



D4.2 – Coping Strategies for Creative Non-Mainstream Filmmakers and Code of Best Practices

Project: Reviving, Boosting, Optimising and Transforming European Film Competitiveness - REBOOT

Grant Agreement: 101094796 - HORIZON-CL2-2022-HERITAGE-01

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Object D4.2 - Coping Strategies for Creative Non-Mainstream Filmmakers and Code of Best Practices

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Description	<i>Deliverable 4.2 - Coping Strategies for Creative Non-Mainstream Filmmakers and Codes of best Practices</i> addresses the legal challenges faced by European cinema professionals and presents the key research outputs of the Work Package 4 of the REBOOT project, which concentrates on the strategies of European cinema professionals. The deliverable consists of a comprehensive review of the EU policy documents, the scholarly literature to map the current legal challenges experienced by European cinema professionals, especially those identify as 'non-mainstream' filmmakers, as well as the EU legislative framework to identify the potential normative solutions to such legal hurdles. Built upon this scholarly effort, the deliverable provides a 'Code of Best Practices'



	(CoBPs) directed at cinema professionals and designed to facilitate their creative endeavours. The CoBPs presented herein constitute a comprehensive set of guidelines collaboratively developed by legal scholars and cinema professionals, resulting from theoretical and qualitative research. Consequently, the CoBPs serve as a valuable tool for the industry, outlining the legal challenges frequently encountered by market actors or cinema professionals involved in the international distribution and promotion of European cinematographic content. Thus, the CoBPs herein offer legally sound, experience-based, and practical solutions to address these challenges.
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EXECUTIVE SUMMARY

The European Film Industry (hereinafter 'EFI') operates within a legal framework that is informed by and governed through a multitude of laws and regulations. These include legal instruments administered by international organisations (e.g. World Intellectual Property Organisation, World Trade Organisation), regional organisations (i.e. Council of Europe), the European Union (hereinafter 'EU'), as well as the national copyright and media laws of the EU Member States. The involvement of numerous stakeholders in the policy- and law-making processes concerning the EFI results in a complex legal landscape, which regulates but also frequently complicates the international distribution and promotion of European cinematographic works within and across the borders of the EU.

Numerous legal challenges pertaining to the exploitation of European cinematographic works have been brought to the attention of EU policymakers and legislators. Nonetheless, these challenges have persisted in casting a shadow on the operations of the EFI over the past two decades. Particularly considering technological advancements and the platformisation phenomenon, there exists an urgent need to address these issues by considering the experiences, perspectives, and suggestions of cinema professionals who encounter these challenges and frequently develop practical strategies to mitigate the adverse impacts of such legal obstacles on the EFI.

This document, Deliverable 4.2, focuses on the legal challenges experienced by European cinema professionals and presents the key research outputs of the REBOOT project in this regard. It consists of a 'Code of Best Practices' (hereinafter 'CoBPs') addressed to cinema professionals to assist their creative practices. The CoBPs presented herein constitute a set of guidelines collaboratively developed by legal scholars and cinema professionals, arising from theoretical and qualitative research. Accordingly, the CoBPs serve as a tool for the industry, delineating the legal challenges frequently encountered by market actors or cinema professionals engaged in the international distribution and promotion of European cinematographic content. Furthermore, the CoBPs provide legally robust, experience-based, practical solutions to address these challenges.

The guidelines addressed to cinema professionals and cumulatively presented as the CoBPs are as follows:

1. Be sure to have a profound understanding of 'copyright' and your rights as an author.
2. Consider joining professional networks and organisations, including regional and international organisations, to expand your knowledge of copyright in countries other than your own.



3. Be sure to consolidate and publicly state your 'authorship' or 'co-authorship' of your literary, artistic, audiovisual/cinematographic works—also to prevent your works from being 'orphaned'.
4. Develop a concrete exploitation and dissemination strategy before launching the production phase of your audiovisual/cinematographic work.
5. Negotiate the terms and conditions of the distribution agreements you conclude with third parties.

(Pelin Turan & Caterina Sganga, 2025)



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LIST OF ABBREVIATIONS

AI	Artificial Intelligence
AV sector/market	Audiovisual Sector/Market
AVMSD	Audiovisual Media Services Directive (Directive 2010/13/EU)
CDSMD	Copyright in the Digital Single Market Directive (Directive (EU) 2019/790)
CEPi	Centre for European Audiovisual Production
CHIs	Cultural Heritage Institutions
CJEU	Court of Justice of the European Union
CMO(s)	Collective Management Organisation(s)
CoBPs	Code of Best Practices
CoE	Council of Europe
D3.1	Deliverable 3.1
D4.2	Deliverable 4.2
DMA	Digital Markets Act (Regulation (EU) 2022/1925)
DSA	Digital Services Act (Regulation (EU) 2022/2065)
E&Ls	Exceptions and Limitations (to Copyright and/or Related Rights)
EAO	European Audiovisual Observatory
EC	European Commission
EFI	European Film Industry
EMI	European Music Industry
EU	European Union
InfoSoc Directive	Information Society Directive (Directive 2001/29/EC)
IP	Intellectual Property
IPRs	Intellectual Property Rights
ISS	Information Society Service
OCSSPs	Online Content-Sharing Service Providers
OSPs	Online Service Providers
OTTs	Over-the-Top (Digital Platforms)
OWD	Orphan Works Directive (Directive 2012/28/EU)



REBOOT	Reviving, Boosting, Optimising and Transforming European Film Competitiveness (Horizon Europe Project)
RLD	Rental and Lending Directive (Directive 2006/115/EC)
RMI	Rights Management Information
SatCab Directive	Satellite and Cable Directive (Council Directive 93/93/EEC, as amended in 2019)
SSSA	Scuola Superiore Sant'Anna
T3.1	Task 3.1
T4.2	Task 4.2
TPMs	Technological Protection Measures
TV	Television
TVWFD	Television Without Frontiers Directive (Council Directive 89/552/EEC)
UC3M	Universidad Carlos III de Madrid
ULIEGE	University of Liège
VLOPs	Very Large Online Platforms
VoD	Video-on-Demand
WP4	Work Package 4
WPs	Work Packages



1 OVERVIEW OF THE PROJECT

The REBOOT project aims to connect the existing strengths, identify and overcome weaknesses and plan for future competitiveness in the fields of policy, practice and experience. More concretely, the project's objectives are, on the one hand, to explore the long-standing strengths and pervasive gaps in European competitiveness and policies for competitiveness. This includes ways of 'measuring', 'analysing' and 'evaluating' the impact of policies and strategic pathways. On the other hand, the project aspires to focus on the active preparation for the future in the area of audiences by exploring audience preferences and their generation, as well as modes of film content production. The latter are elements which today's youth will carry and engage with in the coming decades as makers and consumers, as well as industry and policy leaders. Therefore, the consortium interrogates not only the 'what is' but also the 'what has been' and 'what will be' with fresh lenses.

REBOOT's ambition is to provide a full set of knowledge of the European film industry (hereinafter 'EFI'), which maximises its existing strengths, combined with strategic and tactical dimensions of action for the optimisation of the potential held in European youth public, understood both as emerging audiences and as citizens. Specifically, the ambition of the project combines several dimensions, which reinforce each other but are listed separately for analytical purposes (and in no particular order): **(a)** increasing support for young people's engagement with European film; **(b)** strengthening the place of the European Union (hereinafter 'EU') in the global audiovisual economy, particularly in light of the rise of video-on-demand (hereinafter 'VoD'); **(c)** supporting cultural diversity in the EU film industry; **(d)** addressing the need for a different understanding of competitiveness and relevant indicators in this context; and **(e)** recognising and supporting the importance for the EU of film and, more broadly, of the cultural and creative sector as a geopolitical asset.



2 INTRODUCTION

REBOOT: Reviving, Boosting, Optimising and Transforming European Film Competitiveness (hereinafter ‘the REBOOT project’ or ‘the Project’) is a multidisciplinary research project that brings together a consortium of twelve universities and research institutions across Europe to critically evaluate the current state and competitive power of the EFI within the EU and global audiovisual market (hereinafter ‘AV market’), in order to develop novel strategies to enhance the EFI’s share in the global AV market. Approaching the topic from different disciplinary perspectives, the REBOOT project aims to identify and map the indicators characterising the EFI’s strengths while addressing the various aspects that hinder the EFI from thriving.

In this context, the REBOOT project is committed to understanding the building blocks of ‘competitiveness’, particularly that of the EFI, through a retrospective analysis of the social, policy and legal background against which it is constructed. Building on and updating the defining elements of ‘competitiveness’ within such a multilayered framework, the REBOOT project aims to envision the future trajectories of the EFI and strategise its competitive strength in the European and global AV market. Therefore, the Project not only examines and maps current indicators of internal and international competitiveness but also seeks to identify new measures to evaluate this phenomenon in relation to technological progress, prevailing trends in the preferences and behaviours of key market actors, legislative reforms, and shifts in consumer habits. In doing so, the Project pays special attention to promoting European norms and values that comprise the cornerstones of the EU’s agenda regarding the European audiovisual sector (hereinafter ‘European AV sector’), such as safeguarding media pluralism, protecting cultural and linguistic diversity, and the protection of minors, while reinforcing European culture (COM(1999) 657 final, COM(2001) 0534 final).

Aligned with its goals, the REBOOT project recognises the unique perspectives of various market actors and stakeholders, including cinema professionals involved in different stages of the filmmaking process, consumers of cinematographic content—particularly young audiences—and the EU and national policymakers shaping the policies and legislative framework that inform and regulate the operation of the EFI. With this spirit, the project develops a set of policy tools to enhance the competitive power of the EFI, such as:

- **Policy briefings** to draw the attention of the general public to the EU strategies on the EFI,
- **Policy recommendations** addressed to the EU and national policy-makers to trigger policy and legislative reforms,



- **Code of best practices**, co-developed with cinema professionals, to provide experience-based information and guidance to the members of the EFI at large, and
- **Public engagement and dissemination activities** to share the findings and the abovementioned policy tools of the REBOOT project with greater international and national audiences and stakeholders.

In this framework, this project deliverable is dedicated to developing a ‘Code of Best Practices’ (hereinafter ‘CoBPs’) aimed to support the creative endeavours of the European cinema professionals. Designed as such, this deliverable falls under the research endeavours of Work Package 4 - The framings and strategies of cinema professionals (hereinafter ‘WP4’). Evident from its title, WP4 centralises the perspectives of cinema professionals and aims to provide an in-depth analysis of the interaction of this key stakeholder group with the international and European film markets. In accordance with this overarching objective, WP4’s primary goals are, first and foremost, to comprehend the definitions and complexities of both the ‘international film market’ and the ‘Europeanness’ of the EFI, and second, to identify the primary challenges to the international promotion and competitiveness of the EFI in the global market.

As a pre-requisite to achieving these goals, the REBOOT project in general and WP4 in particular define ‘competitiveness’ by embracing a holistic approach.¹ Having analysed the existing literature in the field, the REBOOT Consortium and WP4 trace the conceptualisation of ‘international promotion’ of European film back to the study conducted by T. Hoefert de Turégano, entitled *‘Public Support for the International Promotion of European Films’*, which was commissioned by the European Audiovisual Observatory (hereinafter ‘EAO’) under the auspices of the Council of Europe (hereinafter ‘CoE’) (see: de Turégano, 2006).

The de Turégano study articulates the ‘international promotion’ of the EFI as reinforcing the visibility of national audiovisual/cinematographic works in ‘countries outside the country of origin of a film’ (de Turégano, 2006). Based on this formulation, the study identifies several indicative criteria

¹ For a comprehensive narrative on the indicators identified by the REBOOT Consortium to update the conceptualisation of the notion of ‘internal promotion’, please refer to the study, titled ‘T3.4 - Promotion of the EFI at the international level: Institutional and policy models across the EU Member States’, which constitutes ‘Part A’ of the following deliverable: Vlassis, A., Bissot, P., Houard, S., Dâmaso, M., Niutta, A., Garcia Levia, M. T., Albornoz, L. A., Vargas Miranda, I., Andriopoulou, I., Turan, P., Pilo, P., Glowacki, M., Mikucki, J., Hiltunen, K., Psychogiopoulou, E., Kandyla, A., Samaras, A., Comerma, L., Sganga, C., Ramadani, G. (2025). Final report on the mapping and EU law of institutional models for the promotion of the EFI. The Reboot Project (Reviving, Boosting, Optimising and Transforming European Film Competitiveness – REBOOT), funded by the European Union's Horizon Europe Research and Innovation programme under Grant Agreement No.101094769. <https://doi.org/10.5281/zenodo.15781266>.



to scrutinise the ways in which the EFI can be promoted in the European Single Market and international forums.

Upon the review of the EU documents and initiatives encouraging the empowerment of the EFI and the circulation of European audiovisual/cinematographic works at the international level,² de Turégano analyses the status of the EFI at the time and international promotion of the national film industries of the major suppliers of the EFI³, as well as the smaller market powers⁴, by focusing on the following indicators:

(1) the opportunities provided to film producers and distributors to access and participate in major international events, principally, international film festivals,

(2) the means to augment the visibility of national content in the international arena, such as presentations at high-profile press or public events,

(3) the methods to foster the theatrical distribution of national content via the inclusion of such in the programmes of foreign movie theatres, while creating strategies to attract the attention of young audiences to such content,

(4) the incentives for networking among film operators to establish transnational business relations,

(5) the initiatives to support and promote the up-and-coming talents of the EFI,

(6) the allocation of public funds or setting up financial support schemes to help achieve the aforementioned goals, in particular, film professionals' attendance at international film festivals; and last but not least,

(7) the mechanisms to make cinema-related information available to the public at large, mainly by compiling and visualising relevant data, for instance, via online and open-access databases.

The de Turégano study constitutes not only an authoritative source in the field but also provides a reference point for the REBOOT Consortium to investigate the transformation of the concept and its components since the publication of the study in 2006. The definition formulated and indicators identified by de Turégano, as mentioned earlier, constitute merely a starting point for the REBOOT Consortium, considering that various tasks organised in disparate work packages, including those under WP4, aspire to advance this articulation and contribute to the adaptation of 'promotion' and

² The study selects and explores the following EU initiatives addressed to the advancement and promotion of the EFI: the MEDIA programme, European Film Promotion, European Coordination of Film Festivals, Europa Cinemas, and MEDIA Salles.

³ These countries are France, Germany, Spain, Italy, and United Kingdom.

⁴ These countries are Denmark, the Netherlands and Switzerland.



‘competitiveness’ to the realities of the modern times and the altering needs and expectations of the key stakeholders of the EFI.

Drawing upon the indicators identified within the de Turégano study and aligned with the overarching aims and objectives of WP4, Task 4.2 (hereinafter ‘T4.2’), led by Scuola Superiore Sant’Anna (hereinafter ‘SSSA’), aspires to understand the reasons that stem from the European legislative framework and complicate the availability and accessibility of European audiovisual/cinematographic works in the EU and international AV market.

Aligned with the overarching aims and objectives of WP4, T4.2 is dedicated to bringing to the fore the perspectives of ‘non-mainstream’ cinema professionals to comprehend the market-related needs and expectations of this specific cohort of European cinema professionals. In this regard, T4.2 investigates the perspectives of filmmakers who stand at the periphery of the modern film industry. It aims to vocalise and highlight the specificities of the necessities of non-mainstream cinema professionals’ creative activities and the obstacles to the promotion of such cultural content by focusing on their engagement with the distribution and promotion of their creative output.

While concentrating on the viewpoints of a particular group of stakeholders, T4.2 refrains from establishing an authoritative definition of ‘non-mainstream’ filmmakers. Instead, it focuses on categories of cinema professionals whose works are directed at a specific audience and are not intended to be major productions or blockbusters. Such categories encompass filmmakers and producers of short films and documentaries, independent or arthouse films, or those who are members of (national or linguistic) minority groups, or who produce films in minority languages.

Another factor that sets the scope of T4.2’s research activities is the lens through which it examines non-mainstream filmmakers’ market needs and expectations. T4.2 complements the analysis undertaken by various other tasks organised under WP4 with a legal one. Therefore, it explores how the European legal framework interacts with the creative practices and market behaviours of the selected stakeholder groups.

In this regard, this project deliverable, Deliverable 4.2 - Coping Strategies of Non-Mainstream Filmmakers and Code of Best Practices (hereinafter ‘D4.2’), addresses the European legal framework that informs and regulates the theatrical and online distribution of cinematographic works and the use of cinematographic content for promotional purposes. These aspects are also well-aligned with the de Turégano study and correspond to the first and third indicators mentioned therein: the distribution of European audiovisual/cinematographic works for their exhibition at international events (e.g. international film festivals), and the methods to foster the theatrical



distribution of European audiovisual/cinematographic works within and across the borders of the EU.

Against this backdrop, and in line with the aims and objectives of WP4 in general and T4.2 in particular, this project deliverable comprises five sections.

Section 1 briefly explained the overarching aims and objectives of the REBOOT project.

Section 2 herein contextualises the research endeavours undertaken by T4.2 and D4.2 vis-à-vis the goals set by and work organised under WP4. Additionally, it includes a thematic overview of this document to help readers navigate through the different sections of the report.

Section 3 constitutes the backbone of this report, given that it sets the theoretical groundwork of the research conducted in the context of T4.2, including an overview of the EU public policy documents and a review of the scholarly literature. It also explains the methodology adopted to collect and analyse data to produce the CoBPs consolidated in this deliverable, D4.2.

To do so, Sub-section 3.1 explains the aims and objectives of T4.2 and D4.2 by clarifying the ways in which the CoBPs herein might help non-mainstream filmmakers cope with the legal barriers identified in the literature. It also sets the scope of the topic investigated herein: the interplay of the European copyright and media law regime, including the rules impacting the public domain, on the day-to-day creative practices of non-mainstream filmmakers. The following part, Sub-section 3.2, offers an insight into methods employed to collect data and to triangulate and analyse the collected data. Then, Sub-section 3.3 provides a systematic review of the existing literature dedicated to or elaborating on the challenges imposed by the intricacy of the copyright rules and legal frameworks upon the creative practices of non-mainstream filmmakers as well as the negative implications of the operation of cultural heritage institutions (hereinafter 'CHIs') and the market behaviours of the private actors, who hold copyright or related rights over cultural content essential to the creative works of non-mainstream filmmakers/producers. The research outcomes of the literature reviews are systematised and thematically presented within the sub-section. Drawing upon these key findings. Sub-section 3.4 triangulates the data collected through the review of the literature by analysing the identified issues through the lens of the EU copyright and media laws to showcase the resolution or continuity of the aforementioned issues in the current European socio-legal landscape.

Section 4, by building upon the research outcomes of Section 3, presents the CoBPs. The CoBPs are designed and presented as a single 'code' consisting of recommendations addressed to all categories of the non-mainstream filmmakers put under the lens herein.

Finally, Section 5 provides the concluding remarks to the report and the CoBPs.



3 BACKGROUND OF THE REPORT AND CODE OF BEST PRACTICES

Audiovisual media, including cinematography, have been integral to the EU's economic, cultural, and social policy agenda over the last three decades. The EU-wide interest in the European AV sector stems from the multifaceted features of audiovisual/cinematographic work, which are projected upon the EU policymakers' multilayered approach to such content.

As showcased by the EU public policy documents issued in the 1980s and onward, audiovisual/cinematographic works, on the one hand, represent an economic good conveying an artistic and cultural expression of their authors (Resolution 86/C 320/04, Council Resolution 94/C 85/02, Communication 2013/C 332/01). On the other hand, these works are acknowledged as media to record, safeguard and transfer disparate European societies' collective memory, communal history, and cultural and social values (Resolution 86/C 320/04, Council Resolution 94/C 85/02, Communication 2013/C 332/01). Given their capacity to encapsulate such an abundance of information of historical and cultural significance, audiovisual/cinematographic works are also deemed as a catalyser to consolidate a common European identity, along with the diversity of cultures encompassed within the EU (Resolution 86/C 320/04, Council Resolution 2000/C 193/01, Communication 2013/C 332/01, Opinion 2011/C 248/25, European Parliament Resolution 2013/C 153 E/12).

These multiple layers of audiovisual/cinematographic works have inspired and shaped the Union's strategies and action plans regarding the European AV sector. From an economic or market-oriented perspective, the Union's public policy agenda, in line with the founding treaties of the EU, centralises 'the free movement of persons and products related to audiovisual activities' (Resolution 86/C 320/04, also see Green Paper COM(2010) 183 final). This agenda item not only underlines the audiovisual/cinematographic work's economic value to (formerly Internal Market, and more recently) the Single Market but also reassures the EU's devotion to enabling the circulation of related goods and services, as well as cinema professionals, within the borders of the EU, as guaranteed by the freedoms of the European Single Market (Green Paper COM(2010) 183 final). From a cultural and social perspective, the EU policies revolving around the European audiovisual and cinema sector advocate for 'a strong audiovisual industry [that is] able to compete with the large overseas industries in this field', in order to foster creativity within Europe whilst reinforcing the common European identity at home and abroad (Resolution 86/C 320/04, European Parliament Resolution 2013/C 153 E/12). As a means to operationalise these market-driven as well as culturally- and



socially-informed goals, the EU policymakers refer to the promotion and distribution of European audiovisual/cinematographic works not only on a European level but also on a global scale.

The international promotion and distribution of European audiovisual/cinematographic works was initially mentioned in the European Council's Resolution of 13 November 1986 (Resolution 86/C 320/04). The EU initiatives and efforts in this regard have gained impetus since then, especially with the declaration of 1988 as the 'European Cinema and Television Year' (Resolution 86/C 320/04). The Union's public policy history consists of a multitude of initiatives addressing different methods to accelerate the internationalisation of the European AV sector and the EFI vis-à-vis the particularities of the relevant era.

The first wave of public policies commenced with the Council Resolution of 5 November 1993 and encouraged the dissemination of European cinematographic works, including the films that are part of the European film heritage, and the exhibition of such works in European theatres and film festivals (Council Resolution 94/C 85/02, also see Council Resolution 2000/C 193/01). To streamline several *ad hoc* initiatives at the national level, the EU eventually launched the MEDIA Programme in 1990, initially for the period between 1991-1995, which was renewed several times upon its expiry (Council Decision 90/695/EEC, also see Council Decision 95/564/EC). The MEDIA program constitutes a milestone, if not a turning point, in the chronology of the Union policies concerning the European AV sector and EFI. This programme is of pivotal importance to the internationalisation of the European AV sector and EFI as it 'encourages the circulation and promotion of European films' (Communication 2013/C 332/2).

The second wave of policies, which were developed under the auspices of the MEDIA programme, concentrated on the new ways in which European cinematographic work can be produced and exploited with the aid of technology and the Internet (Council Decision 95/564/EC, Decision No 163/2001/EC, Decision No 1718/2006/EC, Regulation (EU) 2021/818). In this regard, Council Conclusions of 18 November 2010 welcomed and appraised the online distribution of European cinematographic works, also by emphasising the suitability and probability of online platforms to include art-house movies, heritage films, and films produced in the languages spoken by national or regional minorities in their catalogues, hence providing access to and promoting such 'non-mainstream' works (Council Conclusions 2010/C 323/05, also see Green Paper COM(2010) 183 final, Opinion 2011/C 104/07, European Parliament Resolution 2013/C 153 E/12). The succeeding public policy documents further emphasised the possible positive impact of online distribution opportunities on European social cohesion and cultural and linguistic diversity, but also on the global competitiveness of European cinematography (Opinion 2011/C 248/25, European



Parliament Resolution 2013/C 153 E/12, Council Conclusions 2019/C 192/05, Council Conclusions 2021/C 501 I/02).

More recently, the deployment of artificial intelligence (hereinafter 'AI') and AI-based recommender systems by online platforms and the impact of such technology on the visibility and cross-border circulation of European cinematographic content were brought to the public policy forefront (Council Conclusions 2019/C 192/05, European Parliament Resolution 2020/2017 (INI)). Evident from the Union's policies since 2019, the EU policymaker acknowledges and appreciates the novel contribution of automated decision-making algorithms to enhance the user experience by recommending content tailored to the user's preferences and display history (European Parliament Resolution 2020/2017 (INI)). Nevertheless, the emerging need to take measures against the risk of algorithmic biases and, as a consequence, the discrimination of certain content due to the prioritisation of certain content over others has also been highlighted in the same policies (European Parliament Resolution 2020/2017 (INI), Council Conclusions 2022/C 160/06).

The public policy items mentioned above offer a thematic snapshot concerning the European AV sector and the EFI rather than an exhaustive list of policy items. This policy overview, indeed, comprises the mileposts of the Union's agenda on internationalisation, hence the international promotion and distribution of European audiovisual/cinematographic works. In this context, with its periodically renewed mandate, the EU's MEDIA programme, or more precisely its sub-programme, namely Creative Europe and its Media strand, prevails in observing the pressing needs in tandem with the global market trends in the exploitation of cinematographic content and continues supporting the European audiovisual and cinema landscape (Regulation (EU) 2021/818).

While enhancing 'the circulation, promotion, online distribution and theatrical distribution of European audiovisual works within the Union and internationally in the new digital environment' constitutes one of the three pillars of the Creative Europe programme's Media strand (Regulation (EU) 2021/818), this endeavour is to be pursued in the future under the auspices of the EU's new policy initiative: The Agora EU programme, launched for the 2028-2034 period (Communication COM 550(2025) 550 final).

This section further contextualises the topic at hand based on this overview of Union policies. Sub-section 3.1 begins with a comprehensive review of the existing literature (i.e., books and book chapters, journal articles, studies, and reports) to provide insight into the issues covered in the scholarly literature and grey literature between 2000 and 2025. It complements this narrative by triangulating the literature with the EU public policies and legislative framework. After Subsection 3.1, lists the legal challenges addressed in the literature, Sub-section 3.2 crystallises the aims and



objectives of this document in general and the CoBPs in specific. Then, Sub-section 3.3 explains the eclectic methodology adopted to pursue T4.2 by separately elaborating on the data collection and analysis methods. Finally, Sub-section 3.4 offers, initially, a legal assessment of the issues identified and listed in Subsection 3.1, given the legislative reforms that took place in the EU between 2000 and 2025. This sub-section filters the information extracted from the literature review and presents the key findings of this analytical effort, which lay the groundwork for and constitute the backbone of the final output of this deliverable: the CoBPs.

3.1 Aims and Objectives

The REBOOT project is organised into seven work packages (hereinafter 'WPs'), five of which are allocated to research activities. These packages aim to analyse the current indicators and future trajectories of the EFI's competitiveness through different disciplinary lenses, such as culture and media studies, political science, law, and economics. Among these WPs, WP4 and the research tasks organised under WP4 are dedicated to gaining insight into the underpinnings of the EFI's current challenges that prevent the industry from moving forward and competing on a global scale.

In line with the overarching aims and objectives of the REBOOT project in general and WP4 in particular, T4.2, entitled 'Coping strategies for creative non-mainstream filmmakers and codes of best practices', aims to provide experience- and evidence-based information and guidance on two major aspects of the interplay of EU copyright and media law with the EFI. First, it aspires to enlist the past and current legal hurdles that complicate the international distribution and promotion of European cinematographic works. To do so, T4.2 relies not only on the legal matters already discussed in the scholarly and grey literature but also on the subjective experiences of cinema professionals who pursue their creative activities across Europe. Second, it investigates the ways in which European cinema professionals perceive and apply the EU copyright and media norms, and how they have historically overcome the legal obstacles they experienced.

Based on the information extracted and evidence collected through these research endeavours, T4.2 aspires to pave the way to three major scientific outcomes:

(1) To map and update the copyright- and media law-related obstacles identified and experienced by the key players of the EFI, while also comprehending the underlying reasons for such obstacles,



(2) To identify the legal tools inherent in the EU copyright and media law frameworks and the national copyright and media laws of the selected EU Member States, which might have caused, or which might offer a solution to such challenges, and

(3) To bridge the knowledge gap concerning copyright and media law for the EFI by mitigating the needs and expectations of the cinema professionals with the existing legal framework, while also translating the legal terminology, rules and language into an accessible format via CoBPs for facilitating cinema professionals' compliance with and benefit from the copyright and media law.

3.2 Methodology

The aims and objectives of T4.2 require an eclectic research methodology which would not only help analyse the current state of the matter at hand but also lead to strategizing coping mechanisms to minimise or eliminate the adverse impacts on the international promotion of European cinematographic works.

Aligned with these goals, the data collection method adopted herein combines a systematic review of the existing literature and qualitative methods, specifically semi-structured interviews with a group of cinema professionals. The collected data will be triangulated against the EU public policies and the mapping of the regulatory framework that governs the filmmaking lifecycle and the retail chain, as well as the information extracted from the deliberative exercises held with cinema professionals.

3.2.1 Data Collection

The data collection process is performed through theoretical and desk-based research, specifically a comprehensive and systematic review of EU public policy documents, primary sources of law (e.g., legislation), and secondary sources of law (e.g., books, book chapters, journal articles, studies, reports).

As to the first step of the data collection process, the SSSA research team performed keyword-based research through the official databases of the EU (e.g. EUR-Lex) and several online legal databases to locate and review the public policy documents, legislation and scholarly literature in the field. This phase was followed by an online search to review the publication catalogues of key institutions shaping the EFI ecosystem, such as EAO, and relevant EU-funded projects, such as the



reCreating Europe⁵ project, funded by the Horizon 2020 programme of the EU. These data collection efforts and the review of the EU public policy documents, the scholarly and grey literature were pivotal to identifying, thematically categorising and listing the major issues concerning the interplay of the EU copyright and media law framework with the EFI, especially the international distribution and promotion of European cinematographic works.

As to the second step, the SSSA research team investigated the EU copyright and media legislation through a critical lens to identify and map the legal norms that might have caused the complications listed at the end of the first step of the data collection process. In so doing, the research team utilised the research outputs of Task 3.1 (hereinafter 'T3.1'), which is dedicated to the multi-level mapping of legal norms informing and governing the pre-production, production and post-production phases of the filmmaking lifecycle.

It is worth noting that the scope of the legal mapping endeavours of T3.1 goes well beyond the EU copyright and media laws. It encompasses the international legal instruments administered by the United Nations (hereinafter 'UN') and its specialized agencies, specifically the United Nations Educational, Scientific and Cultural Organisation (hereinafter 'UNESCO') and the World Intellectual Property Organisation (hereinafter 'WIPO'); the World Trade Organisation (hereinafter 'WTO'); regional legal instruments administered by the CoE; the EU Directives and Regulations, and finally, the national laws of the Member States represented in the REBOOT Consortium (i.e. Austria, Finland, France, Greece, the Netherlands, and Spain). As to the thematic spectrum of legal norms, T3.1 maps and consolidates the norms concerning cultural diversity, the concept of 'authorship' and the presumption of authorship, the scope of economic, moral and related rights; the term of legal protection, the norm concerning the public domain, screen and catalogue quotas introduced by Directive 2010/13/EU (hereinafter 'Audiovisual Media Services Directive' or 'AVMSD') and the norms on the protection of minors. The scientific output of T3.1 has been consolidated in Deliverable 3.3 (hereinafter 'D3.3'), entitled 'Policy recommendations', with the aim of demonstrating the level of legal harmonisation achieved in and the prevailing fragmentation across European legislative frameworks that inform and govern the operations of the EFI (see: Turan et. al, 2025).

⁵ reCreating Europe is a research project funded by the European Union's Horizon 2020 programme under the Grant Agreement No: 870626. The Project lasted from January 1, 2020 until March 31, 2023. See: European Commission, 'Rethinking digital copyright law for a culturally diverse, accessible, creative Europe' (Cordis, 2020) <<https://cordis.europa.eu/project/id/870626>>.



On that note, it shall be added that the mapping activities pursued in the context of T3.1 and D3.3 provide a rich repository of sources to feed into T4.2 and to help triangulate the data collected via the literature review against the legal mapping of relevant EU norms.

3.2.2 Data Analysis

The collected data was analysed through comparative analysis and qualitative research methods. This was mainly done by comparing the information extracted from the literature with the information extracted from EU public policies and legislation, as well as through semi-structured interviews and online meetings with cinema professionals.

The data triangulation method began with the extraction of data clustered in the T3.1 repository, which corresponds to the legal challenges listed following the review of the literature for T4.2, as follows:

- (1) Authorship of cinematographic works,
- (2) Legal definitions of VoD and other related terminology,
- (3) Copyright clearance for online distribution of cinematographic works, and
- (4) Transparency of AI tools deployed by online streaming platforms.

This first phase of the data triangulation process was essential to assess whether the legal issues vocalised in the literature from 2000 until 2025 have been subject to policy review or legislative reforms. Therefore, the narrative concerning the review of literature has been complemented with an overview of the relevant EU public policies and up-to-date legislation. The output of this research endeavour is consolidated in the 'Key Findings' sub-section below. As a result of this practice, the list of legal hurdles was updated and backed up with legal norms, and a set of follow-up questions was also prepared for the second phase of the data triangulation process.

Subsequently, the second phase of the data triangulation process involved an online meeting with the REBOOT Project's advisory board members and other key representatives of the EFI to discuss the revised list of legal challenges with cinema professionals. This workshop aimed to understand whether the issues listed therein continue to adversely impact the EFI, whether other issues can be added to the list, and whether the participants are aware of or apply any measures to cope with these legal challenges. The workshop helped refine the methodology adopted and the list of legal challenges identified for performing research endeavours organised in the context of T4.2.

In line with the abovementioned goals, the SSSA research team organised another online meeting designed as a semi-formal and interactive session. This event brought together legal scholars and cinema professionals. Prior to the meeting, the participants of the workshops were



provided with an information sheet that explained the overarching aims and objectives of the REBOOT project, the aims of Task 4.2, the expectations from the workshop, and the expected outcome of the workshop. Additionally, the participants were provided with four key questions, which were articulated broadly and as ‘conversation starters’, as follows:

- (1) What are the problems you experience while authorising licenses to distributors or obtaining licenses from film producers for international or national distribution of European cinematographic works?
- (2) What are the legal challenges concerning the distribution of European cinematographic works on international or national television broadcasts, cinema theatres and VoD platforms?
- (3) What are the challenges you experience in promoting (e.g., ensuring availability and visibility) of European cinematographic works on global VoD platforms?
- (4) What other topics would you consider worth exploring by the REBOOT Consortium?

The research agenda of the SSSA team was refined and finalised following this meeting, as the responses of cinema professionals to the aforementioned question confirmed the interim results of the research team and validated the previously identified policy and legislative gaps, which were discerned through a review of EU policy documents and relevant literature.

Lastly, on April 15, 2025, the key results of the research endeavours and the preliminary code of best practices were presented to an audience of film producers and other cinema professionals during the ‘Meetings on the Bridge’ event held in the context of the 20th Istanbul Film Festival (Istanbul, Turkey).⁶ This event served as a unique opportunity to share the CoBPs with the audience and scrutinise their efficiency before submitting this project deliverable.

3.3 State of the Art

A meticulous review of the scholarly literature, which elaborates on the challenges imposed by the legal framework, especially the European copyright and media laws, upon the international promotion of European cinematographic content, reveals a knowledge gap on the topic. Given the specificity and the relatively narrow focus of the topic, the vast majority of the reviewed literature was produced under the auspices of and published by the EAO. Furthermore, the main corpora of this line of literature were produced in the first decade of the 2000s, which could be explained by

⁶ For more information on the REBOOT Consortium’s participation to the 20th Istanbul Film Festival, please see: REBOOT Consortium, Ramadani (Ed), Newsletter #3, ‘Meetings on the Bridge’, pp. 3-5 <<https://www.thereboot-project.eu/?#!>>.



the growing popularity and the widespread use of VoD platforms in the late 1990s (Cabrera Blázquez et al., 2023).

The emergence of new forms to exploit cinematographic works, such as the proliferation of VoD platforms, marks a milestone in the history of European audiovisual media services. This incident contoured the linear (i.e. TV broadcasts) and non-linear (e.g. on-demand services, including VHR, DVD, Blu-ray rental; online platforms dedicated to online streaming, online display or rental) audiovisual media services dichotomy (Cabrera Blázquez et al., 2016). Whereas the 'linear and non-linear' divide concerning the exploitation of cinematographic works became more evident, the scope and clarity of the definitions of these different modes of audiovisual services have become equally blurry (Cabrera Blázquez et al., 2016). Indeed, the first decade of the 2000s lacked a coherent legal regime defining and governing the operation of, for instance, VoD, Over-the-Top (hereinafter 'OTT') platforms, online platforms, information society services (hereinafter 'ISS'), online content-sharing services (hereinafter 'OCSS') and creative content outlets (Cabrera Blázquez et al., 2016).

The new trends in the AV sector and the widespread use of non-linear modes of exploitation were followed by debates on the shortcomings of the current legislative framework and business practices to respond to the novel features of digital distribution and exploitation of cinematographic works. The major legal hurdles extracted from the systematic review of the literature can be presented as follows:

(1) Digital distribution and exploitation of old and new cinematographic works, including those identified as 'orphan works', were complicated by the overall hardship in copyright clearance, given the joint authorship of this category of works.

(2) The EU legislative framework experienced the absence of a clear-cut, harmonious and legally binding definition of VoD and other related terminology (e.g. OTT platforms, online platforms, ISS, OCSS, video-sharing platforms, creative content outlets). This conceptual opacity had spill-over effects on the business practices essential to the AV sector, such as concluding license agreements for the production, distribution or promotion of cinematographic content.

(3) The earlier stages of the platformisation phenomenon witnessed a general lack of understanding of the technical functions of the online platforms, hence the types of uses for cinematographic works on VoD platforms. The uncertainty in this regard had implications for the clearance of the economic rights clustered under copyright.

(4) The territoriality of copyright has imposed several challenges upon the distribution and exploitation of cinematographic content, especially in the first decade of the 2000s. These challenges stemmed from the fragmentation of copyright protection across Europe and its adverse



impact on cross-border licensing of the same cinematographic content. As another consequence of this legal phenomenon, the AV sector experienced 'price discrimination' due to the differences in the amount of revenues generated through licence agreements concluded in different countries for the same content.

(5) Along the same lines, the 'orphan work' status of certain works has introduced other difficulties in selecting, curating and exploiting cinematographic works as such.

(6) The interaction of emerging technologies, especially AI and AI-based (personalised) recommender systems, with the promotion of European cinematographic works and the proliferation of alternative methods to the traditional means of film promotion has been addressed as unresolved policy and legal issues.

(7) Finally, the most recent studies in the field unearthed and underlined a conundrum that not only underpins the abovementioned challenges but also oversees them: the limited knowledge, if not biases, of cinema professionals and especially of independent film producers on copyright in general and the norms that inform the European AV sector in general. As a result, cinema professionals and particularly non-mainstream filmmakers have been observed to make poorly-informed decisions regarding the licensing or transfer of their intellectual property rights (hereinafter 'IPRs') and especially copyright, while also missing the opportunities and economic arrangements that would help them generate revenues in the long-run by exploiting their creative content at different times, in different territories and through different media windows.

Following up with this concise mapping of the historical or ongoing challenges to the promotion of European cinematographic works, the remainder of this sub-section unfolds each item listed above. In so doing, the sub-section first provides theoretical information extracted from the literature review. It complements this information with a more practical narrative by analysing the topic through the prism of the EU laws and regulations currently in force, which helps contemplate whether the EU policymakers and legislators have responded to the problem or whether the problem prevails.

3.3.1 *The hardship in determining the authorship of cinematographic works*

The debut of the debates on cinematographic works in the legal discourse falls in the early 1900s. These debates derive from the economically driven aspects of the interplay of literary and artistic works with cinematographic works. The clash of economic interests of cinema professionals directly or indirectly involved in the cinematographic productions has been brought to the attention of the international policy- and law-makers during the international conferences held from 1908 until 1967, which were dedicated to the revision of the key international copyright instrument, currently



administered by the WIPO, namely the Berne Convention for the Protection of Literary and Artistic Works of 1886 (hereinafter 'Berne Convention').

Indeed, the initial conversation on cinematographic works in the context of copyright law stemmed from the infringement of copyright by film producers to adapt or re-use existing in-copyright works to produce cinematographic works. The Berlin Conference of 1908 became the stage for dramaturgist and publisher associations to vocalise their concerns about the unlawful appropriation of their works by film producers (Poll, 2002). To mitigate this conflict, several clauses or provisions regarding cinematographic works were inserted in the operational text of the Berne Convention through the Berlin Act of 1908. In this regard, the Berlin Act of 1908, on the one hand, introduced a new clause clarifying that the authors of literary and artistic works have the exclusive right to authorize the reproduction of their works in films and making such reproduced works available to the public through the exhibition of films (Berlin Act of 1908, Art. 14(1)). On the other hand, a new provision was introduced to ensure legal protection of 'works produced by a process analogous to photography' (Berlin Act of 1908, Art. 3). Cinematographic works are entitled to legal protection as long as 'the arrangement of the acting form or the combination of the incidents represented' reflect the author's personal and original character (Berlin Act of 1908, Art. 14(2)).

The inclusion of cinematographic works in the scope of legally protected works and the references to the authors of such works eventually paved the way for discussions on the identification of the author (or authors) of cinematographic works. The Rome Convention of 1928 provided a venue for international dialogues on the question of the authorship of cinematographic works while revealing different national approaches to the identification of the author of a cinematographic work (Poll, 2002). For instance, the Italian delegates' practical approach to the matter and referring to the film producer as the author, hence the one who can exercise the rights over the cinematographic production, was contested by the French delegates who advocated for the recognition of the authorship of *all* the intellectual creators (e.g. screenwriters, directors, producers, composers) contributed to the cinematographic work (Poll, 2002).

The authorship conundrum remained unresolved until the Stockholm Conference of 1967, where the international delegates discussed the relationship between film producers and other intellectual creators involved in the filmmaking lifecycle (Poll, 2002). Yet, the outcome of these debates has been the replacement of 'author of a cinematographic work' from the operational text of the Berne Convention with the 'owner of copyright in a cinematographic work' (see: Stockholm Act of 1967, Art. 14bis; also see: Kamina, 2016). Indeed, Article 14bis(2)(a) of the Stockholm Act of 1967 leaves the determination of the ownership of a cinematographic work to the national legal framework of the



State in which legal protection is sought, Article 14bis(1) of the Act holds that '[t]he owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work'. Therefore, the international efforts to harmonise the national copyright laws of the Berne Union Member States ended up creating not only a 'author and copyright owner' divide for cinematographic works but also a highly fragmented regulation of the cinematographic work authorship across the globe (also see: Kamina, 2016).

At this point, it is worth emphasising that the clarification and legal regulation of 'authorship' is not an ancillary legal strategy but a crucial matter for the AV sector. In principle, the author of a work is the primary owner of copyright over the work, hence the one who has the exclusive authority to exercise, transfer or license rights deriving from the work. Therefore, identifying the author of a cinematographic work is essential to the economic decisions to be made for the theatrical and online, national and cross-border distribution and exhibition of a cinematographic work. Nevertheless, the absence of uniformity in the international norm-setting forums echoes in the EU legal framework and haunts the European AV sector and the EFI.

As of today, the EU copyright *acquis*, comprising twelve Directives and two Regulations, lacks a concise definition of the author or co-authors of a cinematographic work. Instead, it merely consolidates the position of film producers as authors of cinematographic work, while leaving the EU Member States with the margin of discretion to introduce alternative legislative solutions by introducing co-authors to film producers. However, this margin of discretion, while allowing the States to shape their copyright regimes in line with the national priorities and values, results in disparate approaches and legal regulations across Europe with serious implications on the cross-border licensing of cinematographic works.

As explained by Günter Poll, in countries where 'independent contributions to a composite work' are acknowledged as the author of their contribution, a vast array of artistic contributors of a film (e.g. director, cutter, film architect and decorator, special effect designer, sound and light engineer) would potentially qualify as a co-author (Poll, 2002). As rightfully argued by Poll and also by Pascal Kamina, in such cases, distinguishing the film authors from other (artistic or technical) contributors would not be an easy task, while being counterproductive in the context of licensing practices to produce and exploit the cinematographic productions (Poll, 2002; Kamina, 2016). Indeed, the abundance of contributors requires film producers to engage in contractual agreements with all these contributors to clear their copyrights at the pre-production phase, which often is a timely and costly process. Regardless of the time- and cost-related concerns, the national legal frameworks of certain States do not allow the transfer of certain contributors' rights to the film producer, which



leaves the contributors with the authority and power to prevent the secondary exploitation of the same cinematographic work, if such alternative and secondary exploitation methods have not been covered by the license agreements concluded during the pre-production phase (Poll, 2002).

As a last remark, it is worth noting that the EU legislator's approach in this regard has been criticised in the literature (see: Poll, 2002).

EU Policy Response & EU Law

The European Commission (hereinafter 'EC') has dedicated a report on the authorship of cinematographic works and its implications on the exercise of copyright and related rights associated with such works, including licensing practices (see: COM(2002) 691 final). Published in 2002, the report elaborates on the 'authorship' of cinematographic work with respect to the provisions inherent in three EU Directives that are key to the operation of the European AV sector and the EFI: Directive 92/100/EEC⁷ (hereinafter 'Rental and Lending Directive' or 'RLD'), Directive 93/83/EEC (hereinafter 'Sat-Cab Directive') and Directive 93/98/EEC⁸ (hereinafter 'Term Directive').

Among the EU legal instruments, including the three Directives mentioned above, the Rental and Lending Directive stands as the first supranational legal regulation that refers to the authors of cinematographic works. Within its Article 2(2), the RLD holds that 'the principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors'. As noted in the EC's report, the Article 2(2) of the RLD does not necessarily define the 'authorship' of cinematographic works (COM(2002) 691 final). Instead, it ensures that the principal director of a works as such would be either the author or one of the co-authors of the works. In so doing, the Directive refrains from providing a horizontal regulation that would harmonize the authorship of cinematographic works; it, rather, clarifies that the rule regarding authorship enshrined in Article 2(2) of the Directive applies only in the context of the Directive while also leaving room for discretion to the national legislators to decide the creative workers to be acknowledged as co-authors.

Shortly after the adoption of the RLD, the Sat-Cab Directive also referred to the authorship of cinematographic and audiovisual works by closing following the letter of the Article 2(2) of the

⁷ Directive 92/100/EEC has been repealed by Directive 2016/115/EC.

⁸ Directive 93/98/EEC has been repealed by Directive 2016/116/EC.



RLD. Indeed, Article 1(5) of the Sat-Cab Directive also acknowledges the principal director of a cinematographic or audiovisual work as its author or one of its authors. Similar to the RLD, the Sat-Cab Directive also gives the Member States the margin of discretion to introduce co-authors for such works.

Also in this regard, the Term Directive introduces the same rule regarding the authorship of the principal director of a cinematographic or audiovisual work. While setting the rule for the term of legal protection envisioned for cinematographic or audiovisual works, Article 2(1) of the Term Directive repeats the same rule found in the RLD and the Sat-Cab Directive. As opposed to its predecessors, however, the Term Directive does not restrict this rule to the purposes of the Directive. Therefore, the rule enshrined in Article 2(2) of the Term Directive serves as a horizontal regulation, and it harmonises the notion of authorship for cinematographic or audiovisual works.

The EC's report on the authorship of cinematographic or audiovisual works end on the note that the European legal landscape still witnesses different approaches to this matter despite the EU's interventions through the three key Directive mentioned above (COM(2002) 691 final). Yet, it also adds that there is no evidence that suggest that the discrepancies in the national legislation on the authorship of such works hampered the distribution of cinematographic or audiovisual works, as the AV sector and the EFI relies on contractual arrangements to clear the rights necessary for the exploitation of the works in question (COM(2002) 691 final). According to the same report, these contractual arrangements are backed up by the statutory rules inherent in the national legal framework, which regulate the transfer of copyright and related rights to the film producer to facilitate the exploitation of cinematographic and audiovisual works (COM(2002) 691 final).

Over the twenty-three years that have passed since the publication of the EC's report, the RLD and the Sat-Cab Directive were repealed and replaced, respectively, by Directives 2016/115/EC and 2016/116/EC. Yet, the formulation and the wording of the aforementioned provisions have remained the same. Besides, the EU legislative framework has not welcomed any other legal instrument (i.e. Directive, Regulation) that reflects on the authorship of cinematographic or audiovisual works.

Yet, it is also worth noting the Court of Justice of the European Union (hereinafter 'CJEU') judgment of 9 February 2012 in *Martin Luksan v Petrus van der Let* case, where the CJEU ruled that: '(...) rights to exploit a cinematographic work, such as those at issue in the main proceedings (reproduction right, satellite broadcasting right and any other right of communication to the public



through the making available to the public), vest by operation of law, directly and originally, in the principal director. Consequently, those provisions must be interpreted as precluding national legislation which allocates those exploitation rights by operation of law exclusively to the producer of the work in question [and that] [the statutory presumptions of transfers of exploitation rights shall ‘not [be] an irrebuttable one precluding the principal director of that work from agreeing otherwise’] (ECLI:EU:C:2012:65).

3.3.2 *The uncertainty of the legal concepts referring to the non-linear modes of exploitation*

The scholarly works produced in the early 2000s often refer to or elaborate on a conceptual turmoil that haunts the EU legislative framework. As this line of literature emerged shortly after the popularisation of VoD platforms, the scholarly works elaborating on this topic frequently focus on the absence of a clear and binding definition of ‘VoD platform’ as a concept essential to the European AV sector and the exploitation of European cinematographic works.⁹

Indeed, in his journal article published in 2007, Stefan Ventroni highlights the absence of a uniform definition of the concept ‘VoD’ across Europe by explaining the negative implications of this conceptual gap upon the conclusion of license agreements to authorise the digital exploitation of cinematographic works, hence the international and national promotion of cinematographic content by digital means. Ventroni draws attention to the discrepancies in the meaning attributed to VoD by the different market players involved in various segments of the EFI (e.g., technical, administrative, and legal employees). While the lack of a common understanding, let alone a common legal definition, of VoD complicates the management and licensing of copyright over cinematographic works in general, Ventroni explains that certain market trends and practices, such as the conclusion of license agreements for ‘unspecified VoD rights’, exacerbate the initial problem (Ventroni, 2007).

⁹ In line with the overarching aims and objectives of D4.2, the narrative on the VoD platforms provided within Sub-section 3.3.2 focuses on the legal conceptualization of ‘VoD’ and other related terminology. However, for a comprehensive narrative on the interface of the VoD platforms and the international competition of the EFI, please see: Fernandes Rossato Marina, Vlassis Antonios, Bissot Pauline, Solenn Houard (2025): The Framings and Strategies of Cinema Professionals. Report on “International Market” in the European Film Industry, funded by the European Union’s Horizon Europe Research and Innovation programme under Grant Agreement No. 101094769.



EU Policy Response & EU Law

The EU public documents acknowledge the platformisation phenomenon, hence the popularity of non-linear modes of exploitation, as the new reality of the European AV sector (Council Conclusions 2018/C 457/02, Council Conclusions 2021/C 501 I/02, Council Conclusions 2022/C 160/06). As also mirrored in the EU policy agenda, the ever-growing popularity of the digital exploitation of cinematographic content, including the VoD platforms, inevitably accelerated with the global COVID-19 pandemic, which resulted in physical access restrictions to cinema theatres while leaving global audiences with the mere option of digital consumption of audiovisual and cinematographic content (COM(2020) 784 final). Despite the intensified reliance on digital exploitation of such cultural content, the EU policy documents do not necessarily address the conceptual gap mentioned in the literature yet underline the importance of ensuring ‘legal certainty concerning the activities of online platforms in the digital ecosystem for digital media and cultural and creative content’ (Council Conclusions 2018/C 457/02).

As a matter of fact, the clarification of the key terminology concerning the non-linear modes of exploitation is more important today than ever, mainly because the last decade of the EU legislative history has witnessed an intense outlet of legislative reforms, which have amended the existing legal rules or introduced new ones to regulate the activities of digital platforms at large. Whereas the absence of a legally-binding definition of the VoD platform prevails, there is an abundance of interrelated, if not overlapping, terminology describing the operations of a multitude of online market players shaping and influencing the European AV sector. In this regard, it is essential to map the terminology currently used within the EU Directives and Regulations that are related to the European AV sector.

- **Information Society Service (ISS)**

The ISS refers to ‘any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services’ (Directive 98/34/EC, as amended by Directive 98/48/EC, Art. 1(2)).

This concept is adopted by several EU instruments that inform and govern the European AV sector as follows: Directive 98/84/EC (hereinafter ‘Conditional Access Directive’), 2000/31/EC (hereinafter ‘E-Commerce Directive’), Directive (EU) 2019/790 (hereinafter ‘CDSM Directive’ or ‘CDSMD’), Regulation (EU) 2022/2065 (hereinafter



‘Digital Services Act’ or ‘DSA’), Regulation (EU) 2022/1925 (hereinafter ‘Digital Markets Act’ or ‘DMA’).

Given the cross-references to Directive 98/34/EC, as amended by Directive 98/48/EC, or Directive (EU) 2015/1535, which eventually replaced the formers, the concept is used uniformly across the EU Directives and Regulation.

- **Online Content Service**

The concept is defined in Article 2(5) of Regulation (EU) 2017/1128 (hereinafter ‘Portability Regulation’) as ‘a service as defined in Article 56 and 57 TFEU that a provider lawfully provides to subscribers in their Member State of residence on agreed terms and online, which is portable and which is: **(i)** an audiovisual media service as defined in point (a) of Article 1 of Directive 2010/13/EU [the AVMSD], or **(ii)** a service the main feature of which is the provision of access to and the use, works, other protected subject-matter or transmissions of broadcasting organisations, whether in a linear or an on-demand manner’.

There are no other references to this concept in the key EU Directives and Regulations that have been mapped and analysed for the purposes of this report.

- **Audiovisual Media Service**

Comprising a constituent of the definition of ‘online content service’, this concept is defined by Article 1(1)(a) of the AVMSD, as amended by Directive (EU) 2018/1808, as follows:

‘(...) **(i)** a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes, under the editorial responsibility of a media service provider, to the general public, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC; such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph; **(ii)** audiovisual commercial communication’.

- **On-demand Audiovisual Media Service**



Article 1(1)(g) of the AVMSD, as amended by Directive (EU) 2018/1808, provides a definition for 'on-demand audiovisual media service' which is articulated as follows: 'an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider'.

The Directive clarifies that the term 'on-demand audiovisual media service' comprise a synonym for non-linear audiovisual media service.

Given the broad articulation of the concept and the reference made in Recital 27 of the AVMSD, VoD platforms can be acknowledged as a sub-category of 'on-demand audiovisual media service'.

- **Video-sharing Platform Service**

The AVMSD, as a consequence of the amendment with Directive (EU) 2018/1808, introduced a new concept that long existed in the AV reality: video-sharing platform service.

This concept is defined in Article 1(1)(aa) as follows: 'a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing'.

- **Online Intermediation Service**

As defined in Article 2(2) of Directive (EU) 2019/1150, online intermediation service refers to 'services which meet all of the following requirements: **(a)** they constitute information society services within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council (12); **(b)** they allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct



transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded; (c) they are provided to business users on the basis of contractual relationships between the provider of those services and business users which offer goods or services to consumers’.

- **Online Content-Sharing Service Provider (OCSSP)**

The CDSM Directive offers a definition for OCSSP, even though it neither cross-references to any other EU legislation nor defines ‘online content-sharing service’. Despite the existence of certain other terminology that the OCSSPs can be associated with, such as audio-visual media service or video-sharing platform service, the Directive builds a definition based on the legal status of the contents stored or shared therein.

Whereas the EU legislator’s justification for this legislative action is not clear, the OCSSP is defined as follows: ‘a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes for profit-making purposes.’

- **Intermediary Service**

The recently adopted Digital Services Act (or, the DSA) introduced several other concepts into the growing corpora of terminology. In this regard, Article 3(g) of the DSA refers to ‘intermediary service’ and defines it as an information society service that would comprise either:

- ‘(i) a “mere conduit” service, consisting of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network;
- (ii) a “caching” service, consisting of the transmission in a communication network of information provided by a recipient of the service, involving the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information’s onward transmission to other recipients upon their request;



(iii) a “hosting” service, consisting of the storage of information provided by, and at the request of, a recipient of the service’.

- **Online Platform**

Aligned with its overarching aims and objectives, Article 3(i) of the DSA also defines the concept ‘online platform’ as follows: ‘a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation’.

- **Core-platform Service**

Last but not least, the DMA, rather than offering a definition, lists certain services that would fall under the concept of ‘core-platform service’. These services are as follows: online intermediation services, online search engines, online social networking services, video-sharing platform services, number-independent interpersonal communications services, operating systems, web browsers, virtual assistants, cloud computing services, online advertising services.

3.3.3. The complications concerning rights clearance for the non-linear modes of exploitation of cinematographic works and the territoriality of copyright

Scholarly works published in the early 2000s present copyright clearance for digital distribution methods as another legal challenge that causes legal uncertainty, hence hindering the promotion of European cinematographic works within and across the borders of the EU. This line of literature reflects on the standard practices in the industry at the time and explains the license agreements concluded to authorise ‘unspecific VoD rights’ to enable the distribution of European cinematographic work on non-linear distribution channels and their consequences on the trajectory of the rights vested in such works.

In practice, ‘clearance of unspecified VoD rights’ refers to the license agreements which do not clarify the specific types of uses authorised by the licensor but provide a ‘blanket’ license to use the



cinematographic works in question on VoD platforms. An overly broad drafted 'VoD rights' as such fails to identify the various ways in which the licensed work can be used (e.g. downloading, online streaming, online transmission, pay-per-view, residential or non-residential view) on VoD platforms (Ventroni, 2007; also, see Cichon, 2007). Due to the same reason, the licensed economic rights, which shall correspond to the types of uses covered in such blanket agreements, might fall short of covering all the intended uses or go beyond the intended uses and risk overexploitation of the cinematographic work in question. Regarding the latter, Ventroni refers to the scenarios where the economic rights covered in the license agreement exceed the rights, hence the capacity of authorisation, of the licensor. This practice results in the infringement of the unlicensed economic rights of the author or the copyright holder.

Along the same lines, the opacity of the uses required or permitted by 'unspecified' VoD rights, in the absence of a common definition or even perception, imposes additional administrative burdens on licensees as they might need to contact different licensors (e.g. the author, third parties acting as licensor, CMOs) to obtain licenses for different types of uses (e.g. online streaming, downloading, online transmission, pay-per-view, pay TV, free TV, residential/ non-residential/ demand view) for the use of different copyright-protected content (e.g. film music) (Ventroni, 2007; Cichon, 2007). As exemplified by Caroline Cichon, the copyright clearance process for the exploitation of preexisting works on VoD platforms would differ from that for works produced specifically for VoD platforms. Indeed, the display of preexisting content on a VoD platform, on the one hand, would be deemed a 'new use' of such content and would not only require the identification of the licensors of the different aspects of the works (e.g. reproduction, communication to the public, making available to the public, transmission, retransmission). In this regard, it is worth noting that the licensors of preexisting content produced for TV broadcasts would differ from the licensors of content produced to be exploited in movie theatres. On the other hand, the exploitation of preexisting content also requires careful consideration of the release windows (Cichon, 2007).

The concept of 'release windows', or 'media windows', refers to the public regulatory sources (i.e. legislation) or private regulatory sources (i.e. distribution agreements or any other release agreement) 'regarding the time that must pass between the release in cinemas of a theatrical film and its exploitation on other services' (e.g. exhibition in movie theatres, DVD or Blu-ray sales, release on VoD platforms) (Cabrera Blázquez et al., 2023). Whereas the legal provisions or contractual clauses concerning release windows aim to 'avoid cross-sector arbitrage', the overly long holdback periods contracted by the parties risk adversely impacting the generation of revenues by the creative workers involved in the value chain vis-à-vis the 'secondary exploitation' of the



content in question, especially given the current hierarchy of the release windows do not encourage the ‘universal release’, or parallel/simultaneous exploitation of the same content on several exhibition venues (e.g. movie theatres, Pay TV and VoD platforms) (Cichon, 2007). Even though Council Directive 89/552/EEC (hereinafter ‘Television Without Frontiers Directive’ or ‘TVWFD’), which was the first EU legal instrument that introduced an EU-wide two-year release window for the exploitation of cinematographic work in other media windows, was amended in 1997 to liberalise this legal requirement, the special issue published by the EAO in 2023 addresses release windows among the impediments to the EFI’s promotion. Whereas Article 8 of AVMSD requires the Member States to take the necessary measures to ‘ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rightsholders’, the Recitals of the Directive do not further elaborate on the methods to implement this rule. Instead, the Directive leaves a wide margin for the national implementation strategies of the Member States, which risks fragmentation in the national media laws across Europe, and this conundrum translates into legal uncertainty for film distributors and promoters aiming for multi-territorial distribution and promotion (Cabrera Blázquez et al., 2023).

Furthermore, the ‘unspecified’ VoD rights could be detrimental to the protection of a cinematographic work to be exploited via Digital Rights Management (hereinafter ‘DRM’) systems integrated into the VoD platforms (e.g. time-limits to view or download content, or other DRM restrictions such as limitations on the number of copies that can be downloaded, of devices that can be used to display the content, or of users can utilise a single account). Despite being clustered under the umbrella concept of VoD platforms, these DRM measures stem from the transmission channel, the underlying business model or the intensity/frequency of the use of the platform. These variants, however, hold significant importance for licensing, hence promotion methods, as they not only require the clearance of different sets of rights and the authority that can license such rights (e.g. author or CMOs) but also need to be carefully drafted to match the intended use of the content (Cichon, 2007). On this note, Gregor Wichert’s journal article, also published in 2007, is worth mentioning as it introduces the perspectives of public service broadcasters concerning the necessity to balance the rights protected through DRMs with the public’s general interest in accessing cultural content. Underlining the pivotal role that public service broadcasters play in democratising and enhancing public access to new and archival cinematographic works, Wichert advocates that DRMs shall not become ‘gatekeeping’ tools and shall not prevent public service broadcasters’ equal and lawful access to and consumers’ enjoyment of cultural content (Wichert, 2007).



Yet another intricacy concerning licensing practices, which negatively affects the promotion of cinematographic works, stems from the territoriality of copyright law. In cases of license agreements concluded with a limited geographical scope, the legal protection provided for licensed works as well as the rights incorporated in copyright, through license agreements, often vary from one country to another (Cabrera Blázquez et al., 2015; Cabrera Blázquez et al., 2023). Due to the same reason, not only do the entities licensing the same in-copyright content change from one country to another, but also the license fees set by these disparate entities, thus causing price discrimination (Cichon, 2007; Moullier, 2007; Cabrera Blázquez et al., 2023).

EU Policy Response & EU Law

In 2001, the EU policymakers and legislator have responded to the legal conundrum that underpins, if not lies at the heart of, the legal challenges in distribution of European works with the adoption of the InfoSoc Directive. The InfoSoc Directive constitutes the EU legislator's inaugural comprehensive endeavour to harmonise the copyright regimes of the EU Member States. In this regard, the InfoSoc Directive has become one of the main pillars of the modern EU copyright regime, as it modernised and reformed the European copyright frameworks across the EU vis-à-vis the technological advancements which introduced new methods for producing and exploiting creative content (e.g. satellite broadcast, compact disks, the Internet and digital networks), and in line with the international copyright instruments. In this context, the InfoSoc Directive constitutes a milestone in the EU's legislative history due to fostering legal certainty concerning the access to and use of legally protected creative content by both analogue and digital means (see: Shapiro, 2019; Geiger et al., 2021).

Amongst the various novelties that the InfoSoc Directive introduced into the EU copyright framework is the harmonisation of the economic rights encompassed within copyright. Indeed, the Directive consolidates that the economic rights encompassed within copyright consists of the reproduction right, the right of communication to the public, the right of making available to the public, and the distribution right (see: Directive 2001/29/EC, Arts. 2, 3, 4).

Whereas the InfoSoc Directive has achieved a significant level of success in harmonising the economic rights across Europe (see: Turan et al., 2025), the case law developed by the CJEU has brought further clarity to the interface of such economic rights and digital means of access, use and distribution of copyright-protected works.



For instance, constituting one of the key CJEU judgments on the matter, *Stichting Brein v Jack Frederick Wullems* (hereinafter ‘Filmspeler case’), which was about the sale of a multimedia player device that enables free and illegal streaming of copyright-protected audiovisual works on TV, crystallised that ‘a multimedia player such as that at issue in the main proceedings enables, in view of the add-ons pre-installed on it, access via structured menus to links that those add-ons which, when activated by the remote control of that multimedia player, offer its users direct access to protected works (...) must be regarded as an act of communication within the meaning of Article 3(1) of Directive 2001/29’ (ECLI:EU:C:2017:300). Additionally, and in line with the established case law of the CJEU, the judgment held that: ‘the concept of ‘public’ encompasses a certain de minimis threshold, which excludes from the concept groups of persons which are too small, or insignificant. Second, in order to determine that number, the cumulative effect of making the works available to potential recipients should be taken into account. Thus, it is relevant to know not only how many persons have access to the same work at the same time, but also how many of them have access to it in succession (...). In the present case, it must be observed that, according to the referring court, the ‘filmspeler’ multimedia player has been purchased by a fairly large number of people. Furthermore, the communication at issue in the main proceedings covers all persons who could potentially acquire that media player and have an internet connection. Those people may access the protected works at the same time, in the context of the streaming of the works at issue on the internet’ (ECLI:EU:C:2017:300).

Whereas the Filmspeler case sheds light upon the interplay of the right to communication to the public and the distribution of copyright-protected audiovisual works by digital means, another landmark case, *ITV Broadcasting Ltd. and Others v TVCatchup Ltd.*, elaborates on the interaction of the right to communication to the public with distribution of copyright-protected works by TV ‘over the internet, substantially in real time, of television broadcasts’ (ECLI:EU:C:2013:147). The CJEU decided that the acts that lead to ‘a mere technical means to ensure or improve reception of the original transmission in its catchment area does not constitute a “communication” in the sense of the right to communication to the public, whereas ‘making of works available through the retransmission of a terrestrial television broadcast over the internet [which requires the use of] (...) a specific technical means different from that of the original communication, (...) must be considered to be a “communication” within the meaning of Article 3(1) of Directive 2001/29’ (ECLI:EU:C:2013:147).



As to the legal challenges mentioned about the media windows, it is important to note that the AVMSD, as amended by 2018, provides a legal regulation concerning this matter as well. Article 8 of the AVMSD holds that the media services operating in the EU Member States shall comply with the media windows agreed upon with the rightsholders. Indeed, the provision holds that media service providers are not allowed to ‘transmit cinematographic works outside periods agreed with the rightsholders’. This provision reinforces the control of rightsholders over their audiovisual/cinematographic works as well as their power to control the secondary distribution of their works.

3.3.4 *The intricacies concerning the exploitation of orphan works*

The challenges experienced by cinema professionals concerning the international distribution and promotion of copyright-protected cinematographic works are not limited to the works whose authors and/or copyright owners can be identified and located. In fact, there are also works, commonly known as ‘orphan works’, whose authors or rightsholders are not known or are known but cannot be located.

As explained above in detail, cinematographic works, compared to other categories of copyright-protected works, present a peculiar case due to the construction of authorship for this type of works and the technical and legal hurdles originating from identifying and contacting the joint-authors of such works to exploit them by means of theatrical and online distribution and exhibition (see: Op den Kamp, 2018). Whereas the current European legal landscape accommodates disparate national approaches to formulate authorship of cinematographic works, the opacity surrounding, especially, cross-border licensing of copyright and related rights over cinematographic works is exacerbated in scenarios that involve orphan works (Usai, 2009; Op den Kamp, 2018).

The orphan works conundrum impacts the AV sector in several ways. From the perspective of the authors and rightsholders, there exists a high risk of the assimilation of cinematographic works into ‘orphan works’ for two major reasons. First, in line with Article 5(2) of the Berne Convention for the Protection of Literary and Artistic Works of 1886 (as amended in 1979) (hereinafter ‘Berne Convention’), the enjoyment and exercise of copyright and related rights are not subject to any formality. Therefore, at least in the EU Member States and in continental European countries, there are no public registries that systematically list and constantly update the owners of copyright or related rights subsisting in a legally protected work. Also, because of the same provision of the



Berne Convention, the EU legislator or the national legislators of the EU Member States cannot set mandatory registration systems for cinematographic works (Van Gompel, 2007). Given the absence of such a registry, it is not always easy to track the transfer and licensing of copyright and related rights, especially in cases that involve jointly authored works and cross-border licensing practices (Op den Kamp, 2018).

Second, as a consequence of the former point, the hardship in tracking the authors or rightsholders of such a jointly authored or owned work would jeopardise the conclusion of transfer or license agreements to authorise the exploitation of the work. In this case, however, the declaration of 'orphan' status for a cinematographic work would provide the interested parties with the opportunity to rely on exception and limitations (hereinafter 'E&Ls') to copyright and related rights that would allow the re-use of such works in certain specific ways (to the extent prescribed and permitted by the EU and national laws), without necessarily having to seek the authorisation and remuneration of the author and/or rightsholders.

From the perspective of film distributors and promoters, it is also possible to refer to two major consequences. On the one hand, the hardship in tracing the current rightsholders of a cinematographic work hampers the secondary uses of cinematographic works through alternative distribution channels (e.g. festivals, non-profit exhibitions, online distribution). This is especially the case of the secondary exploitation of cult or back-catalogue works, which were initially produced for the cinema theatres, as well as of archival materials through online platforms. In fact, the orphan state of certain has already been raised as a concern for the services provided by public-service broadcasters and their promotional activities, especially in cases involving the broadcasting or re-broadcasting of cinematographic content available in broadcasters' archives (Wichert, 2007; also see Op den Kamp, 2018).

On the other hand, the orphan status of a work also impedes the re-use of the whole work or parts thereof to create new or derivative content. Aside from the distribution- and exploitation-related ambitions, the impossibility or impracticality of tracing the rightsholders and obtaining authorisation from the multiple rightsholders of such works also disables the digitisation, restoration and cataloguing of such works for cultural conservation purposes (Van Gompel, 2007; also see Op den Kamp, 2018).

The latter category of challenges experienced by film producers and distributors is responded to, to a limited extent, by adopting Directive 2012/28/EU (hereinafter 'Orphan Works Directive' or 'OWD'). Nevertheless, the review of the pre- and post-OWD literature, while reflecting on the efficacy of the OWD, does not necessarily provide any coping strategies for authors and rightsholders to



prevent the 'orphan' status, which is a matter of pivotal importance for this report. The article penned by Stef van Gompel for the EAO constitutes one of the very few sources which sheds light upon the ways in which to secure transparent information on authorship and/or rights ownership.

Van Gompel suggests mainstreaming the voluntary use of Rights Management Information (hereinafter 'RMI'), or metadata, into the current business practices of the AV sector would facilitate the identification and tracking of the authors and rightsholders of a copyright-protected cinematographic work (Van Gompel, 2007). It shall be admitted that this solution would only apply to a cluster of cinematographic works: born-digital works and digitised works. Still, the databases which compile RMI and record such information would make a significant difference in the current licensing practices (Van Gompel, 2007).

Van Gompel further suggests that this business practice, namely the use of RMI, can be accompanied by voluntary registration systems, which might be initiated by public but also private entities to help enclose the information of authorship and rights ownership of such works (Van Gompel, 2007). In fact, there is no reason to exclude the cluster of works to which RMI cannot be attached from these databases.

EU Policy Response & EU Law

The EU policymaker's reflections on the market-related implications of the orphan cinematographic works on the AV sector and the EFI dates back to the EC Communication of 16 February 2002 on certain legal aspects relating to cinematographic and other audiovisual works (COM 2002/C 43/04). The Communication concentrates on the free circulation of cinematographic works in the EU Single Market, while assessing the measures that can be taken to optimise the functioning of the Single Market. In this context, the EC addresses orphan works, without necessarily using the exact terminology, while referring to the legal gaps that prevent broadcasting organisations from dissemination and exploiting the audiovisual content available in their archives. The Communication conveys broadcasting organisations' challenge 'to identify and to trace and negotiate with all contributors or their heirs, particularly in the case of old productions' (COM 2002/C 43/04).

As a means to tackle this problem without initiating a legislative reform, the EC Communication of 16 February 2002 considers the possibility of creating a 'rightsholders database'. The rightsholders database was envisioned as a publicly accessible database which would help



register, compile and update information on the initial rightsholders of a cinematographic work as well as the records of transfer or licensing of rights thereof. The idea of a rightsholder database was highly contested. Whereas a small cohort of stakeholders found this idea useful, the vast majority stated that ‘such a database would be very slow, costly, cumbersome and unable to keep pace with constant, very rapid changes in property’ (COM 2002/C 43/04). It was further mentioned that any misinformation or obsolete information in the database would jeopardize the flexibility needed by the AV sector and the EFI, hence the database would risk hinder the smooth functioning of the Single Market and the effective exploitation of cinematographic works rather than fostering it.

The issue of orphan works with respect to the AV sector and EFI have not been addressed since the abovementioned Communication. This might partially be the outcome of the voices that expressed the fair level of transparency on rights ownership provided by the film producers and the CMOs – or the result of the more pressing issues such as the lack of uniformity in the European copyright law.

A decade after the EC Communication of 2002, the EU adopted OWD to mitigate the challenges to the digitisation and online access to orphan works, including cinematographic or audiovisual works, contained in the collections of several CHIs, including audiovisual heritage institutions and public service broadcasting organisations. Nevertheless, it shall be noted that the OWD serves to the public-interest mission informing the activities of certain selected CHIs; therefore, it does not necessarily respond to the needs of market actors who engage in economically driven or commercial activities that would require the exploitation and dissemination of orphan works to generate income or revenues.

Indeed, Article 1(1) of the OWD contours the aims and objectives of the Directive by explaining that the Directive concerns certain uses of orphan works by ‘publicly accessible libraries, educational establishments, and museums, as well as archives, film or audio heritage institutions and public-service broadcasting organisations established in the [EU] Member States’. The use of orphan works by these institutions shall serve to the realisation of their public-interest mission (Directive 2012/28/EU, Art. 1(1)).

For the purposes of the Directive, the concept of ‘orphan work’ refers to a work or phonogram whose rightsholders cannot be identified, or even if one or more of them is identified, none of them is located despite carrying out a diligent search (Directive 2012/28/EU, Art. 2(1)). It is worth



noting that orphan works shall not be confused with anonymous or pseudonymous works (Directive 2012/28/EU, Art. 2(5)).

The categories of works and other subject matter covered by the OWD consist of the following ones, if they were first published or broadcasted in an EU Member State:

- Books, journals, newspapers, magazines or other writings,
- Cinematographic or audiovisual works,
- Phonograms,
- Works and other subject matter embedded or incorporated in, or constitute an integral part of, the abovementioned works as well as phonograms.

As emphasized in the definition of the concept, the 'orphan' status of a work prerequisites a diligent search, which is a process described in detail within Article 3 of the Directive. In brief, this diligent search required by the OWD necessitates consultation to 'appropriate sources for the category of works and other protected subject matter' in the EU Member State where the works or phonogram was first published or broadcasted (Directive 2012/28/EU, Art. 3(3)). Yet, the geographical scope of the search shall be extended to other Member States in case there is evidence suggesting that the rightsholders of the work or phonogram might be identified with the aid of sources therein (Directive 2012/28/EU, Art. 3(4)). To ensure compliance with the diligent search requirement prior to the use of a work or phonogram, the results of the search shall be recorded by the competent national authorities (Directive 2012/28/EU, Art. 3(5)).

According to Article 6 of the OWD, once the diligent search is completed and the 'orphan' status of a work or phonogram is settled, the beneficiary CHIs of the OWD, including the film and audiovisual heritage institutions and public-service broadcasting organisations, can perform the following acts:

- 'Direct or indirect, temporary or permanent reproduction' (Directive 2001/29/EU, Art. 2) of the work or phonogram 'by any means and in any form, in whole or in part' (Directive 2001/29/EU, Art. 2), for the purpose of digitisation, making available to the public, indexing, cataloguing, preservation or restoration;
- Making the work or phonogram available to the public 'by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them' (Directive 2001/29/EU, Art. 3(2)).



The OWD enables the use of orphan works without necessarily obtaining a license from the copyright owner or other rightsholders. Besides, the OWD ensures that once a work or phonogram is considered an 'orphan work' in an EU Member State, it shall be considered an orphan work in all the EU Member States (Directive 2012/28/EU, Art. 4).

Nevertheless, the 'orphan' status, hence the permitted uses, of such works across the EU are not permanent. As clarified by Article 5 of the OWD, the rightsholders of a work or phonogram deemed to be an 'orphan work' has the possibility to end this status and to prevent the unauthorized use of their work or phonogram.

It shall be noted that the OWD has been implemented in the national laws of all the EU Member States; however, with significant delays in the vast majority of the Member States (Commission Staff Working Document SWD(2022) 412 final; Sganga et al., 2023). Nevertheless, the *verbatim* implementation of the Directive by most of the Member States, and without further clarifications on the broadly articulated concepts (e.g. diligent search) have curtailed the efficacy of the Directive (European Commission, 2021; Commission Staff Working Document SWD(2022) 412 final; Sganga et al., 2023). Furthermore, the OWD has been subject to critique for not applying to stand-alone photograph and other images, which comprise a significant portion of the archival materials that might shed light upon the European culture and history, especially if digitised and made available to the public online (European Commission, 2021; Commission Staff Working Document SWD(2022) 412 final).

In sum, there is hardly any evidence to suggest that the OWD would respond to the needs and expectations of the AV sector and the EFI with respect to the distribution or promotion of orphan cinematographic works and other materials related to such works (e.g. film posters, photographs, promotional materials).

3.3.5 Artificial Intelligence, algorithmic recommender systems and non-linear exploitation of European cinematographic content

The interplay of emerging technologies—in particular, AI—with the promotion of European cinematographic content finds significant coverage both in the EU public policy documents and literature, especially given the platformisation phenomenon that characterises the digital space since the mid-2000s. Against this background, global online streaming platforms and the AI-based recommender systems deployed by these platforms attract policymakers' as well as scholars'



attention from several different aspects, including the implications of such technological trends on the European AV sector.

Automated decision-making algorithms are deemed one of the major catalysts for promoting cinematographic content available in the catalogues of online streaming platforms, including VoD platforms operating on a global scale. These algorithms essentially aim to enhance the user experience by learning the various ways in which users interact with the content available in the online streaming platforms' catalogues. They further identify the patterns in user viewing habits, or likes and dislikes, in order to offer a personalised list of recommended content that would help attract the user to the services offered by the relevant platform (Burri et al., 2020).

Whereas these algorithmic recommender systems centralise the user experience due to suggesting new content based on the data concerning user's preferences, the so-called Blackbox conundrum, or in other words, the lack of transparency on how these systems work raises questions concerning these algorithmic decision-making systems' compliance with the existing legal framework, which requires elimination of algorithmic bias (Guidotti, 2020; Jääskeläinen, 2020). Constituting an offshoot of a greater problem, the lack of transparency concerning the personalised recommender systems derives from the opacity of the contents of the datasets on which the algorithms are trained (e.g. demographics of the user-related data used to train the algorithm, categorisation of cinematographic content by the system, identification and labelling of the genres and other features of such content) and the ways in which the algorithm deduces facts—or cinematographic content recommendation in this case—relying on the information and data that have been fed thereinto.

This problem is further exacerbated by the lack of clarity on the exact catalogues of the VoD platforms—including clear-cut and publicly available information on the number, national origins and genres of the cinematographic works hosted on the VoD platforms, the density and diversity of the users of such VoD platforms, as well as the interaction of these content with the interface of the VoD platforms, the classification and presentation of the content by the developers of the VoD platforms' interface and software, the clustering of users' accounts, and also whether and the ways in which such recommender systems interact with other users' accounts (e.g. user preferences, ratings, saved items) or big data (e.g. users' digital traces on online shopping platforms and social media accounts, or the marketing strategies of the market players) that is accessible to the media companies that own VoD platforms (Guidotti, 2020; Jääskeläinen, 2020).

In a highly platformed digital environment where the major market players comprise American tech giants, it is, therefore, a complicated task to understand to what extent European



cinematographic content has been made visible to audiences through the interface and recommender systems of highly popular VoD platforms dominant in the AV market, such as Netflix, Apple TV, Disney+, Amazon Prime Video, Hulu, Peacock, HBO Max, Paramount+, and YouTube. This market reality, in fact, raises questions concerning not only the visibility and promotion of European cinematographic content but also the overall user experience to enjoy cultural diversity and to have access to a wide range of geographically, linguistically and topically diverse content (Burri, 2020).

In addition to the interplay of AI with the European cinematographic works available on VoD platforms, it is worth noting the employment of AI-based applications to conduct media analysis in order to identify a set of keywords for media search and promotion purposes (Guidotti, 2020; Burri, 2020; Jääskeläinen, 2020). The opacity surrounding the functioning of the AI systems also renders it impossible to have a comprehensive understanding of AI-based media content analysis applications' interpretation of such content, especially in comparison to the data available in datasets utilised to train such algorithms. Likewise, the AV sector employs automation to curate and promote cinematographic works. Along the same lines, AI-based applications analyse the general audience tendencies and trends and automatically generate titles, summaries, or illustrations to be disseminated on the internet to promote certain content (Guidotti, 2020; Jääskeläinen, 2020). Therefore, the existing AI tools and their widespread utilisation by the global AV sector raise several questions on the ways in which European works can be promoted at a global scale.

EU Policy Response & EU Law

The interaction of AI technology with the international promotion and distribution of European cinematographic content was first highlighted in Council conclusions on improving the cross-border circulation of European audiovisual works (Council Conclusions 2019/C 192/05). Focusing on the potential to improve the global market share of European audiovisual content, this policy document did not further elaborate on the topic but merely draw the EU bodies and Member States' attention to the European copyright regime '[w]ith respect to the distribution of audiovisual works through digital platforms' (Council conclusions 2019/C 192/05).

The Council conclusions of 2019 were followed by the European Parliament's resolution of 19 May 2020, which was dedicated to AI in certain sectors including the AV sector (European Parliament Resolution 2020/2017 (INI)). This document highlights the increasing reliance on AI



for distribution and consumption of audiovisual content. In so doing, it also refers to the risks that recommender systems entail concerning the ‘data protection, discrimination and cultural and linguistic diversity (...) [by] producing discriminatory output based on biased entry data (...) [hence restricting] diversity of opinion and media pluralism’ (European Parliament Resolution 2020/2017 (INI)). Therefore, the document also highlights the necessity to ensure the ‘transparency, explainability, fairness, accountability and responsibility’ of ‘the development, deployment and use of AI, including the software, algorithms and data used and produced thereby’ (European Parliament Resolution 2020/2017 (INI)). While it urges the European Commission to ‘carry out studies and consider policy options to tackle the detrimental impact of AI-based control of online streaming services designed to limit diversity and/or maximise profits by (...) prioritising certain content’; it also encourages the media organisations to seek for the opportunities to ‘be informed about the main parameters of algorithm-based AI systems that determine ranking and search results on third-party platforms’ (European Parliament Resolution 2020/2017 (INI)). The same messages were conveyed also by recent public policy documents as well (see Council Conclusions 2021/C 501 I/02).

Against this public policy background, it is essential to clarify that the problems addressed in the literature and confirmed by the EU policymaker, such as the AI’s Blackbox conundrum and algorithmic bias inherent in the automated decision-making systems adopted by online platforms’ recommender systems, are out of the reach of the EU copyright regime. Nevertheless, there are three other legislative tools that shall be taken into account in this regard: the AVMSD, the DSA, and Regulation (EU) 2024/1689 (hereinafter ‘AI Act’).

The AVMSD, as amended by Directive (EU) 2018/1808, holds a provision, namely Article 13, which might be of use to shield European audiovisual/cinematographic works from the detrimental effects of algorithmic discrimination imposed by the automated decision-making systems deployed by online streaming platforms—at least with respect to the activities of such platforms within the EU. In broad terms, Article 13(1) of the AVMSD requires on-demand audiovisual media service providers operating in the EU Member States to allocate at least 30% of their catalogues to European works and ensure the prominence of these works.

Yet, it shall be noted that the aforementioned provision does not define the concept of ‘prominence’, neither it further elaborates on the ways in which to ensure the prominence of European works. Additionally, Article 13(6) of the AVMSD exempts ‘media service providers with a low turnover or a low audience’ from this obligation. The same paragraph also introduces



another leeway from this obligation by holding that the EU Member States, instead of implementing these obligations, may waive them if the operationalisation of the catalogue quotas introduced in Article 13(1) of the Directive would be ‘impracticable or unjustified by reason of the nature or theme of the audiovisual media services’.

Regardless of these aspects which curtail the efficacy of the catalogue quotas allocated for European works, Article 13 of the AVMSD, hence having limited power on combatting algorithmic biases or eliminating the ‘Blackbox’ conundrum, are still pivotal legal tools for the EFI and for the global online streaming platforms to take active steps to advertise and enhance the visibility of European works through the platforms.

Aside from the AVMSD, the DSA holds several provisions that are directly linked to the online platforms, specifically those deploy automated recommender systems, in order to ensure the transparency of such AI-based systems. In this context, Article 3(s) of the DSA, first and foremost, defines the concept of ‘automated recommender systems’ as ‘a fully or partially automated system used by an online platform to suggest in its online interface specific information to recipients of the service or prioritise that information, including as a result of a search initiated by the recipient of the service or otherwise determining the relative order or prominence of information displayed.’

Building upon this definition, Article 27 of the DSA mandates that providers of online platforms employing recommender systems disclose, in their terms and conditions, in plain and intelligible language, the primary parameters utilized and the options available for users to modify or influence them. These parameters should elucidate the rationale behind the content suggestions provided to users by illustrating the most significant criteria employed in determining the information to be recommended and the reasons for their relative significance. When multiple options are available for recommender systems that determine the relative order of information presented to users, platforms should provide the latter with a functionality that enables them to select and modify their preferred option at any time, which should be ‘directly and easily accessible from the specific section of the online platform’s online interface.’

Whereas Article 27 of the DSA introduces a general obligation that applies to all online platforms, Article 38 of the DSA tailors a special—and stricter—legal regulation for very large online platforms (hereinafter ‘VLOPs’). Article 38 of the DSA obliges VLOPs to provide ‘at least one option for each of their recommender systems’ that does not stem from the personal profiling of the user, which entails the automated processing of the user’s personal data to analyse or predict aspects concerning their preferences.



Last but not least, the AI Act is also worth being mentioned here, given that the automated recommender systems deployed by online platforms are also subject to risk-based approach adopted by the Act in order to secure the deployment of trustworthy and human-centric AI systems. Considering that the automated recommender systems can be clustered under the high-risk (or prohibited) AI systems in certain cases, the general transparency obligations applicable to AI models under Article 50 of the AI Act may well cover the models on which the recommender systems are based. That said, Article 50(1) of the AI Act lists transparency measures addressed to ‘AI systems intended to interact directly with natural persons’, as is the case for automated recommender systems used by global online streaming platforms. The provision requires providers of such AI systems to inform users about their interaction with an AI system, unless such interaction cannot be deemed obvious from the circumstances and from the perspective of a ‘reasonably well-informed, observant and circumspect’ individual.

3.3.6 *Copyright (mis)information and missed opportunities*

Last but not least, there is yet another issue that lies at the heart of this deliverable. The most recent studies in the field have revealed that creative content producers—especially the ‘non-mainstream’ film producers—are not well informed about copyright in general and particularly about the short- and long-term revenues copyright can provide them with. Despite their limited perception of copyright, which is often built upon certain misconceptions or biases, creative content producers make decisions with serious legal consequences or engage in legal transactions that would require the transfer or licensing of their rights, often in ways that are far from favourable.

In the study, entitled ‘Intellectual Property and the Contemporary European Audiovisual Industries’, which was published by CEPi (known as, the Centre for European Audiovisual Production) in February 2025, Christopher Meir and Petar Mitric focus on the most common business models deployed in the AV sector for the licensing of cinematographic works for digital exploitation and the consequences of such business practices on the short- and long-term revenues of independent film producers, especially with regard to the retention of their IPRs. Meir and Mitric put three main business models under a critical lens: the independent production model, the broadcaster/distributor model, and the streamer model. The co-authors provide working definitions for these models. The independent production model is formulated as a business arrangement where all or most IPRs belong to the independent creative production company. The



broadcaster/distributor model refers to the arrangement in which ‘the commissioning broadcaster or the sale agent/distribution company retains the bulk of the IPRs’ while offering the independent creative producer a share of IPRs or profit-sharing incentives ‘based on the long-term sales of the [cinematographic work] across the global value chain’ (Meir and Mitric, 2025). Last, the streamer model is articulated as the arrangement in which ‘a global streaming platform retains all the [IPRs] in perpetuity in exchange for a higher upfront production fee’, especially compared to the revenues generated through the other two models (Meir and Mitric, 2025).

Among these models, the independent production model is stressed to be more advantageous for independent creative producers, as the success of cinematographic content might lead to derivative works (e.g. remakes, prequels, sequels) or the sale of related merchandise (e.g. video games, action figures, clothes)—both of which generate additional revenues for the producers through new license agreements as well as the extension of the current ones (Meir and Mitric, 2025). Copyright, let alone derivative and ancillary rights, are already acquired by third parties or streaming platforms in the other models, which leaves independent creative producers deprived of any long-term revenue (Meir and Mitric, 2025).

Nevertheless, Meir and Mitric explain that independent creative producers, especially early career producers, often act upon short-term economic interests, in order to secure funds for realising and globally distributing their creative projects, which leads them to relinquish their IPRs, hence independence and long-term revenues, to global streaming platforms. Thus, the co-authors advocate for the education of independent film producers about copyright, as having an insight into the different models, the role of copyright and the economic outcomes of transfer or licensing of copyright in each model would not only empower independent producers but would also help them make informed decisions about the management of their IPRs. Additionally, the co-authors call on European and national policymakers and legislators to introduce funding schemes that would support independent productions and to modify the definition of ‘European works’ embraced by the AVMSD to ensure that only the works whose IPRs are principally managed by European companies would benefit from the quotas dedicated to enhancing the visibility and screening of European works (Meir and Mitric, 2025).

Aside from independent film producers, there is evidence in the literature suggesting that documentary filmmakers are also haunted by copyright misperceptions, which triggers an overall scepticism about several other copyright tools, such as E&Ls that can ease the filmmaking cycle and facilitate time- and cost-efficient filmmaking (Meletti and van Gompel, 2021). This strand of literature is produced by Bartolomeo Meletti and Stef van Gompel in the context of the reCreating



Europe project, which was a multi-disciplinary research project funded by the EU's Horizon Europe programme.

Meletti and van Gompel, by focusing on the market behaviours and perspectives of Creative Cultural Industries (hereinafter 'CCIs'), investigate the British and Dutch AV markets to understand the challenges of specific categories of film producers, including documentary filmmakers. It shall not be noted that the topic at the core of this deliverable, namely the international distribution of cinematographic content, remains outside of the reach of their research scope. Nevertheless, van Gompel and Meletti's conclusions shed light upon an often-overlooked aspect, which was also confirmed by Meir and Mitric: the pressing need to raise awareness on copyright and to educate CCIs as well as individual creators about the promises and perils of copyright.

3.4 Key Findings

The analysis of the legal complexities indicated by the scholarly literature and European cinema professionals, which were considered in the greater policy and legislative context, reveals that the vast majority of the legal hurdles mapped within this report still await a solution, hence the intervention of the EU policymakers and legislators. Yet, several other matters listed herein have been either resolved or have recently been addressed by legislative endeavours whose impact on the performative activities of European cinema professionals is yet to be assessed.

To begin with, the pan-European legislative landscape requires a uniform understanding and articulation of the concept of 'authorship' within the context of audiovisual/cinematographic works. As analysed and elucidated in another deliverable of the REBOOT project, titled 'D3.3 – Policy Recommendations', which is directed towards EU and national policymakers and legislators in order to highlight areas that require further harmonisation, the legal provisions established in Article 1(5) of the Sat-Cab Directive and Article 2(2) of the RLD have exhibited limited influence in harmonising the authorship of audiovisual/cinematographic works across the EU (Turan et al., 2025). While these provisions neither define an authorship model for audiovisual/cinematographic works (e.g., single authorship, co-authorship) nor specify or harmonise the co-authors of such works, the discretion granted to the EU Member States has resulted in nuances in the national implementation strategies adopted by different Member States. Therefore, this aspect complicates the copyright clearance process, especially for non-mainstream filmmakers and cinema professionals who plan and operationalise their creative activities on a limited budget, given the prevailing hardship in identifying the authors of an audiovisual/cinematographic work. This problem is further exacerbated, especially



if the initial rightsholders have transferred their rights to third parties, as the EU copyright system does not support or legitimise the registration of copyright or transfer of rights vested in copyright-protected works (see: Turan et al., 2025).

Unlike the concept of ‘authorship,’ the concepts closely related to non-linear modes of distribution have been clearly defined by the EU Directives and Regulations adopted in 1998 and onward. Indeed, the modern EU legislative framework provides clear-cut definitions, as well as legal regulations, for the concepts ‘audiovisual media service’, ‘on-demand audiovisual media service’, ‘intermediary service’, ‘online intermediary service’, ‘internet service provider’, ‘online content-sharing platform provider’, ‘online content service’, ‘online platform’, and ‘core-platform service’. However, the legal clarity in this regard becomes helpful to the non-mainstream filmmakers and cinema professionals only if they are well-informed about the EU legislative framework and the legal instruments they should consult for their creative activities and the distribution of their works.

Yet another aspect that is well-harmonised across the EU is the economic rights encompassed within copyright and the E&Ls facilitating the use of orphan works (see: Turan et al., 2025), which is crucial not only to conclude cross-border license agreements to facilitate the distribution and promotion of European audiovisual/cinematographic works within the borders of the EU, but also to access and utilise works for the production of new audiovisual/cinematographic works. Nevertheless, this information would also be helpful to non-mainstream filmmakers and cinema professionals if they are well-informed about the legal terminology, the EU copyright framework, and particularly the E&Ls available in the EU copyright regime, the legal nature of their creative practices, and the copyright-related aspects of cross-border license and distribution agreements. Nevertheless, as already encompassed herein and in D3.3, the studies conducted by the legal scholars expose cinema professionals’ reluctance about reliance on E&Ls and the limited nature of their knowledge on the intricacies of copyright law (see: Meletti and van Gompel, 2021; Meir and Mitric, 2025; Turan et al., 2025)

Last but not least, the analysis conducted herein demonstrates that the EU policymakers and legislators have adopted specific legal tools, within the AVMSD, DSA and the AI Act, to tackle the adverse impacts of media windows and the automated recommender systems deployed by online platforms on the cross-border circulation, distribution and promotion of European audiovisual/cinematographic works. In this regard, it shall be admitted that the legal provision introduced within the AVMSD, while strengthening cinema professionals’ management of the dissemination of their works, does not necessarily eliminate the power asymmetries that might influence and shape the license agreements to be concluded between the rightsholders and the



broadcasting organisations or online streaming platforms. As to the interplay of AI and the promotion and distribution of European audiovisual/cinematographic works, it shall be noted that the EU legislator's endeavours aimed at enhancing the transparency of how the automated recommender systems operate are yet to be assessed, given the recent adoption of the DSA and the AI Act.

Considering the ways in which the EU legislative framework supports or falls short of the practices of non-mainstream cinema professionals, it is essential to provide cinema professionals with a set of guidelines that would facilitate their activities.

4 CODE OF BEST PRACTICES

Based on the research conducted in the context of T4.2 and the key findings presented above in Section 3.4, the REBOOT Consortium provides the following suggestions and guidelines as a 'Code of Best Practices' to assist and support the creative endeavours of the European cinema professionals:

- **Be sure to have a profound understanding of 'copyright' and your rights as an author.**

Copyright consists of a bundle of economic and moral rights, which are envisioned as rights exclusive to the author of an original work. Whereas moral rights provide the author with the rights to be mentioned as the author of their work and to prevent any modification of their work, economic rights (e.g. reproduction right, right to communication to the public, right to making available to the public, distribution right) can help generate revenues through exclusive and non-exclusive license agreements or the transfer of rights. Therefore, a profound understanding of copyright entitles the author to the knowledge and the power to make well-informed decisions and to exercise their rights while monetising their works.

- **Consider joining professional networks and organisations, including regional and international organisations, to expand your knowledge of copyright in countries other than your own.**

Despite the legal harmonisation efforts of the EU policymakers and legislator, the copyright regime in an EU Member State differs from that of others. Whereas it is hard, if not impossible, for an individual cinema professional to have a profound and up-to-date knowledge of the copyright regimes of all the EU Member States where they would like to disseminate their audiovisual/cinematographic work, there are several professional networks



and organisations that hold or have access to such information. Therefore, identifying these networks and organisations and actively participating in their activities—such as conferences, workshops, networking events, information sessions and alike—would equip cinema professionals with the opportunity to explore copyright frameworks of countries other than their own.

- Be sure to consolidate and publicly state your ‘authorship’ or ‘co-authorship’ of your literary, artistic, audiovisual/cinematographic works—also to prevent your works from being ‘orphaned’.

‘Authorship’ is not only a key concept of the European copyright discourse but also the key in identifying those who are entitled to copyright, hence the ones who can exercise the economic rights vested in an audiovisual/cinematographic work and monetise the work through license agreements or by transferring the economic rights vested in the work. Therefore, consolidating one’s sole authorship or co-authorship of a work within the work or its promotional materials, on the professional websites associated with the author or the work, or on the author’s online portfolio would provide information on and evidence, also for the presumption, of authorship and rights ownership. In legal systems, such as the EU copyright regime, where the enjoyment of copyright cannot be subject to any formalities, the measures that the authors would take to consolidate and publicise their authorship would ease the conclusion of license agreements, while also helping prevent their works from being ‘orphaned’.

- Develop a concrete exploitation and dissemination strategy before launching the production phase of your audiovisual/cinematographic work.

It is essential to have a robust roadmap, based on the ways in which copyright might come into play over the course of the journey, before launching a creative project. Indeed, planning the workflow by considering the possible transformative uses of the work (e.g. making of prequels or sequels, adapting the work to series or animation format, shooting remakes of the work) would help envision the prospective exploitation opportunities and the generation of revenues in the long term based on the same work. Additionally, considering the other ways in which the work can be commercialised through the design, manufacturing and sale of merchandise based on the work and/or the characters (e.g. stationery, action figures,



collectables, toys and puzzles, textiles and clothing, comics) would help the authors/rightsholders to plan ahead their commercial strategies.

Furthermore, having a concise plan on the State where to produce the audiovisual/cinematographic work and the channels to be employed to distribute the work would be pivotal to understand whether the work in question would fall under the definition of 'European works' in the context of the AVMSD. This aspect is essential to benefit from the screen and catalogue quotas allocated, by means of the AVMSD, to promoting European works across the EU.

- **Negotiate the terms and conditions of the distribution agreements you conclude with third parties.**

Acknowledging the market realities and the power asymmetries in the negotiation of distribution agreements between non-mainstream filmmakers/cinema professionals and broadcasting organisations as well as online streaming platforms, European cinema professionals are strongly encouraged to meticulously assess the terms and conditions of these agreements and to tailor the provisions of the agreements to their needs and expectations. Considering the explanations provided in the context of the previous guideline, conclusion of non-exclusive and short-term license agreements would provide the cinema professionals with the opportunity to further commercialise their works, including their transformative uses of their works. The so-called buy-out contracts, on the other hand, while providing cinema professionals with the payment of a lump sum—which can also finance the production of the work, would terminate the author's control over the work, as these agreements would transfer the rights of the author to the broadcasting organisations or online streaming platforms.

5 CONCLUSION

'D4.2 – Coping Strategies of Non-Mainstream Filmmakers and Codes of Best Practices' constitutes the scientific output of the research endeavours undertaken in the context of the REBOOT project. This document, and the research conducted to produce it, fall under the research endeavours of WP4 (The framings and strategies of cinema professionals), which centralises the perspectives of cinema professionals and aims to offer an in-depth analysis of the interaction of this key stakeholder group with the international and European film markets.



In line with the overarching aims and objectives of WP4, D4.2 is dedicated to bringing to the fore the perspectives of 'non-mainstream' cinema professionals to complement the generalised and/or mainstreamed narratives on the market-related needs and expectations of European cinema professionals. Through the investigation of perspectives of filmmakers who stand at the periphery of the modern film industry, D4.2 vocalises and highlights the specificities of the necessities of non-mainstream cinema professionals' creative activities and the obstacles to the promotion of such cultural content by focusing on their engagement with the distribution and promotion of their creative output.

In this context, D4.2 comprises the 'Code of Best Practices' co-developed by the SSSA research team with cinema professionals for cinema professionals. The document also includes a detailed explanation of the theoretical and methodological background of the CoBPs. Indeed, the CoBPs presented herein are a set of guidelines co-developed by legal scholars and cinema professionals as a result of theoretical and qualitative research, such as interviews and workshops. The CoBPs comprises a tool for the industry that maps the legal challenges common to the market actors (or cinema professionals) involved in the international distribution and promotion of European cinematographic content and offers legally sound, experience-based, practical solutions to cope with such challenges.



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