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**LES ARÈNES
EUROPÉENNES
DE
L'INDÉ-
PENDANCE**

**THE EUROPEAN
INDEPENDENCE
ARENA**

MINUTES OF THE CONFERENCE

Culturesfrances
The European Independence Arena
23 and 24 October 2008

Welcome

Bertrand-Pierre GALEY
Director General, Natural History Museum

Work of Natural History Museum

Link Between Culture and Science

I would like to welcome you to our amphitheatre, which was built by Buffon, a great writer and scientist. In our activities, we use cinema, publishing and sometimes records. We work in partnership with editors who are very often independent. It is our mission to promote and defend the diversity of living beings and cultures. We are also in charge of the Musée de L'Homme. We are not just interested in plants and animals. The biodiversity and cultural diversity that you defend are a common interest. We know that eco-systems are more resilient and capable of surviving crises when they are rich in diversity. Diversity should also provide culture with its strength. Diversity comes from independence and sometimes from inter-dependence. There can be links between science and culture.

Official Opening

Christine ALBANEL
Minister for Culture and Communications

Role of Cultural SMEs

Aim of Conference in Promoting Role

I would like to thank you all for contributing your expertise and experience. You represent a variety of experiences in this area, including that of the European Parliament. The conclusions of the conference will be useful only if they are passed on at European level. This conference has two concerns: the strengthening of cultural diversity and the stimulation of the economy of culture. The conference aims to promote the role of cultural SMEs in the cultural economy and to formulate concrete proposals to consolidate this role throughout Europe.

Large Presence of SMEs

In total, catalogues represent sales for 40% of classical and contemporary music and 37% for jazz. In the area of cinema, independent producers have taken risks with talented new directors. They take part in the dissemination of cinema and all its dimensions. A quarter of all bookstores are independent and 200 independent radio stations were developed at the beginning of the 1980s. A lot of them are regional radio stations that promote regional artists.

Generate Economic Activity

Independent producers may move on to become a bigger company as they become successful. They are also a motivator for economic activity. They also contribute to creative diversity and social cohesion. These are major political elements in the relationships we have with the Ministry for Economy and Finance. The Ministry cannot ignore what culture represents: 500,000 jobs in France and 5 million jobs in the EU. This is one job out of 40. 99% of companies in the music industry have less than 20 employees. SMEs represent 60% of jobs.

Laws Protecting Cultural SMEs

Cross-Cutting Actions

A number of issues have not been analysed properly. How can we ensure that cultural SMEs will have all the tools to promote their role in culture and in the economy? Cross-cutting actions need to be carried out. This has been done over a number of months. The typical cross-cutting actions will be covered by the HADOPI law. It is a good example of inter-professional cooperation. Under the aegis of Denis Olivennes, we have been able to arrive at the Elysée's Agreements with the web access providers.

Impact of Illegal Downloading

Impact on Internet

The law is very balanced and dynamic. It aims to develop the legitimate offer, which is constantly growing and has increased considerably. The law has had an effect. Discussions will be taking place and commitments have been made. Perhaps we can go even further. People who surf on the web should be able to see the positive effects of our actions. There is an educational aspect which provides for prevention via a higher authority which will provide guarantees of confidentiality and discretion. Those who are entitled to rights will be able to input information to the authority without the publishers knowing the identity of the pirates. Warnings will be sent to pirates who will experience temporary suspension of access to the Internet.

Implications of European Amendment

That itself will be the object of negotiation. It is a graduated response. Our European neighbours are very interested in it. The European amendment does not prevent each country from setting up the system they think the most useful for fighting piracy and illegal downloading. Home access to the Internet is not a fundamental individual freedom. The right to confidentiality of data and free web surfing are essential. The right to be paid for one's creations is also important. Case law in all countries and in the European Court of Justice has stated that these rights must be considered.

Impact on Different Sectors

The music industry has been badly affected by illegal downloading, but the cinema and book industries have not. Work has been carried out by the National Union of Publishers and the National Book Council to anticipate this. The law will be sufficiently open to welcoming new provisions which can accommodate the book industry. We are trying to implement a global policy to create conditions for the development of independent producers in the bookstore sectors. An independent bookstore label has been created and will be implemented soon. It was included in the amendments to the Finance Law of 2008. Subsidies to independent bookstores from the Book Council have doubled. People can be exonerated from the *taxe professionnelle* once they have an independent label.

Solutions to Support SMEs

Increased Taxes

The tax credit on records has been increased. Subsidies to the music industry are being tripled from EUR3 million to EUR9 million. There has also been an increase of one-third for the broadcasting of music on radio. Gallery owners and auction houses have also seen the implementation of tax measures to enable the building of collections and the sponsoring of cultural activities. Selective subsidies to cinemas have increased by approximately 11% this year and will continue in 2009. I plan to channel EUR63 million towards independent production.

Regulating Competition Environment

We are trying to regulate competition so that we can adapt to the diversity of the companies in the sector. Progress can be made in different directions. In the area of funding, cultural SMEs can often lack equity. We are trying to see what can be done to encourage private citizens to contribute equity to these companies. For instance, in the media, there is access to credit loans. The role of the Institute for the Financing of the Cinema Industry (IFCIC) for music SMEs could be extended to galleries or bookstores. The Sofica mechanism could be applied to all cultural SMEs. We know that the tax-credit system functions well, as was stressed at a meeting regarding online content created by artists and intellectuals.

Opening Access to Market

The access of the cultural SMEs to the market could be opened up. It is difficult for these establishments to stay in the city centres because of the cost of rent. There was a plan to shorten the deadline for payment between companies with regard to time during which books are displayed in the store. Neither the bookstores nor the publishing companies can gain from this. We have to revise the quotas.

Integration of Cultural Diversity in Competition

There is also the issue of the broadcasting of music and other creative works on digital networks. Orange makes 1 million music tracks available. The next step in our legislation is to ensure that there is equilibrium and that independent production is available. We want to provide a more diverse offer. There is the integration of the cultural diversity factor in competition law. The idea is progressing. The European Commission presented the European Small Business Act on 25 June, which is a demonstration of this. We can apply this principle in the area of cultural SMEs.

Derogation and VAT

Derogations could be applied to the competition rules, which are usually considered perfect. These measures could create a European standard for cultural SMEs which could give them coherence and visibility. Reducing VAT on cultural goods is essential. The scheme is progressing. There are tremendous disparities in the VAT area which impose a penalty on cultural goods. We want independent producers to be able to play their role fully.

Round-Table Discussion

Michel LAMBOT, Co-President, Impala, Co-President PIAS Entertainment Group

Olivier POIVRE-D'ARVOR, Director, Culturesfrance

Patrick ZELNIK, President, Naive

Daniel COLLING, Director, Printemps de Bourges

Konstantinos COSTA-GRAVAS, Director, Cinemathèque Française

Francoise NYSSEN, President, Actes du Sud

Antoine GALLIMARD, Director, Editions Gallimard

Regine VIAL, Distribution Officer, Les Films de Losange

Michel LAMBOT

Preamble

Our industries are experiencing difficult times. I hope we will be able to develop political solutions to make sure that we have a bright future. We are witnessing the decommissioning of cultural content support with the fast growth of YouTube and MySpace, which are new fora for cultural content. There is also the issue of increasing concentration. I am glad that there is democratisation of culture and increasing globalisation. However, I am also sad to see that borders are no longer relevant and that copyright is not respected everywhere. We also need to resolve a number of issues that arise from the new situation.

Olivier POIVRE-D'ARVOR

Vision of Independent Players

Being independent does not mean being a small player. Independent publishers are there to support brilliant writers and authors are approaching these houses. *Time Magazine* spoke of the demise of French culture, but French culture is vibrant. Regardless of an artist's field, we are defending cultural excellence.

Regine VIAL**Working in Cooperation with Artists**

I co-chair Europa Distribution, which represents over 60 independent producers in Europe. These comprise 85% of all the movies presented at the Cannes, Venice and Berlin festivals. I have been working with Films de Losanges for 25 years now. I know that for close co-operation with the artist, you need to have passion and commitment to their work. These artists have a particular vision for their work. We have faced failures and successes. The success of some of our movies is not instant. We have to nourish it. We know that these artists will make it. It is a long-lasting relationship of mutual support.

Konstantinos COSTA-GAVRAS**Encouraging Independence in Cinema****Challenging European Legislation**

Some years ago, the notion of independence was challenged. The General Agreement on Trades and Tariffs (GATT) and WTO (World Trade Organisation) negotiations, cultural goods were considered to be the same as any other goods. However, France and the United Nations Educational, Social and Cultural Organisation (UNESCO) challenged this.

Role of French Cinema in Encouraging Independence

French regulations allow for a great deal of independence. The cinema industry enjoys a relationship of constant cooperation with the Ministry of Culture. This allows us to tackle potential crises and to find solutions. We know that the cinema industry is also a player in the economy and that there is strong competition. We face the problem of economic censorship. The state cannot intervene in this. A lot of movies are produced in France every year. New directors can screen their first films. This is the result of 30 years of work. Every time we faced a crisis, the movie industry found solutions in conjunction with its partners.

Impact of the Digital Revolution

At present, we are facing the digital revolution, which is changing a lot of elements in our industry, such as the aesthetic of movies. Whenever there is a technological revolution, our industry has to adapt. The worst problem we face today is piracy. However, digital technology provides the possibility of shooting a movie with a limited budget and of transporting copies of movies easily. Programming for movie theatres can be carried out simultaneously by one person. This could cause problems, because the idea of being independent is to allow movies theatres and programmers to decide which movies they want to show. This is particularly important when we receive EU subsidies to produce a European movie.

Patrick ZELNIK

Overcoming Difficulties Faced by Cultural SMEs

Ensuring Viability of Cultural Products

The last 10 years has been a hectic time and I want to ensure that the situation is less difficult in the future. It will be very difficult to ensure that the culture industry adapts to competition. Record companies are considered to be the same as other companies. This is not the case in the publishing sector, though. We need to ensure that cultural works are not disposable. There is a degree of disparity between mainstream art which receives a lot of publicity and art which is considered secondary. We should not apportion blame; we need major corporations. The degree of their helpfulness depends on the industry. At the end of the conference, we will draft a declaration with 10 concrete measures that will allow us to foster cultural diversity.

Antoine GALLIMARD

Dealing With Challenges to Publishing Industry

Fostering Economic Independence

Over 15 years ago, a group of editors decided to create an association to defend the rights of our companies called the Association for the Defence of Bookshops (ADELC). We worked with the National Book Council and the Direction de Livres. I will also be chairing a commission considering the application process for acquiring an “independent label” and subsidies for independent bookstores. It is important to show that there are other issues apart from making profit. There is cultural as well as financial wealth. We should agree on a definition of the nature of independence. Regardless of the size of a company, one person is held accountable. They are responsible for taking risks using the company’s capital. We all share common problems, though our approaches might be slightly different.

Model for Countering Crisis

Digital technology offers us opportunities, such as direct access to digital bookstores. However, we also need to ensure that there is a proper regulatory framework for the protection of content. The Bill that was passed to protect our activity has not hindered the development of those activities. We have set an example for many other countries such as Mexico. The model we use has preserved us from many different threats.

Françoise NYSSSEN

Defining Independence

Economic and Cultural Independence

The notion of independence refers to financial and economic independence. Profits should serve the book rather than the reverse. We have extended author deadlines. We must also be independent of fashion and not be motivated solely by market forces. The crisis we are dealing

with offers us an opportunity to develop a new vision of the world. We should not let ourselves be affected by the poor conditions that we see everywhere. We should also try to be geographically independent. We have decided to work where we live and I can inform you of all the advantages and benefits of working in Arles. It is also beneficial to be independent of Paris, where all resources are concentrated. I hope that next year, we will have the symposium in Arles.

Action Taken by Bookstores

No-one can take action in isolation. I would like to pay tribute to the work of bookstores. They only survive because of the French law, the Single-Price which states that a book should cost the same regardless of where it is sold. We all have something to learn from other publishers, other independents. We act as nurturers and we fight to resist those who threaten our artists as they develop.

Daniel COLLING, Director of Printemps de Bourges

Financial Support for Festival

Initial Means of Support

We would not have had the Printemps de Bourges Festival today if it had not been a totally independent operation. I led the team which created it. Initially, there was no funding and we used a Cultural Community Centre, the Bourges House of Culture, which had the means to produce performances. It gave us support for the first 5-6 years. After a few years, we found that that the structure of the House of Culture was not appropriate for our activities. This is why we made this festival independent. It is rather complicated, because if you want to be independent, you have to have the right legal structure. We tried the Association de 1901, which is a loosely structured organisation.

Current Financial Support

In the 1970s, we set up a limited, non-profit company which gave us our independence for the organisation of this festival. Thanks to this structure, we are now totally independent. We used subsidies. 30% of our budget comprises of subsidies from local authorities and central Government. The state subsidy is most important, because it helps us to discover new young artists. It is more of a partnership with the local authorities, such as Montalimar. The subsidies are for general missions. For the other 70%, we are organised like an enterprise; we are not a state company.

Regine VIAL

Threats to the Cinema Industry

Action Taken by Europa Distribution

The cinema halls are switching to digital. In the past 35mm film has been used around the world. In France, we will have 2K for our halls. Other countries may not be equipped to the same standard, so we have a lot of work to do. Europa Distribution asked for our independence to be recognised. We are independent from television networks and even telecom operators, since

telecom operators are now entering the audio-visual and film industries. Our request was turned down by the media, because we are not powerful enough.

Considerable Deterioration in Distribution

The situation regarding distribution has deteriorated considerably. At one point, films could be shown for six months. However, this does not occur today. Cultural works do not remain in the limelight very long. In multiplexes the trailers that you see before a film have been paid for. In an independent cinema, they are free. Our company has access to independent cinemas, but in Paris we have a very real problem because of costs. Independent halls find it very difficult to survive.

Role of Distribution Machinery

We have distribution machinery which is killing the industry. Major companies produce millions of copies of films. They have budgets of millions of euro. You may only have EUR250,000 and 70 copies of a film. In that case, you find that competition is very unfair and difficult to challenge. The Minister said that selective aid will increase, but diversity is being threatened at present. The French audience wants different choices. If that difference is not explained or shown, how can we ensure that they develop diverse tastes?

Daniel COLLING

Particular Situation Regarding Live Performances

I would like to speak about the circulation of cultural goods in Europe. Unlike films, books or records, live performances are not a material product. We have heterogenous complications such as the status of performers in other countries. The license we have here does not exist in other countries which makes the circulation of artists more complicated. There are different schemes in different countries, for instance, in the Nordic countries. In France, there is a tax. However, for performing arts, it would be useful if the Commission could look into questions of taxing and regulation to facilitate the physical movement of artists across Europe.

Questions and Answers

Frédéric NEFF, Viva Musica, Les Catalyseurs Numériques

Independents are concerned about the globalisation of products. The Internet has a double effect. It can be an indicator of fashion or taste. It provides great visibility for reduced costs. However, it also enables globalisation. We are faced with global adversaries such as Orange and Google which are 1,000 times bigger than past players. How do you plan to cope with these players? We have seen a decrease in illegal downloading. People listen to free music more. In Denmark, there was an unlimited downloading operation. 60 million songs were downloaded in a country with only 5 million inhabitants.

Michel LAMBOT

The real problem for IMPALA is access to the market. YouTube offers excellent opportunities to publicise artists. However, though mainstream Hollywood companies receive 1c per click, YouTube refuses to pay monies to independent artists. As a result, IMPALA does not promote one programme over another. The real issue for IMPALA is that artists are not segregated because of the identity of their producer. IMPALA created Merlin, a collective company, two years ago, which manages the rights of independent producers. Impala is trying to harmonise payments to ensure equal payments for all artists.

Philippe BERTHELOT

This issue involves very small companies as well as independent producers. We wish to talk about that dimension of companies which are insufficiently organised and which are invisible. This is not taken into consideration much by public authorities and not at all by Europe. They are considered to be large from a financial point of view, but a large number of these companies contribute to diversity. Without these initiatives, diversity is jeopardised.

Regarding the economic situation, we cannot be content with organising resistance and enable pure competition. How do you intervene on a regulation beyond offering tax relief? The acceptance of derogation regarding the principle of competition is fundamental. One could envisage other models than the so-called capitalist, profit-making model. How can we re-introduce ethics and equity through culture? How can we create solidarity and co-operation between the different actors? How can we accommodate major companies and independents? Otherwise, you end up simply lobbying people who are already organised.

Patrick ZELNIK

Co-operation between large and small companies is one of IMPALA's goals. IMPALA has been working in that direction in Brussels for the past 8-9 years and has been quite successful. The European Commission is impervious to these arguments and does not consider culture. IMPALA prefers regulation to legislation. To legislate, you need to regulate. A lot needs to be done in that area, even if it involves applying the existing laws to the audio-visual sector to provide equal opportunity. We prefer incentives to subsidies. Subsidies may be necessary due to the fragility of the sector, but incentives are necessary. We are thinking of means of making the system more fluid. The aim is to adapt the competition law to present needs.

Daniel COLLING

There is an in-between solution. We could move towards assisted culture. In France, the cultural sector receives the most assistance. We are more fortunate than the US or UK in that regard. This helps less privileged sectors of the population. It is up to us to create a system which regulates and prevents problems. There are allocated taxes which pull money at a given point in time and have a regulatory role for diversity. We hope the Ministry will help us to defend the ancillary rights. It is up to us to find schemes that do adapt and do not prevent micro-enterprises from engaging in artistic expression. However, we should not remain outside of our economic system.

Philippe BERTHELOT

I do not accept your analysis of a binary vision of economic thought. The economy is diverse; there are different ways of being an entrepreneur. We should consider cultural diversity in the widest sense of the word, as well as economic diversity. We know that there is inter-dependence and that there is a need for regulation. It is up to us to measure what is beneficial for the common good. How can we organise the networking of micro-enterprises? No one questions assistance for employment, which exists in heavy industries in the production system. When considering diversity, one should consider all players.

Konstantinos COSTA-GRAVAS

We seem to be submitting automatically to the economy. Why can we not accept an ideology of culture? Military systems have collapsed and the economic system is collapsing. As Europeans, we should state that culture is the future.

Françoise NYSSSEN

Arles was considered to have very poor economic conditions, but employment is increasing. This is because there are two independent cultural companies. Arles' economy depends on culture, so we have changed paradigms. One should not keep believing that culture can be assisted; it can produce a healthy economy.

Frédéric GOLDSMITH, Délégué Général d'APC

At one point, there was a liaison committee which included people from different sectors. It worked for a few years. There was a real impact on the ability to assert cultural excellence, even when it was being challenged at the French Parliament. There are strong themes such as taxation and intellectual and artistic property rights. It is important to have a united discourse. We need to have an ability to broadcast our message. There is a deficit of understanding in the European Parliament; it is not necessarily their fault. It is important to move culture from being associated with heritage to being seen as dynamic.

Grégoire HAREL, Culturesfrance

There has been motivation and political will from civil society and through lobbying which has led to the signature of the Convention on Cultural Diversity. I think it is important to Europeanise our way of thinking. We should carry out tasks on a European timetable and work with the Ministries involved when talking about taxation. It has to be adopted unanimously. It involves a lot of lobbying in all the member states. The Small Business Act is under the auspices of the WTO. There is also the third part of the European Commission, Director General (DG) Competition. The Commission has been working on SMEs, which is under a different Director. The cultural discourse should also recognise the differences amongst players. They should use this at the right time with the different people involved.

Monsieur BOISSIER

I am head of a small publishing company. Everybody has been praising the law about the single-price for books which seems to have protected independent bookstores. There was a 19%

increase in the selling of books, but publishing decreased by 23%. This is because there is no sanction in the law on the single-price of books, so no-one applies it. There have been a few lawsuits against a few people in the industry, who advocate this and do not practise what they preach.

Antoine GALLIMARD

It is true that some of our colleagues are not abiding by the law or its spirit. We are trying to ensure that everyone complies, but one has to be very cautious. Chain stores tend to abide by the rule. A minority of publishers resist it. My major priority is that the publishing industry does not take the direction of the British publishing industry, in which there is one promotion after another. I have been talking to publishing houses which are bigger than mine and we have discovered that basic books do not tend to be sold as much. The only books being sold are the marketed new books. If you do not carry out marketing, you do not exist.

Françoise NYSSSEN

You referred to the reduction of jobs in this industry, but the prices have not decreased in the bookstores. This is a direct impact of the law.

Workshop 1 **How Do SMEs Promote Cultural Diversity?**

Max ARMANET, Journalist, Libération

Alain ROCCA, Producer, Société Lazennec

Gilles de la PORTE, Owner of book store Librairie la Galerie

Liana LEVI, Editor

Renaud DELOURME, Director, Editions Montparnasse

Matteo ZACCHETTI, European Commission DG Information Society and Media

Javier SANTILLAN, Director, Editions Gadir Editorial

Vincent FREREBEAU, Label Director and Artistic Director, Tôt ou Tard

Max ARMANET

Introduction

Does independence affect company size, diversity and pluralism? Is there a specific model for cultural diversity? If you are a big company is it harder to be independent?

Alain ROCCA**Impact of Size****Strength Makes Size**

'It is not the size that makes the strength; it is the strength that makes the size' is a good summary of my answer. The best way to structure an industry is first to rely on independent companies, because size is not going to be a determining factor. The strength of companies on the market is important. For example, the symbolic power of artworks produced by smaller, independent film companies, as well as their economic power, is more important than the size of the company.

Gilles de la PORTE**Books****Economic Players**

Book store owners are also economic players. We are directly in touch with our customers, but we are cultural players as well because, of the 2,000-3,000 books that come out every year, we have to make a selection based on economic factors as well as subjective personal factors. This subjectivity is needed because, while some books are expected due to the reputation of the author, we also need to help readers discover new authors.

Liana LEVI**Long Chain**

A book is part of a long chain. Like book store owners, we also make selections. Before editing books, we need to choose which books we want to edit. In France there is a strong independent movement and the single-price law protecting independent authors and editors makes things a bit easier. Our house publishes a certain number of independent books from totally unknown writers. Therefore, we know that if we do our work well we will be supported by a network of book stores to give these authors and books the opportunity to meet the public. For example, the book *Mal de pierres* was published by a fairly well-known editor in Italy three or four years ago and sold 1,500 copies. We translated it into French and, thanks to the support of the book store network, we have managed to sell over 150,000 copies of the book.

Max ARMANET**Cultural Goods****Consumption**

Something else that is very important is the time you are going to invest in promoting cultural goods. Are we only talking about consumption or is it a way of life?

Renaud DELOURME**Art of Living**

We are stepping away from a mere consumption model and turning to something which concerns the art of living. We are working on having a quality catalogue and need to make sure the way we present our books is pleasant for people. We have reached the limits of this model based on mass consumption. We might be getting close to an overdose of culture, which is why our role as those who select the best works of art is particularly important. We know that time is of the essence and we need to make a choice.

Understanding Behaviour

I am a publisher and I care about promoting culture. But I am also an interpreter and need to make sure my company is thriving. We need to understand the behaviour of all players and make sure the products we select fit the expectations and needs of our customers, while not flooding the market with an excessive amount of lesser quality products. It is important to promote the single-price legislation elsewhere. The model can be replicated, because ultimately what is detrimental to the value of cultural products is marketing them as mass products. The book network has existed for 26 years, protecting independent publishing houses that have allowed a writer or author to build a career. What we are witnessing today is that artists no longer exist as such; they are considered to be mere products.

I think the idea of the single-price should be of interest to the EU. We know that many countries are against it, but it is time we talked about it.

Max ARMANET**EU and the Free Market**

We have the feeling the EU is more concerned with the free market, and consider cultural products as any other products.

Matteo ZACCHETTI**Cultural Exception**

I disagree. We have been talking about cultural exception and I think if the notion of cultural exception still exists it is largely thanks to the European Union and the joint efforts of all member states. Every year the MEDIA programme subsidises 300 new film projects. What is interesting is the concept of the art of living and being able to make informed choices. In France and Europe 80% of the film market is movies from Hollywood. We need to educate people so that they can make informed choices. At school we should educate children to understand what kind of information they are being offered and make sure they can make the right choices.

Javier SANTILLAN

Single-Price Policy

The single-price regulation, which is also in Spain, is paramount. In the UK, just 2% of books are sold in independent book stores. The situation is the same in the USA, where there are beautiful stores but only new books, and it is a direct consequence of the lack of single-price policy.

From an economic standpoint, people think of a single-price policy as a mistake that goes against the free market concept. We need some level of liberalisation of the economy, but also a framework. In Spain the situation for independent publishers is difficult, with an increasing number of independent publishers facing fierce competition from large publishers. There is also a problem with the inflation in the number of books that we publish. The prominent position of the large publishers is slightly threatening and is probably the same in the distribution industry. Our relationship with book stores is very important.

Liana LEVI, Editor

The single-price policy has saved several thousands of book stores and about 90 music stores. Book stores that also want to sell music cannot however, because of issues with different VAT levels and the lack of price regulation. We know certain book stores specialise in certain types of literature. This probably means they could be doing the same with music and we could combine the two activities.

Max ARMANET

Company Size

Size = Quality?

We have the impression that the size of a company is indicative of its quality. Is this the case?

Alain ROCCA

Would it be possible to have 3,000 retail stores focusing on niche products in one country? These kinds of ideas might be ones that influence the way our industry is structured, and usually stem from independent players. Why? It is because independent players rack their brains constantly to make sure their stores do well while still respecting the rules and regulations of the industry. Mass distribution is not all negative. The problem is that major players are not undertaking the challenge to structure our industry in a viable way in the future.

Max ARMANET

Market Logic

Does size exclude you from market logic?

Renaud DELOURME

Independence is not necessarily a synonym for quality. Independents offered discounts first with DVDs, which was good for the market. It is not a question of size; it is a question of energy, resistance, strength. It is useful for an independent producer to establish a link between a work of art and the public. That is the paramount definition of independence and why we have cultural diversity – we do not lock everything into a single subject.

We also have companies striving for profit. The financial crisis seemed to prove the market rules all, but that is not the case. We are finding that without needing subsidies in every case our interest is to offer culture to the public and allow our audience to enjoy leisure time.

Liana LEVI**Devaluing Products**

It is very regrettable to see newspapers selling eye-catching DVDs or books at a low price. It not only devalues the product but also the paper itself because readers are supposed to buy the paper because of the low-priced product offered and not because it is a good paper. Small publishers would like to earn a lot of money because a bank manager will perhaps not be as understanding or as flexible as he might be with big holdings.

The way independent companies work is perhaps better policy. Having to pay an author a colossal sum in advance does not make sense. The big financial markets play around with publishing houses as they would play around with shares on the stock exchange.

Matteo ZACCHETTI**MEDIA**

When I attend this type of discussion in the UK, the Commission is chided for not adapting to market logic. In France it is the contrary. I do not represent Brussels really. I work in the audio-visual sector and we are far from following the free market logic. The MEDIA programme has a significant budget - EUR700,000 from 2006-2007 and 95% of the beneficiaries are SMEs. Two-thirds of the projects come from countries with a small audio-visual production capacity. This is important because we are talking about diversity. There are also more than 100 festivals in Europe, big and small, supported and sponsored by MEDIA.

Alain ROCCA**Assistance from Commission**

We grouped together with 50 big companies to make a catalogue on the Internet and found the Commission changing its attitude to us, as if taking action garnered its interest. The French administration is more accustomed to granting support to someone who has asked for it, once it is profitable. The Commission looks for organisation first and will then give the incentive. We have to find inspiration in other European countries.

Renaud DELOURME

The cinema and the audio-visual production and distribution sector have always been assisted to some extent. Music, DVDs and the Internet are not assisted or controlled sectors. Initiatives fostered to create distribution circuits open to the public are not assisted at all. You will always have the problem of the single-price or the eye-catcher and this has nothing to do with assistance from Brussels.

Vincent FREREBEAU

Music has its own economy and functions in a closed circle. Our text credit system is extending now and allows us to invest, but up until now all local production was funded by local producers. It seems absurd.

Renaud DELOURME

European production, distribution and even marketing systems have very close links to American ones. America can easily flood Europe with programmes, because of country-by-country marketing in Europe. It is difficult for independents to build a European network and make sure their works are distributed and sold everywhere. This is our problem. Technology will perhaps make it easier.

Max ARMANET**Support Measures****Issue of Diversity**

We have mentioned the words independence, subsidy and regulation. Do public authorities help in the expression of diversity? Does diversity entitle you to subsidies?

Liana LEVI**Supervisory Assistance**

What we are asking for is some form of supervisory assistance. We are no longer in a period of all out free trade-ism. I recognise the qualities of the European Commission. It has sheltered us from creating mega-holdings. I hope it will support us with single-price policy and other measures.

Vincent FREREBEAU

The support measures should be incentives rather than subsidies, to pull us towards the top and drive markets upwards.

Gilles de la PORTE

Not every enterprise can go on the Internet and exist in this new economy that is developing. Some could become marginalised.

Matteo ZACCHETTI**Limits**

I am happy that you expect that much of the European Commission and Europe. There are limits, however. Decisions are taken unanimously, and are therefore very difficult. The Commission is entitled to take proposals but decisions are taken by the European Parliament and the European Council. You expect a lot from the Commission, but only 40% of Europeans voted in the last election.

Alain ROCCA**Awareness**

What we call supervisory assistance of the Internet is awareness by public authorities. How can that expectation be met? We ask for some supervisory support because we need a lot of investment to fit fibre optics. The national community and Europe will have to contribute money as well as private operators. Only when there is an awareness of the public authorities can we put forward a number of requirements. What we need is a philosophy. Politicians should see what needs to be set up to assist producers. We are not asking for subsidies.

Javier SANTILLAN**Cultural Agenda**

People speak of Europeans as merchants. This has a negative connotation but I do not think it is the case. If you consider the history of Europe in the 20th century, Europe is a great success. Europe should have culture as its concern; it should be on the agenda of the Commission. In three weeks time there will be a meeting summoned by the President of the European Union on how a literary translation can be approved. Where you have many different languages, literary translation becomes very important and deserves to be subsidised by public authorities. There is an interest, but not much of a budget. We need to convince them to provide a budget.

Questions and Answers

Mr Boissier

I publish books in an independent publishing company, and was interested in disc producers who are envious of our law on the single price for the book. But we have four price categories, and small companies have to abide by the same rules of competition as large.

David GODEVAIS, Club Action des Labels Indépendents Français (CALIF)

The single price of books made it possible to save almost all book stores. In the record industry the opposite happened. Orchestrated by the heads of multi-national companies who thought it was better to work with food chain stores, almost 3,000 music stores were closed down. The confidence we can have is limited.

We are a grouping of photographic editors working on records and were contacted by CNC on the question of video clubs, which are disappearing in the same way as music stores. They asked if we could work together on saving some of these and we are working today on their possible transformation.

Renaud DELOURME

The outlet system is a good one, and there will be serious difficulties if it is not protected by a single price. Supermarkets sell at cost price and we are forced to act in the same way. We cannot have great diversity because we are forced to give a lot of room to products that will be attractive to the consumer. As long as there is no single price for cultural products it will be extremely difficult to start up new networks. Today there is a drastic reduction of shelf display for Compact Discs (CD)s and there is a window of opportunity for niche stores.

Liana LEVI

The single-price for books was not the object of a global consensus. There were a number of publishing houses who were strongly against it, but are today saying they cannot envisage the market without it. Fnac was against the single-price but today they not only defend it but have stopped applying the 5% discount authorised by the law.

Frédéric NEFF

We no longer have independent music stores, and it is difficult when you are an independent music producer. The book price is not perfect, but it is much better than nothing at all.

You also need to consider the role of the product and its cultural offering. Downloading will replace the CD as the reference object when people want to listen to music. We will have increased production costs because we will not be producing large series. We will not have a lot of margin because we will be functioning in a small network of stores. The market will not be growing and will not be dominant. The question is how we can create an alternative independent market coherent with the needs of the public.

We have not talked about video games. You pay the same price for a game everywhere. There are good sides to globalisation.

Vincent FREREBEAU

In music we call it the Apple price. iTunes decided what the price would be for everybody.

Claudine PLACE, Independent Producer

The distortion that exists between the cash flow of independents who are artisans and telecoms that are now a part of the music market is very worrying. The ratio is one-to-100 or even more. In the long run this poses the question of the capacity of independents to play their role in a free competition world. If they have no means of funding development and creation in the long run this will disappear. What France was able to do in the cinema area may be indicative of something we could think about for music today.

Renaud DELOURME

In video publishing there are two types of aid. There is selective aid to video and no positive discrimination.

Max ARMANET

How can you envisage a single price with digital downloading?

Matteo ZACCHETTI

Digitisation is a challenge which is recognised by the MEDIA programme. The Internet is a way of distributing content. This morning the graduated response was mentioned. I do not want to get involved in this debate but 90% of the members of the European Parliament voted against the principal of a graduated response.

Alain ROCCA

Digital may spoil the atmosphere. There is something wonderful about the distributors of cultural content – people can take their time to come and look at it. The development of the equipment of households with digital equipment was done through access providers. People paid EUR30 per month and the rest was free. We have a certain number of operators who did not clearly explain that content is not always free. There is high-quality content worth paying for. We are still in the prehistoric phase of the Internet. The majority of people who consume cultural goods do not pay for them. We find ourselves in an alliance between major groups and independents.

Max ARMANET

It is unfair to consume everything and not pay for it. Also, the digital industry gives young producers more possibilities than existed in the past.

Renaud DELOURME

Coming back to accessing content, are people paying enough? The Internet is a wonderful instrument. When you have a website everyone can see it, but maybe no-one can see it. The homepage has become the equivalent of the display in the store, and if you do not know exactly what you want it is very difficult to escape the homepage and go searching for interesting content in the back of the store. In the Internet there is dis-ownership. A large part of what you see on the Internet is something that people move away from very quickly, so there is a shortening of the message. Apart from a few projects we are in the hypermarket world.

Lise BOURQUIN MERCADE, Kanjil Editor

In this Internet supermarket what is missing is the only value that can carry these cultural goods – the human being. Because librarians have ordered my book I can do my job as a publisher and get the author to be known. I do not feel like an SME. The work that has been done on this author's work could have been done by a major publishing house. Everybody can promote cultural identity, in large and small publishing houses. If you needed to invest it would be in human beings.

The book policy and sales points was a success, but the margin taken by supermarkets has enabled them to develop considerably. When you are not part of the group who can exert pressure you have no means of fighting against that – it is organised asphyxia for the publishing house.

Liana LEVI

The success of the book I spoke about could have been achieved by a larger publishing house, but not without the network of book stores and the single-price. In Italy it was not as successful as it should have been because there is not much of an independent book store network there. Independent publishers can exist in France, but only if there remains a network of book stores.

Jean TARDIF

I am from Quebec and would like to discuss things mentioned this morning about legislation and incentives. Someone said the European cultural market does not exist. I want to add the dimension of the French-speaking market. Our future is related to the presence of high-performance media content. Would it be possible to envisage measures at the level of France but for the French-speaking world?

Renaud DELOURME

You say we need powerful players; our authorities say we need very strong stakeholders. Maybe we can say publishers are the guarantors of cultural independence, but more pragmatically what we are interested in is a project on content upstream and making sure these projects are presented to the public.

The price spiral is a vicious circle because what you are purchasing is no long a work of art but a price. The whole point of the single price is to avoid that competition downwards and to revalue the work of art.

Alain ROCCA

Your question on the quantitative dimension says we are focused on France. We give a quantitative answer because when we talk about irregulation and intervention of authorities, we are talking about quantitative. If you are talking about the right quantitative measures the quality will also be taken into account. If you want to advocate to make sure the programme directors in movie theatres can be truly independent, the more you foster this kind of independent movie theatre the more chance you will have of seeing movies coming from Quebec or elsewhere. We say independent distribution of movies is good because then programme directors truly have a free choice without having to depend on large studios or majors.

Nida MABDI, Journalist and Consultant

We need authorities to step in because a lot of things are going on on the Internet. They need to educate people about cultural expressions and products. There is a lot of work to be done and this is the EU's responsibility.

Matteo ZACCHETTI

We know the Internet is here to stay – we have to adapt. It offers a great deal of opportunities. All European citizens should know how to use all kinds of media.

Nida MABDI

Educating people might be done via contacts via e-merchant on the Internet to make sure they understand the difference between mass consumption products and cultural products.

Vincent FREREBEAU

The person we need to educate is the European Commission.

Max ARMANET

Production costs do not go down because of the Internet; they are increasing.

From the floor

We need to structure the market. We have managed to hold television broadcasting accountable for the CSA; do you not think that we could be doing the same with Internet operators? Who would be in charge of monitoring that?

Alain ROCCA

The issue of Internet operating is a true problem. One can wonder if the crisis we are experiencing is going to be a wake-up call that proves regulation is absolutely necessary. In my industry we see that. To exist we need to upload some content on the Internet. You could be reading newspaper articles without paying, but behind all of those there are journalists who need to be paid. People tell us we cannot levy taxes on Internet operators. At the same time, because there is political will, we are going to levy extra taxes to finance French public television. There is a lack of political will on the issue of Internet access. People think the market will regulate itself, but protecting the cultural world is a moral issue. Taxing the turnover of telecom operators could be part of the solution.

What we are experiencing right now in the film industry is true in other industries. We used to, and still, have very strong structured relationships with movie theatre operators and television broadcasters. Unfortunately the development of video was done without the collaboration of the movie industry. The relationship with access providers is somehow incomplete. The problem is we are not talking about several players with good intentions putting their brains together; we are talking about power struggles. The opportunity to pass legislation is something that is extremely complicated. This window of opportunity is not always there. We had it with regulating 3G phone operators and I hope it will be done with Internet access providers too.

Independent players always have trouble convincing artists they are their best allies. I find myself between artists and corporations. The very few happy artists who are able to work with the large groups are not necessarily going to be fighting for their colleagues who are less well-known or defending independent producers.

The gap between economic size in the power struggle between access providers and independent producers is huge. If we do not have full support from artists to compensate that economic drawback we will not be able to make our voices heard.

Gilles de la PORTE

The will to structure things comes from national authorities, not artists. In 1981 book stores were not entirely convinced by the single-price policy, but the political authorities at the time were. I hope mindsets will change and people will understand that regulations do not go against the interests of consumers. 26 years after the single-price policy was passed, books in France are not more expensive than in the UK. In the UK there are three major operators on the market who set prices anyway. Therefore, people should understand that Internet regulations are crucial. I am from the publishing industry and we have set prices. We have allowed a certain number of publishers to exist. We are the link between publishers and customers, an interface between the two. We are also a showcase for creative artworks.

From the floor

It was said earlier that Internet providers are going to finance television but not music. That can only be true if we require them to finance part of the music industry, but that is not the case. Thus far I have not heard the voice of independent players calling for taxes on Internet service providers to finance some of their activity – nothing has so far been demanded. It is part of our requests that we are supported by several MEPs, but of course this will take time.

Renaud DELOURME

Last year were you selling Alan Greenspan's biography in your book store? At the time everyone praised it and it was a bestseller in America and Europe. It is high time writers understood what a chain is and what our work is really about.

Liana LEVI

You should not think that purchasing a book on the Internet means no work has been done upstream. Even when you buy a book online there is work for a publisher. Today we have reached a crossroads with digitalisation, but if we tackle the issue in an isolated manner I do not think we will meet the challenges. It is interesting to share the experiences of the music and film industry, to make sure we do not make the same mistakes again.

Frédéric NEFF

The director of eMusic suggested levying a tax on access providers. If music were to be sold only as digitalised music we would never be able to generate enough money to ensure the industry works smoothly. Digitalisation is not the be all and end all.

The HADOPI law explains it is absolutely outrageous that access providers generated millions of income without sharing it with the authors and artists. A system of allowing consumers to download music three times in a row but not more was suggested. A suggestion of going to the access provider and asking for contributions to finance the production of works of art was mooted. We know the film industry is very different from the book or music industry. It is going to be hard to have one single regulation for all industries. A writer can put a book on the Internet and share it

will all communities. He will not make money, but he has the right to do so. How are you going to generate revenue with the Internet and how will publishing houses adapt to that?

Vincent FREREBEAU

We have to change expertise and adapt to a new format with digital books. It is the same with movie and music producers. The answer is to adapt.

Frédéric NEFF

Components of the trade will remain the same, but we need expertise to use the new instruments.

Isabelle CARGOL, Publications Director

I opened a culture portal on the Internet to try and enhance the work of independent disc producers, publishers and new performing artists. I work with a great many associations in partnership and include a lot of music because you need to hear the music. It is a multi-disciplinary portal with different styles of art, like ballet or theatre. We have covered practically all the forms of art that exist and our problem is that there is practically no legislation to make bridges between new digital forms to use production ideas or disseminate ideas between new and existing media. We require legislation. It takes a lot of energy to cope with existing legislation and a lot of time.

My second concern is that according to figures I read and the investigation carried out by the Director for Trade and Professions, 96% of independent companies in France are very small companies, not just SMEs. Sometimes it is easier to negotiate with a big company rather than a tiny independent. That tiny independent may compete with you, so it is difficult to have partnership. When we speak of size I know it is not because you are big that you are strong, but you have to achieve some size when you are in charge of an innovative niche or when you have an emerging artists or new talents. The problem is that we are isolated. Where and when can we have those bridges?

Liana LEVI

I represent publishers and we are working for a lot of smaller SMEs. We have an inter-professional association called Calibre that distributes to those very small publishers. It is difficult to deal with these super small SMEs. I do not criticise them because often it is just one or two people. I would like them to help me.

Alain ROCCA

I was thinking of a film I liked so much called *Captain Conan*, which said you always need independent people. It is not just the captain; it is the soldiers marching behind.

Gilles de la PORTE

I was fortunate to be in a sector that understood you had to ensure fairness in organising the economic aspects of publishing. This law, enacted 27 years ago, is a good example of how a lively economic sector can be supported, and not at the expense of the consumer.

Liana LEVI

I am happy to see that the time for regulation is back. We no longer have a free for all in France. The crisis is over for the smaller publisher or small producers of films. Most certainly we will suffer from the economic crisis, but maybe it will also clear away the cobwebs in people's minds.

Renaud DELOURME

Independents are criticised for wanting cultural diversity, but that is a sort of counter-power and being independent is trying to exercise counter-power.

Vincent FREREBEAU

Very often I take part in public debates on the "Creation and Internet" law. I expect many of us will have to cope with this law in the weeks to come. We have to say that we exist and say who we are, because constantly people remind us and refer us to the major companies. We have to assert our position.

Javier SANTILLAN

Professional organisations and public authorities should clarify issues and publicise issues that we have discussed, because public opinion is very often not aware of our problems. We should try influence the agenda of government and European Council and Commission.

Matteo ZACCHETTI

Diversity is really important. If we want to keep it alive we need curiosity. Public authorities and schools certainly have a very important part to play, to try and stimulate curiosity for the unknown.

Max ARMANET

It is a good idea that we have a consensus now. We need to preserve diversity because that is what you have in a democracy. We need more incentives than subsidies because that also preserves the independents and we have come to the stage that we need political will to regulate. If you want regulation you must live in a world that will allow regulation. As regards the Internet, I think we should try build on its innovation and stabilisation. There is a point where access vendors and Internet operators should shoulder the responsibility in creation, and stop being like cuckoo birds stealing other birds' nests.

Workshop 2 **Does Digital Technology Threaten Copyright** **and Intellectual Property?**

Denis Olivennes, President, Nouvel Observateur

Claude-Eric POIROUX, Director, General Europa Cinéma

Frédéric GOLDSMITH, General Secretary, Association of Independent Movie Producers

Olivier HENRARD, Legal Advisor to Christine Albanel

Olga MARTIN SANCHO, Federation of European Publishers, Brussels

Bruno PATINO, Director, France Culture

Stephan BOURDOISEAU, President, Director General Wagram Music

Pascal ROGARD, Director General, SACD (Copyright Society in France)

Denis Olivennes

Introduction

Our discussion covers three subjects: the risks/dangers presented by digital technology, how we should respond to those dangers and the opportunities offered by digital technology. We begin with the dangers presented by piracy.

Frédéric GOLDSMITH

Negative Aspects of Digital Technology

The digital industry is changing all kinds of pre-established patterns in cultural industries, be it music, films or publishing. Music was the first to be affected by the fact that information can be transferred very quickly across all sectors. With regard to film-making, digital technology has caused great upheaval. This is especially the case where films are projected in movie theatres as this can be digitalised. This means there are new opportunities to diversify what is shown in theatres. It also has an impact on distribution. To deal with these challenges, independent producers have created a committee of independents for digital technology to draw up specific rules for the digitalisation of movie theatres so that the principles of diversity might be complied with. Even if there is no piracy, regulation is needed to ensure various processes in the cultural field may enrich our culture rather than deplete it.

This is a technology with great potential for downloading. There can be a great buzz around a film when it is released. This is certainly very productive but the counterpart is that sometimes some films are being downloaded in great quantities. Enormous quantities of French-language films are being downloaded every day. This hidden parallel industry has a great impact on the movie industry in terms of the numbers attending theatres.

Independent producers in the film industry, the music industry and in other sectors have signed an agreement aiming to prevent fraud and to fight against piracy. This allows them to give credibility to consumers. Regulation is important because it means that cultural production can continue to exist. It is recognised that entire sectors can disappear very quickly, even in just a few years. This was the case in Italy, where we saw the disappearance of Italian film-making because of television.

Pascal ROGARD

Positive Aspects of Digital Technology

Opportunity

In our business, people always speak of dangers. This is because producers are extremely conservative; the creators, authors and directors are the innovators. If they do not innovate they are not successful. Digital technology is a fantastic opportunity. It reduces production costs, on the television for example, and allows for more transparency with regard to income. This is especially important for authors.

Piracy Response

The main danger is that digital technology offers individuals the possibility to possess goods without paying for them. To this end, we have developed a progressive response, whereby instead of making piracy a criminal offence, there would be a system of warnings and possibly penalties if warnings are ignored. Thanks to the work of Denis Olivennes, an agreement on responsibility and accountability on the Internet has been signed by all the main operators, authors and producers' representatives. Consumer associations did not sign.

We are in a time of change but as well as being a time of crisis it is also a time of opportunity for creation. We need modern legislation to fight against digital counterfeiting but we also need new obligations applied to those who broadcast on the Internet so that the world of regulated downloading that has to be paid for will contribute to developing creation and contributing to strengthening independents, the first victims of piracy.

Claude-Eric POIROUX

Circulation

It is true that digital technology should bring producers, movie theatres and distributors easier circulation. We need to have copies of films coming to movie theatres with subtitles but this can be difficult. Some small countries do not have the means to do this. Digital technology can be a way of ensuring better circulation of films in the future, with, for example, films from Estonia being shown in Greece. This is not possible at the moment because the market is too small and it is too costly. We all must work together on this for further diversification.

What I have described is an ideal world that we might have in five to seven years' time. There is a transitional process to achieving this. As we strive to reduce costs, one factor we need to anticipate is the saturation of a product. If a product is strong enough, it could go everywhere without bounds and we might find ourselves saturated by the bigger products. We need to anticipate this and keep it in mind.

Market Difficulties

Another danger right now is that there is no fairness for movie theatres when it comes to digital technology. Some 80% of equipment is funded by the industry because it means savings for distribution, as they no longer have to manufacture costly copies. The US market is practically entirely made with national products, with thousands of copies being put out. In Europe, however, there is a difficulty due to the number of countries which have different cultures, practices and languages. There are discrepancies between small markets and big markets and this makes it difficult to distribute profit so as to get investments on an equal basis. Independents, operators and producers, are now trying to see how they can pool their investments. They want to ensure better distribution of income. We can achieve this. Germany is currently preparing a rather ambitious model with the one main purpose that everyone will be equipped at the same time.

However, some smaller movie theatres will certainly close, because they are unable to reinvest in new equipment, which can cost about EUR70,000.

At present, there are 50 to 80 companies distributing European films, independents, and it is the independents who are showing them in theatres. Very often, these companies do not exist in former Eastern bloc countries, where there are no medium-sized independents at all. Large multiplexes are moving into these countries, and Romania, now for example, is in the unfortunate situation of having multiplexes that only show American films. We need to support European filmmakers.

Denis OLIVENNES

Stephan, are there dangers specific to the music industry?

Stephan BOURDOISEAU

Music Industry

Digital technology is a valuable opportunity for music because it allows greater dissemination and at a lower cost. It certainly is a good opportunity for broadcasting. With regard to the dangers for circulating music, there are two criteria to look at. One is the size of the market. Will we be able to create markets which will circulate music more easily or are we going to have reduced market shares? Digital technology can reduce the cost of dissemination but we may not be able to find a great deal of the music. Therefore, what kind of system should we set up? Are we to set up a system developing large markets or a system that develops fragile and weak markets? The second criterion is access to the markets and the diversity of catalogues and players in the sector. We have little visibility and the transition period we are going through is five to seven years. In this transition period, there are dangers and opportunities. The music sector was historically ruled by very large structures and since we are not visible it is difficult to invest. This leaves room to a host of alternate producers who might enter the market. We have an overall market value that has declined over the last five years and the more fragile participants have disappeared and left the market.

Denis OLIVENNES

Are the dangers the same for book publishers?

Olga MARTIN SANCHO**Book Publishers**

Book publishers are also concerned by piracy, but we are currently looking at challenges rather than dangers. We are taking measures to help publishers digitalise their books and put them online, particularly in Germany. Another challenge is gaining access to funding, especially by small publishing houses. We are boosting awareness at national and community level that they need to have that funding, particularly because not much money is coming in from that part of the book publishing industry. We also need to highlight high-level corporate protection. We promote that and support initiatives, such as that in France, but also in other European countries.

Denis OLIVENNES**France****Dangers v Development**

How has France responded to the dangers presented by piracy? How can you control the dangers of digital technology for independents without slowing down development?

Olivier HENRARD**Legal Angle**

When we looked at fighting piracy through the law, we did it to help the legitimate offer to fully develop. Digital networks are good for distribution. However, downloading illegally is always cheaper and we had to ensure that the paying offer to consumers would become more flexible and have a cost of piracy that would reverse the ratio between the legal offering and the illegal offering. We think it was the only way for the legal offer to become attractive. We observed that the traditional tool at the disposal of public authorities was not suited to the purpose, that is enforcement. Discussions on whether we should continue to threaten potential pirates with three years in prison and EUR500,000 fines, or whether there should be small or medium fines, only took place in the realm of enforcement in the judiciary system. We wanted to shift discussion to a field other than repression. We were encouraged in that direction because Germany was bogged down in enforcement, with 30,000 to 40,000 pending lawsuits in German courts. At the risk of associating an unflattering view of creators in public opinion and having an explosion of the judiciary system, the fines were not benefiting anyone. We wanted to drop the enforcement attitude and we decided that it made sense to try to make people responsible and adopt measures that were successful in other countries.

Global Systems

There had been a system developed in the US with a network that had five million to 10 million subscribers, where a message was sent to the downloader. That message was quite effective. In Norway and Austria, warning messages are sent out to people who download from the web. Internet service providers and cultural industries agreed that it was possible to set up this warning system and a possible sanction system that could take on the form of denying access to Internet without intervention from public authorities. It was decided to adapt this to France, with

intervention of French public authority. France has a bad record of illegal downloading. In France, pirating is a trend that has become accepted socially.

The image of economic operators may not be as valued as it is in the US or in the Anglo Saxon world. The Minister of Culture and government departments felt that something else should be added to the warnings and the sanctions introduced in other countries. Rather than having an ISP threatening to shut down a pirate's access to the Internet, we have chosen to put another party in between. We already have three parties — the creators whose rights are violated, the pirates and the ISPs — and this trusted fourth party is an administrative authority about which a lot of incorrect information has been published. I wish to highlight that no one needed a public authority to send out warning messages and possibly temporarily deprive pirates of their access to the Internet. This administrative authority is a guarantee to illegal downloaders whose access to the web will be disconnected.

We believed that it was wrong to leave Internet users faced with their ISPs and the rights holders because that information should be confidential. The role of the authority, when contacted by interested parties in the cultural world, is to warn the downloader that he is doing something illegal. After issuing a number of warnings the sanction would not be financial or criminal but deprivation of access to Internet. The authority protects the privacy of the downloader. Rights holders will never be informed of the identity of illegal downloaders and decisions by the authority can be appealed. A lot of European countries have been keeping a close eye on how legislation is progressing in France and some are ready to take part in the race.

Denis OLIVENNES

European Parliament

Effect on French System

The European Parliament has just adopted an amendment that says no measure can be taken if it violates an individual's freedom. Does this render the French system void?

Olivier HENRARD

This amendment says you cannot violate an individual's right without a prior judiciary decision. Our Constitution also says there should be no restriction of individual rights without a judiciary decision. This would seem to not allow a procedure such as the one we adopted. However, if the French system was to be considered a breach of the amendment by temporarily depriving a web surfer of his access to the Internet, that would mean that having Internet access at home was considered part of a person's fundamental right. We should not confuse something that is a commodity and a basic essential freedom. Having Internet access at home is not part of an individual's basic freedom, even though it does belong to the means made available to consumers to exercise freedom of communication. One freedom cannot be used to deny another freedom; that is, someone's property rights to their work. The French system reconciles different rights and obligations and cannot be seen as a restriction to a right of communication or privacy. It must be seen in the context of defending liberties at a different level.

Denis OLIVENNES

Risk Prevention Approach

When faced with the dangers of piracy, we took that approach following the Elysée's agreements. We developed an innovative risk prevention approach. We had a discussion at the time of the DAVSI law regarding another approach, which was to abandon any type of prevention or repression and instead say that this is part of what people do and radically change things by adopting a flat rate remuneration that would be called a 'global licence'. What were the reasons for opposing this?

Stephan BOURDOISEAU

This is a difficult question to answer. It comes back to market size. What we are trying to do through the creation and Internet law is a scheme which follows the rule of the right to authorise and the one who controls the content made available is the one who should pay. This is the fairest system. An alternative solution, the global licence, would mean that content made available would no longer be paid for by the consumer but possibly by the consumer of access to the Internet, by the taxpayer or by the citizen. The question becomes one of who do we want to pay for what level of content, what level of diversity of content we want and what market size we want.

The recorded music market was a EUR1.3 billion industry six years ago, compared to a EUR600 million industry today. Sales of CDs are down EUR600 million. A few digital rights which were added to the EUR600 million for the sale of CDs, some subscriptions, remuneration, advertising, do we want to consolidate this beginning of a trend which represents EUR100 million, which was EUR1.3 billion six years ago and EUR600 million today. Savings in distribution must be taken into account, but do we expect the creation and Internet law to create a EUR2 billion market?

Denis OLIVENNES

Bruno, what is your view on alternatives in risk prevention?

Bruno PATINO

Alternatives in Risk Prevention

Varying Power

When people are talking about graduated response, global licence or criminal sanctions, it is a game between three parties — those who hold the rights, those who own the pipelines and the consumers. The new law is very relevant. We see in France, the pipeline holders are more powerful than rights holders. It required intervention on the part of public authorities to rebalance the situation between rights holders and ISPs. The global licence is something extraordinary for ISPs. They do not tend to give extra value to the rights and they apply discrimination in paying for the rights. In books, there are the hard cover rights, soft cover rights etc and a price policy that enables different prices for rights holders and promotes diversity of creation. In the present clash between rights holders and bad consumers, I would tend to say that the illegal downloadings lead to people having a dominant position in the provision of a service. With graduated response it is normal to

contractualise the use of an instrument that is put at your disposal. This is not a war on consumers but an attempt to create a new balance.

Denis OLIVENNES

I fully share your view. The issue was to re-regulate economic relations for general good. It seems strange to me that what seems logical to the left and a call for regulation does not seem normal in the cultural sector. An attempt was made to bring some equilibrium back into an asymmetrical situation. It is not for reasons of a power struggle between players that intervention of the State is necessary; it is because our legal culture is different. For Anglo Saxons, the contract protects the individual and the State threatens the individual. In our country, the State protects individuals and the contract threatens. Hence the parliament resolution which says that one should not leave contract parties to settle their own business because individuals would be at risk.

Frédéric GOLDSMITH

Global Licence

There are some legal obstacles to the global licence. There are a number of international conventions, not only EU regulations. The global licence model is a sell-out model. This means that once a fee is set, the whole culture economy is tied into this price. The price will probably fall in the future. This is a short-sighted strategy by operators. It has detrimental consequences for media too. The system looks good on paper but the problem is complex. There are alternatives and several models can co-exist. All of this would only co-exist with a contractual model.

Pascal ROGARD

This idea of global licence is going to be used but I believe there is still some ambiguity. The music and cinema industries are very different. The music industry lives in an environment where the offer is available at any time, anywhere, whereas the film industry is operating with a system that is quite different with different copyright legislation. The system used with music would not work in film. The film industry is based on advanced financing based on exclusive deals. People will not invest millions in a movie that will be on the Internet before TV.

The global licence is not as safe as it looks. Many movies are shot with cameras in theatres, violating copyright and moral rights. These products are not truthful to the original and are of lower quality. People have access to movies that were actually stolen.

Denis OLIVENNES

Olga, does the solution implemented in France to fight against piracy seem absurd to you, or do you think the solution might set an example for other European countries?

Olga MARTIN SANCHO

Each country must decide how it will develop its fight against piracy. I do not think the French system could work everywhere. The approach to contracts in Anglo Saxon countries is different. In Brussels we say let countries decide how they want to do it.

Denis OLIVENNES

What new models will emerge in this new digital era for production?

Stephan BOURDOISEAU**New Models**

As far as distribution and broadcasting of music is concerned, there are several models that operators have brought to market, such as MySpace, YouTube, iTunes and Dailymotion, new downloading systems, social networks, data sharing networks. In the digital world, new work is being added to catalogues that already exist. All traditional distributors decided to invest on the Internet using digital content. A lot of independent producers decided to go down that road. New players also emerged recently. Since it is easier to circulate a catalogue nowadays, we see that there are a number of new catalogues that exist on their own. We do not know what revenue will be generated in the future. There may be a move from a single source revenue model to a multiple source revenue. There will also be development of private copy systems, remuneration systems. There will also be a tax and regulation context that will be an incentive to produce cultural products. There is the idea that one single operator could take care of an artist or music himself so new synergies could be created. There is a lot of talk about an operator recording music and offering live entertainment as well. With different market sizes, new expertise and skills will develop.

Denis OLIVENNES**Future of Producers**

Does digital technology give an opportunity to artists to have direct access to consumers? Is there a future for producers?

Pascal ROGARD

You always need a good producer. In the digital era, when it comes to creation or broadcasting, it is possible for a young artist to have direct access to the general public without going through other links in the chain such as radio stations. There is a great opportunity for artists to get known. However, more ambitious projects, which need more funds and investments, will need someone to build a financial project behind their work of art and need a middle-man to defend their artistic work. Artists are often unsure of what they are doing and need someone to support them and have confidence in them. Producers do have role to play. Many Internet sites are a great opportunity to promote self-produced works of art that can be very successful on the Internet. But once these artists want to go to the next stage, then they need funds and that is when they need producers.

Denis OLIVENNES

Effect on Publishing Industry

Demise?

Will digital technology be synonymous with the demise of the publishing industry?

Olga MARTIN SANCHO

I think, and hope, publishers will still be necessary in digital world. Publishers are already trying to get books online. In the last few years, there have been initiatives in European countries to get publishers and authors to work together to digitalise books. Some 73,000 titles are now digitalised. Initiatives are underway in Denmark, Flanders, Germany, Spain and France. Publishers will still be in the loop, selling e-books to libraries etc

Bruno PATINO

Visibility of Work

In the publishing industry, you do not become successful just because you have digital content to offer. The publisher does have an important role in validating a work of art. It takes a lot of work to make digital work visible. Referencing is important. But there is a cost involved in making work visible. Being referenced by search engines is very important. This bears a cost and it is a challenge for players to make sure their content is visible and found easily in search engines. This can be very costly for small publishers. The stakes are high and the role of the publisher is justified. It is a time of change for independent publishers because this bears significant costs that are more or less equivalent to the cost of distributing a book. There are two main players on the French market that hold major distribution networks and channels and we know that in the digital world with further concentration we will probably have to focus on the capacity to produce meta data to ensure that books are visible and well referenced by search engines.

Denis OLIVENNES

Publishers are also there to select the right books among thousands that are written every year.

Bruno PATINO

Market Shares

Concentration Factor

I am not surprised that the movies that are downloaded illegally most often are blockbusters. The University of Berkeley has conducted a study on marmalade. In the first case, three marmalades made up the market, with market shares of 40%, 30%, 30%. In the second case, 12 marmalades made up the market, with the leader taking 85% of the market, and the others sharing the other 15%. Therefore, the wider the range, the higher the concentration phenomenon. This is because the choice is actually no longer in the hands of the consumer but handed over to a third party. In

the case of the Internet, the third party is the search engine. Five years ago, most people focused on the first five findings in a search engine. Today, 8 % of people focus on the first three items in a Google search. This artistic selection made by the producer goes along with referencing capacity.

Denis OLIVENNES

Does this concentration factor jeopardise the whole notion of the Internet widening the range of products offered? It has been said that the Internet revolution means that if you want to sell a book with limited distribution, on the Internet there are so many potential buyers who can buy one book on one website. A book can be profitable on the Internet when it could not in the traditional marketplace.

Bruno PATINO

The marmalade anecdote is correct. On Amazon, the best-sellers are the same as those of the *New York Times* best-sellers. However, it is not flattering to be hundreds of thousands of places down the rankings. Digital gives a broader range of products, with catalogues for instance. We should have a greater range of offer than before.

Questions and Answers

Frédéric NEFF

As digital catalysts, we are against the law on Internet and creation because it focuses primarily on Internet and very little on creation. We find that in the market for online music, there is always a positive effect; every time there is a successful technological innovation, it means success elsewhere, like TDC in Denmark or eMusic. Doing away with DRM which hampers the consumer was a good thing. In this respect it is a shame that the Creation and Internet law does not plan any other measures. The Economy Nobel Prize winner explains that sales on titles is not logical on the Internet. There should be a price to pay to have access to a catalogue. We see that with Orange, Nokia and Sony Ericsson. Could we say that cultural diversity and digital diversity is based on diversity of offer. If we want to fight piracy, it is not by adding more to catalogues but what service will we have when there is legal downloading. We know there are a lot of pirates but we do not know much about their buying. Deficiency of information is at every level in music. We believe the solution should be creative.

Pascal ROGARD

The law is limping along and it should be balanced. There should be further incentives to develop legal offers for film and books. There are a lot of works that the public do not have access to. If we want works to be accessible, and this is important for authors, they should be available at any time and that is only possible if we have a digital environment with public support because there are costs in digital. We are going to have an Internet creation law, but we need to develop legal offers and allow the public have access to the work.

Michel LAMBOT

We have been doing digital distribution for six years, with turnover of EUR10 million a year. For physical discs, there are 15 titles which represent 15% of the turnover and the remaining 85% is digital. I sell videograms in France and we do not have any video window in the Netherlands, so if a DVD comes out at the same time as the film comes out in theatres, in Flanders we have to make sure we adapt to the film coming out in the Netherlands. However, in the French speaking area, I cannot show the film because it takes six months to get the French version. If tomorrow, there was to be a French film subtitled in Dutch available on a hoster in Dutch, either France will have a problem because it will have an Internet that will not be as competitive as other EU countries or there will be a common European solution. I would opt for the latter and extend the solution to the rest of Europe

Claudine PLACE

We are independent producers and publishers. We did not speak of many new legal offers. We have a permanent jukebox offering everything you want without paying. We found that Deezer has reduced piracy. What can we do for these offers? It is a little dangerous to oppose two principles of law, freedom on the one hand, and the right to ownership, which would be the predominant right in the event of a dispute. In the case of freedom, free service should not be separate from the freedom one might have of downloading. So freedom to download is certainly very significant.

Denis OLIVENNES

We see various models of consumption of music, including free downloading, and the crucial point is not to question a fundamental principle that authors should be paid for their work. What is striking is that despite all the forms of technological progress in films, radio, books and other media, the way in which copyright should be paid for has never been organised. Piracy has upset all this because it has hit the principle of paying the author. These models will give rise to consensus. Various models are currently being developed to protect compensation of authors. We are organising transactions between conflicting entitlements, like the freedom to drive fast and the freedom for pedestrians to survive. Having Internet access at home should go with the freedom of having intellectual property rights. We will consider if what is offered by the law goes along with the freedom we want to obtain.

Stephan BOURDOISEAU

There is very little information on the behaviour of consumers. It is difficult to determine whether one model in the behaviour of accessing music can be substituted for another and, if so, what impact this would have on the market? Some rights holders say a unit downloading act, or subscription formulas, could reach several hundreds of millions in France. People also wonder about an on-demand streaming model with free access to the consumer but which would enable advertising revenue to be generated that would be shared by the operator with the rights holder. Would that overall revenue reach a few tens of millions or hundreds of millions? The person streaming on demand, would that person be replacing one model with another and what consequences would this have?

Claude-Eric POIROUX

The difference in release dates and the possibility of releasing films in theatres and on video at the same time are important issues for us. In the UK, it was found that attendance at theatres did not suffer as a result of simultaneous video on demand. They also believe that it creates a place for independent director work. In the US, Soderbergh released *Bubble* on theatre screens on television and on video. It is a film with no major actors and he said it would only have been shown in a few theatres and the least he could do was to offer it to all the different kinds of audiences in the country who watch TV, rent a video or go to the theatre. This was a legitimate offer, a legal offer.

Philippe CHANTEPIE, Ministry of Culture

With regard to long trends, is the Star system disappearing over the years? There is a long-trend effect but it can be mechanical. There is more on offer through digital media and so it is normal there should be this long-trend effect. This depends on the size of the catalogue. There is a Star system effect. The middle of the catalogue provides the greatest amount of the business, including independent producers. A problem arises for medium-sized productions. There is the not same abundance in the consumed offer because rarity moves to the content and the bottlenecks are in digital distribution.

You talked about regulation tools. From a community point of view, it is not in our interest to think of a must carry attitude to anticipate bottleneck problems on digital distribution. The decision of the Constitutional Council on authors' rights also constitutionalised the international property right alongside the fundamental right. The whole case law of the constitution will have to reconcile the right to communication and property rights. Intellectual Property Rights are now on equal footing.

Bruno PATINO

In the book publishing industry, we proposed a mechanism that constitutes a database or a meta database to break the barriers to referencing. This is especially important for independent producers and publishing houses that are living off middle-section sales. The objective is to enable all sizes to live in digital environment. Producing content and making it known is vital. Referencing on search engines is organised; it is purchased by distributors and creates distortion in access to public knowledge. Commercial referencing, key words and financial resources come into play, and this has a cost. When the average person wants to see what is in a book, they do not do it through Google but rather through Amazon. So there has been a transfer to the seller of content. This ability to feed with well-structured data is a tremendous barrier to entry for independents.

Guillaume LANNEAU, National Union of Artists, CGT

We have always supported the principle of the global licence. Three years ago, we were told that DRM would solve all our problems. Today we are told that the high authority is the best option. I look forward to hearing the next solution in three years time for the next solution.

Denis OLIVENNES

Personally, I have always been against DRM.

Guillaume LANNEAU

A problem is that public authorities can be only interested in certain areas of creation, leaving aside some sectors, for example, fixed images. We have not been able to voice our concerns to the Olivennes Commission and HADOPI. Public authorities should defend the cultural sector. It is unfortunate that they are interested only in those that generate certain economic volume. We have 60,000 authors producing works and we should have been considered as part of the topic.

Denis OLIVENNES

We will report about that tomorrow.

Michel LAMBOT

The last Radiohead CD was originally only available on their website, and people paid what they wanted to pay for it. The average price paid in the US was \$7, it was £4 in the UK and less than EUR1 in France. Clearly, there is a cultural attitude to payment. We must not forget this when considering that the development of digital in the US is greater than in the UK and much greater than in France. It is not just for legal reasons. Radiohead are also the editor and their editorial revenue was greater for this album than for all their previous albums, as author and composer.

Denis OLIVENNES

Radiohead are a group that were marketed significantly over a number of years.

Nida MABDI

As a journalist, 10 years ago I followed the demise of the search engine Voilà. Today, Google is the dominant force. In my opinion, you do not need a lot of means to be referenced well. You have to work with professionals. France has not worked with universities to help the industry develop applications specific to France. France does not have search engines and is not present in the software world. This will be the case as long as France does not link up with the academic world.

Workshop 3 - Affirmative Action: A Solution to Protect Independent Companies?

In Search of a Status for Cultural SMEs

Jacques TOUBON, Member of the European Parliament

Laurent VALLET, Director General, IFCIC

Yannick POIRIER, Director, Tschann Bookshop

Isabelle WEKSTEIN, Lawyer

Alain RECOULES, Lawyer

Sylvain PASQUA, Policy Officer , DG Education and Culture, European Commission

Jacques TOUBON

Background

In our discussion, we will look at what can be done not just to protect, but also to promote cultural SMEs and consider how they can be organised and become actors in terms of culture. European competition rules are about fairness and transparency where one company cannot find itself in a better situation than any other company through assistance from the taxpayer and we must ensure that within the European Union there is free movement of all goods and services, including cultural goods and services. In fact, the situation is extremely frustrating because there is no European culture policy and there will not be one because this is an area which member states will continue to consider to be part of their own domain.

By its very definition, culture in Europe, with all its wealth and strength, is diversified and while trying to bring it all together could be positive, we could also have a negative outcome. When we speak about a European culture policy, budgets will need to be set up and we will also need a series of waivers and exemptions to the fundamental principles of the single market and competition.

Early Moves on Culture

About 15 years ago, when I was in charge of the Ministry for Culture, this all started with our definition of a cultural exception at the international level. We found that cultural goods and services should not be subject to the same rules as other goods and services and there could therefore be no free trade, with each state continuing to have its own specific policies for culture, film and music. The directive on television without borders aimed at developing an internal market, but at the same time we said that to avoid the situation where bad programmes replaced good ones, member countries would be entitled to promote programmes that could be either national or European. This is exactly what is happening now, where there is a two-pillar policy,

with one pillar or the other being used according to the specific case, and that is what has allowed us to go forward up to now.

After the cultural exception, we then said that we would establish the cultural chain, where there would be one price for a book, for example, and it would not be possible to sell books at discounted prices. Although this is anti-competitive, it has been accepted by the European Union. We therefore tried to encourage measures for national support policies and state aids. For example, Canal+ funds a certain proportion of films from independent producers. We heard Christine Albanel of the European Commission say yesterday morning that we should try to do more to carry out this philosophy and find ways of discriminating positively in how we deal with the cultural industries. Any measures we take have to go through the filter of European decisions and at the moment the European Union is blocking our intended moves on value added tax (VAT) as it relates to the publishing industry, for example.

Respecting the Freedom of Others

What we have in common in Europe is the economy, trade, competition and the domestic market. Little by little, we are also seeing some research programmes, such as Galileo, but everything is happening extremely slowly. With a system based on freedom of trade, markets and competition rules, to preserve independence in creativity and production, we should try to highlight not just cultural diversity in European policies, but accepting other people's freedom and underline the need to avoid impeding diversity. We therefore need to fight against monopolies and must have every possibility to choose. 'My own freedom is the freedom of my neighbour' – that should be the motto of all our policies in France. However, that is not the case for other countries, such as the new member states who joined in 2004 and 2007. Nevertheless, in Europe itself I am convinced that it is something that we can work because Europe is open. It is a market economy and a social market economy. In terms of art and culture, we also need openness and freedom all along the chain and your own freedom is your neighbour's freedom.

There are a number of economic and financial problems at the moment and we need a directive that will promote SMEs and provide cultural SMEs with advantages. However, I am not sure if this will be possible because the Council of Ministers and even the European Parliament do not seem to be convinced by the idea yet.

Laurent VALLET

IFCIC

Background

The Institut pour le Financement du Cinéma et des Industries Culturelles (IFCIC) is a small bank that funds cultural enterprises. It is a very French type of scheme and we are a private organisation, with most of our capital held by banks. The Caisse des Dépôts and OSEO are also shareholders at 49.9%, meaning that we have a mode of operation that is not that complicated or made more difficult by all the special rules on accounting and public management. As a credit establishment, we are subject to all the banking regulations and while it is a private organisation, it is nevertheless a public service. The state provides IFCIC with money each year and its mission is to ease access to loans for cultural SMEs.

This all started with the film industry, which was provided with special loans when the Ministry for Culture and the Ministry of Finance decided about five years ago to establish the Institute. It was quite an innovative step and over the past few years things have progressed. Cultural enterprises create jobs and promote the development of regions and local areas.

The IFCIC Guarantee

Although we are a bank, we do not lend money. What we do is offer guarantees to loans that banks provide to cultural SMEs. If there is default on a loan and a company cannot pay the bank back, the bank will be compensated by IFCIC to the value of 50-70% of the amount that has been lent. This is a very powerful guarantee and can be decisive for the bank in terms of whether they will lend or not.

To provide a guarantee of this type, IFCIC obviously needs money and we have a reserve of money that enables us to pay whatever losses we may incur. For example, if we lose about 5% of the total amount of loans guaranteed, when we guarantee 100%, we must make sure that we have at least 5% in reserve. This is guaranteed every year by the state and the Centre Nationale de la Cinématographie (CNC) and we are also involved in cultural activities in music, video games, live performances and festivals. Every year we receive about EUR5 million, which allows us to guaranteed loans of EUR200-300 million to cultural SMEs.

This is a novel structure, where we do not need to spend a lot of public money and with EUR1 we can guarantee EUR40 of loans. Our approach is similar to that of a bank and we take a very low fee for the guarantee.

Providing Expertise

The other part of our job is the sharing of expertise. Very often, rather than banks contacting us we might hear from a publisher or someone who wants to organise a music festival. We therefore serve as a middleman between the entrepreneur and the bank and try to explain to the bank how these companies work. The cherry on the cake is our guarantee, which we hope will trigger the loan. Bankers have data on ordinary SMEs and know how to analyse that type of risk. With cultural SMEs, there is the feeling that their business model is more complicated and one of our roles is to reassure bankers and back that up with our guarantee.

The Importance of Independence for Cultural SMEs

In facilitating access to credit, there is a specific advantage as regards independence. Loans require you to pay interest and they can be expensive. We offer a type of funding that does not take away people's independence. Enabling cultural SMEs to have a privileged access to credit is a way of allowing them to keep their independence and while credit is not a panacea, as long as people are in a position to repay they can keep their independence.

With the current financial crisis, there will be heavy restrictions on credit and SMEs will be hit first and foremost. Amongst the SMEs, the most fragile will suffer and it is in this context that institutions like IFCIC, that support access to credit, have a very useful role to play, and we expect to be very active in the year ahead.

Unfortunately, IFCIC is a unique body in Europe. Nevertheless, with the CNC, we are providing guarantees for certain Belgian, Luxembourg and British productions. People tend to present the French solution as a perfect model that could be applied to the rest of Europe, although we have

seen that that approach can lead to difficulties. If other European countries had mechanisms like IFCIC, it would be better to have a network of organisations rather than having one big IFCIC-type organisation in Strasbourg.

I believe that we will mention this type of thing in the text that we will release at the end of the meeting and I think that we should also refer to all the things that can provide access to funding in general. In the 18 months ahead, cultural SMEs must be allowed to continue to be independent and dynamic.

Yannick POIRIER

The Experience of the Bookstore Manager

I spoke recently at the Book Commission about the economic business model of our bookstore when the MPs there asked me how we functioned. We had bought back the bookstore, where I was an employee, and I then became an entrepreneur. We were able to buy the bookstore back, not with the help of a bank, but with a state guarantee from the National Book Centre, as well as professional guarantees provided by the Association de le Développement de la Librairie de Création (ADELC). Our development was mainly funded through the cash flow that we were able to generate, internal growth and development through hyper-proximity assistance, as well as financial credit and moral support – and moral credit is as important as banking credit.

As a bookstore manager, I defend the values of culture and have a public service mission to make available the texts that I believe are important. In terms of credit and funding, we have a slow, sustainable development where we look for self-financing or credit at 1% or 2% and not 5% or 6%, thanks to the law introduced by Jacques Lang. We are in a different paradigm from the market economy. This is not an industry that needs to create products for the consumer, but one that is concerned about its customers, who have their own specific preferences. The bookstore manager is the last link in the chain and is interested in the intellectual and artistic dimension.

The title of this workshop talks about the cultural industry, but what we are really talking about here are the activities of craftsmen. Today, we are all paying for the industrialisation of the book industry since the middle of the 18th Century and while this has had its advantages, it has forced people to balance the economic side and the intellectual side. We are always caught between the mass-market book product and the subtle, innovative product. We therefore need to be small and have financial independence, although first and foremost we need to have intellectual independence. A few years ago, I suggested that bookstore managers could develop a *haute lecture*, in the same way that the fashion industry promotes *haute couture*. However, that has not happened and I think that that is a pity.

Jacques TOUBON

Yannick has pointed to the dialectic tension and the clash between a cultural economy governed by final demand and one governed by the author and the publisher and, principally, an intellectual and artistic choice. That is also a striking feature of the film industry and is the basis of all of our discussions. As a result of its economic competencies, the European Union always takes the side of the consumer and anyone receiving a cultural service or good is generically termed a consumer.

Alain RECOULES**VAT****The Nature of the Problem**

As a lawyer working for Arthur Andersen – the company that failed after the Enron case – I did not pay a lot of attention to SMEs, being concerned solely with large companies. I and a number of former Arthur Andersen employees then created a co-management structure, with the intention of providing tax consultancies for SMEs as well as large companies, because we ourselves were now an SME.

About 10 years ago, when the Internet started to develop, there was a major competition problem as American operators had a big advantage over their European counterparts as no VAT was payable on Internet sales made on American sites. A text was then drawn up to address this, but as it was so complicated it was not enforced.

To understand the problem of VAT, we need to understand how other member states function. The technical problem is simple. The reduced rates are in the annex of the Sixth Directive and a number of goods benefit from these reduced rates. Since the Sixth Directive, we have had the development of the Internet and historically the Internet has been considered to relate to the provision of services. The point of friction over the next 10 years will be the issue of subsidiarity and where competency lies with the European Commission and where each state decides on its own. There are therefore two problems – unanimity and subsidiarity.

Dealing with the Problem

When we look at the different member states, I think that we see two types. Firstly, there are those that are very legalistic and want to legislate on everything. This type includes France and Germany. Secondly, there are countries that are less legalistic. Additionally, there are the smaller countries and the larger countries. The mission of small countries is to attract funds from large countries, but large countries cannot take the same approach. For instance, large countries cannot establish a tax regime that is favourable to non-residents if the same regime is not provided to their own national establishments.

In the end, you have to take into account, therefore, that France is very legalistic. Nevertheless, I remain confident as regards what we can achieve and progress is being made. For example, ECOFIN has recently included this in its agenda and if action continues from the Ministry of Finance and the Ministry for Culture in the remaining weeks of the French Presidency, we will be able to achieve things. As a result of the financial crisis, Europe is changing and if we all agree that we need to change European legal texts, that can be done, and we can combine that with more pragmatic approaches.

It is important to define the common points of interest between the film industry, the book industry and other cultural activities. One common point – which is not obvious to tax experts – is copyright and this is included in the annex on the reduced VAT rates. We should see whether this can be extended – and other countries have proposed the same thing on this. We need to find a practical solution. SMEs need a single, uniform regime that covers both tangible and intangible activities and in France legislation on copyright has been included. That could assist us in our discussions.

Isabelle WEKSTEIN

Bringing About Cultural Diversity

I specialise in intellectual property rights (IPR) and competition law and, looking at our theme today, my question was whether the very notion of positive discrimination was not shocking in itself and I wondered how it would be applied in relation to other forms of discrimination. We have been told that we should see positive discrimination as a way of bringing about equal opportunity. Rules are already in place which could preserve cultural diversity and allow independent enterprises to defend their rights, but in practice this is an extremely complicated area. We have seen how difficult it is for independent French unions to fight mergers of large companies and make people understand that this type of thing could pose a very big threat to the sector. The procedure for making a submission to the European Commission is very cumbersome. Those who try to put forward their views on mergers are considered as third parties and are not entitled to any rights at all. They do not have access to the dossier and have 50 lawyers and 50 economists lined up against them and the Commission tells them that they must abide by the rules. It is also difficult to get the Commission to understand the cultural dimension.

The merger between Sony and BMG, for example, was eventually halted, but now the fact that Sony is totally in control on its own raises problems of vertical mergers. Along all the legal steps we had tried to explain the importance of taking into account the cultural dimension and had better luck when we fought a planned merger in the bookstore sector when cultural diversity was properly taken into account.

Nevertheless, this is a very complex subject. The *Lang Law* is the model for a number of European countries and this is being questioned today. For instance, there have been recent issues on illegal discounting – where large groups can afford to lose money – and direct mail marketing. While everyone agrees that the law should persist, its legal application is being questioned.

In terms of cultural goods, I agree that we need to act globally. We saw recently that some music networks that had entered into agreements with the state had had these agreements cancelled by the Conseil d'Etat. With Catch-Up TV, the Competition Council decided that there was no infringement of competition rules because this is an incipient market and it saw no problem.

Following this morning's discussion, we can see that measures are needed. We need to promote independent production and allow independent companies to have access to different markets. We have rules in place, but these can be very difficult to apply. Positive discrimination measures, which might seem to be a deterrent, are actually the only means by which independent companies can access these markets.

Jacques TOUBON

In the declaration that we will make this afternoon, the point will be to create an environment that will be favourable to cultural SMEs. We also need something that says that we must keep what already exists, given that, for example, electronic trading is threatening the philosophy of having a single price.

Sylvain PASQUA

Promoting Culture in the European Union

The Position of Culture in the Lisbon Strategy

First of all, I would like to say that I have felt very comfortable listening to everything that has been said so far. The European Commission has limited competencies as regards culture and has only been active in the area for about the last 15 years. In that time, the Directorate General for Education and Culture has tried to promote cultural cooperation among the member states, but this has been quite limited in scope. We are still in a learning phase and I heard many things this morning that suggested that we need to have a better grasp of the legal and economic aspects, as well as of the intrinsic value of culture.

As well as the Commission, the Council, the Parliament and other levels of Government in the cities and regions have had a growing awareness of the contribution that culture can make to the Lisbon strategy for growth, competitiveness and social cohesion. This therefore gives us a little more clout in our discussions with the other Directorates General (DGs). We have realised that cultural activities can generate jobs and produce growth, and they also have the capacity to strengthen social and territorial cohesion. The Lisbon strategy will need to be implemented by the European Union as a whole in the era of the information society and while the strategy has had some successes to date, it has also had some difficulty getting off the ground. It will therefore benefit from a refocusing, and our feeling is that this reorientation will go in the direction of increased attention to creativity. The link between culture and creativity is very clear to us, as is the link between creativity and SMEs.

Activity of DG Education and Culture

At present, we are in a phase of diagnosis, and in terms of positive discrimination we need to think about the needs of cultural SMEs and ensure that policies developed at the different levels respond to those needs. For our part, we have invited member states and civil society to think about the best possible way of developing cultural and creative SME activities in Europe. A year and a half ago, we published a communication that gave rise to a European agenda on culture. This focused on a limited number of objectives, one of which was the link between culture, creativity and innovation, where the aim was to maximise the potential of SMEs, and we will continue to work in cooperation with the member states.

The IFCIC scheme was presented to the member states and the Commission and we saw that there was something similar in the Flemish-speaking part of Belgium. Through meetings of this type, we are attempting to highlight activities in the member states and see what could be duplicated elsewhere. We are also trying to work with civil society, and European networks and organisations are part of a platform that we have created on the theme of cultural and creative activities and SMEs. All this work should provide us with a better grasp of the responses that are being provided today at the European level to the very specific needs of cultural SMEs.

We all need to work together to see how we can best use the Structural Funds, which today represent 44% of the community budget. These funds, which effectively form part of regional policy, help countries with below average gross domestic product (GDP) to come up to the average. This therefore helps the new member states in Eastern Europe, as well as poorer regions in other member states. The Structural Funds are by far the largest expenditure line in the European budget

and it is in the interests of regions to use the Structural Funds better to develop their cultural and creative activities.

Other Activity on Culture

There are number of other programmes that are not managed by my DG, which have the ability to leverage and support activities of cultural companies, such as the Competitiveness and Innovation Programme. There is also the possibility of getting a kind of guarantee for loans and it would be very interesting to see how this mechanism is being used. Our feeling is that it is currently being underused or used badly, possibly because of a language problem between the potential beneficiaries and those in charge of its management. The whole advantage of guarantee funds, such as IFCIC's, is that they ensure that the language of the cultural sector is understood by the financial sector.

As regards competition, we try to develop positive relations with DG Competition to persuade them that cultural diversity is important. The European Community has ratified the recent United Nations Educational, Scientific and Cultural Organisation (UNESCO) Convention and people must make this their own. It is essential to realise that the provisions on culture do not call into question competition rules. Within this framework, it is important for people to understand what cultural diversity means and that it is not just about having more books on the market, but is also a way of measuring quality. With competition issues generally, we are usually involved at the very end of any procedure.

We are trying to develop the appropriate bridges. The problems faced by the cultural industry force us at DG Education and Culture to go beyond our initial scope, and this has to be the same for national ministries. Going beyond these initials competences requires people to understand the needs of everyone else involved.

Jacques TOUBON

In France, it is often forgotten that the Structural Funds can be used for cultural activities. However, a whole series of aids exists for programmes that can play the part of social cohesion programmes in underprivileged neighbourhoods.

Having heard from the speakers, I think that we are looking at things a little more from the point of view of creativity and not just from a consumption point of view. The French approach to culture is a policy of supply that tries to make available all types of creativity. It is also true that the strength of the market economy tends to privilege consumption alone and that is why the Internet is so prevalent. At the moment, Mrs Reding is looking at how she can meet the needs of the end of the pipeline - we must bring in the point of view of what is in the pipeline.

Questions and Answers

Frédéric NEFF

You said that Mrs Reding represented the consumer point of view. In September, she set up a commission for online music and I was surprised by the people she invited – for example, the President of Fiat, Steve Jobs and Mick Jagger. How can Europe arrive at commissions like that, that are so unconstructive?

Jacques TOUBON

A lot of organisations have criticised the composition of this platform, where there is a trend to bring in people who are not part of the business, but who look after consumers. The platform is supposed to consider the rights of the performing artist in particular and creating multi-territorial licences. We were surprised to see that there was nobody representing the rights-holders. Like you, I think that that is stupid. This was under the sole responsibility of Mrs Reding, the competent Commissioner.

As regards online content, my concern is that the timetable will not allow the European Parliament to intervene and the recommendation, if it comes, will come in December, where the custom has been that in the last six months no new co-decision procedures can be launched. We will therefore find ourselves with a recommendation which, due to the power of the Commission and how it can influence the Court of Justice if there are disputes at a later stage, will undoubtedly have an effect, even though it is not a legal text. That is why we are trying as hard as possible to take a stand and the national ministers will also be taking a stand by the end of the year. The European Parliament has set up a working group on authors' rights, which I chair, and we will try to ensure that our voice is heard, despite that not being possible through the institutional mechanism.

Sylvain PASQUA

I cannot comment on Mrs Reding's choice of people as she is not my Commissioner. However, as a DG, we wish to enter into a dialogue with the sector. When you are working with 27 member states in Brussels, it is very difficult to establish a direct relationship with the sector. Nevertheless, we have undertaken an online consultation and held a forum in Lisbon, and the members of our platform were selected following a call for expressions of interest. While a large number of federations and associations are active at the European level, in Brussels it is very difficult to hear the message from the sector. To help with this, we are trying to improve our platforms, as we do not always have the best people on them.

Jacques TOUBON

As regards Mrs Reding, what we are talking about here is online content and there has been a communication, followed by a consultation, on which many people sent in contributions, including Governments. In line with regular procedures, the Commission prepared a recommendation and in doing so Mrs Reding submitted a synthesis of all the consultations that took place at the beginning of the year to the platform that we are talking about. What shocked us was that she said that there was no point putting on the platform people whose point of view she knew in advance. Nevertheless, I have a lot of esteem for Mrs Reding because she looked very positively on the cultural sector.

From the floor

I would like to raise a question on vertical concentration i.e. the commercial agreements reached between the important players in the music sector that lead to huge space in distribution channels such as retail and radio to the detriment of micro and SMEs. For example should NRJ and M6 also be record labels? Are there not competition issues here?.

Isabelle WEKSTEIN

You are right. These questions were raised in front of the DGCCRF and the European Commission. It shouldn't be the case that a television channel like M6 owns its own record label. Having said this we have not had particularly favourable responses so far. In the same way a number of similar examples have been provided to the authorities on the harmful consequences of concentration on diversity, again, with no real success. For example, we were told that there was no link between the short programmes broadcast on television channels – bearing in mind that it was these television channels which had their own production houses. Following the exit of Bertelsmann from SonyBMG we tried to raise the issue of the risks of the control of the music and the physical media. Our remarks were not taken into account.

Jacques TOUBON

It is a real definition of independence and there is a rule in France where the principle is that there is a separation between the broadcaster and the producer. We therefore need to be very careful because this may have an impact on the ownership of artistic works in the future. Some people say that using an artistic work should not belong to just the independent producer, but to the person who has made the investment to make that production possible – that is, the broadcaster. We can see the economic reason for this, but there is also a gap in the European system of copyright and IPR. This brings us once again to the copyright model where the author/producer has to be paid for their work and the producer can get no income from how his work is used and have no control over its use. Given the current financial crisis, this could have an impact in terms of restricting credit. Isabelle said that independent producers were very vulnerable to mergers and that is a point of concern. While the current crisis might not result in an actual recession, growth could be stalled for a few months and independent producers will need protection.

Laurent VALLET

When it rains heavily, it is easier to protect yourself from the rain when you are small. Periods of crises are when creativity, inventiveness and mobility have an even greater added value and while I would not say that you need a crisis to bring about creativity, in a crisis, banks should not start to squeeze overdrafts for smaller enterprises.

Jacques TOUBON

As regards a declaration on this notion of positive discrimination, which entails some form of consensus, all measures on positive discrimination clash with the principle of state aid. The nationalisation of banks was announced overnight and the French President also announced the creation of a fund for action. DG 4 rules can therefore no longer be seen in the same light. Therefore, if there is political will to protect enterprises in the time of an emergency like this and with the background of such a rigid system as state aids, we should be able to reach some surprising conclusions.

There will be victims in the crisis, but the interesting thing is that we have the ability to react and respond. However, sometimes people do not accept that rules should be adapted to reality. We can be more fortunate with national competition rules at times, although they can still work in abstract terms. The risk is that we might very well end up with decisions handed down by the Court of Justice, which will call the procedure into question and the fact that it is inadequate to cope with certain economic realities and with cultural realities in particular. We therefore need to

really fight against the Commission's will to subject state aids to their application in the field to cultural tests, where it could be the tax inspector who decides whether what you are doing is economic or cultural and a work of art or the work of a carpenter. This is something that we need to defend.

There is no way of measuring culture. We need to make sure that people buy books and go to the cinema, and the point is not to create a system where reproduction activities would be more important than creative activities. That is at the core of our debate on infringements to IPRs.

From the floor, Editions Black-Out

We are an independent organisation with a retail outlet and are part of the network for broadcasting on digital versatile disk (DVD) and digital. There are many discriminatory practices for independent companies in the video sector and I would like to hear your opinions on the following example. Fnac is currently entering into agreements with the major players to make DVDs of classical heritage films available only through Fnac's retail outlets. Are these types of measure permissible?

Isabelle WEKSTEIN

This could be part of what could be called discriminatory measures. There is a whole gamut of legal instruments in France and unless these practices are justified, they are listed as harmful, discriminatory practices. We therefore need to know exactly what we are talking about. However, as you have presented it, I think that it is something that could be criticised under French competition law.

Jacques TOUBON

You have already taken a big step forward through creating your network.

From the floor

Could you explain the role of the Independent Music Publishers and Labels Association (IMPALA)?

Isabelle WEKSTEIN

IMPALA initiated these arenas. They are an association with 3,500 independent companies in Europe and they strive to preserve these companies. They have been very active with the European Commission and have tried to negotiate a redistribution of rights attributions in mergers. IMPALA does not try to oppose these mergers head on – and sometimes they are unavoidable – but attempts to bring in accompanying measures to the mergers that offer solutions. It could also be a case of seeking access to the market for compilations for independent companies. Additionally, it could involve the creation of a digital platform. It is therefore about this network of independent companies.

Jacques TOUBON

It is also very active in lobbying at the European level. We have a very large number of organisations, representing enterprises, the trade, workers, musicians and film producers and

directors. IMPALA is an organisation that took an international, European dimension and it tries to get in touch with different levels of decision-makers. It has developed a tremendous amount of know-how and that is what makes it effective.

Michel LAMBOT

It is more than political lobbying and is about trying to ensure that access to copyright for independent producers should not be discriminatory. One very bizarre fact in European policy is that they try to create European champions and they would like there to be one European champion in the disk field.

Jacques TOUBON

IMPALA represents independent companies, but there are very different views as regards artistic and intellectual property. As a producer, IMPALA has problems with those who are entitled to copyright and management companies. Some people suggest that the solution will be in a merger into one or two big groups for the protection of copyright. In other sectors, SMEs are represented by relevant organisations, but when there is a subject of dispute, we are faced by the big groups who define where production should go.

I think that the cultural sector has one main strength, which is that independent companies can be as representative if not more representative of the sector than integrated companies. The idea is therefore to promote the movement of SMEs and consider having a law for SMEs that would originate from the Commission.

From the floor

I belong to the union representing producers of video music. We are very small companies and are seen as providers of services. For independents, there are a number of small things that are moving ahead. However, we are still considered to be providers of services and I would like your views on that. We have no copyright, even though we contribute the money that is given to us by the CNC.

Laurent VALLET

As regards your eligibility to IFIC, there is no problem, but I assume that not being recognised as a publisher poses other problems.

Isabelle WEKSTEIN

I am aware of the problem as I work on these issues and there is a scandalous anomaly here in that producers of video clips who are responsible for ensuring that projects are completed, invest money and help the director, with whom they often have an exclusivity contract, are considered as such, and this was not the case in the past. There has been a change in the contractual situation and they are considered as pure providers of services and have no copyright. There is something on producers of videograms in the text on intellectual property rights and there is therefore a gap between the legislation and the actual situation. This deprives people of their rights and is a ridiculous situation.

Edmond JANSSEN, L'Autre Livre

I belong to an association of independent book publishers. Is positive discrimination like applying a sticking plaster and is there not something unspoken here by trying to reconcile free competition and the free circulation of intellectual works and so on? I would say that there is a lot of hypocrisy when people talk about independence.

Jacques TOUBON

This is all part of the game. The only alternative is the union of writers of the former Soviet Union. The whole difficulty of a cultural policy like the French cultural policy for all areas, particularly for fragile sectors such as publishing and books, is exactly what you have just said – reconciling two environments, two approaches and two requirements. I do not think that the preservation of an independent sector where people would come and bow down would be positive.

Our work should enable the independents throughout the sector to become part of the economic approach. What we need to address is the idea of *haute lecture*, which aims at appreciating the quality of the work rather than the market, with the ultimate aim of educating the public at large. This can be easily done, depending on the specific moment in time, and, as far as music is concerned, it also depends to a large extent on the context. We can more or less control the European context, but have less control internationally.

As I said earlier, this is all about ensuring that my freedom is other people's freedom and it is out of the question that economic freedom should emasculate freedom of creation. That is where the difficulty is in our work. Everything ends up with politicians at the national or European level and there is a constant tension between the idea of the glass being half full or half empty. In the current circumstances, I believe that there is a move towards a change in mentalities and towards models that are socially and culturally closer to what we would hope for. Of course – and this is in the declaration – we need to preserve the strength of intellectual and artistic property, which is the foundation of the whole cultural economy.

Closing Session

Michel LAMBOT**President, Impala**

The questions and answers in the workshops were of a very high quality. I moderated a panel discussion during which people from the different sectors presented their problems. Surprisingly, the different cultural sectors encounter the same problems regarding digital media, and the change in the circulation of works of art and text.

We should approach Brussels together. It is very useful to have a common project together as opposed to alone.

Max ARMANET

Workshop 1 - Promotion of Cultural Diversity

Overview

The theme of the first workshop concerned the promotion of cultural diversity by SMEs. Other themes included the problem of size, and a consensus amongst publishers and distributors of music and cinema that size is not important for dynamism; but rather strength creates size. Promoting independence is crucial for diversity and thus quality. Though smaller than popular broadcasts, independents can support an industry. An example is the subjective choices of independent bookstore owners that create the fabric of literature.

Niche Stores

The law on the single price of books created a big discussion of relevance to other industries. 20 years ago there were as many music stores as bookstores. There are 3,000 independent bookstores today and only 50 independent music stores. Regulation may be disparaged, but the financial crisis has opened the opportunity for the government to take measures. The French government presides over the European Council and those who before promoted deregulation now call for the public authorities to regulate.

Europe

There is consensus. A representative of the European Commission requested an initiative from politicians. Cultural diversity, as one of the major parameters of European construction, can only be initiated through true political will.

Similarly, Spain, like France, which also adopted a single price, is very pleased, and from a competitive point of view, the price of books has not increased relative to the UK, where the network of independent bookstores has practically disappeared.

Diversity is important for cultural goods. Cultural goods are a mode of life, expressing something deeper, spiritual, and transcendent. It is necessary to understand there is a time for living, and this change in paradigm is important.

Europe has a role. People demand more from Europe as a force for protection. The community representative was very open to such ideas and has indicated that 90% of aid to cultural enterprises goes to SMEs. Independence is related to size. Alongside the major groups there is a need to keep a network of smaller, more reactive, more independent companies.

Initiatives

One should be able to facilitate initiatives. One should not ask the state to do things, but to help, to create a favourable context. Instead of subsidies, people require incentives to encourage this virtuous circle of diversity. France could have appeared as isolated in the discussions on these issues. However, people have realised that the presence of public authority is a guarantee of freedom of expression and liberty.

Frédéric GOLDSMITH**Workshop 2 – Digital Technology****Overview**

Workshop number two was on digital technology. There was a real consensus to highlight digital changes: in cinema theatres for example, digital technologies may offer savings. Web 2.0 generates excitement. Viral promotion decreases promotion costs. Legitimate downloading brings revenue. People discussed Deezer, a streaming site, which apparently decreased peoples desire to illegally download. In audiovisuals, there are video on demand (VOD) offers, amongst others, such as streaming sales, etc.

Europe

France has a lot to offer. There are over 40 VOD sites. There are a lot of initiatives in the area of books in Denmark and Spain with book downloading possibilities. Terminals are being developed. A lot is going on

Challenges

There are also however, considerable challenges. These can be overcome with resources.

To mention a few: In digital broadcasting, 15,000 theatres must be equipped. With inadequate resources many will be lost. One has to ensure the development of legitimate downloading which will increase the size of the market and the growth of the cultural sector, thus increasing its ability to create.

Another challenge is to respect fundamental ownership rights and the right to be paid for one's work. Another is access to the market. A number of restrictions were presented. For example, Google: 85% of people concentrate on the first three results in Google. When faced with multiple offers many may choose only the most popular.

Regulation and Incentives

There is a will to move ahead using regulation and incentives, and assistance from public authorities. Time is required to develop sustainable activities, and for talent to emerge. A grouping of individual theatres would be helpful to create an original system, to fight strong organisations and to encourage the authorities to help in developing digital equipment, and legal downloading.

We discussed Internet law and moving away from legal enforcement in favour of educational effort. The law facilitates a transaction system and the protection of personal data.

Cooperation is necessary between the three parties to the internet: the rights holders, users, and Internet service providers (ISP). A database with metadata may be developed. It is important to have information about a product to give it more visibility.

Long Tail Myth

There was some discussion of the long tail myth. Many small references may lead to a large part of the sales. One should enable this to be maintained and exposed to a maximum of diversity. There was also a must carry proposal, ensuring platforms have an obligation to display products so that customers can have access to an offer focused on diversity. This is a worthwhile approach for Europe.

Concluding Points

The digitisation of work in the publishing industry is a priority. One should encourage digitization.

The producer will exist tomorrow. We continue to have an association between the author and producer. We need economic players who will continue to be involved.

Finally, one should consider graphic works and plastic, as it is difficult for them to find mechanisms of support.

Jacques TOUBON

Workshop 3 – Requirements of Cultural Enterprises

Overview

Workshop number three focused on the requirements of cultural enterprises. We must avoid both horizontal and vertical mergers. For that purpose, public authorities must have advantageous policies for smaller cultural enterprises. How can we combine market forces and the interplay of the economy with the advantages of digital technology, and match this with the needs of authors, publishers, and ultimately broadcasters and distributors? One needs freedom and independence, the essence of artistic production and creativity.

We have expanded on the role of IFCIC, which allows bigger enterprises to have the right financing and loan guarantees. This example of IFCIC may be inspirational for what the EU is likely to prepare.

A tax lawyer explained how we should have a reduced rate of VAT for certain enterprises; as already exists for books. Another lawyer suggested that fair competition between all companies be protected by regulating mergers.

Europe

We ended this overview with the representative of the director general for education and culture with the European Commission (EC), who explained of the futility of speaking of a European cultural policy. The EU has no competence in this area.

Since 1993, European treaties have allowed for national programs to be supported by the community. Cultural programs can be developed to support enterprises and encourage mobility and training. The European cultural policy was defined by exemptions, exceptions, niches and notches, according to the governing principles of the EC: the single market.

There was in-depth work to allow countries such as France to develop new initiatives to foster positive discrimination for independent cultural SMEs. State Aid should be granted despite the rules of competition, if the purpose includes: cultural diversity, independence, freedom of expression, creation, and pluralism. Steps could be taken to impede the free movement of goods, such as the provisions to promote national works or European works on TV networks, or to promote European cinema, as in the directive 'cinema without borders'.

Changing Attitudes

Attitudes are changing. These specific policies can help solve the economic problems of the EU. States like France could most certainly support their action in the EU, which is no longer systemically hostile to such policies; specifically policies favouring independent production.

Unfortunately mergers in the music industry have occurred despite the successful litigation of IMPALA. We also discussed vertical measures for production and broadcasting. The message of the panel is that we have today a very real opening for policies supporting SMEs. The most effective policy would be a reduction in indirect taxation on cultural goods and services. We need to mobilise and pool our efforts.

Isabelle WEKSTEIN

Annex H

The conclusion of our workshop is that positive discrimination for independent companies in financing and regulation is well worthwhile.

We had a presentation by a tax lawyer, who explained that Annex H allows for books and cultural industries to have global intellectual property rights (IPR). The reduced VAT rate for cultural goods can be achieved. Current regulations are central. In presentations we saw that even if there are rules, they are not always applied by the courts.

It is a good idea to have a single price for books – something which is being questioned and attacked. We absolutely need to protect and maintain what we currently have in the regulations.

Patrick ZELNIK

We should be able to harmonise the reduced rate, as copyright comes under VAT. Whatever the medium - physical or online - we could claim a reduced rate, which is already in Annex H.

Jacques TOUBON

What was achieved for books can be interpreted for other sectors. The cost of the good or service corresponding to compensation for IPR, could, since it's a cross cutting, horizontal measure in Annex H, be taxed at a reduced rate. It is a potential idea. Instead of having a head on collision or deadlock, we might propose changes to Annex H. If we could work within Annex H, we would no longer be in the same situation. That would be quite clever.

Declaration of the European Arena for Independence

Michel LAMBOT

There is an urgent requirement to:

1. Ensure a specific status for independent cultural SMEs validated at European level and create an environment fostering the creation and development of cultural SMEs. Cultural SMEs should have special support measures and positive discrimination. Existing provisions such as the single price for books should be preserved in a digital environment.

Max ARMANET

2. Recognise the essential role of independent companies in discovering new talents and breaking new ground, and in the emergence of new aesthetics in the musical sector. The independents publish 80% of new film. 60% of concerts are organised by them and they represent 50% of jobs.

Isabelle WEKSTEIN

3. Guarantee a high level of protection for authors, performing artists, producers, and publishers.

4. Regulate the digital environment by establishing mechanisms based on the cooperation of all concerned actors, in particular telecommunications. Those entitled to copyright, voting and implementing the creativity and internet law should guarantee the balance between entitlements and freedom for all concerned.

Frédéric GOLDSMITH

5. Ensure independent productions by inter-professional agreements are shown and displayed in the media, the shops, cinemas, and new digital media.

Max ARMANET

6. Propose new rules and practices for competition law and mergers. Define corresponding measures for both vertical and horizontal mergers.

Olga MARTIN SANCHO

7. Establish financial tools and social and tax measures at European and National level. In the current financial context, special attention should be given to access to credit for SMEs and for SSMEs. By reinforcing institutions such as IFCIC or Kultur Invest, it is necessary to facilitate dialogue and communication between financial and cultural enterprises

Jacques TOUBON

8. Promote the legal offer of works through reduced rates of VAT on cultural products, in both physical and online markets.

9. Invest EUR1.5 billion a year from the EU budget, corresponding to the contribution of that sector to European GDP. Priority should be granted to SMEs and SSMEs and equal 1.5% of the EU budget.

10. Establish a system of positive discrimination for independent companies to facilitate the purchase of advertising space and access to new media.

Patrick ZELNIK

All the professional organizations involved should sign this declaration. It was decided that we would establish a liaison bureau, most likely in Brussels, to represent the three sectors: image, music and writing.

Concluding Remarks

Christine ALBANEL

Minister of Culture and Communication

It is very important for the Ministry of Culture to assist SMEs as they play a crucial role in providing diversity, and in the economy. There is a commitment we should make to go further at a national level, with initiatives for bookstores, music and film making.

What is important is that all sectors meet and engage. Cooperation is never easy but it is very beneficial to have a productive dialogue between sectors. It is a very good idea to have a liaison bureau.

The declaration is very practical. It is ambitious, specific, and pragmatic, and may help to establish the right conditions and environment. This is what's expected of the state at present, not just decisions or subsidies.

The single price law is often considered as something sacred that can not be touched, but there are many initiatives and amendments to laws. It is very important to preserve its existence although that doesn't mean that there will be no change at all.

I asked Hervé Gaymard to assess possible evolutions in the single price law. If we do nothing we are fragile and vulnerable. By acting we can find the best answers and make progress.

I welcome decisions to preserve copyrights, to fight against piracy. The law on creativity and the internet will be submitted to the Senate, and this declaration will be of much value. The first victims are often the SMEs, independent companies, authors and creators. This declaration is one of the stronger points.

I also welcome the idea to ensure that independent productions are present in distribution networks.

Taxation is especially important. What was said about VAT by Jacques Toubon and Isabel Wekstein is very good news, and if we have consensus it would be very effective and intelligent.

Mindsets have changed within Europe and we realize it is quite legitimate for state policy to be promoted with state aid when in the higher interest, such as in the interest of diversity and cultural development.

Can we have a status for cultural SMEs? Things we could not say before, we can now. There is a window open to us, both politically and psychologically. We are at a very favourable point in time.