit and run" release pattern, whereas art house titles often have a slower build-up and longer theatrical life (CNC, 2008; Lescure, 2013: 96). At the same time, the number of films released in theatres is on the rise, with more and more titles competing for cinema visibility and audience admissions. Following from this, there is today an increased risk for films not to be able to fully exploit their theatrical presence, which in turn diminishes their success potential in subsequent windows. This is especially true for smaller titles, where a complementarity approach towards the theatrical and non-theatrical release may somewhat reduce this risk factor (Lescure, 2013: 97-98). In other words: both for high-profile blockbuster films as for small, niche films we can discern arguments for a reduction of the theatrical exclusive window - for different reasons.

Second, an argument that is made for all types of content is the one related to piracy. The idea is that the shortening of release windows allows to better fight unlicensed content providers, as they do not adhere to the rules of the release windows system. Piracy has eroded the exclusivity principle on which the release windows system was grounded. While copyright is crucial in the enforcement of release windows, the timing intervals that are inherent to the system may reinforce the attractiveness of pirated versions made available in advance of the official release dates (Currah, 2007: 81). Pirated copies of a film are sometimes already available on the Internet before the film has been released in theatres. The theatrical window is usually also followed by a period when the film is withdrawn from every platform. At this moment users can access it only via unlicensed platforms. As we will see in 0, similar "dry spells" in the availability of films on legal platforms occur later on in the release cycle due to the pressure exerted by e.g. pay TV operators.

Several industry stakeholders refer to the link between release windows changes and the fight against piracy. However, while the consumers' organisation BEUC defines windows as an obstacle, some of the industry organisations do not believe that media chronology by itself can solve the piracy problem. Yet even if collapsing windows may not eradicate piracy, it seems clear that the increased availability of illegal platforms has contributed to a change in audience expectations. Worldwide, consumers are less and less willing to patiently adjust their habits to 'artificial' barriers to access audiovisual works (see e.g. Lescure, 2013: 9, 93-94).

Taken together, these arguments point towards benefits in reducing the windows from at least three perspectives:



- 1) The VoD platforms themselves: They will be able to develop an attractive offer, including recent titles, as well as benefit from the cumulative marketing efforts for each of the titles in their catalogue.
- 2) Rights holders (producers, distributors): They can increase the impact of their marketing efforts and potentially increase their legal audience share.
- 3) Consumers: at one moment in time, they have more options (that will in addition be more different in terms of experience and price) of consuming the film in a legal way and/or they may access the films sooner in their preferred window.

At the same time, these arguments contradict to some extent with the benefits that players, active in one window, individually derive from exclusive access to (certain types of) content for as long as possible. In other words: the ideal balance from an overall and/or consumer perspective is not necessarily the ideal business situation for each of the individual stakeholders, such as cinema theatres or television broadcasters. As a result, rights holders who are anxious about losing the financing and marketing clout of some established windows, may not be enticed to challenge the established windows cycle.

### Arguments in favour of retaining current windows and their exclusive lengths

As mentioned for instance in the Lescure Report (Lescure, 2013: 9), the more extreme idea of giving up the system of release windows completely by eliminating all borders between the different windows - with all platforms in direct competition with each other - is expected to result in a destabilisation of the sector as a whole. While not necessarily opposing the arguments made in the previous subsection, the trade organisations we interviewed have put forward other arguments in support of the current release windows systems. Expressing a reluctance to change, they were in particular concerned with preserving the exclusivity and the preponderance of the theatrical window in a context of still relatively small and unstable VoD markets.

The starting argument in this respect is that watching films in cinema theatres is a unique (cultural) experience. Such an experience will keep its (cultural and economic) value and may even become more important. In any case, it is currently an important marketing tool for the film. Some stakeholders fear that a film going straight to other markets could be perceived as being of lower quality, thus decreasing the attention and the potential audience of that title. Even if other windows have become more important in terms of direct revenue, the cinema window is still worth the most in terms of marketing impact. As a consequence and for the time being, theatre operators in many European countries have important bargaining power in the discussions over release windows experiments (see 0).

Aside from this support for a first and exclusive theatrical window, the discussion then centres on the sequence and length of windows between the different non-theatrical channels. In this regard, the interviewees pointed out that the discussions do not take place in a vacuum, i.e. they are influenced by current power (im-)balances. Relatively new market entrants such as many of the VoD platforms cannot get windows as short as they would like to, because they have less market power than TV broadcasters or theatre operators (measured e.g. in terms of revenues or contribution to the financing of films). The Lescure Report explains for instance how, in France, Canal Plus has an important bargaining power due to its implication in the prefinancing of films - to the extent that films are not made if they are not involved (Lescure, 2013: 93).



One of the main issues that is of concern in this regard is that of film (pre-)financing. For the time being, the role of VoD in the financing of films remains limited. Even minimum guarantees are unusual and reserved for the largest titles (Lescure, 2013: 223). In contrast, the Lescure report shows that, at least for France, the VoD services receive a relatively low share of the revenue per transaction than their counterparts in the physical video market. To be profitable, the VoD service therefore has to reach important sales or rental volumes. That, in turn, often requires substantial promotion and marketing investments - for which many of the VoD players are not strong enough (Lescure, 2013: 223). As long as this vicious circle persists, the market realities will not make it evident to break through the established business and financing relationships and related release windows organisation.

Yet as the market matures, the competition between VoD and in particular Pay TV can be expected to intensify and affect the release windows organisation. This does not mean that the idea of exclusive and sequential windows will evaporate. While VoD players are natural opponents of the existing release windows system, we should not confuse this with an opposition to the idea in itself. In fact, some signs point towards an evolution whereby VoD players themselves increasingly distinguish their content offer through exclusive access deals. In December 2012, for instance, Netflix scored a deal with Disney, gaining exclusive US TV rights for Disney titles from 2016 on, as soon as 7 months after the theatrical release (Edwards & Palmeri, 2012). In terms of audience access, the preponderance of exclusive deals seems potentially problematic, as they may have to acquire different subscription in order to access different "exclusive" offers.

Despite the sometimes-heated debates, interviews and desk research indicate that all parties increasingly see change in the windows system as inevitable. The main debate then becomes centred on the exact characteristics of the changes. A related question is whether public intervention by national and/or EU policy-makers has a role to play alongside the expected market evolutions. In this regard, the involvement of big international players such as Netflix or Apple adds a further dimension to the European debates. In the next subsection, we look more closely at changes currently taking place in EU release windows systems, to shed more light on some of the key issues.

## **2.2 The reshuffle of the release windows system in the EU**

While the Information Sheets (see Annex) provide the overview of legislation, film support regulation and business practices around release windows in every MS and the US; the aim of the section is to focus on a few indicators to capture the extent of current trends, and identify the level of convergence or divergence between different release windows systems in the EU. This will help us to assess the current opportunities and challenges, in particular with regard to the emerging VoD offers.

The assessment is organised around three topics:

### 1) The overall organisation of the release windows

The indicators include the number, the type and the sequence of windows. This also considers whether the windows are exclusive (notably the possible alignment of VoD and video).

### 2) The theatrical window

We compare the length of the theatrical window and differences/convergences in the EU in terms of which is the following window.

### 3) The VoD window

The indicators include the position (relative to previous and subsequent windows), the start date and the length of the VoD window.

## The overall organisation of the release windows

The EU countries differ in terms of the number of windows identified and even in terms of the different types of the windows (see

Table 5). The major but only common characteristic among all MS is the fact that theatres in general benefit from an exclusive window, which comes before all the other windows. While in most countries, there is no rigid (legal) framework to protect the theatrical windows (see previous section), the usual practice is to reserve an exclusivity for theatres, which is defended notably by theatre operators.

**Table 5: Number, type and sequencing of release windows in the EU27 countries and the US**

	Number of windows	2nd window	3rd window	4th window	5th window	6th window	7th window	Are there ≠ types of VOD?
Austria**	4	DVD, Online, PPV	Pay TV	Free TV				No
Belgium	6	DVD, TVOD	Pay TV	Free TV	SVOD	Free VOD		Yes
Bulgaria*	3	DVD, Online	Free TV					No
Cyprus	5	Online	DVD	Pay TV	Free TV			No
Czech Republic	4	DVD, Online, PPV	Pay TV	Free TV				No
Denmark	4	DVD, Online, PPV	Pay TV	Free TV				Yes
Estonia	2	DVD, Online, Pay TV						No
Finland	4	DVD	Online	Pay TV, Free TV				No
France*	7	DVD, TVOD, PPV	Pay TV (1)	Pay TV (2)	Free TV	SVOD	Free VoD	Yes
Germany**	5	DVD, Online	PPV	Pay TV	Free TV, Free VoD			Yes
Greece	5	DVD	Online	Pay TV	Free TV			No
Hungary	4	DVD	Pay TV	Free TV				No
Ireland	5	DVD, EST	Streaming, PPV	Pay TV	Free TV			Yes
Italy	3	DVD, Online, PPV, Pay TV	Free TV					Yes
Latvia**	2	DVD, Free TV						No
Lithuania	6	DVD	Online	PPV	Pay TV	Free TV		No
Luxembourg	2	DVD, Online						No
Malta	n/a							n/a
Netherlands	5	DVD	Online	Pay TV	Free TV			Yes
Poland	6	DVD	TVOD	Pay TV	SVOD	Free TV		Yes
Portugal*	3	DVD, PPV	Free TV					No
Romania	5	DVD	Online, PPV	Pay TV	Free TV			No
Slovakia	4	DVD, Online	Pay TV	Free TV				No
Slovenia	4	DVD, Online	PPV, Pay TV	Free TV				No
Spain**	4	DVD, Online, PPV	Pay TV	Free TV				Yes
Sweden	6	DVD, Online	Streaming	PPV	Pay TV	Free TV		Yes
United Kingdom	5	DVD, EST	Streaming, PPV	Pay TV	Free TV			Yes
United States of America	2	DVD, Online, Pay TV, Free TV						No

\*Countries in which there is a general legislation on release windows

\*\*Countries in which there are rules regarding film support related to release windows (Sweden had such rules until 2013, hence the information provided refers to these rules)

After the theatrical window, the number of windows varies from 1 (e.g. Latvia) to 6 (in France). Most – but not all – countries distinguish between DVD, online distribution (“online” in the table), pay-per-view<sup>18</sup> (“PPV” in the table), Pay TV, and Free TV. This does not

<sup>18</sup> Pay-per-view is not a new concept. Yet the set-up of digitised "online" video on demand from the second half of the 1990s on benefited from technological advances in broadband and other delivery areas. As such, it has provided new dimensions to the idea of time- and place-shifting (KEA European Affairs & MINES ParisTech Cerna, 2010: 41). In a sense VoD provides the digital translation of what was pay-per-view in an analog context, but expands on it. This historical

necessarily mean that every distribution channel benefits from a distinct exclusive window. Rather, it means that the sequential system distinguishes between a separate starting point for each of these "windows". The starting point is usually defined vis-à-vis the theatrical release date. Generally, we could find a starting point for each window, but no specific indication of its length or ending date. However, as we will see, the different channels do negotiate for exclusivity, meaning that films will be taken out of one window when the subsequent window starts. This is not the case for all windows. From our research, we gathered that:

- Usually, the theatrical window is long enough to warrant a quasi-exclusive window. When the second window starts, the title will have disappeared from cinemas (second-run establishments or very small theatres may still be showing it);
- The DVD and Electronic Sell-Through VoD window will usually overlap with all subsequent windows. Disney has traditionally been a counterexample of this rule, as it retracts its DVDs from the markets at regular intervals in order to retain the novelty character of its releases. Warner Bros. recently started to follow a similar strategy for the Harry Potter franchise (Russel, 2011);
- There is usually a freeze in terms of availability on Pay-Per-View and in VoD rental catalogues during the broadcasting of a title on Free and/or Pay television. As we will see, the length of these freezes is a source of conflicts between the different parties involved.

Within online distribution, an explicit distinction is made in a few countries between different types of Video on Demand offerings. France and Belgium give a special status to Subscription VoD (SVOD) and Free VoD; Germany also distinguishes Free VoD, which shares the same window as Free TV. In some countries a distinction is made between rental and Electronic Sell-Through (EST) (in Belgium, Denmark, France, Ireland, Italy, the Netherlands, Sweden, United Kingdom; see Box 2 for an overview of the different types of VoD). We can expect the contractual practices to follow similar trends in many other countries.

Although in some cases the DVD window is still situated earlier on (in Finland, Hungary, Lithuania, the Netherlands, Poland, Romania), in most EU countries, DVD and online distribution are now in the same window. As the data we found is based on information gathered by the European sector organisations among their national representatives, the terms and level of detail varies between the countries. What falls under "online distribution" therefore varies as well, but generally speaking, it relates here to Electronic Sell-Through, with sometimes also Transactional rental models included (see also point 0). For Cyprus, IVF data suggest that online distribution can benefit from an earlier window than DVD. Yet the information from IVF and from other sources is slightly contradictory for these countries, which is why this should be assessed with caution.

#### Different types of VoD

Different financial and delivery models can be distinguished in the VoD marketplace. From the point of view of the end-user, we can firstly distinguish between a) free models, b) direct

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evolution is reflected in the fact that a separate window for "pay-per-view" can still be distinguished from "VoD" in many cases.

payment models and c) a mix of payment models, for instance *freemium* offerings whereby a small percentage of users pay to access extra content or services whereas the basic offer is free of charge (e.g. Hulu and Hulu Plus). Secondly, from a technical delivery perspective, we can distinguish between downloading and streaming models. Usually, streaming of content is done on a rental basis; while downloading is used for programmes offered on a permanent basis as well as for rentals.

The following types of VoD are thus regularly discerned:

- **Transactional VoD or TVoD of the rental variety, sometimes equated to Pay-per-view (PPV):** The consumer pays per VoD transaction but does not acquire permanent access to the title, instead renting it for a limited number of hours (usually 24 or 48).

- Transactional VoD of the sales variety, often named Electronic Sell-Through (EST) or download-to-own (DTO): The consumer can permanently access the acquired title, which is downloaded for future use.

- **Download-to-burn (DTB):** When the acquired files (transactional VoD) can be burned (on a DVD for instance), the term download-to-burn is used.

- **Subscription-based VoD (SVoD):** In return for a periodical (usually monthly) sum, the consumer gets access to either a fixed number or an unlimited supply of programmes. The catalogue of these services varies over time.

- **Free VoD, often advertising-based (AVoD):** The audience of the service is valuable for advertisers, who in a sense "subsidise" it. As a result, the consumer does not have to pay directly for the VoD service, which usually is based on non-permanent streaming of titles.

#### Box 2: Different types of VoD

### The theatrical window

The theatrical window has an average length of exclusivity in the EU of 116 days, i.e. in average films can not be made available on another platform before 116 days. This is close to the length in the US (119 days) (see Table 6 and Figure 1).<sup>19</sup> The exclusive theatrical window usually lasts between 90 and 150 days (i.e. 3 and 5 months), both in the EU and the US (see Figure 1). There may sometimes be circumstances under which the exclusive theatrical window is shortened, as is the case in France when the film is not performing well in theatres (see also Box 1). As such, even if Austria, Romania, Germany, Sweden, Finland and the Czech Republic still have higher-than-average theatrical windows, in all these countries there are provisions for shortening the window (see the Information Sheets for more detail).

The few countries with release windows legislation, i.e. France, Bulgaria and Portugal, are not out of step with the countries in which there is no such legislation: their minimal theatrical window is set between 90 (92 in France) and 120 days. Yet Germany and Austria are at the same time among the countries with extensive regulation related to film support, and among the countries that have the longest theatrical window (even if exceptions are provided for).

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<sup>19</sup> The standard deviation is 27 days. The values taken to calculate the average length of theatrical window were either the usual or legal length of the window ; or an average of the minimal and maximal length of this window. For example, for Austria, the value taken was the average of 120 and 180 (i.e. 150).

As we have seen, the available data (including a comparison between previous studies and the most recent IVF data) indicate a trend of shortening windows. This has been reflected in the legislative developments, with France amending its release windows in 2009, and currently studying further modifications following market evolutions in this area (see also Box 1).

In terms of the window following next, Table 6 shows that this usually comprises the DVD window, which in many cases, as noted, is already aligned with the window for online distribution (generally transactional VoD).

**Table 6: Features of the theatrical window in EU27 and the US**

Country	Length of exclusivity of the theatrical window (days)	Media in the following window
Hungary	180	DVD
Austria**	Between 120 and 180	DVD, Online, PPV
Romania	Between 120 and 180	DVD
Germany**	Between 120 and 180	DVD, Online
Sweden	Between 105 and 180	DVD, Online
Finland	Between 105 and 180	DVD
Czech Republic	Between 90 and 180	DVD, Online, PPV
Poland	Between 90 and 180	DVD
Slovenia	Between 90 and 150	DVD, Online
Belgium	120	DVD, TVOD
Portugal*	120	DVD, PPV
Slovakia	120	DVD, Online
Netherlands	120	DVD
United States of America	119	DVD, Online, Pay TV, Free TV
Luxembourg	119	DVD, Online
<i>Average EU</i>	<i>116</i>	<i>n/a</i>
France*	Between 92 and 120	DVD, TVOD, PPV
Ireland	Between 90 and 120	DVD, EST
Spain**	Between 90 and 120	DVD, Online, PPV
United Kingdom	Between 90 and 120	DVD, EST
Italy	105	DVD, Online, PPV, Pay TV
Denmark	Between 85 and 120	DVD, Online, PPV
Bulgaria*	90	DVD, Online
Estonia	90	DVD, Online, Pay TV
Latvia**	90	DVD, Free TV
Lithuania	90	DVD
Cyprus	Between 60 and 90	Online
Greece	Between 30 and 90	DVD
<i>Standard deviation EU</i>	<i>27</i>	<i>n/a</i>

\*Countries in which there is a general legislation on release windows

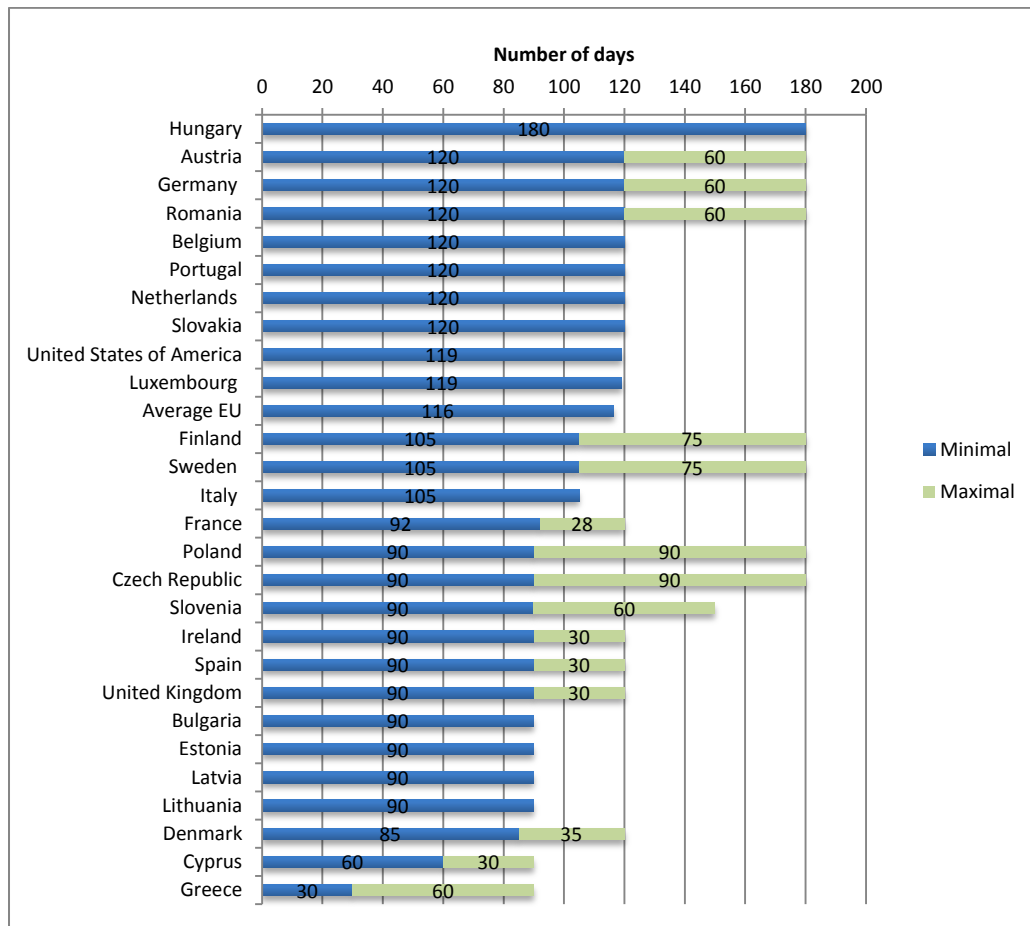
\*\*Countries in which there are rules regarding film support related to release windows

$$\text{Average EU} = \frac{\sum_{i \in \{EU \text{ countries}\}} \text{Length}_i}{N_{EU \text{ countries}}}$$

$$\text{Standard deviation EU} = \sqrt{\frac{\sum_{i \in \{EU \text{ countries}\}} (\text{Length}_i - \text{Average EU})^2}{N_{EU \text{ countries}} - 1}}$$

with  $\text{Length}_i$  being the length of exclusivity of the theatrical window in country  $i$ . In cases when different durations exist,  $\text{Length}_i$  is the arithmetic means of these different durations.

Figure 1: Length of theatrical window in EU27 and the US



### The VoD window

In a digital context, the questioning of release windows systems has been further exacerbated due to the need to insert a new window for Video on Demand (VoD), with sometimes different windows for the different kinds of VoD.

Generally speaking, sector stakeholders initially showed a certain reluctance towards VoD, instead focusing on the larger revenues coming from the DVD window. In France, the 2010 Hubac Report demonstrated that a rights holder received approximately €1,5 from each VoD rental, but that a sale of the same film on DVD or Blu-ray came with at least three times higher revenues (Hubac, 2010: 12). Today, the decline of DVD/Blu-ray markets has led to more emphasis being put on the growing VoD markets (Lescure, 2013: 94). Nevertheless, as



Lescure notes, many producers are focused on the prefinancing of their films, and thus put more emphasis on the theatrical and television windows (Lescure, 2013: 49).

In the EU, the VOD window starts on average 131 days after the theatrical release, vs. 119 days in the US.<sup>20</sup> There is a greater disparity among MS compared to the length of the theatre window (see Table 6), with most countries having a VOD window starting between 90 and 180 days after the theatrical release.<sup>21</sup> In Romania, the window starts only after between 180 and 270 days.

Rather than being an "exclusive" window, the VOD release often coincides with the DVD window (see Table 6). There is moreover a large disparity between the countries in terms of when the subsequent window starts. In some, the next window starts very quickly, whereas in others, a long period goes by before the subsequent release (e.g. up to 600 days in Finland). From the interviews, it appears that the VOD window (or at least some forms of VOD) often "shuts down" at this point to enable an exclusive release on e.g. pay television. The Lescure Report shows that, in the French case, pay TV channels (such as those of Canal Plus) negotiate (in return for their prefinancing involvement) such a freeze of the VoD (rental) window from the 10<sup>th</sup> month after the theatrical release and during the whole Pay TV window. Subsequently, the free television channels make similar demands, which render the exploitation by (Subscription and Free) VoD services impossible up to 30-48 months after the theatrical release. As the freeze is renewed at every rebroadcast, some of the (most commercial) titles even risk never to return to the VoD offer (Lescure, 2013: 102). The report concludes that there is no proof of cannibalisation between the VoD and these television windows, which makes it difficult to justify the "freeze" practices. In contrast, the appearance and disappearance of works on VoD platforms is difficult to comprehend for the average consumer, and may be an obstacle for the development of a legal online offer (Lescure, 2013: 103). As we will discuss in section 2.3, there are also some experiments in which a brief VoD window opens and closes during the theatrical release - at premium price levels (Premium VoD).

As we already noted, some countries draw more elaborate distinctions between different forms of VOD and the vocabulary used is not the same for each Member State. For some countries, the IVF data refer only to one VOD (or "online") window. For other countries a distinction is explicitly made (sometimes in legislation, if there is any) between Transactional VOD (TVOD), Subscription VOD (SVOD) and Free VOD (see Box 2).

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<sup>20</sup> The values taken to calculate the average duration before the start of VoD window were either the usual or legal length of the window ; or an average of the minimal and maximal duration before the start of of this window. For example, for Poland, the value taken was the average of 90 and 180 (i.e. 135).

<sup>21</sup> This is most easily seen by comparing standard deviations: 40 days for the start of the VOD window vs. 27 days for the length of the theatrical window.

Table 7 encloses all countries for which there is information available upon VOD in general without any distinction between the various forms.

**Table 7: Features of the VOD window in some MS and the US**

<b>Country</b>	<b>Start (days after the theatrical release)</b>	<b>Average length of exclusivity (days)</b>	<b>Previous window</b>	<b>Following window</b>
Finland	Between 120 and 360	Up to 600	DVD	Pay TV, Free TV
Romania	Between 180 and 270	Up to 270	DVD	Pay TV
Lithuania	180	90	DVD	PPV
Austria**	Between 120 and 180	Up to 240	Theatre	Pay TV
Czech Republic	Between 90 and 180	Between 90 and 270	Theatre	Pay TV
Slovenia	Between 90 and 150	Between 210 and 270	Theatre	PPV, Pay TV
Portugal*	120	240	Theatre	Free TV
Slovakia	120	240	Theatre	Pay TV
Luxembourg	119		Theatre	None
United States of America	119		Theatre	n/a
Bulgaria*	90	90	Theatre	Free TV
Estonia	90		Theatre	None
Cyprus	Between 60 and 90	Between 30 and 60	Theatre	DVD
Greece	Between 30 and 90	90	DVD	Pay TV

The table includes all countries for which no distinction could be found between different types of VOD

\*Countries in which there is a general legislation on release windows

\*\*Countries in which there are rules regarding film support related to release windows

In the countries where we received information that distinguishes between the different types of VoD, Transactional VoD comes first, followed by SVoD and Free VoD (see

Table 5). TVOD starts on average 123 days after the theatrical release, with the subsequent window starting 210 days after (see

Table 8). The Transactional VoD window usually coincides with the DVD or PPV windows and thus forms the first non-theatrical window. In the few times when a distinction is made between rental/streaming and electronic-sell-through/downloads, the sales window starts before the rental window (see

Table 8).

**Table 8: Features of the TVOD window in some MS**

Country	Specific features of TVOD	Start (days after the theatrical release)	Average length of exclusivity (days)	Previous window	Following window
Belgium	The opening of the Pay TV window corresponds to a closing of the TVOD window. Reopening at 720 days	120	240	Theatre	Pay TV
Netherlands	Some distributors distinguish between Streaming (rental) and EST	165	315	DVD	Pay TV
Germany**		Between 120 and 180	Up to 150	Theatre	PPV
Poland	TVOD is usually between 15-30 days after the DVD release	Between 105 and 180	Up to 255	DVD	Pay TV
Sweden	30-45 days additional delay for Streaming (rental) possible	Between 105 and 180	Up to 120	Theatre	Streaming
<i>Average EU</i>		<i>123</i>	<i>210</i>	<i>n/a</i>	<i>n/a</i>
France*	The opening of the Pay TV window corresponds to a closing of the VOD window (streaming / rental but not EST)	Between 92 and 120	At least 180 (for streaming / rental)	Theatre	Pay TV
Ireland	Streaming (rental) up to 30 days after EST	Between 90 and 120	Up to 60	Theatre	PPV, Streaming
Spain**		Between 90 and 120	Between 240 and 450	Theatre	Pay TV
Italy	Sometimes a distinction between rental and retail	105	345	Theatre	Free TV
United Kingdom	Streaming (rental) up to 30 days after EST	Between 90 and 120	Up to 60	Theatre	PPV, Streaming
Denmark	Maybe a distinction between rental and sales	Between 85 and 120	Between 240 and 275	Theatre	Pay TV
<i>Standard deviation EU</i>		<i>23</i>	<i>147</i>	<i>n/a</i>	<i>n/a</i>

\*Countries in which there is a general legislation on release windows

\*\*Countries in which there are rules regarding film support related to release windows (Sweden had such rules until 2013, hence the information provided refers to these rules)

SVoD, when explicitly mentioned is much further removed from the theatrical release, and generally coincides with or comes after the Free TV window (see



Table 9). If there is a specific provision for Free VoD, it always comes last in line, i.e. years after the theatrical release (see

Table 9). The rationale is that SVOD and Free VOD cannibalise respectively Pay and Free TV given the similarities between the revenue models. As the latter are more important to the rights holders in terms of pre-financing and/or revenue, these VoD models usually have difficulties to access recent content. Some interviewees even expressed the concern that with such models developing (e.g. with the arrival of Netflix announced in most EU countries towards the end of 2013), consumers would be steered away from other types of VoD that offer titles at higher prices, and hence would reduce the overall value generated by VoD. At the same time, SVoD is seen as a particularly attractive proposition from the point of view of the consumers, but the current catalogues of SVoD platforms suffer from the long time intervals that are generally applicable. In a reaction to this situation, Netflix successfully recently entered the original content arena (with programmes such as Arrested Development and House of Cards; Block, 2012). This move into premium content investment may make SVoD more attractive as an alternative to (Pay) TV from both a consumer and a rights holder angle in the near future.

**Table 9: Features of the SVOD and Free VOD windows in some MS**

Country	SVOD / Free VOD	Start (days after the theatrical release)	Average length of exclusivity (days)	Previous window	Following window
Belgium	SVOD	Between 720 and 1080	Up to 360	Free TV	Free VOD (at 1080 days)
Germany**	Free VOD	Between 180 and 540	n/a	Pay TV	-
Poland	SVOD	Not earlier than 450	Up to 270	Pay TV	Free TV
France*	SVOD	1080	Up to 360	Free TV	Free VOD (at 1440 days)

\*Countries in which there is a general legislation on release windows

\*\*Countries in which there are rules regarding film support related to release windows

## Conclusions

Looking at the organisation of release windows and related trends in the EU countries, we can confirm that the diversity of frameworks identified in section 2 (legislation, regulation and/or industry agreement) translates into a set of very diverse release windows practices. This seems to be in particular the case in terms of the overall organisation of the release windows systems. The definitions and level of detail in the release windows framework tends to vary, in particular with regard to online distribution and the different variants of Video on Demand (e.g. TVoD, SVoD, Free VoD, see Box 2 in the report). This does not contribute to sector transparency at EU level.

Despite this diversity, however, we can identify common characteristics and trends. Firstly, the theatrical release remains clearly the first window across the EU. At the same time, the length of the exclusive theatrical window tends to be shortening to around 3-5 months, both in the EU and the US. It is generally followed by the DVD window, often aligned with the online (Transactional VoD) window.

Secondly, the non-theatrical window structure seems to be in a period of transition, with different terminologies and levels of detail visible in the MS, to reflect the emerging and diversifying VoD market. There is a general acceptance today that the VoD window should coincide with the DVD window, at least as far as Transactional VoD is concerned. Whereas DVD revenue is dropping, the VoD window is seen as a growth market. More problematic is the observation that they are confronted with time holdbacks or "freeze" practices, which means that content disappears from their platform, to the advantage of subsequent (television) windows. Non-transactional VoD models such as SVoD or Free VoD, which may be particularly attractive to audiences, are either not explicitly treated or - if they are - tend to get access to films years after the theatrical release. In a sense, different VoD variants form the "on-demand" translation of existing release channels: SVoD is often seen as similar to Pay TV; Free VoD to Free TV and Transactional VoD to Pay-per-view and/or DVD rental/sales. Rights holders in the EU tend to remain focused in first instance on established windows (television, theatrical), whereas the latter continue to carve out exclusive access to content. As a result, VoD services generally do not have exclusive access to content. All these aspects may negatively impact the ability of VoD to offer a true alternative to piracy.

Moreover, there is not so much room for manoeuvre to apply release windows in a flexible way, either at the level of the MS or across the EU. From our review and the interviews it appears that, in the absence of specific legislation or other regulatory provisions on release windows, contrasting market forces result in a tug of war that is often to the benefit of the incumbent players. On the other hand, such external rules do not necessarily prevent strong incumbent players from protecting their window. While it is not surprising that some of the main incumbent parties (cinemas, television broadcasters) are trying to protect their acquired windows rather than taking the risk of losing part of their audiences and revenue, this makes it difficult to make a trade-off between the different arguments pro and contra a change in the windows' organisation. Yet also in the group of countries with regulation/legislation, there are clear differences in terms of the level of detail and complexity of the system that affect the potential to diverge from the system. France's elaborate release windows organisation has the benefits of clarity and balanced negotiations, but may be slow to adapt and too rigid for the players and titles that do not follow a typical release strategy.

Despite the reluctant attitude of some players, however, a number of tests and alternative release strategies have been set up in recent years. It is important to look at both the cases that occurred in the EU as those that took place outside of the EU. Given the arrival in Europe of some important players from the US (such as Netflix), it is important to particularly study the evolutions in this country.

### **2.3 Towards more flexibility? Testing new release strategies in the EU and beyond**

As seen in Section 2, there is a clear trend towards shortened release windows in the EU as well as in the US. This acceleration of the release cycle results mainly from the insertion of VOD window(s) and the competition from copyright-infringing services.

In addition, we now consider the impact of cases when films' releases diverge from the set release modalities. These cases centred in particular on one of the two main debates we identified at the end of the previous subsection, i.e. on the position and length of the theatrical window and how they relate to the VoD release. The experiments put forward alternative release schedules that approach the sequencing windows with more flexibility. This impacts the theatrical window in various ways. Starting out as experiments, we can today distinguish a number of distinct alternative release strategies:

- Day-and-date strategies. This means that a title is released in different channels and/or markets on the same day (August et al., 2013: 1). It may refer to e.g. the release of a title both in the home and the international theatrical market, but currently (and in this report) it is mostly used to refer to a simultaneous release on VoD and in theatres.
- Reverse windowing or "ultra" release models, i.e. with a release on VOD before the release in theatres.
- Premium VoD releases, i.e. the release of an offer on Video on Demand during the theatrical window, but at higher (premium) prices than during the later VoD window (KEA European Affairs & MINES ParisTech Cerna, 2010: 58; Miller, 2012).

Table 10 gives an overview of a number of recent cases that we identified through our desk research. While we did not provide an exhaustive overview of all experiments, our selection of 45 cases showed that they were diverse in terms of the type of films involved, the

distributors and the type of release strategy followed. Nevertheless, while the first experiments still concerned the simultaneous release on DVD and in theatres, the rise of VoD becomes clear over time, with day-and-date releases and ultra-releases in VoD and theatrical markets today most prominent. They often occur for smaller, independent films and/or documentaries, for which a wide theatrical release is supposedly less evident. In contrast, major distributors have been the ones attempting to establish a Premium VoD window for some mainstream blockbusters.

In the following pages, we will take a closer look at some of the experiments that took place respectively outside and inside the EU. We have in particular aimed to gather concrete economic performance data for a number of cases that are different in terms of the following:

- a) The type of experiment (see above). Among the experiments, the day-and-date releases are said to be more successful than the premium VoD experiments (Lescure, 2013: 98).
- b) The type of content (mainstream versus non-mainstream): we saw in subsection 3.1. that there are different justifications possible that warrant closer windows for various types of content.
- c) The type of industry players involved: as noted in subsection 2.1, vertically integrated players may be more enticed to align windows closer in order to optimise the overall marketing impact and potential revenues.
- d) The countries in which the experiment took place (EU or non-EU, with extensive release windows framework or not). We may expect countries where boundaries of the release window system are set through regulation and/or legislation to be less open to such experiments. Additionally, the level of piracy, the cinema infrastructure and other country-specific factors may influence the feasibility and/or results of certain experiments.

In fact, even if movie theatres tend to look at these alternative releases with suspicion, most of our interviewees recognised that there is a lack of concrete market data that can help to prove or disprove the existence of a cannibalisation effect.

Country of experiment	Year	Film & Director	Country of origin	Type of film	Distributor	Type of experiment	Further description
10 EU territories	2013	"Viramundo: a musical journey with Gilberto Gil" - Pierre-Yves Borgeaud	France/Switzerland	Documentary	Urban Distribution (FR); Nomad Films (IT); Alambique (PT); Kaunas International Film Festival (LT); Brunbro Films (Benelux); Soda Pictures (UK/IE); Gutek Films (PL)	Ultra-release / Day-and-date	<i>Viramundo</i> is the first film to be released in the framework of TIDE. TIDE, Speed Bunch and EDAD are projects financed by the European Commission under the first call of its Preparatory Action. The results will be presented at a conference presumably in May 2014. <i>Viramundo</i> was released simultaneously or quasi simultaneously in theatres and on VoD. To work around legislative requirements in France, a symbolic VoD release before the theatrical one was released in France.
UK	2013	"A Late Quartet" - Yaron Zilberman	US	Feature film (independent, drama)	Curzon Artificial Eye	Day-and-date theatrical/ VoD	Same model, combining a Curzon VoD release and theatrical release
France	2012	"Paraisos Artificiais (Les Paradis Artificiels)" - Marcos Prado	Brazil	Debut feature film	Damned Distribution	Ultra-release	This debut feature film was shown Dailymotion's site on October 29 2012 from 22.00, ahead of French distributor Damned Distribution's release on October 31. Over 6,0000 people viewed it online. However, a chain of cinemas decided to cancel its bookings of the film, which meant that it was only shown at three independent venues
France/Belgium	2012	"Nuit #1" - Anne Emond	Canada	Debut film, independent	Coopérative Nouveau Cinéma	Ultra-release	This debut film was put online on Dailymotion in France and Belgium as a "sneak preview", 2 days before the theatrical release. Up to 7,000 people watched the title, which was released in a limited number of theatres. There were however no cancelled bookings
UK	2012	"Le Havre" - Aki Kaurismaki	Finland/France/Germany	Feature film (nominated for a Cannes Palme D'Or)	Curzon Artificial Eye	Day-and-date theatrical/ VoD	<i>Le Havre</i> was shown simultaneously in cinemas and on Curzon On Demand, for £10 per new release.
UK	2012	"Something In The Air" - Ramsay Davila	France	Feature film (drama)	Curzon Artificial Eye	Day-and-date theatrical/ VoD	Same model, combining a Curzon VoD release and theatrical release
UK	2012	"Beware of Mr Baker" - Jay Bulger	US	Documentary	Curzon Artificial Eye	Day-and-date theatrical/ VoD	Same model, combining a Curzon VoD release and theatrical release

Country of experiment	Year	Film & Director	Country of origin	Type of film	Distributor	Type of experiment	Further description
UK	2012	“Stories We Tell” - Sarah Polley	Canada	Documentary	Curzon Artificial Eye	Day-and-date theatrical/ VoD	Same model, combining a Curzon VoD release and theatrical release
US	2012	“Bachelorette” - Leslye Headland	US	Independent film	The Weinstein Company/ Anchor Bay Entertainment	Ultra-release	The film was released on VOD a full-month before its theatrical release. It was seen as very successful, in particular on VOD, where it grossed \$5.5 million (compared to a weak revenue of \$448,000 in the theatrical market)
US	2012	“Arbitrage” - Nicholas Jarecki	US	Non-mainstream film	Lionsgate/ Roadside Attractions	Day-and-date theatrical/ VoD/cable	It was released on the same day in all three markets (theatrical release in nearly 200 locations). It is considered the most successful day-and-date release so far, with \$8 million grosses at the box office and another \$14 million in VoD
US	2012	"The Bay"	US	Independent film (horror/sci-fi)	Lionsgate/ Roadside Attractions	Day-and-date theatrical/ VoD	This ecological thriller about creatures infesting people's bodies, premiered in about 23 theatre locations, and on VOD the same day. It made comparatively large theatrical earnings within its two-week run (\$30,000)
US	2012	“Piranha 3DD” - John Gulager	US	Low-budget 3D comedy/ horror/thriller	Anchor Bay Entertainment/ Dimension Films/ Starz Digital Media	Day-and-date theatrical/ Pay TV/VoD	Piranha 3DD was available day-and-date on VOD (rental), in theatres, in Pay TV homes and even on Facebook (rental offer via dedicated app)
US	2012	“Universal Soldier: Day of Reckoning” - John Hyams	US	Mainstream action film	Magnolia/ Magnet/Sony	ultra-release	The film first ran on Video on Demand, before opening on three screens. No detailed numbers were available, but the trade press considered it a success
France	2012	“Fear of Falling” - Bartosz Konopka	Poland	Feature film (drama)	Eye on Films	Ultra-release	Avant-premieres of the film were organised through VoD. There were no reactions from theatres
US	2012	“Bel Ami” - Declan Donnellan, Nick Ormerod	UK/IT	Independent film	Magnolia	Ultra-release	“Bel Ami” (starring Robert Pattinson) can be rented via select cable or satellite operators ahead of its theatrical release
US	2012	“The Do-Deca-Pentathlon” - Jay Duplass, Mark Duplass	US	Independent film	Fox Searchlight (ancillary); Red Flag Releasing (theatrical)	Day-and-date theatrical/ VoD	Here, the filmmakers made separate VOD and theatrical deals as part of a compressed-window release. The Duplass Bros. handed theatrical to Red Flag Releasing and ancillary to Fox Searchlight for a simultaneous release

Country of experiment	Year	Film & Director	Country of origin	Type of film	Distributor	Type of experiment	Further description
US	2012	"To the Wonder" - Terrence Malick	US	Independent film	Magnolia	Day-and-date theatrical/ VoD	Supposedly because of its unlikely theatrical strength
Ireland	2012	"Silence (III)" - Pat Collins	IE/DE	Independent film	Volta	Day-and-date theatrical/ VoD	Volta offers films simultaneously on its own platform and in theatres
Ireland	2012	"Town of runners" - Jerry Rothwell	Ethiopia/ UK	Independent film	Volta	Day-and-date theatrical/ VoD	Volta offers films simultaneously on its own platform and in theatres.
Spain	2012	"Carmina O Revienta" - Paco León	ES	Independent low-budget film (mockumentary)	Jaleo/ La Luna de Tantan	Day-and-date theatrical/ VoD/DVD	Acquired about 15,000 VoD buys (\$2.40 to \$5) which was seen as a success. It also sold 9,000 DVDs. Theatrically released on just 20 screens, the box office revenues were more modest (\$37,926)
US	2012	"The Fitzgerald Family Christmas" - Edward Burns	US	Independent film	Tribeca Film/Marlboro Road Gang Productions	Ultra-release	The film is premiered first on Apple's iTunes, Amazon and cable video-on-demand services
Portugal	2011	"Tangled" - Nathan Greno, Byron Howard	US	Mainstream animation	Zon Lusomundo Audiovisuais	Premium VoD	"Tangled" was offered on demand six weeks after the film opened in theaters, at the price of €24.99. Disney declined to discuss the results, but by all accounts, it wasn't considered a success, attracting fewer than 1,000 hits. In contrast, the Tangled VOD offering didn't appear to hurt theater traffic. It grossed worth of \$3.6 million in Portugal, making it one of the top grossing 2010 releases. According to the trade press, Portugal was an ideal testing ground because there was little danger of theaters pulling Tangled, since the largest cinema chain in the country is the sister company of the distributor that licenses Disney product
US	2011	"Just Go with it" - Dennis Dugan	US	US major film (romantic comedy)	Columbia Pictures (Sony)	Premium VoD	The film released on VoD while the movie was still shown in cinemas for \$29.99 on Direct TV (available 48h)
US	2011	"Margin Call" - J.C. Chandor	US	Independent film (thriller)	Lionsgate	Day-and-date theatrical/ VoD	It was seen as a successful day-and-date release, in which marketing buzz was combined to give the film a boost in theatres. Revenues in both windows were significant. Gross domestic revenues exceeded the budget



Country of experiment	Year	Film & Director	Country of origin	Type of film	Distributor	Type of experiment	Further description
US	2011	“Tower Heist” - Brett Ratner	US	Major film (comedy/ action)	Universal Pictures	Premium VoD	Tower Heist was released on On-Demand in several US cities to Comcast digital cable subscribers just three weeks after its theatrical debut for \$59.99. A number of independent theater chains and Cinemark USA Inc., the nation’s third largest theater chain, vowed not to play the movie “Tower Heist” in any of their locations
France	2011	“Red Heart” - Michael Lavers, Eben Bolter	UK	Micro-budget film	Eye on Films	Ultra-release	Avant-premieres of the film were organised through VoD. There were no reactions from theatres
US	2011	“Melancholia” - Lars von Trier	DK/SE/FR/DE	Auteur film (drama)	Magnolia	Ultra-release	Melancholia appeared on VOD a month before its theatrical release. It made \$3 million in theaters and a reported \$2 million on VOD, topping the \$4 million-plus box office takes for each of Lars Von Trier’s two top hits, “Breaking the Waves” and “Dancer in the Dark.” It was seen as a successful example
US	2011	“The Woman in the Fifth” - Pawel Pawlikowski	FR/PL/UK	Independent film (thriller)	ATO Pictures	Day-and-date theatrical/ VoD	A first day-and-date release for ATO Pictures
US	2011	“Return” - Liza Johnson	US	Independent film	Focus World (digital); Dada Films (theatrical)	Shorter theatrical window	There was a limited theatrical rollout a few weeks before and after a digital release. While the film’s theatrical take was negligible, it was said to have helped garner positive reviews
Ireland	2011	“The island president” - Jon Shenk	US	Documentary	Volta	Day-and-date theatrical/ VoD	Volta offers films simultaneously on its own platform and in theatres
US	2011	“Newlyweds” - Edward Burns	US	Independent film	Marlboro Road Gang Productions/ Tribeca Film	Day-and-date theatrical/ VoD/DVD	The film combined a small theatrical run in Chicago and San Francisco with a focus on VOD and iTunes releases
France	2010	"Film Socialisme" - Jean-Luc Godard	Switzerland/ France	Auteur film (drama)	Wild Bunch	Ultra-release	The film was offered on VoD for €7 for 2 days before the theatrical release
UK	2010	“Alice in Wonderland” – Tim Burton	US	Mainstream film	Disney	Premium VoD and shortening of the DVD window	Disney planned to offer the title on demand shortly after the theatrical release, at a premium price. It also planned a DVD release after 12 instead of the usual 16 to 17 weeks. Following a boycott by UK cinema's, a comprimise deal was struck

Country of experiment	Year	Film & Director	Country of origin	Type of film	Distributor	Type of experiment	Further description
US	2010	“ReGeneration” - Phillip Montgomery	US	Documentary	Red Flag Releasing/Warner Bros. Digital Distribution	Day-and-date theatrical/VoD	Released through an output deal with Warner
US	2010	“The Green Wave” – Ali Samadi Ahadi	Germany	Documentary	Red Flag Releasing/Warner Bros. Digital Distribution	Day-and-date theatrical/VoD	Released through an output deal with Warner
US	2010	“Nice Guy Jonny” - Edward Burns	US	Independent film	Marlboro Road Gang Productions	Exclusive VoD release	Bypassing of theatrical release. It was evaluated as a success. Notably, the filmmaker was able to retain a higher share of the profit (no studio deal)
Japan	2009	“The Curious Case of Benjamin Button” - David Fincher	US	Blockbuster film	Warners Bros.	Day-and-date VoD/DVD	A simultaneous release on DVD and VoD
US	2009	“Cloudy With a Chance of Meatballs” - Phil Lord, Chris Miller	US	Animation film	Sony	Premium VoD	While the film was still in theaters, it was released for early rental to owners of Sony-branded digital devices (for \$24.95). Exhibitors were upset and threatened to pull the film from its screens
US	2009	“G.I. Joe: The Rise of Cobra” - Stephen Sommers	US/CZ	Major action film	Paramount	Shorter theatrical window	Exhibitors were upset over the decision to release the film on DVD only 88 days after its theatrical release. However, the distributor claimed it was an anomaly, designed to position the film for holiday shoppers
Korea	2008	“The Dark Knight” - Christopher Nolan	US	Blockbuster franchise	Warner Bros.	Day-and-date theatrical/VoD	The Dark Knight was released online and on cable TV two weeks prior to its release on DVD
Spain	2007	“Going Nuts” - Juanjo Ramirez	ES	Animation film	Perro Verde	Day-and-date theatrical/VoD/DVD	Filmotech was a partner for the VoD release
US	2007	“Purple Violets” - Edward Burns	US	Independent film	Marlboro Road Gang Productions/iTunes	Exclusive VoD release	Bypassing of theatrical release. It was evaluated as a success

Country of experiment	Year	Film & Director	Country of origin	Type of film	Distributor	Type of experiment	Further description
UK	2006	"The Road to Guantanamo" - Michael Winterbottom & Mat Whitecross	UK	Documentary	Channel Four Films	Day-and-date theatrical/VoD/DVD	The film received a simultaneous theatrical, DVD and internet release through Tiscali in March 2006, the day after it aired on Channel 4. It was evaluated positively
US	2006	"Bubble" - Steven Soderbergh	US	Independent film	Magnolia	Day-and-date theatrical/Cable TV, shorter DVD window	Steven Soderbergh released "Bubble" on theatrical and cable television on the same day, and on DVD after a four day period
China	2005	"The Sisterhood of the Traveling Pants" - Ken Kwapis	US	Mainstream film	Warner Bros.	Day-and-date DVD release in China and Theatrical in US	The movie was released on DVD in China on the same day the movie opened in U.S. theaters in an effort to prevent piracy of the film. The move marked the first time a major U.S. studio had simultaneously released a film at home and on DVD in a foreign country. The movie, was one Warner Bros. did not intend to release in Chinese theaters

Table 10: An overview of experiments taking place in Europe, in the US and in the rest of the world

## A closer look at some US and other film cases

Through our desk research, we could identify many interesting case studies that took place in the US and/or involved US film releases in other global markets, notably Asia. Not only is the US Hollywood industry the major global film presence, there is also an important independent US film sector which appears to be particularly involved in setting up alternative release strategies. We selected nine cases for further analysis (see Table 11).

The Asian examples all concern movies with large budgets, released by one of the Hollywood majors. According to Cunningham et al. (2010: 122), Korea and Japan were most probably targeted because of the speed, quality and accessibility of their broadband infrastructure. The impact on theatrical box office was not negative, however we could not find information on the VOD revenues. Piracy may also play a role when US majors decide to tighten timing gaps between a US and global release, as was allegedly the case when Warner Bros. released *Sisterhood of the Traveling Pants* on DVD in China at the same time as the US theatrical release. Such a strategy can backfire since bootleggers might spread HD copies quickly around the world (AP, s.d.). In the case of *The Sisterhood...* it does not seem to have hindered the film's success, which ended up being profitable – with box-office superior to budget (see Table 11).

Within the US itself, our selection covers two typical examples of how US players are inserting flexibility into their release strategies. A first set concerns the independent release of relatively small titles on a day-and-date basis (*Bachelorette*, *Margin Call*, *Arbitrage*, *Newlyweds*), notably covering EU films as well (*Melancholia*). Such films often follow a staggered release pattern, and are initially released only in the theatres of some of the major US cities. As a result, a large part of the country's population could not see the movies in a near-by theatre, or at least not immediately upon release, hence the strategy of a parallel release on VoD has the potential to capture an additional audience. As the US theatrical landscape is dominated by multiplexes (in 2012, 81% of its screens were located at venues with 8 or more screens, cf. MPAA, 2012: 22), the biggest blockbusters tend to crowd out smaller titles in the theatrical market (Mulligan, 2013).

The assessment of these experiments is rather positive. Thus *Arbitrage* is “not just a good return for any indie film, it's the most successful day-and-date release by far” (McClintock, 2013). For *Margin Call*, rather than undercutting its theatrical release, its VOD availability has resulted in a positive buzz around the film (Miller, 2012). The success of *Melancholia*, made by Danish director Lars von Trier, was such that analysts claim that “*the film demonstrated that advance VOD won't necessarily hurt a film's theatrical take*” (Goldstein, 2012).

Second, US majors have started to experiment with Premium VoD releases for bigger-budget titles (*Tower Heist*). This type of experiments has been set up more recently, with first tests reported in 2011. Yet the protest against this type of VoD release was perhaps even higher than the one over day-and-date at lower VoD prices - probably as Premium VoD typically is tested for more high-profile titles. *Tower Heist* was set to be released on-demand in two cities (Portland, OR and Atlanta, GA) just three weeks after its theatrical debut at a price point of \$59.99 (Orange, 2011). Yet the experiment did not go through following the surge of protest from theatre owners. Another 2011 set of experiments with "Home Premiere" (at a price point of \$30) did not get a follow-up, allegedly because of poor sales (Dickey & Stewart, 2011; Fritz, 2011). In June 2013, the announcement of new Premium VoD test-beds, this time in Asia, was however seen as an indication that this battle is not over yet (Spangler, 2013).

Day-and-date releases have become more widespread as years go by, in particular for smaller titles. Some of the interviewees have claimed that no cannibalisation seems to occur and that,

on the contrary, the overall revenue levels seem to increase because of it. However such practices are not fully accepted, in particular not by cinema theatres. In light of this, it is perhaps not surprising that the main distributors adopting these strategies in the US are part of vertically integrated firms (notably IFC and Magnolia, which spearheaded this release strategy). As these players combine their distribution activities with the control of both theatrical and non-theatrical outlets (including VoD), they hold all the reigns and have the power to independently adopt such release strategies.

**Table 11: A detailed overview of a selection of experiments taking place in the US and in the rest of the world**

Country of experiment	Year	Film/Director	Country of origin	Type of film	Production budget	Distributor	Type of experiment	Theatrical				VOD		
								Country of experiment	box office (\$)	admissions	theatres*	EU27 admissions	Global box office (\$)	Country of experiment
US	2011	"Margin Call" C. Chandor	US	Independent film (thriller)	\$3.5million	Lionsgate	Day-and-date theatrical/VoD	US	5.3million	661,895	56/199	10,768,866	19.5million	5 million
US	2011	"Tower Heist" Brett Ratner	US	major film (comedy/action)	\$75million	Universal Pictures	Premium VoD	US	78million	9,851,963	3,367/3,870	3,132,693	153million	
US	2012	"Bachelorette" Leslie Headland	US	Independent film	\$3million (est.)	The Weinstein Company/Anchor Bay Entertainment	Ultra-release	US	448,000		47/60	597,442	10million	5.5million
US	2012	"Arbitrage" Nicholas Breakey	US	non-mainstream film	\$12million (est.)	Lionsgate/Roadside Attractions	Day-and-date theatrical/VoD/cable	US	7.9million	993,684	197/256	740,947	32million	14million
US	2011	"Melancholia" Lars von Trier	DK/SE/F/R/DE	Auteur film (drama)	\$7.4million (est.)	Magnolia	Ultra-release	US	3million	317,666	19/145	1,877,011	16million	2million
US	2011	"Newlyweds" Edward Burns	US	Independent film	\$9,000 (est.)	Marlboro/Roadside Productions/Tribeca Film	Day-and-date theatrical/VoD/DVD	US	4,500		1/1			
Korea	2008	"The Dark Knight" Christopher Nolan	US	Blockbuster franchise	\$185million	Warner Bros.	Day-and-date theatrical/VoD	US	25million			23,513,421	1billion	
Japan	2009	"The Curious Case of Benjamin Button" David Fincher	US	Blockbuster film	\$150million	Warner Bros.	Day-and-date VoD/DVD	US	25million			12,651,966	334million	
China	2005	"The Sisterhood of the Traveling Pants" Ken Kwapis	US	Mainstream film	\$25million	Warner Bros.	Day-and-date/DVD release in China and Theatrical in US	US				100,177	42million	

Source for admissions: Lumiere  
Source for film info, budget, box office and theatres: Box office mojo  
Source for VOD revenue: Various articles see Bibliography/Annex  
Source for budgets: Box Office Mojo/IMDB  
\* Opening weekend/widest release

### A closer look at some EU film cases

An interesting outcome of the study is that, despite the various types of frameworks (including legislation and regulation linked to film support), alternative release strategies are being tested in various EU countries. Yet detailed data on the performance of the titles in different windows is lacking - with even less industry data available than for the US experiments (see Table 12). Other important similarities and differences between the EU and the US experiments include:

- A theatrical landscape less dominated by multiplexes, with a stronger tradition of organised (and subsidised) arthouse exhibition (as exemplified by the Europa Cinemas network). Linked to this, for many Europeans the travelling time to the nearest theatre showing arthouse titles tends to be lower.
- Nevertheless, and as noted for France in Lescure (2013: 99), not all countries or regions in the EU have a similar theatrical landscape. In certain geographical areas cinema theatres may be very scarce. If there is one it may be a multiplex and/or only an occasional screening service. Therefore, even during a theatrical release, the actual access to the film may be restricted or non-existent for substantial parts of the potential audience.
- A stronger arthouse film tradition, with however a large share of EU productions not attracting a wide theatrical release outside of the home market.

In other words, while the theatrical landscape varies in terms of the audience's proximity to (arthouse) cinemas, the smaller-scale character of European film's releases in any case may provide incentives to set up innovative window structures, especially to increase cross-border

circulation of films. For the time being, most of the cases we identified focus on one territory, and concern arthouse films.

In particular the UK is renowned for the number of experiments taking place there. This is notably the case with Curzon Artificial Eye. Proving that vertically integration may offer particular incentives to build custom release strategies, the company at the same time operates as an exhibitor, a distributor and a VOD service. Day-and-date releases are at the core of its strategy. A recent list of films they have released in this manner includes *Le Havre* (Aki Kaurismaki), *Something In The Air* (Ramsay Davila), *Beware of Mr Baker* (Jay Bulger), *Stories We Tell* (Sarah Polley), all released in 2012, and *A Late Quartet* (Yaron Zilberman) released in 2013.

There are also other examples from the UK, including *The Road to Guantanamo* (Michael Winterbottom & Mat Whitecross) and *To the Wonder* (Terrence Malick) (see Table 12). For the former, the VOD data are not available but the rights holders were quoted as being very pleased with VOD figures (Screen Daily, 2007: 26). The experiment also showed no negative impact on interest of theatrical rights buyers outside of the domestic market (Screen Daily, 2007: 26). As for the latter, the film has been “a quiet performer” in the UK (Lodge, 2013).

**Table 12: A detailed overview of a selection of experiments taking place in Europe**

Country of experiment	Year	Film/Director	Country of origin	Type of film	Production budget	Distributor	Type of experiment	Theatrical			VOD			
								country of box office	experiment admissions	EU27 admissions	Global box office	country of Revenue	experiment #downloads	"Rest" Revenue
France	2012	"Paraiso Artificial" (Les Paraisos Artificiels) / Marcos Prado	Brazil	Debut feature film		Damned Distribution	ultra-release			676			6000	
EU	2013	"Viramundo: A musical journey with Gilberto Gil" / Pierre-Yves Borgeaud	France/Switzerland	Documentary		Urban Distribution (FR); Nomad Films (IT); Alambique (PT); Kaunas International Film Festival (LT); Runbro Films (Benelux); Soda Pictures (UK/IE); Gutek Films (PL)	ultra-release/day-and-date							
UK	2006	"The Road to Guantanamo" / Michael Winterbottom & Mat Whitecross	UK	Documentary	£1.5 million (est.)	Channel Four Films	Day-and-date theatrical/VoD/DVD		772	17606	\$1.5 million		1.7 million viewers on TV	
Portugal	2011	"Tangled" / Nathan Greno & Byron Howard	US	Mainstream animation	\$260 million	Zon Lusomundo Audiovisuais	Premium VoD	\$3.4 million	383018	19731007	\$590 million		less than 1000	
UK	2012	"To the Wonder" / Terrence Malick	US	Independent film		Magnolia	Day-and-date theatrical/VoD	\$323000						
Ireland	2011	"The Island President" / Jon Shenk	US	Documentary		Volta	Day-and-date theatrical/VoD			1056			€162000 and 271800 units sold (home video)	
Spain	2012	"Carmina O Revienta" / Paco León	ES	Independent low-budget film (mockumentary)	€40,000 (est.)	Jaleo/La Luna/El Estan	Day-and-date theatrical/VoD/DVD	€105070	17645		€397000	103736		

Beyond the UK, alternative release strategies are being developed in Ireland. These are primarily conducted by Element Pictures, a production and distribution company that also owns the VOD service Volta (which belongs to the EuroVOD network). A young service, Volta has had 10 day-and-date releases since January 2012, which include *The Island president* (Jon Shenk, see Table 12), *Town of runners* (Jerry Rothwell) or *Silence (III)* (Pat Collins). It is the only VOD service performing such releases in Ireland. They recognize having experienced variable levels of success although we were not able to get access to more detailed information due to confidentiality concerns.

In Spain, there have been some day-and-date releases as well. While a few interviewees state that this is perhaps one of the EU market most affected by piracy, these releases have had variable success. One of the most successful is *Carmina O Revienta* (Paco León, see Table 12) that was available on the VoD service Filmin. Filmin has had other day-and-date releases, which include *Marley*, *Diamond Flash* and *Ríndete Mañana*. A few years ago, the VOD service FilMOTECH experimented day-and-date release with *Going nuts*, which did not prove very successful.

It is important to note that the existence of a legal framework for release windows does not necessarily prevent experiments to take place. However not all kinds of experiments can easily take place in countries with a legal framework. In Portugal Disney released *Tangled* on

Premium VoD in 2011 (Nathan Greno & Byron Howard, see Table 12). There are no official data available but VOD was not considered a success. Yet it did not appear to hurt theatrical attendance either since it was one of the top grossing films in that territory in 2010 (McClintock, 2011). Some examples can be found in France too, in spite of its strict regulation on release windows. They sometimes boil down to releasing the film directly to non-theatrical markets, which may not be particularly innovative. One recent example of this is *Ségo et Sarko sont dans un bateau...* (Michel Royer & Karl Zéro). The directors wanted the film to be available on DVD before the French presidential election. Hence they skipped the release in theatres to directly release in video. A more challenging example is *Paraisos Artificiels (Les Paradis Artificiels)* (Marcos Prado, see Table 12), where the director decided to allow people to watch the film on *Dailymotion* two days before the theatrical release. This however led a chain of cinemas (12 of the planned 15 screens) to cancel its bookings of the film for just a day before the release. Such boycott actions clearly make it difficult to assess the real-market impact of new release strategies.

The interviews confirm that the different stakeholders have very divergent opinions on release window experimenting, which are difficult to reconcile. Some stakeholders are firmly against such experiments. Not surprisingly, this group includes the representatives of theatre operators. Their main argument centres on the importance of theatrical exclusivity in terms of revenues and marketing (see also 3.1.0). In their view attacking this exclusivity would have a negative impact on theatres and, ultimately, on the whole film industry. Stakeholders in the French market that oppose day-and-date even claim that a relaxation of the legislation would not have an impact on their negative attitude in this regard.

Other stakeholders praise the ability to experiment because they may provide some information about the relevance of e.g. day-and-date. There are anecdotal evidences but it is hard to see a pattern at this stage. Actually, few data are publicly available, as many interviewees recognize, and as confirmed by our own analysis of experiments (cf. supra). The more data are available, the easier it will be for stakeholders to decide how release windows should evolve. Some interviewees note that the potential opportunities are large, especially in terms of eliminating duplicate marketing costs (see also 0).

Most importantly, most of the stakeholders that are proposing to expand the room for experimentation, do not ask for a systematic shortening of windows. Rather, a better fit of release strategies with the particularities of each film is proposed. In 2012, at the EU level, a Preparatory Action "Circulation of films in the digital era" was launched (European Commission, 2013) with the aim to increase knowledge on the impact of innovative release models. MEDIA plans a conference in May 2014 to talk about the results of the day-and-date projects that they have supported. This will include a discussion of the advantages and disadvantages related to user group targeting, cross-promotion, revenues, piracy, losses, the cinema experience, etc. (Heidsiek, 2013). The comments on this scheme reflect the ones made more generally and are outlined in the Box below, which discusses the first of the experiments launched within this programme (see Box 3).

#### TIDE

TIDE is part of the Preparatory Action on Digital Circulation. It is one of the projects, selected in the first call for proposals, that aims to test the impact of (quasi-)simultaneous releases on a film's transnational circulation and audience (European Commission, 2013). The other projects selected in the same call are SPEED BUNCH and EDAD. In the TIDE Experiment, four films are being released in 5 to 9 territories over an 8-week window.



*Viramundo: a musical journey with Gilberto Gil* (Pierre-Yves Borgeaud) is the first film to be released in the frame of TIDE. In order to work around the existing legislative requirements, which set fixed windows once a film is released in theatres, a symbolic VoD release was organised in France 3 weeks before the theatrical one. Subsequently, a short but exclusive theatrical run was put in place. As there has been a lot of pressure against this experiment, only 10 to 15 theatres are involved in the release in France (including e.g. Latina, Utopia).

Even if the release does not occur on the same date in each of the 8 countries, the same trans-European marketing is used on the basis of 2 different posters. The release team (which includes Under The Milky Way and The Film Agency) provides transversal support for the local distributors with a trailer for every country and general follow-up.

According to the organisation behind the experiment, it will be successful only if it brings new spectators and cannibalization is limited. Therefore there will be an assessment in the end of the experiment – based on panels of viewers in theatres and on VOD. The assessment will also consider what could have been done with different rules (e.g. a closer VOD window in France). According to the release team, demonstrating that it is possible to coordinate close releases in several European countries would already be considered as an outcome in itself.

According to the interviewees, the experiment is possible thanks to MEDIA's support, which helps unblocking things. It allows redefining existing distribution roles, e.g. by including one of the first European marketing agencies (The Film Agency). For the experiment to take place, it was also necessary to break the logic of pre-financing that is dominant in Europe. In the classic system of Minimum Guarantees (MG), the local distributor often feels entitled to take most decisions related to the release (windows). The idea here is to encourage more risk-taking: there are no MG for distribution but every distributor's print and advertising (P&A) costs are funded by MEDIA. Revenues are flowing back to right holders from the 1<sup>st</sup> €, with the aim to make producers recoup costs with a more direct connection to the exhibition performance. This should not only render the financing and revenue flows more transparent, it is expected to create, for the film producer, a closer sense of connection with the film's performance.

All in all, it seems that TIDE (and the Preparatory Action in general) does not have an overwhelming popularity in the industry. with in particular some opposition from cinema exhibitors. Its proponents argue that this scheme will provide figures and thus increase knowledge that will help settle some of the debates. Among the opponents however, some already point out that the experiments lack involvement from big (theatrical) players, which negatively impacts the general validity of their results. Nevertheless, a large number of stakeholders do endorse the principle of an EU-level policy initiative centred on experimentation, within the limits of market realities.

**Box 3: the TIDE experiment**



## Conclusions and lessons

Our overview of how alternative release strategies are being developed outside of the traditional release windows practices, shows that very diverse firms and films have been involved, with various levels of success. The cases show that alternative strategies are being developed in countries with a variety of windows systems, including those with legislation. In the latter case, innovative circumvention strategies may be applied, for instance to set up the MEDIA-supported release of *Viramundo: a musical journey* in France – but such legislation nevertheless constrains the conditions of such release strategies. Moreover, both small and large companies within the EU and the US have been involved, but we do see that some parties are more often engaging in these type of releases than others (e.g. some integrated firms such as Magnolia in the US or Curzon in the UK). Even if concrete numbers are sometimes lacking, the simple observation that these players continue to set up such releases is one indication of their success.

There has also been an evolution visible over the years. While the first experiments still concerned the simultaneous release on DVD and in theatres, day-and-date releases and ultra-releases in VoD and theatrical markets today are most prominent. They often occur for smaller, independent films and/or documentaries, for which a wide theatrical release is supposedly less evident. In contrast, major distributors have been the ones attempting to establish a Premium VoD window for some mainstream blockbusters.

Most of the experiments reviewed in this section demonstrate that contextual conditions play an important role in the set-up and possible success of the experiments. Beyond the individual differences, we were able to discern a number of other commonalities as well. First and foremost, it is clear that there is a lack of concrete market data available, in particular for the European markets. The MEDIA-driven Preparatory Action can hopefully contribute to resolve this issue by providing such data regarding a number of experiments.

Second, the engagement of key partners is important. These can be cinema theatres, which have often prevented experiments to be (fully) rolled out, by boycotting films that did not adhere to traditional (theatrical) windows. Even if laws can limit the possibilities to experiment (e.g. in France), the crucial constraints relative to release windows are often non-written and market-driven ones, as confirmed in our interviews. This is also true the other way around. For instance, for *Tangled* in Portugal, the release was enabled because it took place in the largest cinema chain, which is a sister company of the licensing distributor (McClintock, 2011). Indeed, our analysis confirmed the power of vertical integrated players to opt out from traditional market practices. The cases of Curzon in the UK and Volta in Ireland were exemplary: both companies are active in production, distribution and provide a VOD service. According to a Volta representative, the experiments are even most successful when Element Pictures distributes the film because then everything in the marketing campaign is aligned to the simultaneous availability of the title in different windows (value of cross-promotion).

Third, the examples studied seem to indicate that day-and-date or ultra-release strategies have been more successful than Premium VoD, although this may also be due in part to the even stronger protest (and often boycott) by cinema owners for the latter type of experiment.

Fourthly, many small films (documentaries, auteur films, low-budget titles) have been among those to be released in non-traditional ways. On the one hand, the risks that come with experimentation may be lower here (e.g. as theatres may be less interested to begin with and thus less inclined to boycott). On the other hand, this may point towards the value of such releases for this type of content. If so, European films, a large part of which are considered art house titles, may be able to benefit from following such strategies. Finally, during the

interviews it was acknowledged that, from a distribution perspective, adjustments might be interesting for small films, in particular when they are no longer shown in theatres.

The insertion of possible derogations to the release windows organisation and increased room for experimentation is something that is also put forward in and forms one of the recommendations in the Lescure report (Lescure, 2013: 9). It would mean that films of a certain type (e.g. low budget films) and/or films that do not pass a certain threshold in the theatrical release (in terms of box office and/or admissions), could obtain a derogation from the obligatory rules of the French release windows system. In the next Section we assess in more detail to what extent these and further changes to the release windows system may provide opportunities and challenges for the EU audiovisual markets. We look at this both in general industry terms and in terms of increased European cross-border circulation. We will look into the margins available for injecting such change given the existing practices, regulations and legislations.

# Introducing changes to the release windows system in the EU: opportunities and challenges

In this final Section, we bring together the insights from the first three Sections in order to assess how further changes to the release windows chronology may provide opportunities and challenges for European players and films. These can be situated at different levels. First, we consider the role of release windows in the establishment of an attractive VoD market in the EU (4.1.). In second instance (4.2.), we move towards the potential impact for increased cross-border circulation. Does the current organization of release windows in the EU have an impact, first, on the presence (or lack thereof) of pan-European players, notably VOD services? Second and related to this, does it impact the circulation of content between the Member States?

## 3.1 Developing attractive VoD offers in the EU: the role of release windows

The Video on Demand market has been touted as an important emerging market for the film sector for many years now, even if, so far, continued growth in on demand spend cannot yet compensate for the on-going decline of physical home video. Overall spending on audiovisual content through online platforms and services (both TV-based and digital) rose to €1.2 billion in 2011. This contrasts with European spending on DVD and Blu-ray, which still stands at €8.3 billion, but the value of which dropped for the seventh consecutive year (International Video Federation, 2012).

Moreover, for a sector faced with a digital boom in the illegal consumption of its content, the set-up of a strong VoD offer seems not only attractive in terms of potential additional revenue, but first and foremost a necessity in view of changed audience expectations. The competition of US-based VoD players (such as Apple and Netflix) provides an additional and international dimension to this emerging market and the goal of developing attractive European offers.

In the previous sections, we have gathered a number of insights that can help us to assess the role of release windows in the set-up of such attractive EU VoD offers. We can distinguish two particular attention points. Firstly, release windows are important as they determine when VoD catalogues can first offer film and other titles. Second, release windows influence whether VoD platforms can offer these films in parallel with other windows.

### First availability of content in the on-demand window(s)

In terms of the catalogue characteristics of the on-demand window, a distinction has to be made between the different types of VoD (see Box 2): Transactional, Subscription-based and Free VoD.

With regard to Transactional VoD, we saw that its window is usually coinciding with the DVD window, and that this has become generally accepted, especially in view of the decrease in value of the DVD market. Nevertheless, with the current exclusive theatrical window at around 4 months, there may be further room for a reduction of the theatrical window, as this means that most films are not (or barely) legally accessible for weeks or even months. This issue is the subject of a continuous power battle between rights holders and exhibitors, which has already led to reductions in the length of the theatrical window and can be expected to evolve further in the future.. Theatre exhibitors are reluctant towards a shortening of their window in favour of VOD because they feel that their own contribution to raising awareness

of a film would benefit the VOD exploitation without them getting any benefits in return. One possible solution to this could be to reconfigure the existing revenue sharing deals between film distributors and exhibitors: a higher share for the cinema exhibitor may entice him to accept a shorter exclusive theatrical window (see also the discussion within subsection 0).

More importantly, the Lescure report notes for France that despite these evolutions the availability of content in the on-demand window remains lacking compared to the offer in the DVD window (Lescure, 2013: 49-50). Moreover, many films are only available on one platform at a time, which makes it difficult for consumers to find a certain title. Yet while the rights holders' perception of the value of the VoD market could be improved, a more crucial (and related) issue is how to increase audience awareness, information and attraction. Simply making content available on (some) on-demand platforms will not suffice in a digital context of abundance. Instead, the development of tools<sup>22</sup> to guide consumers to their platform of choice will be crucial in the fight against piracy.

With regard to SVoD and Free VoD, the situation is more problematic, in the sense that these players usually have to establish an attractive offer based only on titles that are at least a couple of years old. While the attractiveness of such offers from the point of view of the consumers has been pointed out, it appears that the European market players are not fully comfortable with this type of on-demand proposition and fear that it will lead to a reduction in the value of their content: both in terms of audience perceptions and in terms of revenue generated. In this regard, it is important to note that one of the recommendations of the Lescure Report is to push forward the Subscription VoD window (Lescure, 2013: 9). Right now at 36 months, the SVoD window in France starts much later than the corresponding SVoD window in the US. There, the average time period before the SVoD window opens is 21 months (Lescure, 2013: 100). The expected expansion of Netflix' SVoD service in the EU plays an important role in the need to reassess European time periods. It is uncertain if international players whose services are available in the French market but who are not installed in the French territory have to adhere to the French release windows rules (Lescure, 2013: 95). Yet producers fear that such services will compete with existing pay and free television offers, while reducing the value for content given the lower prices usually charged by these SVoD platforms (compared to Pay TV) (Lescure, 2013: 50). According to Lescure, there is a risk that no major French alternative can develop in this particular market because of such practices (Lescure, 2013: 100). More generally, our review also showed that many of the market players, film support schemes and/or MS legislations do not distinguish clearly between different types of VoD, which reflects a certain lack of knowledge and of clear guidelines in the market.

### Parallel availability of content in different windows

We saw in Section 2 that the notion of *exclusive sequencing* of different windows is a basic element of the principle of release windows. Yet as noted in that same section, the idea that one window cannibalises on the other is offset by a number of opposing trends. In other words, there are reasons why it makes sense to offer the same titles in different windows, as long as this parallel availability is realised in a balanced way, taking into account the potential level of substitution between different content versions.

More than the first availability of content in on-demand windows, this notion of parallel availability of titles in different windows appears to pose a number of problems in the EU.

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<sup>22</sup> Examples of such tools are [www.findanyfilm.com](http://www.findanyfilm.com) and [www.canistream.it](http://www.canistream.it)

There are two areas within the release windows cycle where the potential parallel existence of a VoD offer has led to tensions: 1) during the theatrical window and 2) during the Pay and/or Free TV window.

First, the parallel availability of films in theatres and on VoD platforms is at the core of a conflict between rights holders who wish to maximise their overall revenue as well as their marketing impact; VoD platforms that want to build up an attractive offer of recent titles; and cinema theatres that fear their revenues will shrink. It seems crucial here to gain more insights into the level of substitution between these types of consumption. On the one hand, in particular cinema owners argue that people will opt for the cheaper VoD consumption over a night out in the cinema, thus undermining both the revenue model of the theatre and all the marketing benefits that come with theatrical exposure. On the other hand, there are also arguments that go against this idea (see also 0): the notion of repeated consumption for instance, or the observation that parts of the audience may not be able to see certain films (in particular smaller titles) due to the lack of a nearby cinema, but also because of e.g. their family situation. New parents with small children may for instance prefer to temporarily move their film consumption to the home environment. Most importantly, the attractiveness of cinema theatre - especially in a context of digital piracy - today arises less from its position at the start of the release cycle, than from the unique viewing experience it continues to offer. These elements of differentiation of the theatrical and the VoD experiences can be further emphasised, by the theatres themselves in the first place. As we discussed in Section 2.3, several alternative release strategies are currently being tested, with different forms (day-and-date, Premium, ultra-release) seemingly more appropriate for different types of content (e.g. small titles versus mainstream ones). With vertically integrated players naturally more inclined to approach film releases in a more flexible and case-specific manner, a closer relation between distributors and exhibitors on specific projects may prove to be beneficial. Film theatres themselves are namely also looking at new ways to enhance their attractiveness in a digital context. One way for them to achieve this may be to get more involved in the planning and marketing of "film events" and to move away from the traditional programming schedules that long guided distributor-exhibitor relations. The sharing of VoD revenues (as already hinted upon in subsection 0) forms one possible element of such a collaboration and was mentioned by some of our interviewees. While the discussion may seem highly hypothetical at first sight, in the US when Disney first discussed Premium VoD (see 2.3), some big theatre circuits expressed their openness to the idea on the condition of a negotiation of VOD revenue sharing. Likewise, the notion of shared Premium VoD revenues is also suggested in the Lescure Report (Lescure, 2013: 98). In practice, it could mean that theatre operators allow some VoD services to offer a film during, or shortly after, the theatrical window, in exchange of a share of revenues related to the transactions realised. To our knowledge, nobody has yet attempted to do this in practice and it is clear that the feasibility and modalities of such an idea would need to be worked out first.

Second, the parallel availability of VoD titles during other windows, in particular Pay and/or Free TV, is a source of conflict between the different players, which ultimately impacts the availability of films to the audience in a negative way. Both during the interviews and in the desk research, it became apparent that some operators are able to exert their power position (linked to their role in the prefinancing of films) to acquire important "freezes" in the VoD window. Importantly, this does not simply concern SVoD or Free VoD, which are very similar to the offers of Pay and Free TV, and thus engender a strong substitution effect. Titles are also taken out of Transactional Rental offers, which however more closely resembles the DVD window that is today disappearing. It is therefore important that competition authorities look into the type and length of these freezes. The French Lescure Report for instance

proposes to restrict or prohibit in particular the "freeze" of rights by (pay or free) television players (Lescure, 2013: 10).

### **3.2 Increasing European cross-border circulation: the role of release windows**

The lack of cross-border distribution and consumption of European films has been a weakness of the European sector for several decades. Different EU-level initiatives, among which the MEDIA programmes, have aimed to remedy this situation, with various levels of success. In a period of important transitions, fuelled by the spread of digital technology and solutions, especially the VoD market has been seen as an opportunity for European films across borders. In this final section, we consider the potential impact of changes to the release window system from this perspective. The differences in terms of release windows systems across the EU stem mostly from differences between the Member States' film industries. As explained in 1.2, the release windows systems were built following the contours of the territorial (sometimes linguistic) markets. This explains why not only the release windows, but also the releases dates may differ for a film in different European countries. A representative for the cinema exhibitors even stated that none of the European frameworks could therefore be imported in another country. The impact of such a situation on the establishment of pan-European VOD services and on the cross-border circulation of film content in the EU is ambiguous.

We look at the two ways in which cross-border activities can be realised in the VoD market: a) through the cross-border presence of VoD services (the availability of VoD services in several countries at the same time) b) through the presence of non-national European titles in the catalogues of nationally oriented VoD players. Both ways can happen simultaneously, but are separated here for analytical purposes.

#### **Cross-border VoD services**

When discussing the possibility for VoD services to be present across borders, it is first of all important to distinguish between the idea of providing a similar offer in different countries versus the idea of the same VOD player or platform developing distinct activities in different countries. The most extreme configuration of the first notion would entail that one VoD service would be present in all EU countries, making available the exact same offer to all European citizens. While everyone seems to agree on the impossibility of obtaining such a uniform pan-European service, there are nevertheless several, less extreme, ways in which VoD players have developed a cross-border angle.

Some players seemingly make the same service available in different countries, providing various language versions on the same platform. Examples of this approach are the US-based players Mubi and Cinecliq. The main country-specific differentiation of their service is linked to the composition of their catalogues: depending on the territory, the consumers of these services will access a different set of films. Often, such services will further localise the presence of their different "branches" by setting up distinct marketing and distribution strategies. Either way, the simultaneous availability of titles in different countries is not a given, but nevertheless does not hamper the possibility of cross-border brands to be set-up. For the time being, many of the VoD brands known across different EU countries however tend to be related to US companies, including players like iTunes and Netflix. Even if they operate on a localised basis, their presence adds an international and cross-border dimension to the debates. As they are often located outside of the territory in which they are active, potential problems of competition between them and more fragmented European players may not be sufficiently addressable at the national (policy) level (see for the French case Lescure,



2013: 95). At the sector level, some interviewees mentioned that regional cross-border alignment may form a feasible strategy, as shown e.g. by some players in the Nordic countries. Another interesting European cross-border alternative is the EuroVOD network, which federates national VOD services in eight EU countries, with a focus on independent, art house films. Their aim is to take fragmentation as a given (there are differentiated film markets within the EU, which each local actor knows best) but to benefit from some economies of scale and scope, e.g. in terms of negotiating with rights holders and sharing technological infrastructure costs.

Indeed, it is costly for a VOD service to become available in another country, despite technological advances and related cost-efficiencies. These costs relate to the need for locally adapted marketing (including different language versions and various subtitling options) and also to the additional licensing rights for the additional country. Release windows seem to play a small role in these costs.

The release window differences rather add onto general differences in terms of the acquisition of rights for different territories, which reflects in the differences between local branches of the same VoD service. From the perspective of the VoD players, geo-localisation technologies seem to be an accepted tool to manage these catalogue differences. From the perspective of the audiences however, it may lead to frustrations if certain titles are listed as "not available in this territory". Some players therefore choose not to mention the non-available titles on their platform.

Given that VoD players seem to perceive differences between release windows' organisation in different EU countries as something that can be managed, they do not call for a EU-level policy intervention in the domain of release windows, e.g. an EU-wide (re)alignment of release windows. They tend to agree with other industry stakeholders that national film markets are very different from each other, and that this is reflected in the national organisation of film support and the MS' competencies in cultural matters. At the same time the release windows systems and practices that are in place in some countries could still benefit from improvements at the national level (as discussed in 3).

### Cross-border circulation of content

Another way of looking at the cross-border question relates to the circulation of content itself. In other words rather than having necessarily the same VoD platforms available in different EU countries, to increase the presence of non-national European titles on territory-based platforms. To put in a different way, while VoD platforms may be active in several countries and may or may not adopt their offer to national specificities, the key seems to be rather whether non-national European films are available in such catalogues, independently from the fact if the catalogues are part of a pan-European service or not. We identify two main ways in which release windows may impact this.

First of all, the different release traditions and sometimes-variable theatrical release dates may hamper the possibility for distributors to achieve economies of scale through a simultaneous VoD release in different countries. Marketing impact through social networking strategies may be more difficult to achieve in this context. Some of our interviewees acknowledged that the current territory-based organisation of release windows does not provide incentives for such cross-border release tactics, where the same title is released simultaneously on different territory-based platforms. At the same time, however, all interviewees agree that there are more important barriers for such cross-border release strategies in the EU. They argue that films are sold and released territory by territory because it has proven to be most successful. National distributors know their market best, and will set up distinct release strategies based upon e.g. the other films released in that territory. Cultural diversity, i.e. cultural differences

between citizens in different EU MS, is the first reason cited for a lack of circulation of non-national European films across the EU. Some interviewees perceive a tendency to overestimate cross-border demand or, at best, that the demand for cross-border still has to be created. In sum, it appears that the majority of EU players seem unwilling or unable to take risks in this respect as they see such demand as uncertain.

These arguments however contrast with other arguments, including those that can be made on the basis of the theory of the Long Tail. In his work, Chris Anderson has drawn attention to the potential of titles that are situated outside of mainstream demand, as they may collectively represent an important market that is easier exploited in a digital context (Anderson, 2008). Moreover, the continued existence of a parallel illegal circuit that does not adhere to geographical or other borders, may also point towards underserved audience segments, an observation that contrasts with the identified "uncertain demand" by part of the EU audiovisual sector.

This brings us to the second area where we see a potential relation between release windows and cross-border content circulation. As we saw in the discussion on experiments, an important consideration when setting up day-and-date releases has to do with the accessibility of the theatrical offer for substantial parts of the audience. A simultaneous VoD offer may help to expand the audience reach, in particular for small titles that are not widely released in theatres. In a EU context, non-national European titles are typically screened in art house venues, which are usually less widespread outside of cities and populous areas. On top of that, European titles are not necessarily theatrically released in all EU countries, because the potential audience is deemed too small for instance. However, the audience may be large enough to bring in some additional revenues via VoD. The expansion of day-and-date strategies at cross-border level, coupled with a more elaborate use of geo-localisation technology, may permit the residents of certain areas or countries to have access to the film on VoD at the same time as others access it in cinemas. Such releases would not cannibalise theatrical revenues, as the VoD release would only occur in areas where no theatrical screenings could be confirmed.

Nevertheless, some limits to the long tail theory have to be taken into account when setting up such cross-border day-and-date experiments. In particular, the attraction of audiences towards the titles in this long tail continues to engender an important investment (in time and money terms), whereas individual revenues (at title level) are often lacking (Lescure, 2013: 107-109). For a territory-based distributor or VoD platform, the costs (e.g. of acquiring subtitles) may in other words still be too high to warrant a VoD release of such a small title. In order for such strategies to be successful, economies of scale may turn out to be crucial. Two types of stakeholders could in our view successfully take up a role in this regard. Firstly, there are already some European actors whose activity consists in aggregating rights at the European level, and then licensing such rights to big VOD services, such as iTunes. For instance the aggregator 'Under The Milky Way' plays the role of intermediary between local rights holders and various VoD platforms. They have set up a network of local offices that permits to build local relationships with rights holders. Secondly, rights holders, in particular producers, may be best placed to take on a more intensive promotional role in those territories where it has not reached local distribution deals for the exploitation of a given title. In this regard, recent initiatives such as Vimeo-on-Demand and Liveshelf are particularly interesting. Vimeo-on-Demand offers a self-distribution platform where rights holders can choose to offer their work across the globe and set the conditions of sale (including the price, but also the territories in which to offer the title) (Vimeo, 2013). In the same way, Voddler's Liveshelf allows content owners to set a global distribution strategy on their own terms. Thus, content owners publish titles to the platform, which provides streaming to users as well as monetization solutions (e.g. on the basis of advertising or direct payment). The platform is available globally, with content



owners deciding in which countries, and under which conditions, their content is made available (Sjöman, 2013).

## Conclusions

This report aimed to provide an overview of the release windows systems in the EU and its possible evolution, paying particular attention to their impact on emerging VoD business practices.

Section 2 provided an overview of the organisation of the release windows system, its context and evolution. It discussed the justifications behind the release windows principle, before moving to an assessment of the frameworks that organise release windows in the EU. These are diverse and grounded in territorial, cultural and/or language specificities, but broadly form a mix between legislative provisions, regulation (especially linked to film support funding) and sector agreements at the collective and/or individual level. In general terms, the release windows systems across the EU function according to the same principles, i.e. to find a balance between complementarity and cannibalization in view of maximising overall revenues while building sustainable business relationships. Yet these general principles are adapted to the local context, with a specific framework, different windows and various window lengths. The result in the EU is a diversity of release windows features, reflecting the long-lasting diversity of national film industries.

Section 3 then looked at how digital trends are influencing the characteristics of the windows throughout the EU. We showed how a trend towards shorter theatrical windows was clearly visible, even if some stakeholders continue to oppose it. As further evolutions seem inevitable, we subsequently discussed a number of key issues related to the reshuffle of the EU release windows system(s). Various firms and films have already tried out alternative release schedules that approach the sequencing system with more flexibility. We discussed various examples of day-and-date strategies, ultra-release models and Premium VoD offers set up around the world and in the EU. Lastly, we moved to Section 4 in which we analysed in more details what the challenges and opportunities are in view of introducing further changes to the release windows in the EU film sector.

Throughout this study, a number of lessons became apparent that can be situated at two levels: 1) the continued applicability of the general idea of release windows and 2) the potential modification of windows systems in practice.

At the general level, we identify two main considerations that relate to the validity of release windows in a digital context. Firstly, digitisation brings along increased room and potential for differentiation, flexibility and diversity. This is true for the distribution channels/viewing environments for films as well as for the films themselves. For the latter, digitisation has brought along new distribution and marketing tools (e.g. on social networks) and to new "on demand" dissemination channels that can potentially empower audiences to have more choice in terms which content to watch when and where. The one-size-fits-all idea behind rigid release windows clashes with this trend. We saw for instance how shorter windows may benefit certain types of content in specific contexts: non-mainstream titles could in particular benefit from the added marketing impact associated with closer or simultaneous windows. Yet also in terms of the different distribution environments, it becomes increasingly crucial to differentiate between the experiences each can offer to an audience. This differentiation becomes less and less rooted in price and time, the two traditional dimensions of the release windows system. Instead, theatres will have to profile the other characteristics that contribute to the creation of the unique cinematic experience in order to compete with e.g. the home (on

demand) experience. In turn, the on demand players will have to develop an attractive offer based on non-price elements in order to effectively provide an alternative for illegal offers (which can not be beat on price).

In other words, while the differences between each channel and film will continue to be crucial to attract an audience, the set-up of strict borders between each seems no longer valid in current circumstances. Therefore it seems important to increase room for diverging strategies. For those systems that fix release windows in legislation and/or regulation, it will become more and more necessary to provide a sufficient number of derogations. The example of France where it is proposed by the Lescure report to make the current system of release windows more flexible shows that such debates are already under way.

Secondly, however, it is important to keep in mind that release window flexibility cannot be seen as distinct from the broader industry context. Therefore all modifications to traditional systems will have to take the sometimes divergent interests of the different stakeholders into account. While it is crucial to entice incumbent players to develop forward looking strategies, it is equally crucial to provide some time for transition. For consumers, current evolutions of the release modalities may seem frustratingly slow. Yet stakeholders, especially incumbent players, warn that too abrupt changes risk undermining other pillars of the European film sector, in particular the financing of European film production. This does not mean that the current financing and revenue models could not be reassessed. Indeed, we noted that both an increased contribution by new VoD players to content financing could have a positive effect on current conflicts. More generally, further reflection is needed on how to reconfigure revenue sharing models between the various stakeholders.

Turning to the potential modification of windows systems in practice, another three main points come to the fore. They relate both to the film sector in general and to the EU industry in particular. A first area that will undoubtedly be the area of further evolutions, is that of the theatrical window and its exclusive length. Here it is important to find a balance between the substitution and complementarity of windows. Experiments with alternative release strategies seem to offer the best way to further increase the knowledge of what the impact of various release modalities is on the various parties involved.

A second area relates to the problem, between non-theatrical windows, of exclusivity requirements and corresponding time holdbacks or "freezes". While all stakeholders, including not only incumbents but also VoD players, are trying to get exclusive access to titles, it is important that policymakers at the MS and EU level make sure that this does not lead to unreasonably uncompetitive behaviour. This seems an issue fit for competition authorities.

A third area concerns the link between release windows modifications and the increased access to content for consumers. From a cross-border perspective, we noted how day-and-date releases on VoD and in theatres could help spread European films in areas where they would usually not benefit from a theatrical release. This is another area where experimentation should be encouraged. However, such experiments should be part of a broader exercise in order to have a reasonable chance of success. Geo-localisation tools, subtitling financing, adapted aggregation and dissemination platforms are some of the other factors that play a role in this regard. Most of all, it requires increased knowledge of the elements that shape audience demand for cross-border content and services in a digital era.

# Bibliography

## 4.1 Sources referred to in the report

- Anderson, C. (2008). *The long tail : why the future of business is selling less of more* (Rev. and updated ed.). New York: Hyperion.
- AP (s.d.). WB Releases 'Pants' DVD In China In Anti-piracy Move. *billboardbiz*. Retrieved from <http://www.billboard.com/biz/articles/news/1410960/wb-releases-pants-dvd-in-china-in-anti-piracy-move>
- August, T., Dao, D., & Shin, H. (2013). Optimal timing of sequential distribution: the impact of congestion externalities and day-and-date strategies. Unpublished Working paper.
- Benhamou, F., Gergaud, O., & Moureau, N. (2009). Le financement du cinéma par la télévision : une analyse économétrique des investissements des chaînes. *Economie & prévision*, 2(188), 112.
- Blaney, M. (2012). Germany drafts new VoD regulations. *Screen Daily*. Retrieved from <http://www.screendaily.com>
- Block, A. B. (2012). Netflix's Ted Sarandos explains original content strategy. *The Hollywood Reporter*. Retrieved from <http://www.hollywoodreporter.com/news/netflix-ted-sarandos-original-content-309275>
- Bomsel, O., Cohen, Y., Kern, P., Monte, G., & Vaissberg, E. (2007). *Study on the impact of the Conditional Access Directive*: the European Commission Directorate General for Internal Market & Services.
- Calzada, J., & Valletti, T. M. (2012). Intertemporal movie distribution: versioning when consumers can buy both versions. *Marketing Science*, 31(4), 19.
- Cichon, C. (2007). Licences and media windows. In S. Nikoltechev (Ed.), *Iris Special: legal aspects of video on demand* (pp. 51-62). Strasbourg: European Audiovisual Observatory.
- CNC (2008). *Durée de vie des films en salles*.
- Cunningham, S., Silver, J., & John, M. (2010). Rates of Change: Online Distribution as Disruptive Technology in the Film Industry. *Media International Australia*(136).
- Currah, A. (2007). Hollywood, the internet and the world: a geography of disruptive innovation. *Industry and Innovation*, 14(4), 359-384.
- Dally, P., Durandez, A., Jiménez, L., Pasquale, A., & Vidal, C. (2002). *The audiovisual management handbook. An in-depth look at the film, television and multimedia industry in Europe*. Madrid: Media Business School.
- De Vany, A., & Lee, C. (2001). Quality signals in information cascades and the dynamics of the distribution of motion picture box office revenues. *Journal of Economic Dynamics and Control*, 25, 22.
- De Vany, A., & Walls, W. D. (2002). Does Hollywood make too many R-rated movies? Risk, stochastic dominance and the illusion of expectations. *Journal of Business*, 75, 27.
- Dobson, G., & Kalish, S. (1988). Positioning and Pricing a Product Line. *Marketing Science*, 7, 19.
- Edwards, C., & Palmeri, C. (2012). Disney's Netflix deal gives top billing to online viewing. *Bloomberg*. Retrieved from <http://www.bloomberg.com/news/2012-12-05/disney-s-netflix-deal-gives-top-billing-to-online-movies.html>
- Elberse, A., & Eliashberg, J. (2003). Demand and supply dynamics for sequentially released products in international markets: The case of motion pictures. *Marketing Science*, 22, 26.
- Eurimages (2013). Support for co-production of full-length feature films, animations and documentaries.
- European Commission (2013). MEDIA Programme - Digital Circulation Retrieved July 31st, 2013, from [http://ec.europa.eu/culture/media/fundings/digital-circulation/index\\_en.htm](http://ec.europa.eu/culture/media/fundings/digital-circulation/index_en.htm)
- Frank, B. (1994). Optimal Timing of Movie Releases in Ancillary Markets: The Case of Video Releases. *Journal of Cultural Economics*, 18(June), 9.
- Gambaro, M. (2004). *The Relationship between Different Distribution Channels for Movies: Some Lesson from the Case of Free Television*. Paper presented at the 15th ITS Conference. Connecting societies and markets: communication technology, policy and impacts.
- Garandeau, E. (2012). Build and adapt, rather than change and destroy. MIPCOM.
- Goldstein, G. (2012). Distributions go multiplatform diving. *Variety*. Retrieved from <http://variety.com/2012/film/news/distributions-go-multiplatform-diving-1118054273/>
- Gomery, D. (2005). *The Hollywood studio system. A history*. London: British Film Institute.
- Heidsiek, B. (2013, 18 March 2013). Day & Date Article 1: Audience Demand in a Digital World. <http://www.europa-distribution.org/day-date-article-1-audience-demand-in-a-digital-world-by-birgit-heidsiek/>.
- Hennig-Thurau, T., Henning, V., Sattler, H., Eggers, F., & Houston, M. B. (2007). The last picture show? Timing and order of movie-distribution channels. *Journal of Marketing*, 71(October), 63-83.
- Hennig-Thurau, T., Houston, M. B., & Walsh, G. (2006). The Differing Roles of Success Drivers Across Sequential Channels: An Application to the Motion-Picture Industry. *Journal of the Academy of Marketing Science*, 34(Fall), 17.
- Hubac, S. (2010). *Mission sur le développement des services de vidéo à la demande et leur impact sur la création: centre national du cinéma et de l'image animée*.
- International Video Federation (2012). *European Video Yearbook 2012*.
- KEA European Affairs, & MINES ParisTech Cerna (2010). *Multi-territory licensing of audiovisual works in the European Union*. Brussels: European union.
- Kuhr, M. (2008). Media Windows in Flux. Challenges for Audiovisual Media Chronology. *Iris plus, Legal observations of the European Audiovisual Observatory*(4).
- Lehmann, D. R., & Weinberg, C. B. (2000). Sales through sequential distribution channels: an application to movies and videos. *Journal of Marketing*, 64, 18-33.

- Lescure, P. (2013). Mission "Acte II de l'exception culturelle". Contribution aux politiques culturelles à l'ère numérique.
- Littoz-Monnet, A. (2003). European Cultural Policy: A French Creation? *French Politics*, 1, 24.
- Liu, Y. (2006). Word of Mouth for Movies: Its Dynamics and Impact on Box Office Revenue. *Journal of Marketing*, 70(July), 16.
- Lodge, G. (2013). Malick's 'To the Wonder' to be released day-and-date in theaters and on VOD. *Hitfix*.
- McClintock, P. (2011). Disney Tests Appetite for Premium VOD in Portugal. *The Hollywood Reporter*.
- McClintock, P. (2013). Sundance 2013: How 'Arbitrage's' VOD Gamble Paid Off. *The Hollywood Reporter*. Retrieved from <http://www.hollywoodreporter.com/news/sundance-how-arbitrages-vod-gamble-412594>
- Miller, D. (2012). Sundance 2012: The Day-and-date success story of 'Margin Call'. *The Hollywood Reporter*.
- MPAA (2012). Theatrical market statistics 2012.
- Mulligan, J. (2013, 2013, 18 May). Can't find it in theaters? Try on-demand. *The Boston Globe*, from <http://www.bostonglobe.com/arts/movies/2013/05/18/can-find-theaters-try-demand/mWTK472llllmYroYjldcL/story.html>
- Nikoltchev, S. (2006). *Analysis*. Strasbourg: European Audiovisual Observatory.
- Nikoltchev, S. (2008). Editorial. IRIS plus. Legal Observations of the European Audiovisual Observatory(2008-4).
- Olesen, A. K. (2012). Danish film is locked inside the cinema. *FERA website*. Retrieved from <http://www.filmdirectors.eu/?p=2452>
- Orange, A. (2011). Tower Heist to Debut On-Demand 3 Weeks After Release. Retrieved from <http://www.movieweb.com/news/tower-heist-to-debut-on-demand-3-weeks-after-release>
- Pham, A. (2013). Anna Serner: "It's important to consider new distribution models". *Nordisk Film & TV Fund*. Retrieved from <http://www.nordicfilmantvfund.com/index.php/news/stories/anna-serner-its-important-consider-new-distribution-models/>
- Prasad, A., Bronnenberg, B., & Mahajan, V. (2004). Product Entry Timing in Dual Distribution Channels: The Case of the Movie Industry. *Review of Marketing Science*, 2(1).
- Ranaivoson, H. (2010). Video on Demand in Europe. *INA Global. The review of creative industries and media*. Retrieved from <http://www.inaglobal.fr/en/digital-tech/article/video-demand-europe>
- Russel, J. (2011). Harry Potter and the case of the vanishing DVDs. *The Guardian*. Retrieved from <http://www.theguardian.com/film/filmblog/2011/oct/26/harry-potter-vanishing-dvds>
- Screen Daily (2007). Cash on Demand. *Screen International*, 2.
- Sjöman, A. (2013). Voddler launches LiveShelf global video streaming service, featuring ViewShare, legal sharing of films. Retrieved from <http://news.cision.com/voddler/r/voddler-launches-liveshelf-global-video-streaming-service--featuring-viewshare--legal-sharing-of-fil.c9402598>
- Ulin, J. C. (2010). The business of media distribution. Monetizing film, TV and video content in an online world. Burlington/Oxford: Focal Press.
- Varian, H. (1989). Price Discrimination. In R. Schmalensee & R. D. Willig (Eds.), *Handbook of Industrial Organization* (Vol. I, pp. 56): Elsevier Science Publishers.
- Vimeo (2013). Vimeo on Demand Retrieved July 29th, from <http://vimeo.com/ondemand>
- Vogel, H. L. (2007). *Entertainment Industry Economics. A guide for financial analysis* (7th ed.). Cambridge: Cambridge University Press.

## 4.2 Sources used for the overviews of frameworks and experiments

### Personal communications

- *For Belgium*: Olivier Maeterlinck (Belgian Entertainment Association). E-mail exchange (20 August 2013).
- *For Bulgaria*: Irina Kanousheva (International Relations - Festivals&Promotion, Acting Executive Director Bulgarian National Film Center). E-mail exchange (11 March 2013).
- *For Cyprus*: Diomides Nikita (Cultural Officer, Ministry of Education and Culture. Cinema Section). E-mail exchange (21 August 2013).
- *For Estonia*: E. Koppel (Estonian Film Foundation Information Manager). E-mail exchange (11 March 2013).
- *For Luxembourg*: Joy Hoffmann (Responsable Département film et archives, Centre national de l'audiovisuel). E-mail exchange (23 August 2013).
- *For Poland*: Marta Materska-Samek (Researcher, President of the Cinema Development Foundation and coordinator of "the Malopolska D-cinemas Network"). E-mail exchange (19 August 2013).
- *For Poland*: Alicja Grawon (project manager Polish Chamber of Audiovisual Producers). E-mail exchange (21 August 2013).
- *For the US*: P. Corcoran (Director of Media and Research, NATO). E-mail exchange (14 March 2013).

## Studies and articles

- Bain&Company (2007, September). *The Digital Video Consumer. Transforming the European Content Market*. Boston, US: Liberty Global Policy Series. Retrieved from: <http://www.lgi.com/PDF/public-policy/Digital-Video-Consumer.pdf>
- Cunningham, C., Silver, J., & McDonnell, J. (2010). *Rates of change: online distribution as disruptive technology in the film industry*. Australia: Media International Australia (No. 136).
- De Vinck, S., Lindmark, S., Simon, JP. (Ed.) (2012). *Statistical, Ecosystems and Competitiveness Analysis of the Media and Content Industries : The Film Sector*. Brussels: Joint Research Centre. Retrieved from: <http://ftp.jrc.es/EURdoc/JRC69525.pdf>
- ENDERS Analysis (2012, May). *Digital Europe: Diversity and Opportunity*. Brussels, Belgium: Enders Analysis. Retrieved from: [http://www.letsgoconnected.eu/files/Lets\\_go\\_connected-Full\\_report.pdf](http://www.letsgoconnected.eu/files/Lets_go_connected-Full_report.pdf)
- European Commission (2012). *Preparatory Action « Circulation of European films in the digital era ». Call for proposals EAC S05/2012*. Retrieved from: [http://ec.europa.eu/culture/media/media-content/documents/fundings/digital-distribution/circulation-in-the-digital-era/calls/call-1/dig-distrib-list\\_en.pdf](http://ec.europa.eu/culture/media/media-content/documents/fundings/digital-distribution/circulation-in-the-digital-era/calls/call-1/dig-distrib-list_en.pdf)
- European Audiovisual Observatory (2012, July 11). *Chronologie des médias : analyse détaillée d'une année de sorties*. Retrieved from: <http://www.cnc.fr/web/fr/publications/-/ressources/2078702>
- Gubbins, M. (2011). *Digital Revolution Engaging Audiences*, MCG Film & Media: A CINE-REGIO report in collaboration with Filmby Aarhus. Retrieved from: [http://www.cine-regio.org/press/digital\\_revolution\\_2011/](http://www.cine-regio.org/press/digital_revolution_2011/)
- Hoffmann-Yliniva, A. (2009). Parliament votes for amendment of film subsidies act. *Iris* 2009-1:10/14.
- Hoffmann-Yliniva, A (2009). Bundesrat adopts amended film subsidies act. *Iris* 2009-3:7/11.
- International Video Federation (IVF) (2012, November). *Survey of film release trends in European Member States*. Received via e-mail from IVF.
- KEA&Cerna (2010, October). *Multi-Territory Licensing of Audiovisual Works in the European Union*. Brussels, Belgium: Final Report Prepared for the European Commission, DG Information Society and Media. Retrieved from: [http://www.keanet.eu/docs/mtl\\_full\\_report\\_en.pdf](http://www.keanet.eu/docs/mtl_full_report_en.pdf)
- Kuhr, M. (2008). *Media Windows in Flux. Challenges for Audiovisual Media Chronology*. Strasbourg: Iris plus. Legal observations of the European Audiovisual Observatory, n°4. Retrieved from: [http://www.obs.coe.int/oea\\_publications/iris\\_plus/iplus4\\_2008.pdf.en](http://www.obs.coe.int/oea_publications/iris_plus/iplus4_2008.pdf.en)
- L'Observatoire européen de l'audiovisuel et la Direction du développement des médias, avec la collaboration de NPA Conseil. (2009) *Vidéo à la demande et télévision de rattrapage en Europe*. Strasbourg, France : Observatoire européen de l'audiovisuel. Retrieved from : [http://www.obs.coe.int/online\\_publication/reports/vod\\_2009.pdf](http://www.obs.coe.int/online_publication/reports/vod_2009.pdf)
- Media Consulting Group (MCG) (2012, June). *Etude sur les nouveaux modèles économiques*. Brussels, Belgium: Rapport final pour Commission européenne, Direction D – Culture et Media Unité D3 – Programme MEDIA. Retrieved from: [http://www.mediafrance.eu/IMG/pdf/RAPPORT\\_FINAL\\_Nouveaux\\_Models\\_Economiques\\_1506012.pdf](http://www.mediafrance.eu/IMG/pdf/RAPPORT_FINAL_Nouveaux_Models_Economiques_1506012.pdf)
- NATO (2012). *Major Studios Release Windows*, retrieved from: <http://www.natoonline.org/Release%20Windows/2012/9.24.12/Major%20Studio%20Release%20Windows%209.24.12.pdf>
- NATO (2012, September 27). *Average video announcement and video release windows*. Retrieved from: [www.natoonline.org](http://www.natoonline.org).
- Nikolchev, S. (2001). *National Film Production Aid: Legislative Characteristics and Trends*. Strasbourg, France : Observatoire européen de l'audiovisuel. Retrieved from : [http://www.obs.coe.int/oea\\_publications/iris\\_plus/iplus4\\_2001.pdf.en](http://www.obs.coe.int/oea_publications/iris_plus/iplus4_2001.pdf.en)
- UNIC (2012). *Smart Release Strategies for Films*. Extract from UNIC's Annual Report 2011-2012, retrieved from: <http://www.unic-cinemas.org/wp-content/uploads/2012/07/Smart-Release-Strategies-2012.pdf>

## Press articles, company information and other sources:

- Alvarez Rilla (M.) (2007, May 5). Cartoons take new direction. *Variety*, Accessed online (31 July 2013) at <http://variety.com/2007/digital/news/cartoons-take-new-direction-1117965178/>
- Bernfeld, W. (2012, April 23). *Brave New World: Digital Distribution Beyond the Old World*. Sundance. Retrieved from: <http://www.sundance.org/artistservices/distribution/article/brave-new-world-digital-distribution-beyond-the-old-world/>
- Billboard (2005). *WB Releases 'Pants' DVD In China In Anti-piracy Move*. Retrieved from: <http://www.billboard.com/biz/articles/news/1410960/wb-releases-pants-dvd-in-china-in-anti-piracy-move>
- Blaney, M. (2008, November 15). *Germany drafts new VoD regulations*. Screen Daily. Retrieved from: <http://www.screendaily.com/news/germany-drafts-new-vod-regulations/5049040.article>
- Blaney, M. (2012, 8 November). "MEDIA-supported VOD initiative courts controversy", Screen Daily, Accessible at <http://www.screendaily.com/news/digital/media-supported-vod-initiative-courts-controversy/5048760.article>

Blocman, A. (2001). *Changes to Regulations on Media Chronology*. Strasbourg: Audiovisual Observatory. Retrieved from: <http://merlin.obs.coe.int/iris/2001/1/article28.en.html>

Box Office Mojo ([www.boxofficemojo.com](http://www.boxofficemojo.com))

Cole, M. (2011). *Law on Electronic Media Updated*. European Audiovisual Observatory. Retrieved from: <http://merlin.obs.coe.int/iris/2011/2/article31.en.html>

Cunningham, S., Silver, J., & McDonnell, J. (2010). Rates of change: online distribution as disruptive technology in the film industry. *Media International Australia*, 136, 119-132.

De Laubier, C. (2010). « Cinéma : avoir le choix entre salle et vidéo ». *Le Monde*, Accessible at [http://www.lemonde.fr/idees/article/2010/05/18/cinema-avoir-le-choix-entre-salle-et-video-par-charles-de-laubier\\_1352932\\_3232.html](http://www.lemonde.fr/idees/article/2010/05/18/cinema-avoir-le-choix-entre-salle-et-video-par-charles-de-laubier_1352932_3232.html)

Driscoll, B. (2012). "Launch Of Curzon On Demand Provides Another Way For Cinema-Goers To Enjoy Films". *The Huffington Post UK*, Accessible at: [http://www.huffingtonpost.co.uk/2012/05/02/curzon-on-demand\\_n\\_1470753.html](http://www.huffingtonpost.co.uk/2012/05/02/curzon-on-demand_n_1470753.html)

Filloux, F. (2012, November 26). *Different release times of films and TV shows boost global piracy*. *The Guardian*. Retrieved from: <http://www.guardian.co.uk/technology/2012/nov/26/films-tvs-global-piracy>

Filmotech (s.d.). "Worldwide success of going nuts", *Filmotech.com*, Accessible at [http://www.filmotech.com/v2/EN/GRITOTENELPASILLO\\_FX.ASP](http://www.filmotech.com/v2/EN/GRITOTENELPASILLO_FX.ASP)

Gilbert, S. (2008, January 1). *Cracking Release Windows: Apple, WB Shift the Movie Industry*. *The Business of Media, Entertainment and Technology*. Retrieved from: <http://metue.com/05-01-2008/itunes-warner-brothers-studios-dvd-day-and-date-releases/>

Girre, L. (2013, February 26). *A First Pan European Day and Date Release for TIDE*. Press release. Retrieved from: <http://thetideexperiment.files.wordpress.com/2013/02/tide-1st-pan-european-and-day-date-release-260213.pdf>

Goldstein, G. (2012). "Distributors go multiplatform diving". *Variety*, Accessible at <http://variety.com/2012/film/news/distributors-go-multiplatform-diving-1118054273/>

Goodfellow, M. (2012, Novembre 15). *TIDE Experiment plans four "day-and-date" releases in 2013*. *Screen Daily*. Retrieved from: <http://www.screendaily.com/news/distribution/tide-experiment-plans-four-day-and-date-releases-in-2013/5048177.article>

Goodfellow, M. (2013, 27 February). "TIDE to "day-and-date" release Gilberto Gil doc in ten countries". *Screen Daily*, Accessible at <http://www.screendaily.com/news/gilberto-gil-doc-set-for-tide-day-and-date-release/5052414.article>

Gordon (2012). "Volta Facebook App Now Available", *Film Ireland*, Accessible at <http://filmireland.net/2012/09/20/volta-facebook-app-now-available/>

Graham, J. (2012). "Talking Your Tech | Edward Burns delivers small films straight to you", *USA TODAY*, Accessible at, <http://www.usatoday.com/story/tech/columnist/talkingyourtech/2012/12/18/edward-burns/1769929/>

Gross, T. (2006). "Will Soderbergh's 'Bubble' Burst on Hollywood?", *NPR*, Accessible at <http://www.npr.org/templates/story/story.php?storyId=5169316>

Hopewell (J.) (2012, July 9). Comedic faux docu bows in hardtopx, DVD, VOD. *Variety*, Accessed online (31 July 2013) at <http://variety.com/2012/digital/news/carmina-opens-vod-door-in-spain-1118056346/>

Horn, J. "Film studios starting to release video-on-demand sales figures: The 'creative accounting' of movies and more recently pay-per-view releases is giving way to some transparency, as seen with the film 'Arbitrage.'", *Los Angeles Times*, Accessible at: <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-arbitrage-vod-20121102.0.6330523.story>

IMDB ([www.imdb.com](http://www.imdb.com))

Kay, J. (2011). "Rio is grand but cinemas won't just go with premium VoD". *Guardian*, accessible at <http://www.guardian.co.uk/film/filmblog/2011/apr/26/premium-vod-just-go-with-it>

Knolle, S. (2009). "Theater Owners Furious Over Early Digital Release of 'Cloudy With a Chance of Meatballs'", *moviefone*, Accessible at <http://blog.moviefone.com/2009/11/11/cloudy-with-a-chance-of-meatballs-digital-release/>

Laubier, C. (2010, May 18). *Cinéma : avoir le choix entre salle et vidéo*. *Le Monde*. Retrieved from : [http://www.lemonde.fr/idees/article/2010/05/18/cinema-avoir-le-choix-entre-salle-et-video-par-charles-de-laubier\\_1352932\\_3232.html](http://www.lemonde.fr/idees/article/2010/05/18/cinema-avoir-le-choix-entre-salle-et-video-par-charles-de-laubier_1352932_3232.html)

Lodge, G. (2013). "Malick's 'To the Wonder' to be released day-and-date in theaters and on VOD", *Hit Fix*, Accessible at <http://www.hitfix.com/in-contention/malicks-to-the-wonder-to-be-released-day-and-date-in-theaters-and-on-vod>

Lumiere (<http://lumiere.obs.coe.int/web/search/>)

Macnab, G. (2012, October 25). *Through the window*. *Screen Daily*. Retrieved from: <http://www.screendaily.com/reports/in-focus/through-the-window/5047678.article>



- McClintock, P. (2013, January 16). *Sundance 2013: How 'Arbitrage's' VOD Gamble Paid Off*. *The Hollywood Reporter*. Retrieved from: <http://www.hollywoodreporter.com/news/sundance-how-arbitrages-vod-gamble-412594>
- McClintock, P. (2011, August 3). *Disney Tests Appetite for Premium VOD in Portugal*. *The Hollywood Reporter*. Retrieved from: <http://www.hollywoodreporter.com/news/disney-tests-appetite-premium-vod-165395>
- Mendelson, S. (2012). "2012 in film: Pre-Theatrical VOD goes mainstream...Mendelson's Memos" Accessible at <http://scottalanmendelson.blogspot.be/2012/12/2012-in-movies-part-i-pre-theatrical.html>
- Miller, D. (2012). "Sundance 2012: The Day-And-Date Success Story of 'Margin Call'". *The Hollywood Reporter*, Accessible at <http://www.hollywoodreporter.com/news/sundance-2012-margin-call-video-on-demand-zach-quinto-283033>
- Morran, C. (2010). "Disney To Attempt Theatrical Shrink Ray With 'Alice In Wonderland'". *Consumerist*, Accessible at <http://consumerist.com/2010/02/11/disney-to-attempt-theatrical-run-shrink-ray-with-alice-in-wonderland/>
- Orange, A. (2011). "Tower Heist to Debut On-Demand 3 Weeks After Release", *Movie Web*, Accessible at <http://www.movieweb.com/news/tower-heist-to-debut-on-demand-3-weeks-after-release>
- Pomerantz, D. (2010). *Disney to Keep Pushing Movie Release Windows*. *Forbes*. Retrieved from: <http://www.forbes.com/sites/dorothy pomerantz/2010/08/10/disney-to-keep-pushing-movie-release-windows/>
- Screen Daily (2007, 18 May). Promotional Feature. "Case study: The road to online", Accessible at <http://www.screendaily.com/promotional-feature-case-study-the-road-to-online/4032542.article>
- Seidler, E. (2012, September 16). *Film distributor's "day-and-date" and "ultra" release models show success*. *Vox Indie*. Retrieved from: <http://voxindie.org/?p=2501>
- Suciu, P. (2012). "Prima Cinema brings movies to home theaters on the day of the release for \$500 a pop", *Digital Trends*, Accessible at <http://www.digitaltrends.com/home-theater/prima-cinema-brings-movies-to-the-home-on-the-day-of-the-release/>
- Szalai, G. (2012, May 30). *'Piranha 3DD' to Become First 3D Film to Get Day-and-Date Release*. *The Hollywood Reporter*. Retrieved from: <http://www.hollywoodreporter.com/news/piranha-3dd-day-date-release-331143>
- Tartaglione, N. (2013). "European Union Backs Pan-European Day-And-Date Distribution Trials". *Deadline London*, Accessible at <http://www.deadline.com/2013/02/european-union-backs-pan-european-day-and-date-distribution-trials>
- The Daily Beast (2011). "Edward Burns, Director of *Newlyweds*, on the Changing Face of Indie Film Distribution", *The daily beast*, Accessible at: <http://www.thedailybeast.com/articles/2011/12/26/edward-burns-director-of-newlyweds-on-the-changing-face-of-indie-film-distribution.html>
- Vary, A.B. (2012, August 24). *'Bachelorette' and the video-on-demand revolution: How digital distribution is changing indie cinema*. *Inside Movies*. Retrieved from: <http://insidemovies.ew.com/2012/08/24/bachelorette-video-on-demand-indie-cinema/>
- Verrier, R. (2011). "More theaters threaten to hold up Universal movie 'Tower Heist'". *LA Times*, Accessible at <http://latimesblogs.latimes.com/entertainmentnewsbuzz/2011/10/more-theaters-threaten-to-hold-up-universal-movie-tower-heist.html>
- Warren, Christina (2011). "Edward Burns and the Socialization of Indie Cinema", *Mashable*, Accessible at <http://mashable.com/2011/12/27/edward-burns-newlyweds-indie/>
- Wiseman, A. (2013, 7 March). *Curzon rebrands on-demand service; announces day and date schedule*, *Screen Daily*. Accessible at <http://www.screendaily.com/news/curzon-rebrands-on-demand-service/5052733.article>

## Documents and legislation EU institutions / Council of Europe

- Council (EEC) Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (1989) OJ L 298/23.
- Council of Europe (2002). *European Convention on Transfrontier Television (ETS No. 132) as amended by the provisions of the Protocol (ETS No. 171) which entered into force on 1 March 2002*.
- European Commission, *Nederlandse Federatie voor Cinematografie* (Case 34.927) closed by comfort letter of 30 August 1995.
- European Commission, "Communication on certain legal aspects relating to cinematographic and other audiovisual works" COM(2001) 534 final.

## Case law

- CJ (Joined Cases C-403 & 429/08) *Football Association Premier League Ltd and others v QC Leisure and others and Karen Murphy v Media Protection Services Ltd* (2011) (not yet published).
- ECJ (Joined Cases 60/84 and 61/84) *Cinéthèque* (1985) ECR 2605.

ECJ (Case 262/81) Coditel SA and others v Ciné-Vog Films SA and others (1982) ECR 3381.

## National Legislation

Code du cinéma et de l'image animée (version consolidée au 1 janvier 2013). Last accessed online on July 26, 2013, via <http://www.legifrance.gouv.fr>

Décret n°87-36 du 26 janvier 1987 pris pour l'application des articles 27-I et 70 de la loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication et fixant pour certains services de télévision le régime de diffusion des oeuvres cinématographiques et audiovisuelles. Retrieved from: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000882075&dateTexte=20120825>

Film Industry Act (2003, amended in 2005, 2006, 2007 and 2009). Retrieved from the Bulgarian National Film Center website (last accessed on July 26th, 2013): [http://www.nfc.bg/en/normativni\\_aktove.html](http://www.nfc.bg/en/normativni_aktove.html)

Journal Officiel du Grand-Duché de Luxembourg. Retrieved from : [http://www.mediacom.public.lu/institutions/Institutions\\_nationales/smc/loi\\_medias\\_electroniques\\_memorial/Loi\\_m\\_dias\\_te\\_xte\\_modif\\_2010\\_M\\_m\\_A\\_241\\_du\\_24\\_d\\_c\\_2010a241.pdf](http://www.mediacom.public.lu/institutions/Institutions_nationales/smc/loi_medias_electroniques_memorial/Loi_m_dias_te_xte_modif_2010_M_m_A_241_du_24_d_c_2010a241.pdf)

Ministère de la Culture et de la Communication (2009, 12 juillet). Arrêté du 9 juillet 2009 pris en application de l'article 30-7 du code de l'industrie cinématographique. *Journal officiel de la République Française*. Accessed online (March 2013) via <http://www.upfilms.fr>.

Ministério da cultura (2006). Decreto-Lei n.º 227/2006 de 15 de Novembro. *Diário da República*, 1.a série - N.º 220 - 15 de Novembro de 2006. Accessed online (last on July 26th, 2013) at <http://www.wipo.int/wipolex>

Romanian Audiovisual Law. Retrieved from: <http://www.cna.ro/The-Audio-visual-Law,1655.html>



# Annexes

## 4.3 Interviews

Table 13: Overview of the interviews

Company/organisation	Interviewees	Interview
BBC Global Player	Helen Keefe	Phone interview 14 May at 10.30
Canal+ Group	Séverine Fautrelle; Pascaline Gineste; Patrick Holzman	Phone interview 14 May at 17.00
Curzon World	Ross Fitzsimons	Phone interview 26 April at 16.00
EGEDA (Filmotech)	Carlos Anton	Phone interview 17 April at 16.30
Mubi Europe (Bazaar Inc)	Bobby Allen	Answers provided in writing (e-mail)
Le Meilleur du Cinéma SAS (Universciné)	Dragoslav Zachariev	Face-to-face interview (Paris) 11 April at 10.00
Element Pictures (Volta)	Maria Heffernan	Phone interview 30 April at 16.00
Central European Media Enterprises (Voyo)	Sorina Big	Phone interview 10 May at 15.00
Comunidad Filmin	Jaume Ripoll	Phone interview 6 May at 15.30
International Video Federation (IVF)	Charlotte Thomsen Julia Hahn	Face-to-face interview (Brussels) 10 April at 12.00
Europa Distribution	Adeline Monzier	Phone interview 17 April at 15.00
Federation of European Film Directors (FERA)	Elisabeth D. Sjaastad	Phone interview 3 April at 9.30
Cine Regio	Charlotte Appelgren	Face-to-face interview (Brussels) 9 April at 16.30
Union Internationale des Cinémas (UNIC)	Jan Runge	Face-to-face interview (Brussels) 5 April at 12.00
Europa Cinemas	Fatima Joumer Claude-Eric Poiroux	Phone interview 11 April at 15.00
MPA Europe	Olivier Dock	Face-to-face interview (Brussels) 24 April at 17.00
BEUC (European Consumers' Organisation)	Kostas Rossoglou	Face-to-face interview (Brussels) 17 April at 12.00
ETNO	Caroline Greer Caterina Bortolini	Phone interview 5 April at 10.00
Eurocinema	Yvon Thiec	Face-to-face interview (Brussels) 10 April at 10.00
CICAE	Christian Bräuer	Face-to-face interview (Brussels) 8 April at 10.00
Under The Milky Way (aggregator)	Jérôme Chung	Face-to-face interview (Paris) 10 April at 15.00
Fédération Internationale des Associations de Distributeurs (FIAD)	Jelmer Hofkamp	Face-to-face interview (Brussels) 22 April at 14.30
Level (sales and distribution company)	Tine Klint	Phone interview 19 April at 13.00
Service Général de l'Audiovisuel et des Multimédias (Ministère de la Fédération Wallonie-Bruxelles)	Thibault Mulatin	Face-to-face interview (Brussels) 24 April at 14.00

### Interviews with stakeholders

These interviews have aimed at getting better insights into the justifications for the current release windows system, as well as the attitudes and opinions of all stakeholders in the film value chain related to the current evolutions of various windows.

Interviewed stakeholders (15):

- International Video Federation (IVF)
- Europa Distribution
- Federation of European Film Directors (FERA)
- Cine Regio
- Union internationale des cinémas (UNIC)
- Europa Cinemas
- MPA Europe
- Service Général de l'Audiovisuel et des Multimédias - Ministère de la Fédération Wallonie-Bruxelles
- BEUC (European Consumers' Organisation)
- ETNO
- Eurocinema
- CICAÉ
- Under The Milky Way (aggregator)
- Fédération internationale des associations de distributeurs de films (FIAD)
- Level K (sales and distribution company)

TOPIC LIST:

A) Introduction

B) Current release windows situation in Europe

- Legislation

- Film support guidelines

- Industrial agreements

- Commercial practices

- Financing and release windows

C) Impact of coordinating release windows in Europe

D) Policy role in establishing the future media chronology in Europe

A. Introduction

The research project aims at providing an overview of the functioning of release windows in Europe in order to arrive at ideas on how adapting this system might foster the advent of a Digital Single Market while respecting cultural diversity within and between the MS' audiovisual industries.

The research questions of the project address:

1) the functioning of release windows, including an assessment of their alignment across the EU and an analysis of their justifications;

2) the impact of introducing more flexibility and/or more coordination in the functioning of release windows across the EU, taking recent experiments into account;

3) the policy role in improving the current situation and adapting the system in order to foster the advent of a Digital Single Market.

1. Can you describe in a few words what your work at X comprises and what X's main purpose is?
- B. Current release windows situation in Europe
2. How do you assess the current functioning of release windows across the EU: Is it simple/complex? It is diverging/converging?
  3. To what extent does legislation within (some) Member States influence the setting of release windows?
  4. To what extent are industrial agreements important to set release windows' length and structure?
  5. In those countries where industrial agreements are key to set the release windows, how is this process organised in practice?
  6. Are the existing legislative and regulatory measures in the area of release windows reexamined at regular intervals?
    - a. If so, when and on what basis is this done?
    - b. If not, would it be necessary to realign them more to evolving business practices?
  7. How do commercial practices relate to the existing legislative and industry agreement frameworks? (alignment or not)
    - a. To what extent do these frameworks offer margins for experimenting with release windows?
  8. Do film support schemes demand alignment with a certain release windows schedule in order to be eligible for support?
    - a. If so, what are the characteristics of the criteria to be followed?
    - b. Are there differences between the way these criteria are included in the guidelines of the various support schemes at regional, national and European level?
    - c. Do these regulatory guidelines foster or hamper the set-up of certain production/financing structures? (e.g. co-production, financing by PSB)
  9. In general, what is the influence of release windows alignment on audiovisual financing in Europe, and vice versa?
- C. Impact of coordinating release windows in Europe
10. Where do you think video on demand channels should be inserted in the traditional framework? Should there be differences between the various kinds of VoD?
  11. How do you expect release windows to evolve?
  12. What would according to you be the possible impacts of aligning release window schedules between the different countries?
    - a. In terms of film financing
    - b. In terms of production structures (co-productions e.g.)
    - c. In terms of the business relationships between different stakeholders (e.g. with cinema exhibitors)
    - d. In terms of cross-border distribution of films
    - e. In terms of marketing push ("buzz")
    - f. In terms of audiovisual consumption (wider audience, more international?)
    - g. In terms of revenues generated (digital benefits captured by the sector)
  13. To what extent do you think the alignment of release windows would have an impact on the set-up of VoD services that operate across borders?
  14. Vice versa: to what extent do you think the set-up of cross-border VoD services impacts the evolution of release windows?
  15. What would according to you be the possible impacts (cf. q12 above) of *shortening* release window schedules across the different countries?
  16. What would according to you be the possible impacts (cf. q12 above) of making release window schedules across the different countries *more flexible*? (case-to-case)
  17. What do you think of the release windows experiments (e.g. ultra release model, day and date releases, VoD premiere)?
- D. Policy role in establishing the future media chronology in Europe
18. What (legislative, regulatory or other) actions (if any) do you think are needed for improving the current situation? Why?
  19. To what extent do you think the national *legislation* should be changed?

20. To what extent do you think film support practices and eligibility criteria have to be amended?
21. Do you think MS should (re-)introduce national regulatory/legislative measures with regard to release windows, or the chronology and the length of each release window should remain a matter of contract between right holders and distributors?
22. Do you think there should be more coordination among MS in terms of release windows? Is there a role for the EU in this regard?
23. Do you think there needs to be more coordination and negotiation between the different sector organisations/stakeholders, such as exhibitors, distributors, VOD providers, etc.?
  - a. If so: at the national and/or European level?
  - b. If so: who should coordinate/initiate this? (top-down or bottom-up)
24. Do you think that a reform of the release windows in the EU could become an important mechanism for change towards the realisation of the Digital Single Market in the audiovisual field? Why/Why not?
25. From your point of view, how this reform should be done?

## Interviews with VOD services in Europe

The goal of these interviews has been to get better insights into the impact that release windows mechanisms have on the economic and cultural presence of VOD services in Europe, in particular in terms of the cross-border availability of these services and the films on offer.

Interviewed VOD services (9):

- Curzon World
- Mubi Europe
- Universciné (EuroVod)
- Volta (EuroVod)
- Filmin (EuroVod)
- Filmotech
- Canal Play (Canal Plus)
- Voyo
- BBC Global iPlayer

Topic list:

- A. Introduction
- B. Cross-border characteristics and potential of VoD in Europe
- C. Release Windows

A. Introduction

The research project aims at providing an overview of the functioning of release windows in Europe in order to arrive at ideas on how adapting this system might foster the advent of a Digital Single Market while respecting cultural diversity within and between the MS' audiovisual industries.

The research questions of the project address:

- 1) the functioning of release windows, including an assessment of their alignment across the EU and an analysis of their justifications;
- 2) the impact of introducing more flexibility and/or more coordination in the functioning of release windows across the EU, taking recent experiments into account;

3) the policy role in improving the current situation and adapting the system in order to foster the advent of a Digital Single Market.

1. Can you describe in a few words what your work at X comprises and what X's main purpose is?
2. Could you expand a little bit on the characteristics of X's VoD offer?

B. Cross-border characteristics and potential of VoD in Europe

1. In what territories is your VoD service active? Why do you cover specifically these countries/this(these) region(s)?
2. How does the given (national/EU) legislation and business environment influence the choice to set up this service in a given territory?
3. Are there further economic/legal/cultural/other reasons that influence the choice to be available in certain countries (or not)?
4. Is your catalogue country-specific? Why/why not?
5. How do you license your content? Is the arrangement exclusive? Is the arrangement renegotiated (if so, after which time period)? Is the license based on a flat fee and/or revenue split?
6. Are there any other aspects of your service that differ between countries (e.g. platform, payment options)?
7. Would you like to expand your service further across borders in the short- or long-term future?
8. To what extent do you believe a pan-European VoD market can be realised?

C. Release Windows

9. Do you think that the current functioning of release windows across the EU restricts flexibility and makes it harder for the sector to capture digital benefits?
10. Does the current model constitute an obstacle for the unification of the European audiovisual market and the circulation of audiovisual works between Member States?
11. How do release windows impact the day-to-day organisation of your activities as a VoD service provider?
12. Does the media chronology in Europe (and differences between countries) affect the availability of films on your VoD platform?
13. Does the media chronology organisation influence the similarity of the content catalogue you offer in different countries? (availability in some countries but not in others) (with regard to experiments)
14. Can the online releases provide an alternative for the theatrical release of European films?
15. Can release windows experiments offer benefits in terms of a more prominent marketing push for non-mainstream films?
16. Are such experiments a means to facilitate better transnational circulation?
17. Do you see any reasons to maintain the release windows system? Which ones?
18. Do you have experience with the problematic alignment of release windows? How do you handle them?
19. How do you expect release windows to evolve?
20. Which legislative steps would be needed to improve the situation?

## **4.4 Information Sheets for every Member State's release windows system**

See enclosed files.

**European Commission**

**Analysis of the legal rules for exploitation windows and commercial practices in EU Member States and of the importance of exploitation windows for new business practices**

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