

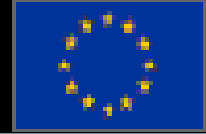
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Motion Picture
Association-Europe**



**FORENINGEN FOR ENTERTAINMENT- & MEDIERET
Nytårstaffel 2012, Copenhagen, 26 January 2012
EU Copyright Reform – Implications for the AV sector**



EU's Digital Agenda/IPR Strategy



“A Single Market for IPRs”....the “*answer is in the Single Market*” – Commission Communication in May 2011 – the challenges:

- “high transaction costs”
- a “knowledge gap”
- a mismatch between enforcement and digital environment

Key policy initiatives, including those announced 2012 workplan

- Framework Directive on Collective Rights Management
- GP on Licensing practices in the AV sector
- A European Copyright Code? A EU Copyright Registry? UGCs?
- Private copy levies – new legislation?
- Proposal for Orphan Works Directive
- Review of the Copyright Directive
- Review of the Enforcement Directive



More recently: Communication on the E-Commerce Directive

- Reprises many of the same issues but also reviews the E-Commerce Directive

International dimension - WIPO/ACTA/FTAs

Political Pressure and the irrational debate

- EU level – focus is how to manage exclusive rights and how to limit them in service of the Internal Market.
 - **Sacrificing copyright protection for growth?!**
- National level:
 - UK Google Review – Hargreaves Report – Copyright Consultation
 - Ongoing Copyright Reviews across the EU
- Issues - Adapting copyright to the digital era
 - Orphan Works/Out of commerce works
 - UGC permissions
 - Rights management (film is not music)
 - Simplify licensing/reduce transactions costs
 - Territoriality
 - Copyright registries/exchanges
 - New exceptions (and making old ones mandatory)
 - EU Copyright Code
- US fair use as a panacea to European ailments
- The role of the Court of Justice (the *Premier League* message?)

EU Audiovisual Green Paper – Last summer

- Consultation ongoing
- European film production/distribution
- Rights Clearance
- Role of collective management in AV sector in EU “digital single market”.
- Role of the Cable and Satellite Directive
- Territoriality of copyright
- Mandatory collective administration of a statutory remuneration right for authors and performers for the online exploitation (making available)
- Special uses and beneficiaries – e.g., archives



Orphan Works

- Proposal for Directive adopted in May
- Currently before the EP and Council
- Public interest beneficiaries (commercial broadcasters?) for their public interest mission
- Diligent Search
- Cross-border
- Consideration of the AV sector
- National rights management, incl ECL, intact but no cross-border effect
- Is this an exception?



Collective Rights Management

- A legal framework for collective rights management
- Two main elements:
 - Minimum requirements transparency, supervision and good governance of all collecting societies
 - Facilitating multi-territorial licensing of music
- One size does not fit all
- CRM in the AV sector
- A vehicle for broader reform?
- Role of ECL
- Commission working on Impact Assessment
- Proposal expected this spring

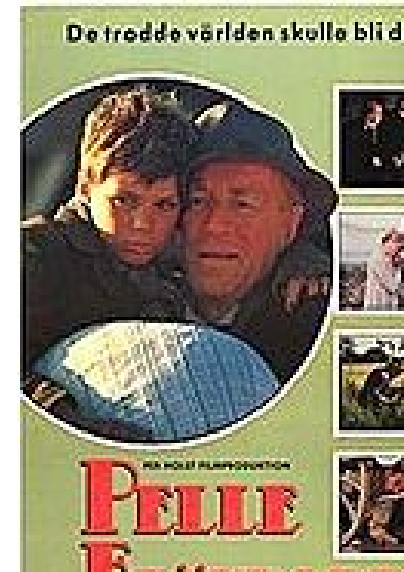


Private Copy Levies

- Recent CJEU caselaw – in particular *Padawan*, with two more recent referrals
- Fundamental questions:
 - Legal source
 - Copying pursuant to a license
 - Lockers/Remote PVRs
- Previous industry/collecting societies discussions failed
- New efforts to achieve stakeholder agreement
- **Mission Impossible**: A high-level mediator with a mandate to explore possible approaches to harmonise the methodologies used at national level
- Legislative action in 2013

On the horizon

- All roads lead to a close evaluation of the ©Directive
- What about definition of film authorship?
- Other film copyright issues – transfer
- © contracts
- Better enforcement of the EU © acquis?



Court of Justice of the EU (CJEU)

- Submerged – last year including:
 - Scarlet v. Sabam (CJEU 24 November)
 - ThuisKopie – private copy levy (CJEU – 16 June)
 - Irish Hotels (AG – 29 June)
 - Italian Dentists (AG – 29 June)
 - L’Oreal v. eBay (CJEU - 12 July)
 - Austrian Cessio Legis (AG – 6 September)
 - Premier League (CJEU - 4 October)
 - Airfield (CJEU - 13 October)
 - ePhone case (AG – 13 November)
 - DK TV2 v. NCB (AG - 17 Jan 2012)
- Pending: Sabam v. Netlog, Infopaq II
- New References:
 - ITV v. TV Catchup (streaming/catchup rts)
 - UsedSoft v. Oracle (exhaustion)
 - DataCo v. Sportradar (country of origin – sui generis DB right)
 - Two more private copy cases





Preliminary Remarks

- CJEU addresses only the communication to the public by satellite of broadcast signals incorporating PL matches
- Certain aspects look general – how far?
 - Beyond live football?
 - Beyond satellite pay-TV?
- From a © perspective, some elements might limit the effects on film/TV content licensing....
- Of course, one must consider copyright points in conjunction with free movement and competition
- And finally the views of EU policy-makers (AV Green Paper) and enforcers (DG Competition)

Grey to White Cards

- For all content?
- For all services?
- Wither fraud, misuse, etc?
- Other RHs have no standing here but TPMs?
- Greek sports package costs more than Sky's
- Where does this leave the middlemen?
- What about cards from outside the EU?

Part A: Copyright Issues

- EU-level standard of originality
 - No copyright for football matches?
 - What if PL had more ©?
- CJEU seems to create a protection for sports events in order to make fundamental freedom and competition law analyses
- Remuneration for exploitation of works in EU
 - “appropriate remuneration” based on economic value and actual/potential audience
 - Remuneration for “each use” but no guarantee of “highest possible”

Part B: © after a nice reception - Reproduction

- Consistent with Infopaq/Uniform interpretation
- Covers transient fragments in STBs and TV screens
- Article 5(1) exception for certain temporary copies
 - Giveth and taketh away
 - Interpreted restrictively
 - a new technology privilege?
 - “*enable the effectiveness of the exception*”
 - Article 5(1)–(3) contains an exhaustive list
- Specific conditions of Article 5(1) of the Directive
 - lawful use
 - Relevant of the communication to the public right?
 - Independent economic significance – “redundant”
- Backhander to the three-step test
- Ouch

Part B: © – Come to the Pub?

- High level of protection/Unity of the EU legal order
- Article 3(1) Directive 2001/29/EC
 - ES, GR, IE Hotels; IT Dentists; RO Circuses ...
 - Now English Pubs
 - Intentional access/Commercial benefit
 - A new public – not present where broadcast originates (Cf., Newzbin1)
 - Leaving out only live and stage performances
 - What if you stay at home?
 - Looks like the pubs have infringed copyright...
 - Ramifications
 - A boon for collecting societies?
 - How do you exercise individually?
- Related rights of b'caster not before Court
CabSat Directive was a red herring?

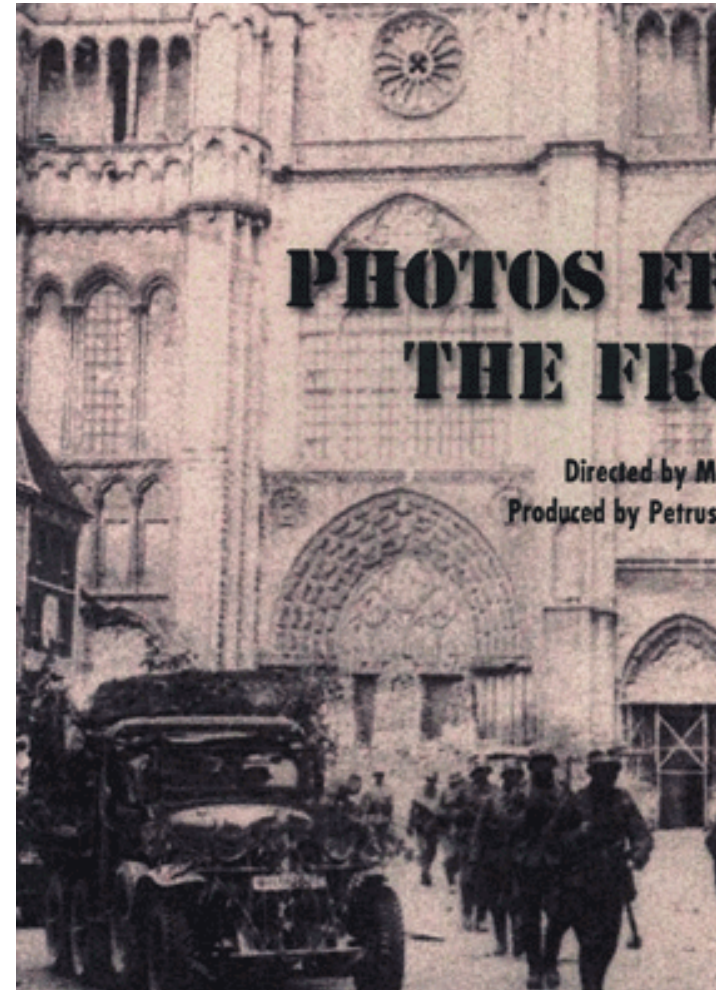
So what next?

- CJEU does not condemn territorial licenses but prohibits absolute territorial protections.
- So how does this work in practice?
- What about pre-sale of rights on a territorial basis to finance film/TV production?
- What value/cost exclusivity?
- What impact on windows (Cf., Art 8 AVMS Directive)
- Does Sky have set up service centres all over the EU?
- Who benefits?
- Who loses?
- What new models?



Case C-277/10, Austrian "Cessio Legis" (AG 6 Sept 11)

- Exploitation rights/legal transfer
- Film exploitation rights in respect of reproduction, satellite broadcasting and other communication to the public
- Beneficiary of payment – equitable remuneration
- Are MS laws which assign exploitation rights directly and exclusively to the producer inconsistent with EU law?
- *“Austrian model can be compatible with EU law as long as it satisfies certain conditions but not the split in equal parts of private copy levy*



Eiz Wilson	....	Entae (as Friday Eiz Wilson)
Candice Orwell	....	Yané
Sofia Coppola	....	Saché
Keira Knightley	....	Sabé
Bronagh Gallagher	....	Radiant VII captain
John Fensom	....	TC-14
Greg Proops	....	Beed (voice)
Scott Capurro	....	Fode (voice)
Margaret Towner	....	Jira
Dhruv Chanchani	....	Kitster
Oliver Walpole	....	Seek
Katie Lucas	....	Amee (as Jenna Green)
Megan Udall	....	Melee
Hassani Shapi	....	Eeth Koth
Gin Clarke	....	Adi Gallia (as Gin)
Khan Bonfils	....	Saesees Tiin
Michelle Taylor	....	Yarael Poof
Michaela Cottrell	....	Even Piell
Dipika O'Neill Joti	....	Depa Billaba
Phil Eason	....	Yaddle
Mark Coulier	....	Aks Moe
Lindsay Duncan	....	TC-14 (voice)
Peter Serafinowicz	....	Darth Maul (voice)
James Taylor	....	Rune Haako (voice)
Chris Sanders	....	Daultay Dofine (voice)
Toby Longworth	....	Sen. Lott Dodd/Gragra (voice)
Marc Silk	....	Aks Moe (voice)
Amanda Lucas	....	Tey How/Diva Funquita (voice) (as Tyger)

Produced by
George Lucas executive producer
Rick McCallum producer

Original Music by
John Williams

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