



**The International Film Industry:
EU Perspectives and Challenges
Swimming with Sharks**

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Introduction and Outline

- What's the IVF and what does a Director General actually do?
- Why the “Swimming with Sharks”?
 - The copyright model is under constant attack
 - Our territorial business model is being questioned – “Just change your business model!!”
 - Are we actually able to exercise our exclusive rights online?

AUDIOVISUAL	MUSIC
<p><u>Definition:</u></p> <ul style="list-style-type: none"> ▪ Cinematographic works ▪ TV series/fiction/documentaries ▪ Animation/Cartoons ▪ Other items covered by copyright 	<p><u>Definition:</u></p> <ul style="list-style-type: none"> • Musical works – compositions • Sound recordings/phonograms • Performances
<p><u>Rights management</u></p> <ul style="list-style-type: none"> ▪ Individual contractual and collective bargaining agreements between authors and producers, between performers and producers ▪ Assignments of the rights of authors to producers; assignments of the rights of performers to producers on the basis of contracts and/or national presumptions of transfer (cf. Article 2.5 Rental Right Directive) ▪ No collective management of rights except for private copy, cable retransmission and rental (in certain countries) ▪ AV works are licensed by producers/distributors 	<p><u>Rights management</u></p> <ul style="list-style-type: none"> • Mandatory Collective management: communication to the public (performers/producers have only remuneration right), private copy, cable retransmission. For authors and performers, even where not mandatory, their rights are usually assigned to collective societies and licensed collectively to different platforms • Music producer acquires by contract only rights necessary to make the sound recording. Rights acquisition by operation of law does not exist. • 3 separate categories of right holders all of which engage in certain licensing activities
<p><u>Duration</u></p> <ul style="list-style-type: none"> ▪ Author's life plus 70 years after his death (for film from last surviving author) ▪ Producers get the right to exploit the work in exchange for contractual remuneration, including residuals, to be paid to authors and performers. ▪ No competitive disadvantage, vis-à-vis US producers 	<p><u>Duration</u></p> <ul style="list-style-type: none"> • Author's life plus 70 years after death (lyricists/composers) • Performers' rights – 50 years • Producers' rights – 50 years • Music producers do not acquire music author's rights in such a manner that they may rely on them once their own related rights expire.

Copyright Model Under Attack

- **WIPO (Development Agenda and pursuit of mandatory exceptions and limitations)**
<http://www.wipo.int/portal/index.html.en>
- **EU Green Paper on Copyright in the Knowledge Economy (372 submissions for and against copyright)**
- http://circa.europa.eu/Public/irc/markt/markt_consultations/library?l=/copyright_neighbouring/consultation_copyright&vm=detailed&sb=Title
- **National level (e.g. UK initiative to “completely rethink copyright”)**
<http://www.ipo.gov.uk/pro-types/pro-copy/c-policy/c-policy-consultation.htm>
- **All new exceptions or changes to existing exceptions must meet the 3-step test (EU CR Directive Article 5.5)**
- **What about compulsory licensing for the Internet?**

What about term extension?

- Term extension considered positive for music industry (by some . . .) – what about the film industry?
- Fundamentally different financing model, licensing practices and exploitation modes
- “Accompanying measures” (e.g. social fund and “use-it-or-loose-it” clauses) considered ill-adaptable to the film industry
- And how do we deal with the massive public and academic opposition (term extension is bad for innovation)?

Financing plan for a Film (courtesy Katrine Schlüter Schierbeck)

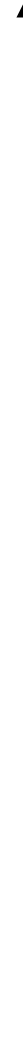
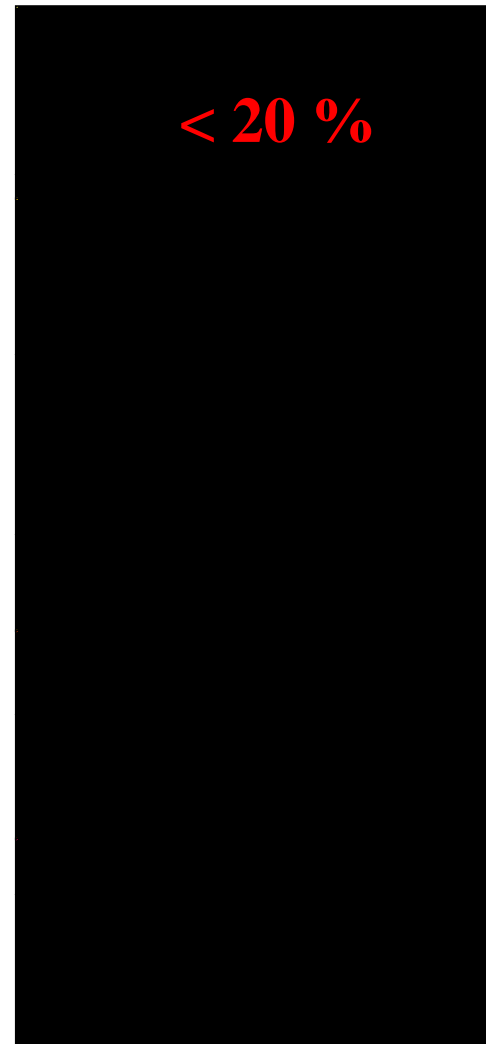
Financing

Top financing (bank financing against sales estimates) →

Pre-sales entered into with a number of distributors in specific territories →

Subsidy arrangements (Nordic institutions, Eurimages, etc) →

Financiers' equity (facility deals, cash, deferrals) →



Territorial Business Model is Being Questioned

- Commissioner Reding's ongoing interest in multi-territorial licensing –forthcoming study on implications
(http://ec.europa.eu/avpolicy/info_centre/tenders/archives/index_en.htm)
- Commissioner Kroes' initiative on “Opportunities for Online Business”
(http://ec.europa.eu/competition/sectors/media/online_commerce.html)
- Commissioner Kuneva's consumer priorities in the online world include addressing “artificial geographical restrictions”
(http://ec.europa.eu/consumers/strategy/facts_en.htm)
- Premier League Case (reference to the ECJ)

How to Exercise Exclusive Rights Online?

- 14 million illegal downloads per month in France (as estimated by ALPA – French Audiovisual Anti-Piracy Programme) . . .
- Does it really matter? Have we lost control anyway?
- Improvement is sought by increased cooperation with ISPs and telecommunications companies
- Perceived issues of “fundamental rights” and data protection
- Application of Art. 8(3) of EU CR Directive providing for injunctive relief against ISPs whose services are used to infringe copyright

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