

Greenberg Traurig: Digital Single Market – The State of Play for the Film Industry
Remarks by Senator Chris Dodd, Chairman and CEO, MPA
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As Prepared for Delivery

Good evening. It's a pleasure to be in Berlin with all of you.

First of all, thank you, Dr. Lütje, for that kind introduction.

I also want to thank all the people at Greenberg Traurig who helped organize this great event.

The Digital Single Market is an important issue, one that will have profound effects on the future of Europe's film and television industries. So I want thank everyone here for taking the time to come and be a part of the conversation.

And I cannot think of a better time for us to have this discussion than during the 66th Berlinale, an incredible celebration of cinema. An art form whose future, as I said, will be greatly impacted by the implementation of a Digital Single Market.

At the outset of my remarks, I would like to address a mistaken premise. The audiovisual sector is not unquestioningly opposed to the Digital Single Market, despite what some may say.

I know that Commissioner Oettinger understands this. Through his experience working with and listening to our industry, Commissioner Oettinger understands that we are, in fact, ready to embrace a Digital Single Market. We simply want to ensure that it mutually benefits both consumers of film and television, and those whose livelihoods depend on their creation.

The current proposed plans, however, have the potential to cause significant harm to this beloved industry. The principals of territoriality, licensing, and contractual freedom have long served as the financial bedrock of Europe's film industries. But these new regulations threaten those principals.

Coupled with the potential weakening of copyright protections that have defended creators and their works for hundreds of years, these proposed regulations have the potential to severely damage the film and television industry.

So while the audiovisual industry is not blindly opposed to the Digital Single Market, we do have strong concerns with the proposed regulations. And I am grateful that we have the

opportunity, tonight, for a fuller discussion of what a Digital Single Market could mean for Europe.

The biggest misunderstanding about a digital single market is the belief that there is a monolithic European audience all seeking the same content.

That's just not the case. Europe is not made up of one people or one culture. Europe is a collection of different nations; it is a mixture of different cultures and different histories; of different values and different beliefs; different languages and different tastes. There is no reason to assume that movies and TV shows that are popular in Germany will be appealing in France or Spain. Or that the types of comedy that people in London love will be received the same way in Barcelona. MTV is a great example of what I'm talking about.

When MTV first tried launching Europe almost thirty years ago, they created a single set of programming to be shown across the continent. No matter which country you traveled to, you would see the same thing on MTV.

But they failed to take into account the different musical and style tastes that exist between countries. Or even the linguistic differences.

Eventually MTV Europe began splintering off into different localized stations. And these stations have succeeded by providing programming tailored to local audiences.

While anecdotal, that example illustrates the lack of an audience for pan-European content. A recent study conducted by Eurobarometer offers further proof. According to the study, only 8 percent of consumers have ever tried accessing content online that was created for other markets. Rather than becoming more homogenized, European consumer habits and viewing patterns have actually grown increasingly individualized and focused on domestic creations.

That focus is why territorial licensing is so important to Europe's film community. The contractual freedom to experiment with innovative offerings for local audiences, and to make deals that meet the needs of local platforms is key to meeting consumer demand for local content. Rather than forcing all manner of different content on consumers, we cater to what they want.

And far from preventing cross-border services or stifling the sharing of content between markets, the current framework enables content distribution on a linguistic, territorial, multi-country, and pan-European basis. If there is enough demand and a viable market, service providers can absolutely deliver cross-border services. But those decisions are based on market demand, not government regulation. And the framework is working; more of these cross-border offerings are becoming available every day.

But while contractual freedom and licensing play an important role in ensuring audiences have access to the content they want, their importance actually goes much further. They protect the ability of these industries to operate and ensure that the millions of jobs relying upon them continue to exist. They are key sources of financing vital to the continued growth and sustainability of Europe's film and television industries.

Creating movies and TV series is a high-risk, experimental business. It requires substantial upfront investments with no guarantee of making a profit, or even recouping those initial investments. But one thing we can guarantee is that without the financing that comes from licensing and territorial agreements, no production will ever have the chance to try. They won't even have the chance to be made.

That means lost jobs, lost wages, and the lost ability of nations to support their creative industries.

Another recent study, this one by Charles River Associates, a firm hired by the European Commission to examine the implications of these proposed new regulations, concluded that changing the rules by which Europe's creative industries have operated could result in unintended and damaging consequences. The report went as far as to warn that "a total ban on territorial licensing might decrease, rather than increase, consumer choice."

And we all know that consumers want choice. They want choice in what they watch, when they watch it, and on what device they use.

This is also a good opportunity for me to address a misconception. I have heard people ask, "You have a digital market in the United States, so why shouldn't we have one in Europe?" We do not have a digital single market in the United States. We have exclusive rights and contractual freedom. In the United States rights holders are free to license as they like: locally, regionally, or nationwide. Sometimes rights holders have different strategies in different geographic areas that take into account local preferences. Here in Europe, with your much greater cultural and linguistic diversity, that approach of contractual freedom to meet local demand makes a lot of sense.

The film and television community is continuously evolving, creatively and technologically, to meet consumer demands and provide the choices audiences are seeking.

We embrace the latest technological innovations, and constantly look for new methods of distributing our content. And because we do, audiences now have more options than ever before for enjoying the great content our industries are producing. According to the European Audiovisual Observatory there are now more than 3,000 licensed audiovisual services.

And that number will continue to grow in the coming years as innovators work tirelessly to create the next “big thing”.

But while territoriality within the Digital Single Market is a major concern for those of us within the film and television community, there are a number of other issues that fall within this package. And because this afternoon’s panel of experts will look at all of these various topics, let me take a moment to briefly touch on a couple before I close.

First is the proposal on portability. Without going into too many details here, let me just say that while traveling throughout the European Union, the industry supports the principle of temporarily providing consumers with access to online digital films and TV services they have acquired legally. Portability, however, cannot be a “back door” to mandating cross-border access. A number of key safeguards need to be built into the legislation so the industry can continue to invest in new content and provide consumers with choices of high quality entertainment.

Second are the proposals on Copyright. As long as filmmaking has existed, copyright has served as the foundation of a healthy global industry. Even with today’s sweeping technological revolution, copyright stands as the most effective guarantor for the creation, production, and dissemination of creative and cultural works.

But these new directives have the potential to weaken this foundation. As an industry, we worry that with an inflated number of exceptions to copyright, the exceptions may begin to swallow the rule, weakening the protections that creators and artists throughout Europe have relied on for centuries.

Contractual freedom, territorial licensing, copyright enforcement – in the end, all of it comes back to the strong tradition of free expression, the spirit of skill and innovation, and the longstanding commitment to sustaining the economic rights and freedoms of creators that this continent is known for.

It is because of that tradition, and the creative communities that sprung from it, that more than 7 million men and women across Europe went to work today in a job that is dependent, either directly or indirectly, on core copyright-intensive industries like film and television.

200,000 of those individuals work right here as part of Germany’s film and TV industry. And it is why those industries contribute roughly 509 billion Euros to Europe’s economy.

So while people here in Europe consider these new regulations that will change the way creative industries operate, it is vitally important that any new structural measures are carefully considered. We must ensure that they do more good than harm to the innovation, jobs, and growth that this industry is known for.

We must not jeopardize trust in the well-established financing models that have long stood as the foundation of Europe's film and television industries.

We must not stifle the incredible diversity of creativity and artistic expression that is rampant across this continent, or the ever-growing abundance of choice enjoyed by today's consumers.

Let us instead protect creative diversity. Let us promote local, regional, and pan-European content and services according to market and audience demand rather than a one-size-fits-all system.

Let us work together to ensure that this industry's future continues to shine bright and continue to remain prosperous for decades to come.

Thank you.