“THE TIME WHEN THE LAW OF COPYRIGHT AND ITS INTERNATIONAL REGIME WAS A RELATIVELY SIMPLE AND WELL-DEFINED SUBJECT HAS PASSED. THE PRODUCTION OF COPYRIGHTED WORKS AND THEIR USES HAVE BEEN ENORMOUSLY ENLARGED IN THE LAST QUARTER CENTURY. THE CONFLICTS OF INTERESTS BETWEEN PRODUCERS OF LITERARY, MUSICAL AND ARTISTIC WORKS, AND THEIR CONSUMERS AND INTERMEDIARIES AFFECT LARGE GROUPS AND INVOLVE GREAT SOCIAL INTERESTS.

STEPHEN P. LADAS: PREFACE, THE INTERNATIONAL PROTECTION OF LITERARY AND ARTISTIC PROPERTY (MACMILLAN COMPANY, 1938)
Introduction

- Copyright is what funds creation – it is the key to finance, production and distribution
- AV sector business models undergo perpetual innovation and constantly embrace new technologies
- EU Copyright Framework
  - Contractual freedom
  - Centralisation of Rights in Producer
  - Specific Regulation
- Online market is moving fast
- Growth is explosive but still a fraction of overall revenue (6% in 2010 according to the JRC study)
  Demand is the driving force
- EU Digital Agenda/Follow-up to the EC Green Paper on AV Online...
EC AV Green Paper (2011) and JRC (2012)

© Cultural industries: about 3% GDP, annual market value of €500 billion & about 6m employed (KEA).

© The EU produced 1,168 feature films in 2009, compared to 677 produced in the US (EAO).

© More than 700 on-demand AV services in the EU VOD generated turnover of €544m (actually GP refers to 500, this seems to be an error) (EAO).

© A range of platforms offering transactional on-demand services span multiple territories – local preferences.

© Content available on multi-territorial basis.

© The figures in the JRC studies are impressive for MCI (Recreational, cultural, sporting): 170B€ and 10.8m employed. EU AV sector is 75k companies employing 400k persons with revenues of 60B€.
AV Content Online - Marketplace

- Shrinking windows – Premium VOD
- Experiments on Social Networks (Facebook)
- Movie Apps
- VOD ready TV/New Hardware/Connected TVs
- Ultraviolet (the Cloud)
- Global Market leaders emerge
  - Dominate the US…but not quite as strong elsewhere
- EST – digital retail (closures)
- Internet Video On-demand – more growth
- Subscription/Ad-supported On-demand
- Role of VAT and other non-copyright factors
Finally – Entertainment unleashed!
From an alliance of leading entertainment and technology companies.

1. Shop Any UltraViolet Retailer
Look for the UltraViolet logo on movies & TV shows in stores and on websites you access via computer, TV or phone.

2. Register Purchases in Your Free UltraViolet Account
Your ultra-accessible portal to all your UltraViolet content also safeguards it for future use and allows you to easily share with family or household members, wherever they are!

3. Watch in More Ways and Places!
Now, put downloads, discs* and streaming at your convenience – on any participating brand UltraViolet device – when and where YOU want to watch.
So... a little about production/distribution in the EU and the US
THE “IDEA”

• Original concept/idea/basis

• Synopsis (brief description of the idea, the story, and its protagonists)

• How will you tell the story and will it be of interest to anybody?

• Approve synopsis and start writing the script using professional film scriptwriters

• Scriptwriting takes a long time and requires patience and particular skills
FILM PRODUCTION

- Organize financing, insurance, completion bonds, etc.

- Hire actors, director, writers, composers, camera men, technical staff, etc.

- Organize shooting, location and post-production schedule

- Shoot the actual film material for later reworking in post-production process
POST PRODUCTION

• Everything that is done to the film after the shooting is completed

• Development, sound, colour grading, editing, digital formatting, and all other kinds of technical mastering

• Adding sound effects etc

• Post production really brings the film to life
DISTRIBUTION

- Theatrical

- Non-theatrical: trains, planes, hotels, cruise ships, buses, educational use, etc.

- DVD and Blu-Ray

- Online distribution (EST and streaming)

- TV (pay and free, Catch-up, OTT)

- Chronology

- Classification

- VAT
How to go about financing a film -
development/production in Europe –
generic somewhat Nordic approach

- The respective ____ Film Institute - development
- ____ Film & TV Fund - development
- Distributor – ”Out-put deal”
- TV station – ”Option”
- Equity – investment
- Deferred fees from scriptwriter, director and/or producer

- The respective ____ Film Institute - production
- ____ Film & TV Fund - production
- Distributor – minimum guarantees (”MG”)
- TV station – investment/pre-sale
- Equity – investment
- Deferred fees from scriptwriter, director and/or producer
Financing possibilities

1. Subsidies, tax incentives and/or soft money
2. Payment against sale of rights (pre-sales and minimum guarantees)
3. Equity
4. Sponsorship
Top financing (bank financing against sales estimates – very rare only for “big” productions)

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

Subsidy arrangements (National institutions, EU level, etc)

Financiers’ equity (facility deals, cash, deferrals)

Example of a financing plan for a film
And What About A “Big” International Film?

Initial Budget: $277,000,000
Final cost: $350,000,000

- “Consortium” of distributors in 25 countries
- Pre-sales of distribution rights on all three films before the end of production!
- New Line is thought to have covered 65% of production costs through pre-sales
Exploitation of Rights by the Producer

- Producer obtains financing (own funds, private equity, hedge funds, tax incentives, product placement, pre-sale of rights). Organises locations, insurance, effects, etc. Hires authors, actors, and many others. Obtains necessary clearances, rights and licenses. Takes the principal risk.

- Producer may assign copyright to a distributor or license a number of companies (e.g., by territory, by language, by category of rights).

- Aim is to position film in best competitive position in order to cover costs, pay everyone, to secure return on investment and make money to create new works.

- System recognises that rights are best administered by the entity that must exploit the work in a complicated and changing environment.
US producers under the © Act & CBAs

- Producer is © owner of the film via the “work made for hire” doctrine. WMFH + complex contracts with director, writers and actors (collective bargaining) is basis for the operation of majority of US producers and the exploitation of their films.
- Contrasts European system where the “author” is © owner and indeed there are multiple RHs. EU producer acquires rights by operation of law and/or contractually (subject to certain limitations).
- In US, about 90 percent of the production, and MPAA memco films are governed by “guild agreements”.
- Collective bargaining agreements set economic remuneration minima, including residuals, for broad range of uses.
- Extremely detailed provisions on working conditions as well as some “moral” or creative rights. Final cut. Re-releases. Health Plan & Pension. More can be negotiated individually.
- Collective (or compulsory licensing) in US AV sector is rare (cable, satellite, some music).
Some Key Copyright Issues

© Orphan Works Directive
© AV Green Paper Follow-up
© Proposed Directive on Collective Rights Mgmt
© Levies levies levies…
© Copyright Reform
© Role of the Court of Justice
The Worst Part of Censorship is Censorship

Tell Congress: Please don't censor the web!
Multi-Territoriality Licensing

© Copyright law is the enabling factor
© Diversity of licensing models drives new services
© **Contractual freedom:** one-size-does-not-fit-all
© Producers license their content as on a national, linguistic or multi-territorial basis
© Film producers develop multi-territorial licenses when there is a demand and when it makes sense commercially
© Consideration for local preferences and regulations
© Impact of the CJEU decision in the *Premier League* case
Contractual Freedom

© Financing, producing and exploiting AV works is a costly, complex, risky and delicate endeavour

© Need to flexibility to create pro, high-quality AV content

© Pre-sale of rights by territory to finance film

© Licensing decisions are made on the basis of informed decisions aimed at maximizing exposure of the works

© Consideration for local sensitivities (cultural preferences, consumption patterns, classification regs, language, etc.), demand and consumer satisfaction

© AV producers seek to position their works in the best competitive position in order to cover production costs, pay everyone involved, secure return on investment and finance future works.
Collective Rights Management

© Proposed CRM Directive - 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 is not prevalent (e.g., private copying, cable retransmission)

© Cornerstone of the Directive – Rightholder CHOICE
© No rightholder should be forced into collective management/licensing except for reasons of practicability under relevant international law.
© Such cases are the exception, not the rule.
Private Copy Levies

© Recent CJEU caselaw – in particular *Padawan* and *Stichting Thuiskopie*, 3 more in the pipeline

© Fundamental questions:
  © Legal source
  © Exclusive rights/licensing
  © the Cloud

© Previous stakeholder discussions failed

© A solution within the existing framework of law or alternative solutions?

© The Vitorino Mission Impossible?
The *Premier League* judgment

© Live Football Matches in the EU

© The grey market for smart cards in the EU is now white.

© National legislation could cover fraud and breach of contract

© The Freedom to Provide Services (Art 56 TFEU)
  © Precludes national legislation that outlaws foreign or “unauthorized” smart cards – fraud not a factor

© An exclusive licence agreement between an IPR holder and a broadcaster violates competition law (Art 101 TFEU) where broadcaster is prevented from supplying cards outside the licensed territory (exclusive territorial licenses are ok but broadcaster can’t say no to customers outside the territory).

© Reproduction Right (Art 2 © Directive) extends to temporary copies in satellite decoder and a TV screen if they are original

© However, these copies are not subject to copyright (Art 5(1))

© ‘Communication to the public’ under Article 3(1) extends beyond hotels to pubs

© Impact on Film/TV works?
So what next?

- CJEU does not condemn territorial licenses but prohibits absolute territorial protections – how far?
- Communication to the public/Making Available - not subject to exhaustion
- What about IPR holders that don’t have EU-wide or multi-territorial rights?
- Do licensors to license content now need to acquire pan-EU rights for underlying works *ab initio*?
- What recourse for the RHs in the underlying works?
- What about pre-sale of rights to finance production?
- What value/cost exclusivity?
- What impact on windows (Cf., Art 8 AVMS Dir)
- Does Sky need service centres all over the EU?
- Who benefits? Who loses? What new models?
Food for Thought?

- The important role of exclusivity and territoriality in independent producers’ financing model
- How to develop further online distribution?
- Maintain copyright as a tool to exploit creative works
- and there are proposals to expand the financing model
The Culture of Funding

© JRC studies seem quite comprehensive
© Long tradition of subsidization and tax incentives which has worked in many countries --2B€ -- not only to enhance “global competitiveness”
© Challenge is adaptation to the current environment
© For many in the European AV sector, it is only natural the new modes of distribution would contribute to production…
PEACE LOVE AND COPYRIGHT