

# Cinema, audiovisual sector: legal aspects relating to production and distribution of works

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**PURPOSE:** A comprehensive overview of legal aspects relating to audio-visual work. **CONTENT:** There are currently two key EU instruments governing audio-visual work. They are the television without frontier Directive and the Media Plus Programme. Their main objective is to allow European companies to fully benefit from the European single market in this sector. In addition to these instruments articles governing state aid and competition, as laid out in the EC Treaties, largely dictate financial consideration for the audio-visual industry. The audio-visual sector comprises two dimensions. On the one hand it is a huge source of economic activity and wealth creation in the EU. In 1999 the European audio-visual market had an estimated worth of EUR 58.3 billion. On the other hand European audio-visual work encourages, reflects and promotes European heritage and culture. This duality offers the audio-visual sector special consideration vis-Ó-vis European regulatory and legal provisions. The first part of this Communication examines the general orientation of the EU's policy regarding state aid to the cinema sector. Under this heading the report notes that the Treaty of Maastricht recognises the unique positioning of culture within the European context and hence awards it an article (Article 151). Similarly, the articles governing state aid and competition allow for derogation's to promote culture. A large section of this Communication is devoted to examining the current EU position on how to combine these legal aspects and in particular the compatibility with the EC Treaty of aid schemes to cinema and television production. The basic rules governing state aid prohibit state grants which threaten to distort competition and trade between member states. Article 87 (3) d) offers an exemption for aid which promotes culture, where such aid does not affect competition and trading conditions to an extent contrary to the common interest. In 1997 the Commission was forced to examine the interpretation of this article in greater detail following a complaint about exclusionary effects created by the French cinema production aid scheme. The Commission's findings on this case form the benchmark for future policy. The Commission's conclusions mark the boundaries between what the specific compatibility criteria for state aid to cinema and TV production should be. They are: - The aid is directed to a cultural product. - The producer must be free to spend at least 20% of the film budget in other member states without suffering any reduction in the aid provided for under the scheme. - Aid intensity must in principle be limited to 50% of the production budget. - Aid supplements for specific filmmaking activities (e.g. post-production) are not allowed. In the Commission's view the above criteria strike a balance between the aims of cultural creation, the development of the EC audio-visual production and respect for EC rules on state aid. These findings will remain valid until June 2004, the time limit set in the decisions adopted so far. In terms of reviewing state aid schemes the Commission has set up a method to examine in detail the varying forms of state aid in the audio-visual sector. In its findings, the Commission concludes that a) There is a great diversity of aid schemes within the EC both in terms of aid type and scope; b) Many of the schemes contain provisions contrary to the general legality principle; c) Very few member states impose territoriality requirements in order to qualify for aid. d) Only exceptionally, will Member States grant aid levels higher than 50% of the film costs; e) The exception to this latter finding normally fall under the "difficult and low budget film" category. The Commission will continue a multilateral dialogue with the member states on this matter. Other aspects covered by this Communication include: - Protection of heritage and exploitation of audio-visual works. (Before putting forward a possible proposal the Commission intends to carry out a stocktaking exercise in respect of the current situation within the member states.) - The creation of a registration scheme (Again the Commission will undertake a stocktaking exercise prior to presenting a proposal) - The creation of a right-holder's database. (This will be examined within the context of the Green Paper on Copyright and Related Rights) - The exploitation of rights. (The Commission urges more co-operation between interested parties) - E-Cinema. (The Commission welcomes the establishment of the European Digital Cinema Forum) - Tax issues. (On the matter of VAT exemption the Commission suggest it may respond to this within the context of the review of Annex H of the 6th VAT Directive, to take place

after 2002.) - Rating. (The Commission will prepare a study) - 2002 review of the television without frontiers Directive. (Under the new review the Commission is going to examine the definition of a "European work" and "independent producer". It will also examine questions on media chronology and on-line rights.)