



Guidelines on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover

Possible approaches and guiding questions

AVMSD Contact Committee
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This document has been drawn up by Commission services as basis for discussion with the AVMSD Contact Committee and does not engage the Commission as an Institution.

Relevant provisions

- **Article 13(1)** -> 30% share of European works in on-demand catalogues
- **Article 13 (2)** -> possibility for MS to impose financial contributions to cross border providers
- **Article 13 (6) and Recital 40** -> mandatory exemptions for companies with a low turnover or low audience
- **Article 13(7)** -> Commission's guidelines in consultation with Contact Committee

Main aim of the upcoming guidelines

- Strike the right balance between
 - **the objective of ensuring cultural diversity, including the circulation of European works within EU, and**
 - **that of avoiding unnecessary burdens on providers and national regulatory authorities.**
- Provide necessary clarity and predictability to providers and regulators

Calculation of the share of European works in on-demand catalogues: Method of calculation

Possible approach: Calculation by titles

- Different from linear services programming schedules, time is not a decisive factor in the creation of a VOD catalogue:
 - The inclusion of a certain programme/item in a catalogue is not dependent on the availability of a time slot
 - User are free to select and watch an individual programme from a catalogue whenever they want and as many times they want

Definition of a title/item

Possible approach: 1 film and 1 season of TV series = 1 title

- Generally, a season of TV series is the result of a single and continuous creative input
- Advantages compared to a calculation by duration/episodes:
 - More neutral: e.g. does not incentivise the acquisition of longer format TV series
 - Likely positive impact on the cross-border distribution of European works
 - Generally less burdensome for providers
 - Likely to facilitate verification by national authorities

Application to national catalogues

Possible approach: the share should be fulfilled in each national catalogue

- Likely to reduce uneven distribution of European works across different national catalogues
- Possible positive impact on cross-border distribution of European works

Guiding questions

In your view:

- *Would this approach strike the right balance between ensuring cultural diversity, including circulation of works within EU and that of avoiding unnecessary burdens on providers and authorities?*
- *How to best ensure consistency in treatment between different formats, e.g. films v. series?*
- *Any other suggestions?*

Definition of low audience and low turnover

General remarks

- Aim to establish system which is practical and not excessively burdensome
- The exemption from Art 13(1) is applied by the national authority of the country of origin
- Exemption from Article 13(2) is applied by the national authority of the targeted MS

Exemption from Article 13(1) – low turnover

Possible approach: threshold based on COM Recommendation (e.g. micro and small sized enterprises)

- Consistent with the aim to facilitate the entry of new players in the market (Recital 40)
- Consistent with the Commission regulatory approach in the area of SMEs
- Consistent with Media Programme funding policies

Exemption from Article 13(1) – low audience

Possible approach: take into account the reach of the VOD service, i.e. number of active users out of households with broadband connection in a given Member State

- Provides for the lack of audience measurements for VOD services
- Selected threshold needs to ensure that players with insignificant market presence are exempted
- The exemption takes account of the different sizes of the national markets

Guiding questions

In your view:

- *Is the proposed approach sufficiently practical and not excessively burdensome?*
- *Are there any possible shortcomings that need to be tackled?*
- *Any other suggestions?*

Exemption from Article 13(2) – general remarks

The aim of the exemptions from Article 13(2) is not to replace exemptions established at national level (which should also apply to cross-border providers)

- It is relevant only for MS that apply cross border financial contributions
- It applies only to providers (both VOD and linear service providers) from other Member States

Exemption from Article 13(2) – low turnover

Possible approach: same as for Article 13(1) – Commission Recommendation on SMEs

- The targeted Member State may establish national exemptions applicable to national providers
- Such national exemptions would apply to the cross-border provider if they are more favourable than the Article 13(6) exemption

Exemption from Article 13(2) – low audience for cross border VOD

Possible approach: same method as in exemption from 13(1)

- Cross border providers potentially subject to several financial contributions in different Member States
- The possible obligations under Article 13(2) thus likely to raise higher barriers for cross-border providers
- Hence, need to consider a higher threshold than in 13(1)

Exemption from Article 13(2) – low audience for linear services

Possible approach:

- Audience to be defined based on measurement of daily audience share in targeted Member State
- Threshold: to be selected so that the TV channels subject to the obligation are those with higher audience share that capture together e.g. 80% of audience share
- An additional safety net threshold to exclude channels within the 80% batch that only reach an insignificant audience share

Guiding questions

In your view:

- *Is the proposed approach sufficiently practical and not excessively burdensome?*
- *Are there any possible shortcomings that need to be tackled?*
- *Any other suggestions?*