The impact of including AV in the EU Geoblocking Regulation: evidence from industry

Prepared for a group of AV businesses active in Europe

4 March 2020

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compelling economics

The impact of cross-border access to AV content, 2016 and 2020

In 2016
we identified the potential harm from a loss of territorial exclusivity

Producer revenue losses of up to €8.2bn per year

Output reduction of up to 48% for TV content and up to 37% for films

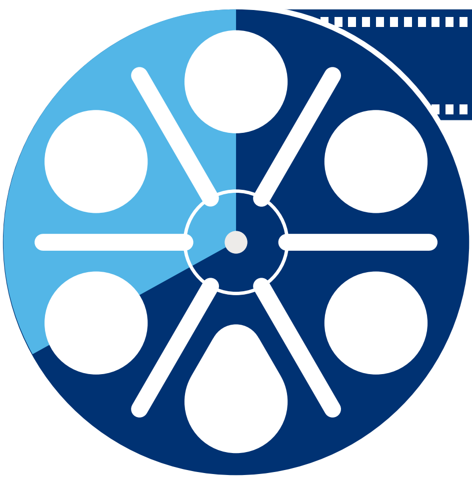
Consumer welfare losses of up to €9.3bn per year

In 2020
our survey finds these harms would persist:

71% of industry anticipate **'negative' or 'very negative'** effects if AV is in scope of the Geoblocking Regulation… … even with a requisite rights limitation

84% of industry say territorially exclusive pre-sales are 'very important' to the functioning of their business

Over the last 5 years, consumer access to non-national content has substantially increased



67% of industry agrees new content discovery mechanisms have increased non-national content consumption

Considering two aspects of the debate in particular, we conclude that:

1. A requisite rights limitation would not prevent harm

74%

of industry anticipate a loss in rights value

Admit one SCREEN TIME PRICE

…for titles available, but not actively marketed, in a given territory

…of these, 65% anticipate the values of:

61% to 100% less

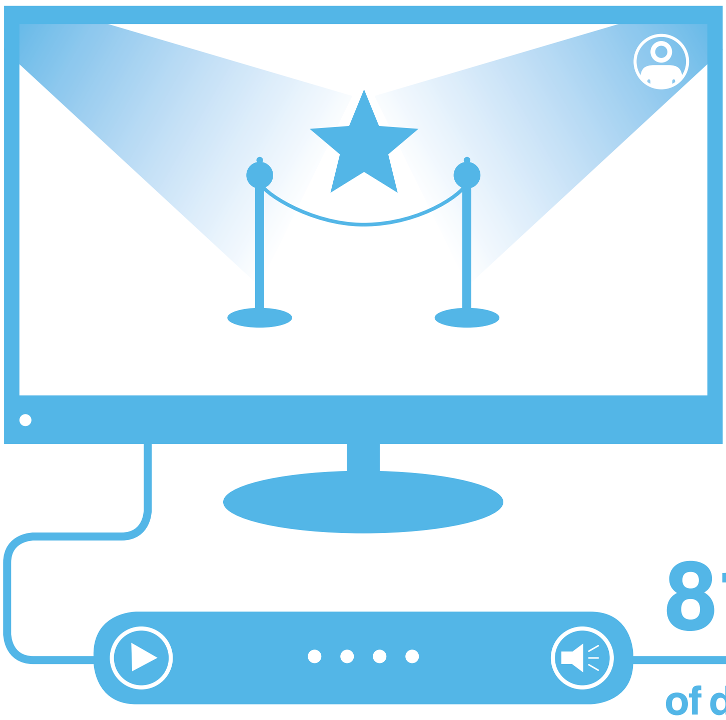
Admit one SCREEN TIME PRICE

2. Language versioning is unsuitable for exclusive contracting

87%

of industry considers language exclusivity would be 'less effective' than territorial exclusivity at recouping investments

Overall, the contractual freedom to agree territorially exclusive licences remains key:



81%

of distributors and aggregators consider exclusive content more important than in 2015

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Boxes, figures and tables

Glossary

Active sales	Actively marketing and selling to consumers located outside the territories for which the licensee holds the relevant content licence
AV	Audiovisual, in this report specifically referring to film and TV content (excludes radio)
Catch-up services	Services providing TV programmes, on demand, on devices connected to the Internet. Access is normally only available following a programme's linear TV broadcast
Consumer welfare	A measure of individual benefits derived by people consuming particular goods and services
Cross-border access	The ability to access content via services that are available in a member state that is not the consumer's country of residence
Day-and-date release	First release of television content via (near) simultaneous broadcast in both the home country and other licensed territories
Digital Single Market	The European Commission goal for a harmonised and integrated European market without barriers to trade in digital and online services
DTC	Direct-to-consumer—an online service, typically for a monthly fee. Offered by a producer to provide its own content directly to consumers as a complement to traditional distribution channels
DVR	Digital video recorder—a device used to record, save and play back television programmes. A DVR can also pause live TV by recording the current show in real time
FTA	Free-to-air—an unencrypted TV broadcast, allowing any person with the appropriate equipment to receive the signal for free (subject to a licence fee that may be payable to the public service broadcaster in a particular territory)
IP	Internet protocol—references to IP can be taken to mean 'Internet'. IP refers to a means of delivering TV and film content to consumers
Online services	Any service delivered over the internet that provides end-consumers with access to film or TV content. This can include local and international SVOD, TVOD, simulcasts and catch-up services.
OTT	Over-the-Top. See 'Online services'
Passive sales	Sales responding to unsolicited requests from individual consumers located outside the territories for which the licensee holds the relevant content licence
Pay-TV	Paid-for TV services—normally subject to a monthly subscription fee. In this report, pay-TV is applied broadly, to refer to linear broadcast on traditional pay-TV and their associated VOD services
SVOD	Subscription video-on-demand—a service that gives users unlimited access to a wide range of VOD programmes for a monthly flat rate
Trader	As defined in the Geoblocking Regulation, Article 2(18), a trader is any natural or legal person acting for purposes relating to their business, including online interface operators (Article 2(16)) and entities offering general conditions of access (Article 2(14)). This therefore includes actors at all levels of the AV value chain
TVOD	Transactional video-on-demand—services that allow consumers to pay for access to individual television programmes or films. There are two types of TVOD: download to own (DTO—also known as electronic sell-through, or EST) and download to rent (DTR)
VOD	Video-on-demand—an interactive television technology that allows subscribers to view programming in real time or to download programmes and view them later. IP TV technology is often used to bring VOD to TV sets and personal computers

Key messages

- ➔ Our industry survey finds that **including AV within the scope** of the Geoblocking Regulation—even subject to a ‘requisite rights’ limitation—would have **material negative effects** throughout the value chain.
  - **71% of respondents** said that prohibiting geo-blocking with a requisite rights limitation would have a **‘negative’ or ‘very negative’** effect.
- ➔ Given the **inherent risk** associated with TV and film production, and the significant diversity across individual works and territories, the **contractual freedom** to optimise rights values remains key.
- ➔ Eroding territoriality **undermines the commercial strategies and value-generating mechanisms** that AV traders rely on to recoup their investment costs. This reduces the incentive to fund and promote new works, as the risks of under-recovery increase.
- ➔ The Oxera and Oliver & Ohlbaum 2016 report found that removing territoriality in the AV sector would lead to **short-run, annual losses** of up to:
  - **€9.3bn** of consumer welfare;
  - **€8.2bn** of industry revenue;
  - **48%** of film and TV output.
- ➔ These **risks to the quality and quantity** of new works available to consumers would persist, even with a requisite rights limitation.
- ➔ Language versioning would be **unsuitable** as a basis for exclusive contracting given **differing consumer preferences** for dubbing and subtitling, as well as the proliferation of language skills around the EU.

Summary

In this study, conducted on behalf of a group of AV businesses active in Europe, Oxera has examined the likely impact on producers, distributors, cinemas and broadcasters if AV services were to fall within the scope of the 2018 Geoblocking Regulation (‘the Regulation’), subject to a requisite rights limitation.

In 2016 Oxera published a report jointly with Oliver & Ohlbaum (‘the 2016 report’), which modelled the likely effects on industry and consumers of increased cross-border access to AV services within the EU. This new study extends the 2016 report by focusing on the supply-side effects, gathering evidence through a broad-based survey of industry participants across Europe, supplemented by a series of in-depth interviews with senior staff from a selection of key companies in Europe’s AV value chain.

Legislative background

In keeping with the 2006 Services Directive, AV services are completely excluded from the scope of the 2018 Geoblocking Regulation (‘the Regulation’). Other services—whose main feature is the provision of access to and use of copyright works—were exempted only from the prohibition on applying different general conditions of access to goods and services.

At the time that the European Commission released its proposal for a regulation, it had taken into consideration the specific economic and legal characteristics of electronically supplied services whose main feature was the provision of access to and use of copyright-protected works (such as AV services), determining that the geo-blocking of such services was justified. Two years after the Regulation entered into force (and every five years thereafter), the Commission must report to the European Parliament and Council on the Regulation's impact. As part of its first review—due no later than 23 March 2020—the Commission must also consider the scope of the Regulation, including whether it should be extended to electronically supplied services providing access to copyright-protected works.

Scope of this study

This study focuses on two aspects of the debate regarding the inclusion of AV services within the scope of the Regulation:

- first, we consider the effect of the requisite rights limitation laid down in Article 9(2) of the Regulation—meaning traders would be prohibited from applying different general conditions of access provided they have the requisite rights for the relevant territories;
- second, we reflect on the comments made in a recent research report for the European Parliament CULT committee ('the Film Financing report'), which suggests that exclusive language rights may be a 'natural substitute' for territorial exclusivity as a means of optimising content licensing.

The study also considers the specific impact of these issues for a selection of representative territories, highlighting how these effects may differ between member states.

Recent changes have further increased the need for territorial exclusivity

76%

of producers and distributors consider online distribution more important than in 2015

Since 2016, Europe's AV landscape has undergone a series of significant commercial and technological changes. On the demand side, these changes include a continued trend of viewers shifting away from traditional linear viewing to more personalised, mobile and on-demand content consumption. On the supply side, there has been an evolution in the variety of business models in the sector, enabled by technological developments and driven by fierce industry competition. These changes are having a noticeable impact across all distribution windows.

For instance, there has been a rapid ascent of a variety of online services across Europe, including: international SVOD players, such as Netflix; TVOD players, such as Amazon; and local players, such as Nordic Entertainment Group's Viaplay and Sky's NowTV. We are also beginning to see the emergence of new, DTC offerings as a complement to traditional distribution channels, from local producers, such as Spain's Atresmedia; and international players, such as Disney.

‘As consumers are shifting away from linear to on-demand viewing, the quality of the content on a distribution channel (and, in particular, the exclusivity of that content) has become a key factor for competition.’

Vertically integrated European producer-distributor-broadcaster

New distribution modes are exerting greater competitive pressure on existing windows, increasing the impetus for broadcasters and online services to acquire exclusive content as a means of staying competitive. This increases demand for original content, boosting investment in (and increasing the cost of) original content.

There have also been considerable technological advances that offer consumers new ways to discover content based on their tastes and preferences. New content discovery mechanisms (such as personalised recommendations) are helping to increase the amount of non-domestic content being watched by EU consumers.

64%

agree that new content discovery mechanisms have increased the share of foreign content being consumed

These business model developments, spurred by technical innovation and increased competition, have occurred within the context of the existing legislative and regulatory regime, which continues to uphold the principles of contractual freedom and the ability to license on a territory-by-territory basis.

84%

of respondents said that territorially exclusive pre-sales are **‘very important’** to the functioning of their business

Accordingly, our survey of industry finds that territorial exclusivity remains a key tool for the functioning of Europe’s AV businesses. This is particularly true for producers of high-quality local European film and TV series, which are increasingly dependent on financing mechanisms that can distribute the risks involved in production—such as co-production and pre-sales—in order to fund new content investment.

A requisite rights limitation would not prevent harm

Including AV within the scope of the Regulation—even subject to a requisite rights limitation—would undermine many of the most important financing and value-generating mechanisms in the AV industry by impinging on traders’ freedom to contract on a territorially exclusive basis. For example, a producer with a DTC offering that wished to include a work on its own service in one EU territory would be prohibited from geo-blocking access in any territory for which it still held the rights. Similarly, a broadcaster that acquired rights to more than one EU territory would be prohibited from geo-blocking its services between those territories.

This would have a detrimental impact on the established mechanisms of funding the production, distribution and promotion of new AV works. As described in the 2016 report, producers rely on a tapestry of pre-sales, co-production, public funding, gap funding and secondary rights sales to raise finance and distribute risk.

Indeed, the 2016 report found that eroding the territorial licensing model for AV content and services was likely to be detrimental to EU consumers as well as local and international AV businesses. In particular, the report found that:

- producer revenues would fall as local broadcasters and distributors have reduced valuations of non-exclusive content, which would not differentiate their offerings from cross-border competition;
- less content would be made as funding for new productions becomes harder to secure, due to reduced rights valuations by distributors;
- as cinemas, broadcasters, distributors and producers respond to the changing industry dynamics, consumer welfare in Europe would fall as a result of a reduced output of new content. Falling budgets would also result in a reduced quality of work, less diversity of new projects and restricted access to existing content.

Ultimately, it is a combination of broad audience reach and effective cost recovery that facilitates the enjoyment of new content by consumers. The 2016 report estimated short-run consumer welfare losses of up to €9.3bn per year; industry revenue losses of up to €8.2bn; and an output loss of up to 48% as a result of territoriality being removed.

As the quality and cost of new content continues to increase, the ability to stagger releases across individual territories is vital to the recoupment of the significant investments associated with the development, production and promotion of new works. Through our industry survey and stakeholder interviews, we uncovered several ways in which a territory-by-territory release of new works can add real value to both consumers and industry, including:

- allowing works to be ‘incubated’ in their domestic territory ahead of international sales, increasing the value of the rights to foreign distributors;
- enabling local distributors to optimise the promotion and release strategies for highly localised consumer preferences and cultural requirements;
- mitigating the risks involved with new content acquisition for distributors, online services and broadcasters by allowing them to ‘wait and see’ if a work is successful in its domestic territory first.

However, prohibiting geo-blocking where the requisite rights are held would introduce the risk of cross-border cannibalisation between territories. This would undermine these value-generating strategies, increasing the risk of under-recovery for producers and distributors investing in the production and marketing of new content. In light of this, traders may be forced to adopt new strategies that mitigate the devaluation of these rights.

For example, since a vertically integrated producer would necessarily own the requisite rights around the EU, it would be prohibited from geo-blocking any territory for which the rights are unsold at the time of exhibiting on its DTC service. This would result in reduced rights values for any future sale in that territory, due to the risk of earlier cross-border cannibalisation by the DTC service.

74%

of respondents anticipate a **loss in rights value** if a work has already been made available, though not actively marketed, in a given territory

'We benefit from 'incubating' works in the domestic territory to build critical acclaim before later selling those works into foreign territories or to international OTTs'

European producer-broadcaster

To mitigate this risk, such a producer might find itself forced to license the rights in all EU territories it wishes to sell to *before* showing a work on its own DTC service. However, this approach would undermine the strategy of incubating a work on a DTC service that has been pursued by a range of different producers. Indeed, if producers are forced to license rights ahead of their first exhibition, there is no incubation period for the work.

35%

of respondents said they **exhibit 80–100% of their content** in one EU territory while still holding the rights to other EU territories

Moreover, multi-territory broadcasters and online services might acquire the rights to a work in different territories at different prices, or on different terms. For example, a trader may acquire rights to one territory as a pre-sale and in another territory after the title has already been produced. If these traders were to be prohibited from geo-blocking across the territories for which they hold rights, it could undermine the economic case for acquiring rights in certain territories; or may lead to an increase in prices, as highlighted in the 2016 report.

Finally, from the perspective of those acquiring rights, the wait-and-see strategy to mitigate the acquisition risk around niche or distinctive new creations would be undermined. If vertically integrated producers increasingly license rights ahead of the work's first exhibition, cinemas, distributors, online services and broadcasters would not have the opportunity to observe the work's success ahead of acquiring the rights.

71%

of respondents said that prohibiting geo-blocking with a requisite rights limitation would have a **'negative' or 'very negative' impact** on their business

Consistent with this, our survey confirms that including AV within the scope of the Regulation—even if subject to a requisite rights limitation—would be expected to have material negative effects throughout the value chain. Eroding territorial exclusivity impedes traders' ability to optimise the local commercialisation of their rights. This would have a knock-on effect on the complex financing and promotion mechanisms prevalent in the AV industry. As such, we anticipate that the risks to the quality and quantity of new works highlighted by the 2016 report would persist.

Language versioning is unable to maintain effective exclusivity

In order to focus on the economic implications of a potential move to language exclusivity, we make the simplifying assumption that AV services are included in the scope of the Regulation and, as a consequence, producers employ a model of multi-territorial language exclusivity. For example, a French trader acquiring the exclusive rights to the French-language version of a work would be granted the rights to exhibit that content in any EU member state; while at the same time, a Dutch provider acquiring the exclusive rights to the Dutch subtitled version would also get the rights to exhibit across the EU.

Under these assumptions, we find that language versioning would be unsuitable as a basis for exclusive contracting, given consumers' differing preferences for subtitling, dubbing and original language viewing (particularly of English-language works) throughout the EU.

Through our interviews, we found that a principal reason that distributors seek to acquire licences on a territorially exclusive basis is to manage the release of new works according to local tastes and preferences. Territorial exclusivity also plays a role as a basis for distributors to estimate the likely value of rights and opportunities to recoup their investment in localisation and promotion.

In contrast, under a language-exclusive contracting regime, it is likely that the release of different language versions would be uncoordinated; and local distributors would have no guarantee that successful investments in localisation and promotion would deliver them sales revenues.

Indeed, since multiple language versions would be available within the territory, broadcasters and consumers may choose to purchase an alternative version instead. At the same time, advances in artificial intelligence (AI) technology are making automatic translations of AV content possible, further increasing the risk that consumers forgo the localised content and view an alternative version with an unauthorised translation. Furthermore, language exclusivity would inhibit the effective allocation and sharing of rights for works co-produced by traders from separate territories that share the same language (as the Film Financing report itself also notes). This is likely to have a dampening effect on the incentives to enter into co-productions of this type, just as the importance of co-productions is increasing as a means of content financing.

For consumers, a shift to language exclusivity is likely to mean reduced access to works in the timeframe and format they prefer. For example, our interviews with industry participants revealed that in certain territories (e.g. Germany and Spain) consumers often have a choice of soundtrack, including their own language and the original. However, under a language-exclusive regime, the provision of multiple soundtracks may become impractical if the local cinema, broadcaster or online service has to acquire different versions from different distributors.

Furthermore, in the case of widely spoken languages, a model of language exclusivity would be likely to favour large, international distributors, broadcasters and cinema chains with the infrastructure to exploit the rights across many territories. While these international players have the means and reach to acquire and exploit language-exclusive rights, they may have less focus on the local needs in any one territory. This would result in consumers receiving a less tailored service, reducing the overall commercial potential of the work.

For less commonly spoken languages (such as Slovenian, Croatian or Estonian), a move towards language-exclusive rights could result in an erosion of value to such an extent that the content may simply not be translated into those languages. This could happen if the English-language version of the work is made available before a local-language version, which is common given that the language conversion process takes time. With increased uncertainty over revenue, local distributors would be unwilling to invest in the conversion of works into local languages. This would harm both consumers—who no longer have the option of watching content in their local language; and producers—which face a loss of sales to those viewers who *would* have taken a local-language version but not a foreign-language version.

In the long run, producers seeking to prevent the devaluation of content rights due to cross-border access may enforce dubbing and/or strategically delay the release of content in certain territories.

Overall, a shift to language exclusivity would be expected to reduce revenues, with 87% of our survey respondents indicating that language exclusivity would be 'less effective' or 'much less effective' at raising revenues compared with territoriality.

87%

of respondents said that language exclusivity would be **'less effective' or 'much less effective'** at raising revenues

Conclusions

There is no one-size-fits-all approach to financing and exploiting AV content. In our discussions with industry participants, we found that different traders will adopt different approaches to financing, marketing, distribution and localisation of content depending on the specific characteristics of a given work and their chosen business model. Given this diversity, it is vital that traders retain the contractual freedom to tailor their strategy to each individual work and territory.

Including AV within the scope of the Regulation—even with a requisite rights limitation—would erode that contractual freedom, impinging on traders' ability to contract on a territorial basis. This would undermine many of the funding and value-generating mechanisms that traders use to finance new productions. This, in turn, would put investment in new content at risk, reintroducing the risks to output and consumer welfare identified in the 2016 report.

A language-exclusivity regime would also reduce the contractual freedom of traders at all levels of the value chain. Smaller distributors, cinemas and broadcasters may find themselves unable to afford the rights to content with multi-territory appeal; while producers may be unable to find distributors willing to acquire the rights and invest in the localisation and promotion of content in less widely spoken local languages. For consumers, this would mean less tailored content and services; while for producers, the commercial potential and incentives to invest in new works would be reduced.

1 Introduction

1.1 Overview

In 2016, Oxera—together with Oliver & Ohlbaum—was asked to examine the potential impact of increased cross-border access to AV services within the EU as part of the debate surrounding the European Commission's proposed geo-blocking regulation and changes to online AV copyright laws.[1] The resulting report ('the 2016 report') highlighted the socio-economic justification for geo-blocking of AV services, given the negative consequences that would be likely to result for both European businesses and consumers if territorial exclusivity were eroded.

In December 2018, the Geoblocking Regulation ('the Regulation') became applicable, prohibiting the unjustified denial of access by online sellers for reasons relating to nationality, place of residence or place of establishment.[2] For most online services (for example, online software or travel booking agents) the Regulation means that sellers cannot deny cross-border access to their website (e.g. by redirection) or refuse to supply customers on the basis of their location. However, given the specific nature of the AV and other creative industries, Article 1(3) completely excludes AV services from the scope of the Regulation (in keeping with the 2006 Services Directive). Article 4(1)b further excludes services, for which the main purpose is the provision of access to copyrighted work, from the prohibition on applying different general conditions of access.

The Commission is now required to periodically evaluate the overall impact of the Regulation and report to the European Parliament and Council. The first report is due no later than 23 March 2020—two years after the Regulation entered into force—with a further review every five years thereafter. As part of its first evaluation, the Commission has affirmed its intention to analyse whether to eliminate restrictions based on nationality, place of residence or place of establishment for sectors not covered by the 2006 Services Directive, such as AV and transport services.

In light of this, a group of AV businesses active in Europe asked Oxera to consider the ongoing justification for excluding AV from the Regulation. This new study is conducted in the context of the recent evolution of the AV industry, including two important regulatory developments for the AV sector since the 2016 report was published:

(i) the entry into force of the Portability Regulation on 1 April 2018;[3]

(ii) the adoption of the Online Broadcasting Directive in April 2019.[4]

The first of these instruments broadens access to online content services by enabling consumers who are temporarily present in another member state to

[1] Oxera and Oliver & Ohlbaum (2016), 'The impact of cross-border access to audiovisual content on EU consumers', prepared for a group of members of the international audiovisual industry, May.
[2] Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC.
[3] Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market.
[4] Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC.

access paid-for services in the same way they do at home.[5] The second takes a further step, applying the country-of-origin principle for copyright clearance to the exhibition of a broadcaster's own productions as well as news and current affairs programmes. As such, this is limited to a narrow range of content over broadcasters' own 'ancillary online services' (i.e. simulcasts or catch-up services) only, excluding co-productions, third-party acquisitions and commissioned content.

1.2 Scope of this study

In this study, we assess the continued importance of exclusive territorial licensing and justified geo-blocking for the AV ecosystem, in light of the developments in the commercial and regulatory AV landscape since the 2016 report. We focus on two aspects of the debate regarding the inclusion of AV services within the scope of the Regulation, namely:

- the effect of the 'requisite rights' limitation laid down in Article 9(2) of the Regulation—meaning traders would be prohibited from applying different general conditions of access provided they have the requisite rights for the relevant territories;
- the suggestion, made in a recent research report for the European Parliament CULT committee ('the Film Financing report'), that exclusive language rights may be a 'natural substitute' for territorial exclusivity as an alternative licensing model.[6]

The assessment of the 'requisite rights' limitation is conducted in light of Article 9(2) of the Regulation, which stipulates that the Commission should assess the scope and the possible application of Article 4(1)b to services which provide access to and use of copyright-protected works, subject to a requisite rights limitation. We discuss the implications of this in section 3.

In addition, we consider the comments made in the recent Film Financing report, which suggests that exclusive language rights may be a 'natural' alternative to territorial exclusivity as an alternative licensing model. The report proposes that producers facing an erosion of territorial exclusivity could license exclusive rights for particular language versions, valid across all EU territories, meaning different versions might co-exist concurrently within the same territories. We discuss the practicalities of such an approach in section 4.

This study also considers the specific impact of these issues for a selection of representative territories, highlighting how these effects may differ between member states.

While it is beyond the scope of this study to update the modelling conducted as part of the 2016 report, our assessment remains limited to certain types of content. Specifically, we do not consider the impact on sport, video games, radio or music, but focus instead on films and TV content.

1.3 Data gathering

Focusing on the supply side of the AV production, distribution and broadcast sector, we gathered evidence through a broad-based survey of 52 industry

[5] 'Temporarily present in a member state' refers to an EU citizen being present in a member state other than their member state of residence for a limited period of time only (typically 30 days). This may be for purposes such as leisure, business trips or learning.
[6] Poort, J., Hugenholtz, P.B., Lindhout, P. and Til, G. van (2019), 'Research for CULT Committee – Film Financing and the Digital Single Market: its Future, the Role of Territoriality and New Models of Financing', European Parliament, Policy Department for Structural and Cohesion Policies, Brussels.

participants throughout Europe, supplemented by a series of in-depth interviews with senior staff at key companies.

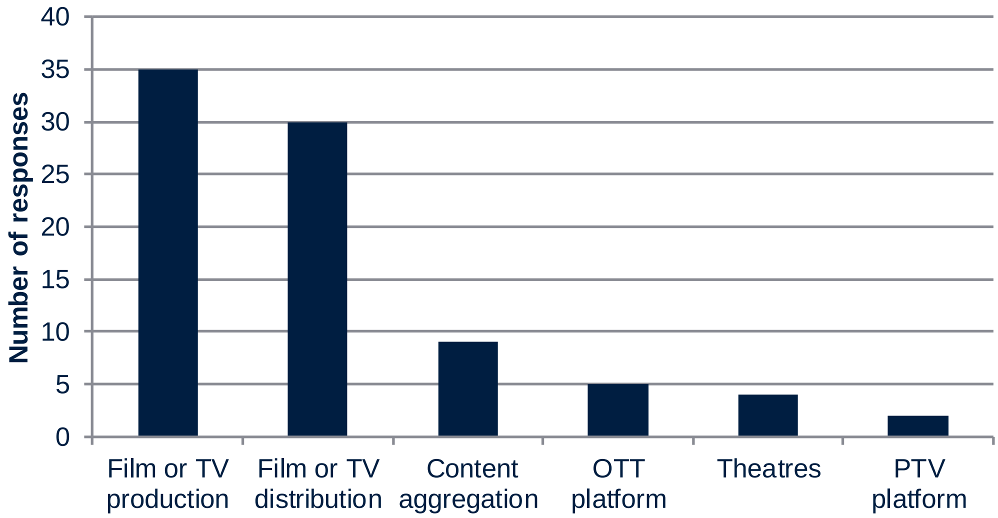
1.3.1 Survey

The survey consisted of 51 questions covering the three main themes of this report:

- the ongoing relevance of the 2016 report's conclusion in light of recent industry trends;
- the impact of a requisite rights limitation on geo-blocking;
- the efficacy of 'language exclusivity' as a licensing model.

We also asked questions about the respondents' business activities, in order to contextualise the answers they gave to the thematic questions. Figure 1.1 and Figure 1.2 provide a summary of the survey's reach across the EU and the AV value chain. Data collection ran from November 2019 to January 2020.

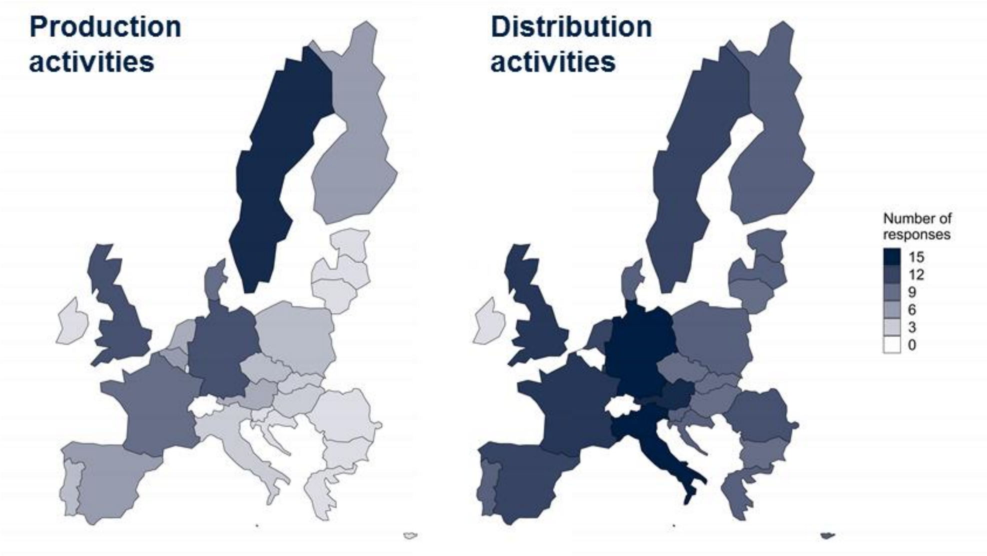
Figure 1.1 Activities of the survey respondents



Note: Respondents may give multiple answers to this question.

Source: Oxera, based on a survey of 52 industry members.

Figure 1.2 Location of the survey respondents' activities



Note: Answers to the survey questions: 'Which EU countries do you produce content for (as a domestic market)?' and 'Which EU countries do you distribute or operate channels / platforms in?'. Respondents may give multiple answers to this question.

Source: Oxera, based on a survey of 34 industry members.

Full details of the data collection process, the sample of companies surveyed and the survey questions are provided in Appendix A2.

1.3.2 Interviews

To supplement the survey evidence and help explain the results we observed, a series of 13 in-depth interviews were conducted with senior staff from a range of key companies in the industry. Participants included European and international producers, distributors, theatres, broadcasters and online service operators.[7]

The interview questions focused on each specific company's experience of the evolving industry dynamics since 2015, as well as asking how a requisite rights limitation or language-exclusive contracts might affect its business in practice. Where applicable, some interview evidence was used to provide specific country examples (see Appendix A1).

1.4 Sponsors

The group of AV businesses active in Europe that sponsored this study (referred to jointly as the 'Sponsors' throughout this report) consists of the following organisations:

- Allianz Deutscher Produzenten – Film & Fernsehen e.V.
- Association of Commercial Television in Europe (ACT)

[7] By 'online services' we mean any retail AV service, delivered over the Internet, providing end-consumers with access to film or TV content. This includes local and international SVOD services, local and international TVOD services, as well as online services providing access to live channels or catch-up programming (such as those offered by certain pay-TV operators or broadcasters). Online services may aggregate content from a number of providers, or may be a DTC service that provides access to content from just one producer or studio group.

- British Association for Screen Entertainment (BASE)
- Bundesverband Audiovisuelle Medien e.V.
- Constantin Film AG
- Entertainment One
- Fédération Internationale des Associations de Producteurs de Films (FIAPF)
- International Video Federation (IVF)
- Le Centre national du cinéma et de l'image animée (CNC)
- Motion Picture Association (MPA)
- Pact
- Sky EU
- The International Union of Cinemas (UNIC).
- Verband der Filmverleiher e.V.

2 Evolving economics of the AV industry

Since the 2016 report, the AV sector in Europe has continued to evolve as a result of technological advances and global economic forces. These include the rise in consumer take-up of online services; the increase in original productions by broadcasters; and a responsive shift towards DTC propositions by traditional content producers. This section outlines how these trends have affected the AV industry in recent years and what that has meant for businesses at each stage in the value chain.

2.1 The evolution of the AV value chain

Technological developments have led to the removal of constraints that previously limited the traditional content value chain. For example, the reducing cost of production technology has led to a rise in low-budget content creation; IP delivery has reduced the cost of distribution, meaning on-demand content can be provisioned at scale; and the proliferation of connected devices has meant that consumers can access content where and how they want.

The removal of these constraints has meant that barriers to entry have fallen and a new generation of players has entered the sector, most notably offering online services including DTC services.

Box 2.1 presents some examples of this new generation of services available in Europe.

Box 2.1 Examples of evolving AV services

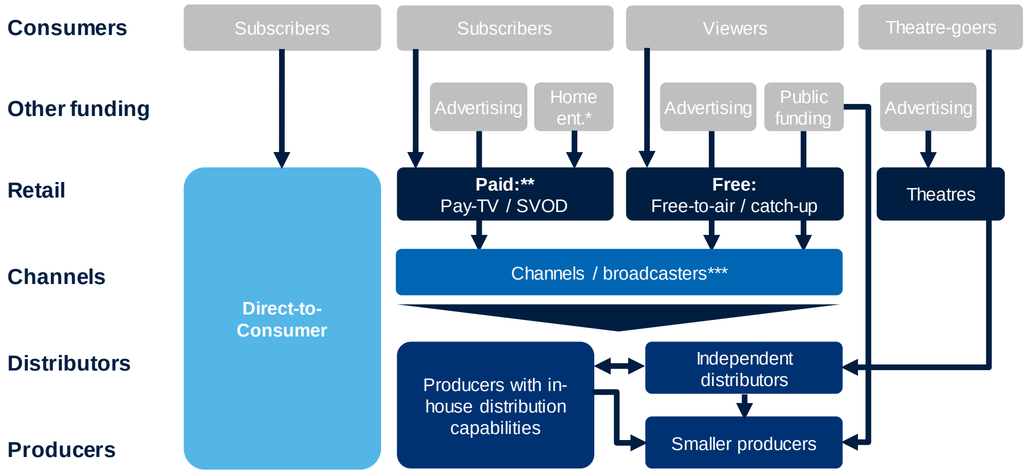
Some examples of the type of new digital offerings and business models that online technologies have enabled in Europe include the following.

- **Pluto TV:** a linear, ad-supported streaming service which is scheduled like an electronic program guide but is available via mobile or connected TV. It shows long-tail content for free online, and there is also a VOD section. Pluto TV was launched in the UK, Germany and Austria in 2018, and Switzerland in 2019.
- **Volta.ie:** launched in 2012, Volta is an Irish VOD service offering independent Irish and international titles to rent or buy, sometimes on the same day as theatrical release.
- **Atresplayer:** launched in 2018, Atresplayer is a VOD with free and paid options, showing Spanish titles shortly after release. Available both to Spanish consumers and as a paid version internationally.
- **Viaplay:** available in the Nordics, Viaplay is a premium online streaming and VOD service, including the latest international TV releases, original drama, all-time classics and film premieres. Nordic Entertainment Group will typically also present the world premiere of its own original content on this service. First launched in 2007 under the name 'ViaSat On Demand' the service was renamed in 2011, as the first SVOD service in the Nordics.

These technological and business model developments have occurred within the current exclusive territorial licensing regime, driven by local and global competitive forces and the need to innovate in order to remain competitive.

Figure 2.1 illustrates the AV value chain in light of these new business models, highlighting the main players within each stage and their associated revenue flows.

Figure 2.1 Revenue flows in the TV and film content value chain



Note: * includes physical sales and TVOD. ** includes several online distribution models (transactional, permanent access or time-limited) and subscription. *** commissioning broadcasters can also interact directly with producers.

Source: Oxera analysis.

With the advent of new business models in Europe, there has been an increase in the number of distinct release windows. For example, many territories have seen the appearance of a second and, in some cases, even a third pay-TV window.[8] Whenever new distribution windows arise they will naturally compete with existing windows to some extent. Accommodating these windows can create competitive pressure, which may result in the shortening of pre-existing windows.[9] Therefore, as technological developments create the opportunity for new distribution modes, we could expect a general downward pressure on the duration of other windows.

2.2 The continued importance of effective windowing

Despite new business models putting further pressure on windows throughout the value chain, the traditional windowing approach still remains extremely important for producers. Effective windowing enables producers to provide European consumers with a diverse range of content, while still allowing them to secure financing and recover the cost of their productions.

Our interviews with industry participants highlighted how preserving distinct windows is crucial to ensuring revenue flows throughout the value chain and can be used to finance future projects. For example, a distinct theatrical window plays an important role in the marketing of a new film within a given territory, putting a spotlight on a given work for a period of time to raise its profile among consumers.

The success of this initial launch in a territory is shown to benefit the revenue prospects of the work throughout the subsequent exhibition windows, with the Federation of European Film Directors highlighting that theatrical release is a powerful indicator of success in subsequent windows.[10] Similarly, an exclusive VOD premiere in a later window can add value to a DTC offer, the revenue from which can be used to finance new titles.

[8] European Audiovisual Observatory (2019), 'Release windows in Europe: a matter of time'.
[9] European Audiovisual Observatory (2019), 'Release windows in Europe: a matter of time', p. 10.
[10] European Audiovisual Observatory (2019), 'Release windows in Europe: a matter of time', p. 42.

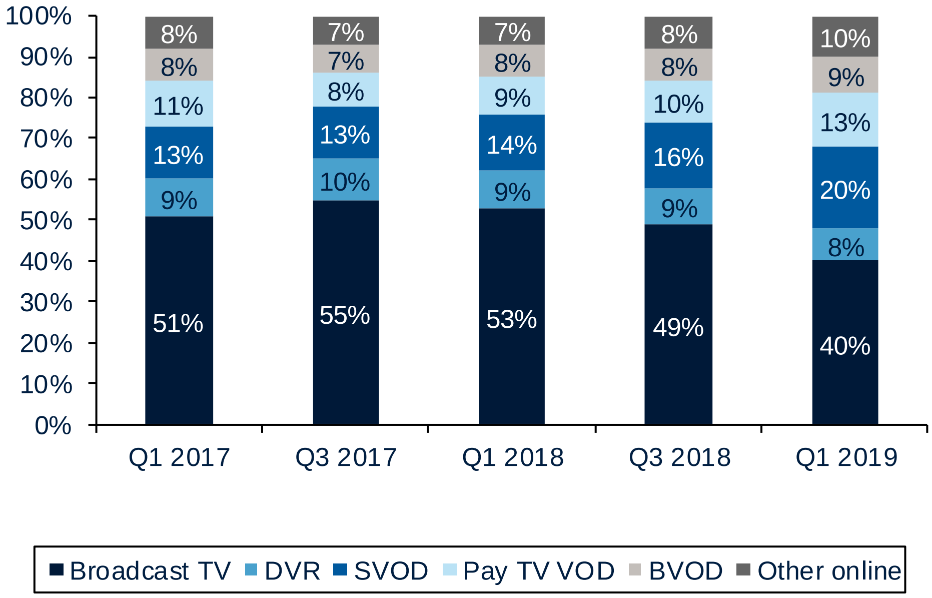
Effective windowing is crucial in this regard, as it allows each player in the AV value chain to maximise the likelihood of recouping its investments over the project's lifecycle. However, windowing also provides a way to offer different prices and access options to different consumers. As such, consumers with varying valuations for a given work can choose to view the content at different times, or in a different format or quality, to best suit their needs and budget.

2.3 A continuation of shifting consumption habits

Since 2015, we have observed a continuation of the growth of online services—a trend we first highlighted in the 2016 report. However, despite the rise of online services, there has been little evidence of 'cord-cutting' in the EU, with pay-TV subscriber numbers still increasing (by 1.2% in 2017).[11] Theatrical admissions also remain strong, with European admissions of 984.5m in 2017 representing the second-highest admission numbers since 2004.[12]

That said, the popularity of non-linear services has grown substantially over recent years and is reflected in the changing patterns of consumer viewing preferences of home entertainment services. As Figure 2.2 shows, between broadcast TV's recent peak in Q3 2017 and the latest data for Q1 2019, the proportion of viewing time attributed to online and VOD (SVOD, pay-TV VOD and BVOD combined) has increased by around 50%, from 35% to 52%.

Figure 2.2 Claimed viewing time by service—selected countries



Note: Selected countries: Germany, Denmark, Spain, France, UK, Italy, Netherlands, Poland, Sweden, USA.

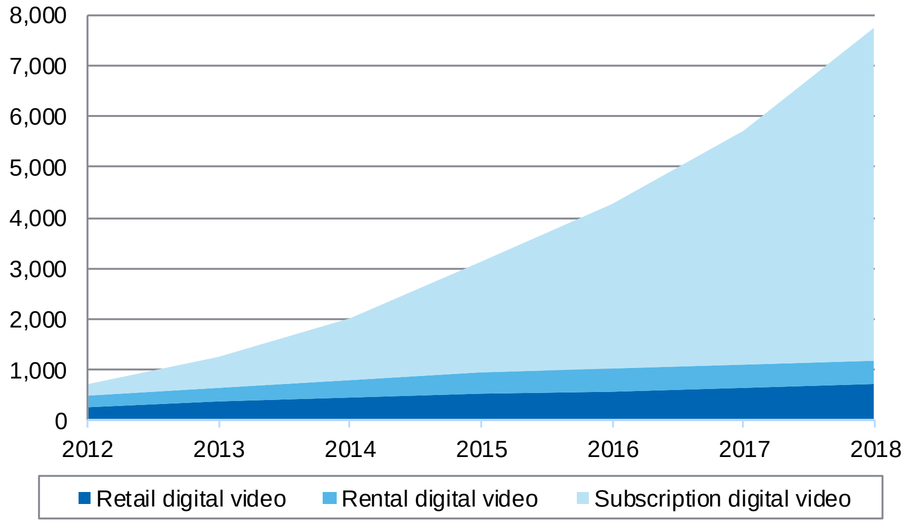
Source: Ampere Analysis for Ofcom (2019), 'The UK VoD market: Current status and future developments', p. 3.

The success of online content is mirrored across the EU, where consumer spending on digital AV content has experienced considerable growth since 2015. As shown in Figure 2.3, this growth is largely attributable to online business models. However, given differences in the business models, increased consumer spending on online services—particularly SVOD—does

[11] European Audiovisual Observatory (2019), 'Yearbook 2018/2019 Key Trends'.
[12] European Audiovisual Observatory (2019), 'Yearbook 2018/2019 Key Trends', p. 56.

not necessarily translate into the same revenue for producers as an equivalent spending on 'traditional' channels (such as home entertainment or pay-TV).

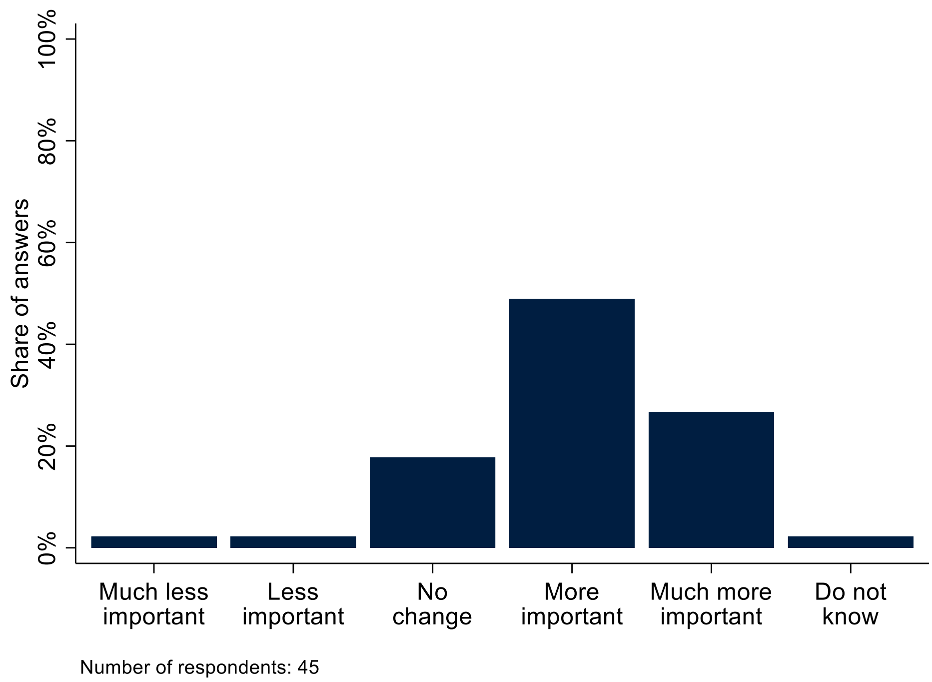
Figure 2.3 EU consumer spending on digital video, 2012–18 (€m)



Source: Oxera analysis of International Video Federation data.

Nonetheless, the industry shift towards online services is perceived as an important change by AV businesses around the EU. As Figure 2.4 shows, 76% of respondents to our survey answered that concluding contracts with international online services is 'more important' or 'much more important' now than it was in 2015.

Figure 2.4 The importance to producers of concluding contracts with international online services, now vs 2015



Note: Answer to survey question: 'How has the importance of concluding contracts with international OTT services changed for your business since 2015?'. Excludes those who answered 'Not applicable'. Restricted to those with production and distribution activities.

Source: Oxera, based on a survey of 52 industry members.

2.4 The emergence of direct-to-consumer business models

These combined commercial and technological forces have prompted a response from some traditional content producers, resulting in the emergence of new DTC business models.[13] These services offer content to consumers directly, typically for a monthly subscription fee, as a complement to the traditional cinema and broadcasting distribution channels. The content bundles offered by these services are usually narrow in genre, for example including games of one sport or the content of one producer.

Recent research by Boston Consulting Group (BCG) predicts that the prevalence of DTC models will continue to rise—with US household penetration increasing from 10% in 2017 to 25% by 2022.[14] BCG finds that consumer demand for DTC offerings is also expected to increase in the EU as more services launch—an expectation echoed by our interview respondents, many of whom said that the development of DTC services in Europe was part of their strategy for the coming years.

2.4.1 Increased demand for content

The rise of international online services in recent years has significantly increased demand for AV content. Although some of the biggest spenders in content acquisition are the streaming services, most of the growth in content acquisition spending in the last five years has been from traditional broadcasters that have substantially increased the proportion of revenue they allocate to content expenditure.[15]

Our stakeholder interviews revealed that one of the main reasons for this is the need to retain a competitive consumer offering in the face of growing online catalogues and original productions. This sentiment is echoed in European broadcasters' annual reports, many of which list competition in programme acquisition as one of the biggest threats to their businesses.

For example, in its 2018 annual report, the RTL Group stated that there was:

> higher competition in programme acquisition…as countries move towards digital switchover, market entry barriers are reduced. New entrants will also provide further choice to the viewer.[16]

while Sky identified the risk that:

> competition could impact the group's ability to acquire content that our customers want on commercially attractive terms…[17]

Mediaset has noted that:

> the absence of technological barriers is increasing the risk of traditional broadcasters being bypassed by groups that own original content and formats,

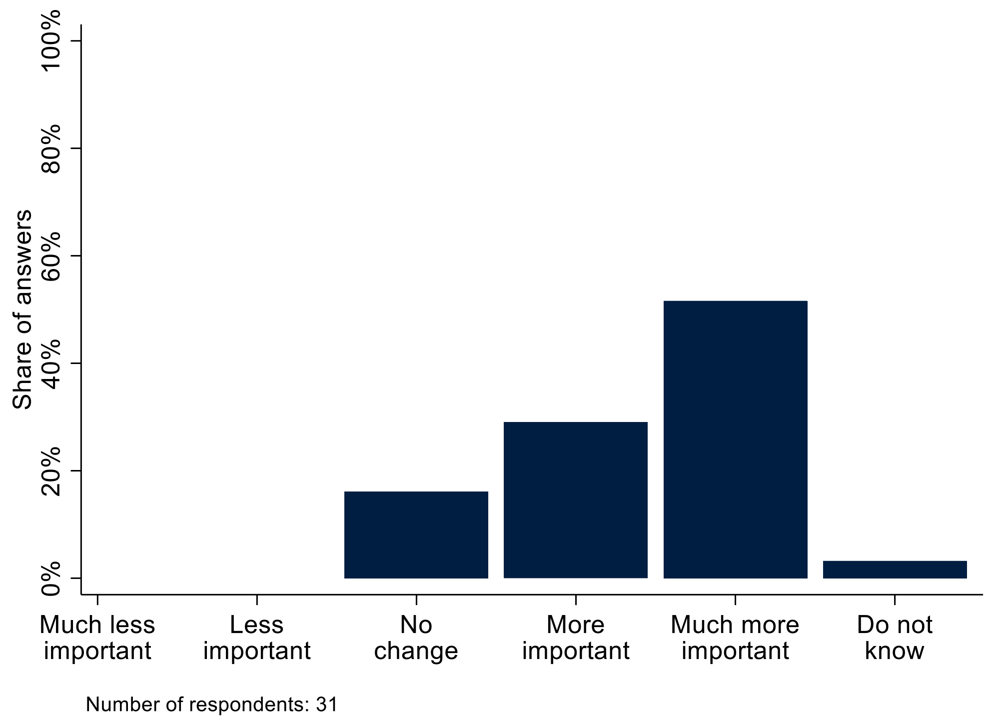
[13] For example, in its 2018 annual report, Disney explained that it developed its DTC products (ESPN+ and Disney+) in response to industry developments in distribution and consumption patterns. See The Walt Disney Company (2018), 'Fiscal Year 2018 Annual Financial Report', https://www.thewaltdisneycompany.com/wp-content/uploads/2019/01/2018-Annual-Report.pdf, accessed 19 December 2019.
[14] Boston Consulting Group (2018), 'Television's $30 Billion Battlefield'.
[15] Balderston, M. (2019), 'TV Content Spending Increased $50B Over Last Five Years', *TVTechnology*, https://www.tvtechnology.com/news/tv-content-spending-increased-50b-over-last-five-years, accessed December 2019.
[16] RTL Group (2018), 'Annual Report 2018'.
[17] Sky (2018), 'Annual Report 2018'.

or by Internet operators, some of whom are beginning to move towards purchasing content on the market, in an attempt to duplicate offering models that compete with those of broadcasters[18]

2.5 The increasing importance of exclusivity

In order to remain competitive and to differentiate their services, it is increasingly important for broadcasters and online services to have exclusive content in the territories they operate in. When asked whether the importance of exclusivity for attracting viewers had changed over the last five years, 81% of our survey respondents involved in distribution and aggregation answered that it had become ‘more important’ or ‘much more important’, as shown in Figure 2.5.

Figure 2.5 The growing importance of exclusive content for aggregators and distributors since 2015



Note: Answers to the survey question: ‘How has the importance of exclusive content as a differentiator for attracting viewers changed since 2015?’. Excludes those who answered ‘Not applicable’. Restricted to those with distribution and aggregation activities.

Source: Oxera survey of 52 industry members.

The increased competition for viewer attention from the growing online services, including DTC propositions, has changed industry dynamics, increasing traditional broadcasters’ need for exclusive content in order to remain competitive.

Our engagement with stakeholders in the European AV industry highlighted that this increased desire for exclusive content is having two effects on the wider industry:

[18] Mediaset (2018), ‘Annual Report 2018’.

- traditional broadcasters are pushing for content exclusivity in earlier windows, in order to differentiate their content offerings from those provided by online services;
- there has been a rapid increase in the quantity and quality of content investment.

Therefore, as technological developments and competitive forces increase the proliferation of online services, we would expect the need for exclusive content to remain an important competitive differentiator.

As one producer-distributor responded to our survey, the changing AV landscape makes it more important than ever to retain exclusive content.

'as consumers have shifted away from linear to on-demand viewing, the quality of the content on a distribution channel (and, in particular, the exclusivity of that content) has become a key factor for competition.'

Vertically integrated European producer-distributor-broadcaster

'The buying power of the big SVoDs and the proliferation of online services means that it is ever more important to try and retain exclusive content across wider territories'

Integrated producer/distributor

2.5.1 Increased original production

In the past, the content spend of online services was mostly focused on acquiring library content, as these new services were growing their offerings. More recently, however, these players have moved towards strategies focused around original content in a bid to build their exclusive offerings. Traditional broadcasters are also increasing their investments in original content as a way of strengthening their consumer propositions. In our discussions with industry participants, we identified two reasons for this:

- first is the emergence of DTC business models, which leads to some producers retaining the rights to their content for inclusion in their own online services. This results in less content being available to acquire by third-party broadcasters and distributors. In some cases, local broadcasters report that they are increasingly relying on producing their own content to fill this gap;

'Original productions have become increasingly important for broadcasters and online services, as the major studios are withholding work for use on their own DTC services'

Vertically-integrated producer-distributor-broadcaster

- second is that local broadcasters are increasingly seeking high-quality, culturally specific content to make their offer distinctive for consumers. Undertaking original productions facilitates this, while providing an opportunity to capture the upside from selling the secondary rights internationally.

The overall effect of these trends has been an increase in both the volume of content created and the levels of investment. For example, in its 2018 report, Sky indicated that the group would make:

significant investment in the origination of content as well as in acquisition from across the world.[19]

Indeed, Sky demonstrated this intent in June 2019, when it announced the launch of Sky Studios along with its plans to more than double investment in original production over the following five years.[20]

As of 2019, Movistar+, a pay-TV operator in Spain, is also reported to have increased investment in original Spanish-language content to approximately $78m per year, to finance two feature films and a dozen series.[21]

2.5.2 Increasing content costs

As well as driving an increase in the quantity of content created, the increased competition for high-quality exclusive content has increased consumer expectations. As a result, traditional EU players are having to invest in more content to meet this new 'international quality standard', which ultimately benefits EU consumers, who can enjoy an increasing array of high-quality local and international AV content.

However, consumer expectations around ever-greater cinematography and big-name talents is pushing production budgets. One industry interviewee noted that the evolution of this trend has pushed the cost of producing original content to 10 or 20 times the cost of acquired content, increasing the need for effective exclusive territorial licensing and co-production (see section 2.5.3).

Similarly, available data from the UK shows that production spending on film and high-end drama in 2019 was the highest on record, with total expenditure of £3.6bn—a 16% increase on the previous year.[22] Additionally, the available data from networks and studios in the USA confirms this increase, reporting that the production budget for high-end dramas intended for online services and pay-TV in 2017 was approximately $5m–$7m an hour, up from $3m–$4m five years previously.[23]

2.5.3 Increased dependence on co-production

The overall increase in the volume of content—creating increased demand for inputs such as key talents—coupled with increasing consumer expectations over the quality of production, is causing production costs to rise significantly.

The rising cost of creating content increases the associated risk, since larger costs heighten the chance of under-recovery for producers.

'Co-production is playing an increasingly important financing role, making original productions feasible for traders that would not be able to finance high-quality works. This is good for consumers, who receive more high-quality, locally tailored content.'

European producer-broadcaster

[19] Sky (2018), 'Annual Report 2018'.
[20] Sky (2019), 'Sky Studios launches with plans to more than double investment in original production', 12 June, https://www.skygroup.sky/corporate/media-centre/articles/en-gb/sky-studios-launches-with-plans-to-more-than-double-investment-in-original-production, accessed 19 December 2019.
[21] Hollywood Reporter (2019), 'Spain's Telefonica and Atresmedia Form Production Joint Venture to Take on Netflix', 20 September 2019.
[22] BBC (2020), 'Star Wars: The life of a props trainee on set', 3 January, https://www.bbc.co.uk/news/business-51293295, last accessed January 2020.
[23] Ryan, M. and Littleton, C. (2017), 'TV Series Budgets Hit the Breaking Point as Costs Skyrocket in Peak TV Era', *Variety*, https://variety.com/2017/tv/news/tv-series-budgets-costs-rising-peak-tv-1202570158/, accessed January 2020.

Arguably, therefore, the need for producers to share these risks has become more important. This increases both the need for exclusive territorial licensing as an effective means of raising finance and the prevalence of co-productions as a way to share the growing financial and creative risks.

'Studio output deals have declined … this means less money is going to America, with an increase in the prevalence in co-productions in Europe'

International producer-distributor

In addition, the requirement of large budgets might put certain types of content creation out of the reach of local broadcasters. Through our discussions with industry we found that, in some cases, co-production is vital to ensure that culturally specific European works can continue to be made at the quality level consumers expect.

Box 2.2 Case study: a European production partnership

- Input from our survey and interviews finds that the evolution of new business models has sparked an increase in high-quality productions, for which budgets have increased. As a result, co-productions are becoming more frequent and necessary in order to share these higher financial and creative burdens.
- An example of such a co-production is Freud, which was originally developed as a co-production between Satel (Austria) and Bavaria (Germany) as a German-language series for ORF, an Austrian broadcaster.
- Subsequently, Netflix joined the project as a producer, agreeing to leave the Austrian territory rights with ORF and giving the content the opportunity to be shown globally as a 'Netflix original' in other territories.
- Set to launch in 2020, this example demonstrates that co-productions between different territories and collaboration between industry participants at different levels of the value chain—producer, broadcaster and online service—can enable local broadcasters to stay competitive, creating high-quality, original content for their viewers, which they might not otherwise have been able to create.

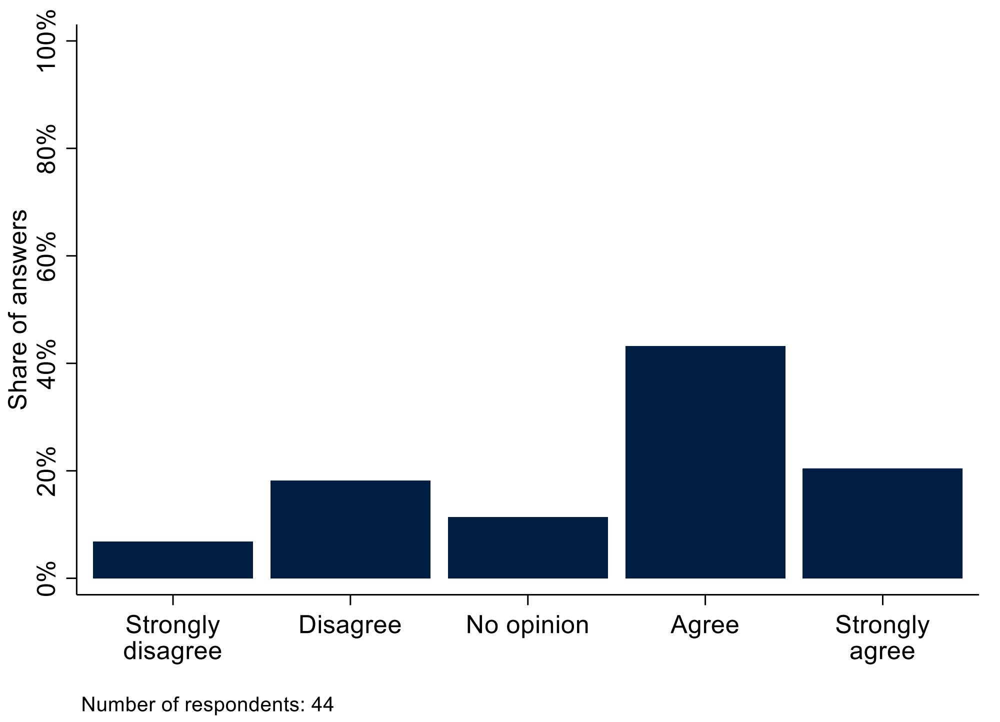
Source: Clarke, S. (2018), 'Netflix Boards 'Freud,' Austrian Thriller with Young Sigmund Freud Tracking a Killer', 5 July, *Variety*, https://variety.com/2018/tv/news/netflix-boards-freud-german-language-serial-killer-thriller-1202865542/, accessed January 2020.

2.6 New content discovery mechanisms

Another digital trend that has continued since 2016 is the emergence of new content discovery mechanisms for consumers. In contrast to traditional electronic program guides (EPGs), which list content by channel, the new ecosystem of distribution channels and connected devices offers a growing range of search and recommendation features to help consumers discover content. For example, new technologies and user interfaces, such as voice search, content carousels and personalised recommendations, are increasingly presenting content to consumers based on algorithms that consider factors such as viewing history, preferences or time of day. As a result, consumers are exposed to content they might otherwise not have encountered, providing more opportunities for independent or foreign content to be viewed by consumers.

Indeed, Figure 2.6 shows that 64% of the survey respondents answered 'agree', or 'strongly agree', to the statement that new content discovery mechanisms have led to the average viewer watching more foreign content than in 2015.

Figure 2.6 Since 2015, new content discovery mechanisms have increased the amount of foreign content watched



Note: Answer to survey statement: 'New content discovery mechanisms (such as personalised recommendations) mean the average viewer is watching more foreign content than in 2015', Excludes those who answered 'Not applicable' or 'do not know'.

Source: Oxera, based on a survey of 52 industry members.

However, these content discovery mechanisms are not considered a replacement for the tailored promotion and marketing undertaken by dedicated local distributors and broadcasters.

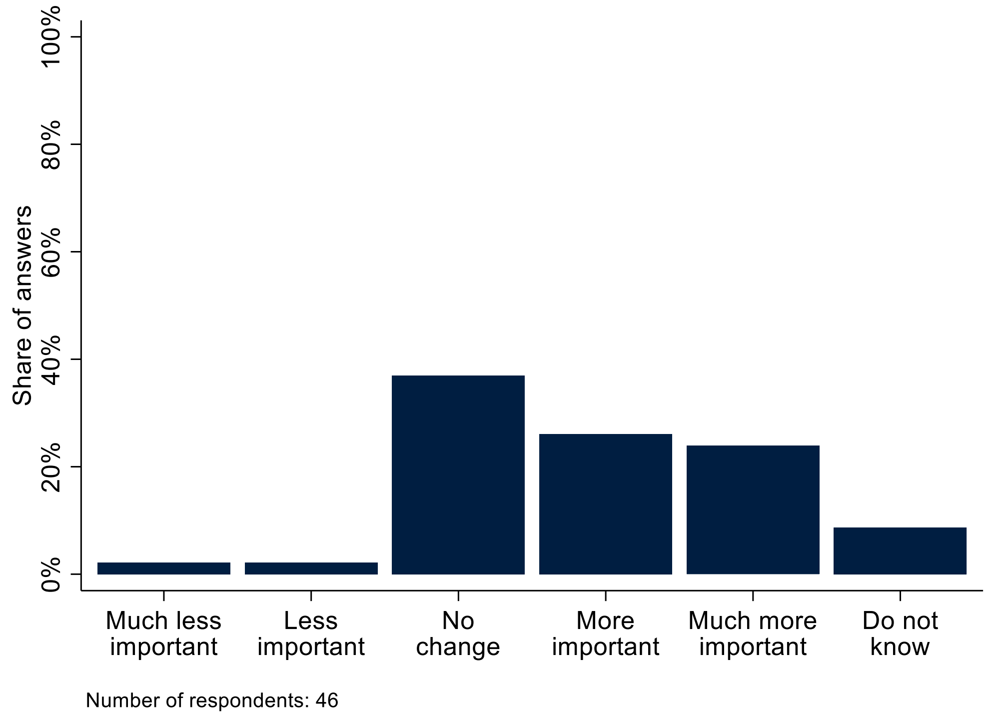
As discussed in section 2.2, theatrical releases are considered a crucial publicity mechanism for raising the profile of a film for consumers in a specific territory. Furthermore, our interviews with industry participants have emphasised the role of local distributors and cinemas in crafting a marketing campaign focused around the specifics of a territory, such as laws, language variations and local scheduling logistics, to ensure that the content appeals to local audiences. For example, one industry participant highlighted that while online services can help certain titles reach new audiences, there is also the possibility that titles can get lost within a large digital catalogue. In these cases, a traditional pay-TV release may be preferable as a way of ensuring that the title receives the focused promotion and air time required to have maximum impact—given the smaller selection of content that a pay-TV service carries at any given time.

2.7 Increased access to non-national EU content

While the conclusions of the 2016 report remain unchanged, the evolving commercial and technological trends described in the sections above have led to increased access to non-domestic EU content for consumers. For example, many online service operators including DTC players operate their services internationally, in multiple EU territories. This gives consumers more access to non-national EU content than they can typically access from traditional, local channels and broadcasters. Indeed, the average TV fiction programme on SVOD is available in 6.2 territories, compared with just two territories on TVOD services (which tend to be more localised).[24]

This shift in non-domestic EU content consumption has also been observed by industry, with 50% of our survey respondents indicating that multi-territorial contracts have become 'more important' or 'much more important' as a result of the growth of international online services, as shown in Figure 2.7.

Figure 2.7 Since 2015 multi-territorial contracts have become more important as a result of the growth of international online services



Note: Answer to survey question: 'How has the importance of concluding multi-territorial contracts changed as a result of the growth of international OTTs?'. Excludes those who answered 'Not applicable'. Restricted to those with distribution and production activities.

Source: Oxera, based on a survey of 52 industry members.

Furthermore, there have been efforts on the part of some producers to provide access to their content to consumers abroad, within the current territorial regime. For example, the newly launched NutAlone.com service seeks to make available independent EU works that are not otherwise under licence for exhibition within the EU (as described further in the box below).

[24] European Audiovisual Observatory (2019), 'Yearbook 2018/2019 Key Trends'.

Box 2.3 NutAlone.com

- An industry-led project currently under development, NutAlone.com is a search tool/social media platform that aims to increase cross-border consumption of works.
- The platform has an agreement with rights holders' for the listed titles such that, based on the consumer's member state, the platform either leads the consumer to the distribution options available in their territory or allows them to pay to watch the title online, in the absence of an existing, territorial distribution agreement.
- This service provides an industry-led means of increasing consumer access to non-domestic EU works, while still accommodating the existing territorial exclusivity mechanisms that underpin funding and distribution in the AV industry.

Source: Oxera, from http://www.nutalone.com

Finally, it should not be forgotten that cinemas have also been programming a growing number of foreign films, and that the increased awareness of these titles among consumers is likely to have a beneficial effect on later stages of the value chain. For instance, approximately 31% of all films shown in EU cinemas are EU non-domestic; and only in Italy, France, the UK and Germany do cinemas show more domestic than EU non-domestic films.[25]

2.8 Conclusions

Within the existing exclusive territorial regime, technological advances have facilitated new business models that provide consumers with an increasing array of options through which to access more content, while preserving the existing funding mechanisms. These mechanisms—dependent on the use of release windows—not only provide rich consumer choice, but also remain important for producers seeking to market their content in the most appropriate way, which can differ by country, genre and even individual title. For example, a high-profile drama may benefit from a global rights deal with an international online service that can provide a wide-reaching marketing campaign. In contrast, a European arthouse film may perform better when marketed by distributors that are more in tune with local conditions—staggering release windows to make the most of publicity from local film festivals and thus increasing the title's revenue potential.

A continued shift towards online AV consumption, together with technological advances reducing distribution costs within the industry, has led to the emergence of DTC business models. The increased competition in the AV sector has made it crucial for exhibitors at all levels of the value chain (from cinemas to pay-TV and online services) to have distinctive content. This reinforces the increased importance of exclusivity over windows and territories. Meanwhile, consumers' increasing quality expectations are driving up production budgets. This is making the risk sharing of projects through co-production and territorial pre-sales more important, in order to share both the creative and financial risks of a project.

Finally, there is evidence that the current regime, underpinned by territorial exclusivity, already offers consumers increasing access to non-domestic EU works. This has been aided by expanding digital libraries and new content discovery mechanisms that help consumers discover and access content they might otherwise not have encountered, based on their preferences.

[25] European Audiovisual Observatory (2018), 'European cinemas are showing more European films than TV or VOD', 6 March.

3 Assessing the requisite rights limitation

As stipulated by Article 9(2), a requisite rights limitation would prohibit traders from applying different general conditions of access to services for reasons relating to a customer's nationality, place of residence or place of establishment *only* if the trader has the requisite rights for the relevant territories. For example, if AV services were in the scope of the Regulation and subject to a requisite rights limitation, a producer with a DTC offering that wished to include a work on its own service in one EU territory would be prohibited from geo-blocking access in any territory for which it still held the rights. Similarly, a broadcaster that acquired rights to more than one EU territory would be prohibited from geo-blocking its services between those territories.

In this section we consider the potential impact on producers, distributors, cinemas, broadcasters and online services of including AV within the scope of the Regulation, subject to a requisite rights limitation.

First, we review the key findings from the 2016 report. As established in that report, territorial exclusivity is key to the financing of works, delivering benefits to both the AV industry in Europe and European consumers. We begin by looking back at the key findings from the 2016 report on how films and TV series are financed, the importance of territorial exclusivity for raising the necessary funds, and harm to industry and consumers resulting from an increase in cross-border access.

Next, we examine how territorial exclusivity continues to underpin value generation throughout the AV value chain. In particular, it facilitates important strategies, such as: incubating works in their domestic territories, localising works to account for local tastes, and delaying the acquisition of the rights to a work until it has proven successful.

Finally, we consider the impact of eroding that territorial exclusivity by including AV within the scope of the Regulation, even in light of the requisite rights limitation laid down in Article 9(2).

3.1 Review of the 2016 report findings

At the time of the 2016 study, the Commission had expressed its intention to enhance the cross-border distribution of AV programming, but had not yet presented clear policy proposals to achieve that. As such, the 2016 report focused on assessing the economic effect of *increased cross-border access*, by whatever means.[26]

The 2016 report concluded that mandating greater cross-border access to AV content and services, as outlined in the Commission’s Digital Single Market strategy, was likely to be significantly detrimental to European consumers and the AV industry in Europe, as well as to international AV businesses active in Europe. Table 3.1 presents the potential impact we identified in the 2016 report—explained in more detail in section 3.1.1.

[26] Oxera (2016), Oxera and Oliver & Ohlbaum (2016), ‘The impact of cross-border access to audiovisual content on EU consumers’, prepared for a group of members of the international audiovisual industry, May, p. 14.

Table 3.1 Summary of potential impacts identified in 2016

Losses of …	‘No response’	Long term
Producer revenue	€8.2bn	€3.6bn
Content production	48%	35%
Consumer welfare	€9.3bn	€4.5bn

Source: Reproduced from Oxera and Oliver & Ohlbaum (2016), ‘The impact of cross-border access to audiovisual content on EU consumers’, prepared for a group of members of the international audiovisual industry, May, p. 6.

Uncertainty over the exclusivity of a work in a given territory reduces traders’ valuation of rights. Even with a requisite rights limitation, traders would still face an erosion of territorial exclusivity as they would be prohibited from geo-blocking across territories for which the requisite rights are held. Therefore, the harms to the core AV financing and value generation mechanisms detailed in the 2016 report would not be fully mitigated.

In the following sections, we review some of the main characteristics of the AV industry discussed in the 2016 report and highlight the main conclusions of that study. In particular, we describe:

- the financing mechanism and content production decision;
- the importance of territorial exclusive licences;
- the harm of increased cross-border access.

3.1.1 The financing mechanism and content production decision

As detailed in the 2016 report, AV content production is inherently risky. For example, the report identified relatively low box-office to budget ratios for films, and low recommissioning rates for TV. At the point of committing finance to produce a piece of work, investors do not have certainty over the creative success of the project, or its likely commercial performance with consumers. The industry is characterised by an extreme distribution of outcomes, with a relatively low proportion of huge hits, and a large number of low-performing works. Those investing in the production of content recover their costs across a portfolio of works, where the profits generated from ‘hits’ need to be able to cover the losses from any ‘misses’.

With this study, we find this continues to be the case. For example, Table 3.2 shows that the most successful films often account for a disproportionately large share of box-office revenues. In 2018, the top ten performing films at the box office in France, Germany and Spain accounted for between 24% and 28% of the total box-office revenues generated by all films in those territories in 2018.

Table 3.2 Proportion of box-office revenues generated by the ten most successful films

Country	All films: 2018 box-office revenue (€m)	Top ten films: 2018 box-office revenue (€m)	% of 2018 box-office revenue accounted for by top ten films
France	1,336.10	314.39	24%
Germany	899.30	241.46	27%
Spain	585.70	163.31	28%

Note: The box-office revenues for the top ten films were converted from US$ to € using the average 2018 exchange rate of 1.1810.

Source: Oxera analysis of Statista data: 'Box office revenue in European countries from 2013 to 2018'; 'Most successful films based on box office revenue in France in 2018'; 'Most successful films based on box office revenue in Germany in 2018'; 'Most successful films based on box office revenue in Spain in 2018'.

New content creation typically begins with a 'greenlighting' decision, whereby the financial viability of a project is assessed. The process leading up to this greenlighting decision can vary for different types of content. For example, a film intended for theatrical release may be co-developed by producers, writers and directors, before being greenlit by the producer once a budget looks realistic.

Alternatively, for TV production, many projects grow from producer-developed concepts and ideas which are then either co-financed with broadcasters or sold as a package. TV productions may also be triggered by a commissioner, seeking external production for a show. However, it is the greenlighting decision that ultimately determines what content is available to viewers and, by extension, the revenue flows entering the sector.

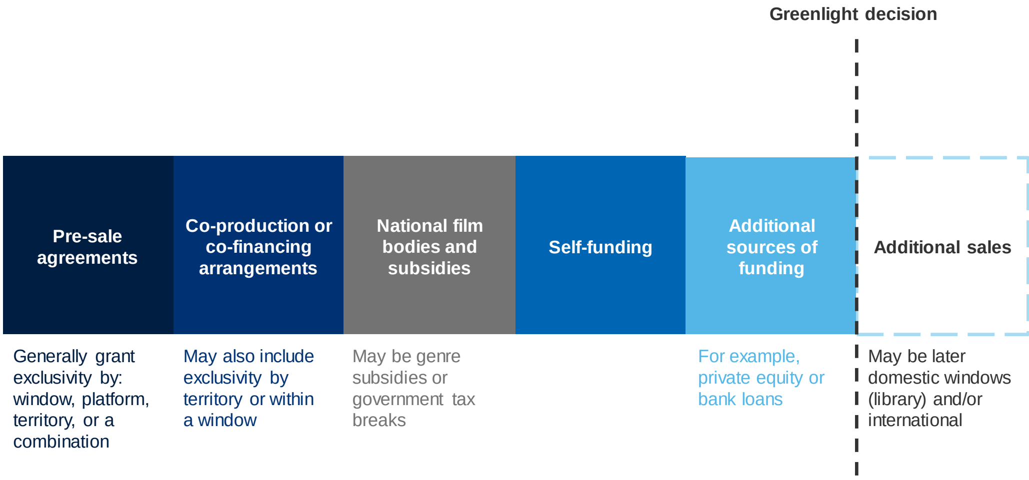
The main sources of pre-production finance, which are often used in combination to raise the necessary finance, include the following.

- **Self-funding:** where producers supply the finance themselves, typically using revenues from previous projects. Some producers may only use self-funding as a way of topping up funding that they have not managed to obtain from other sources.
- **Pre-sale agreements:** funds or commitments to purchase (on which gap funding can be secured) provided to a producer by distributors in exchange for rights to sell the content in a given window, distribution channel or territory, typically exclusively. Each type of exclusivity can be negotiated separately or as a package, and the total contribution will reflect the level of exclusivity granted. The commitment is generally for a fixed advance, or minimum guarantee upon completion, allowing the distributor a share of any upside from the project.
- **Co-production or co-financing arrangements:** a means of increasing the available self-funding, these arrangements involve producers (often from different territories) jointly financing or producing content in return for an agreed proportion of the proceeds and/or the right to exploit the finished content in a given territory, window, or distribution channel (generally exclusively, as for pre-sales).
- **National film bodies and subsidies:** including government tax breaks, subsidies and additional funding to films that are shot in a specific territory. In some territories, subsidies may also be given to works of a particular genre, such as animation or high-end drama.

- **Additional sources of funding:** including private equity or bank loans for a production that has proven its commercial viability through pre-sales but is yet to reach the greenlight budget.

The stylised example in Figure 3.1 illustrates how a producer might rely on multiple sources of funding to greenlight a work.

Figure 3.1 Stylised example of finance sources for a new production



Note: This is illustrative and not indicative of proportions. 'Pre-sale agreements' often account for a substantial part of the financing, and 'Additional sources of funding', such as private equity, are less frequently used.

Source: Oxera analysis.

This often includes several exclusive pre-sale agreements with different distributors for different windows, distribution channels and/or territories. These types of co-financing arrangements serve to share both the creative and financial risk among a group of industry peers. This further serves to maximise the project's chances of success by providing a form of peer review. If a work is unable to generate confidence from co-producers, distributors and broadcasters, it calls into question the commercial viability of the project in its current form—spurring changes to the project. This was the case for A Royal Affair, which underwent a re-scripting mid-way through the production process in order to ensure its commercial appeal to the prime target audience (see Box 3.1).

Box 3.1 Case study: A Royal Affair

A Royal Affair was a Danish–Swedish–Czech Republic co-production, led by the Danish production company Zentropa. The film was based on culturally specific Danish historical events. Early project development involved an English script, international cast and significant budget. However, Zentropa found it challenging to make the project attractive and relevant enough to foreign investors/future distributors to close the budget.

Therefore, a decision was made to re-develop the project with a Danish script and cast in order to achieve the creative vision for the film sought by the producers and the author/director—a story rooted in Danish history but with international appeal. However, this meant that the development costs incurred for the English-language project had to be written off. The total budget of €6.4m for the revised project was raised from 20 different financing sources, including eight foreign pre-sales. The film went on to win widespread international acclaim, and was subsequently widely sold/released internationally.

Source: Oxera, based on input from the report Sponsors.

For content to be greenlit, producers must raise enough finance to cover the production budget while having a reasonable expectation of returning a profit to investors. Ultimately, the decision to provide finance in return for the rights is directly linked to the expected revenues that can be generated from exploiting the work. For content with international appeal, co-producing with those in other territories ensures multiple ‘home territories’ in which to first release the title. This reduces the financial risk as there is more of an opportunity for recoupment before the content is later released in other territories.

3.1.2 The importance of territorial exclusive licences

As explained in the 2016 report, securing a range of funding—such as pre-sale agreements or co-production finance—is critical to sharing the risk involved with the greenlighting decision. However, there is an additional complexity to raising production financing in Europe, stemming from national audiences placing significantly different values on the same content depending on local tastes, culture and linguistic factors.

Producers seek to capitalise on these differences by granting rights on a territorially exclusive basis and allowing local distributors to optimise the promotion and marketing according to local conditions. Foreign distributors work to create demand for the content in their territory, and producers benefit from issuing rights for a particular work to a variety of distributors, offering territorial exclusivity to each in return for the distributor investing in localised promotion and marketing. However, many broadcasters and distributors are focused on a single or specific set of domestic territories, and their valuation of rights outside these territories is likely to be low.

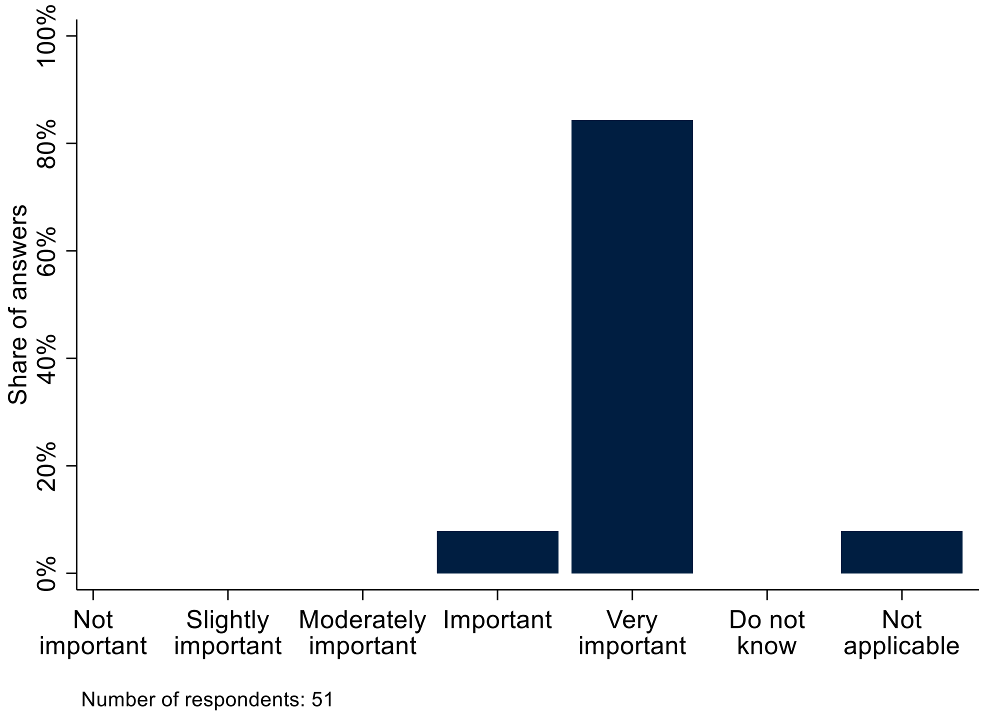
Tailoring in this way allows producers to acknowledge that consumers have different valuations and abilities to pay for content, and enables them to maximise their audience by ensuring consumers are provided with appealing content at an affordable price. Ultimately, it is a combination of broad audience reach and effective cost recovery that facilitates the production of new content. Therefore, without territorial exclusivity, it is highly likely that quality and quantity of AV content would reduce.

The ability to finance via territorially exclusive pre-sales is especially important for non-English-language works. In the Film Financing report, it was suggested that many non-English-language European films are more dependent on exclusive territorial licensing than big blockbusters titles, as language barriers and cultural differences mean that they do not benefit from the same economies of scale.[27]

The continued importance of territorially exclusive pre-sales—and exclusive content in general—is reaffirmed by our industry survey. Figure 3.2 shows that 92% of respondents considered pre-sales as either ‘important’ or ‘very important’ to the way their business operates, confirming the findings of the 2016 report.

[27] Poort, J., Hugenholtz, P.B., Lindhout, P. and Til, G. van (2019), ‘Research for CULT Committee – Film Financing and the Digital Single Market: its Future, the Role of Territoriality and New Models of Financing’, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels.

Figure 3.2 The importance of territorially exclusive pre-sales to the functioning of the EU AV sector



Note: Answers to the survey question: 'Thinking about how you operate today, how important are territorially exclusive presales to the functioning of your business?'.

Source: Oxera, based on a survey of 52 industry members.

The 2016 report also noted the importance of territorial exclusivity to the value of these pre-sales. Territorially exclusive content is used by broadcasters and online services to attract viewers who generate revenues; and by distributors as a means to recoup their investments in localisation, promotion and minimum guarantees.

Territoriality also forms the basis for investors in content to take a view on the expected revenue and return from a given project. However, there would be greater uncertainty over the expected revenues if there is the potential for consumers to have viewed the content previously from a foreign service. In that case, the value of content to online services and broadcasters falls as they lose the ability to use it as a differentiator. This has a knock-on effect on distributors, which face increased risks and reduced incentives to localise and promote works, given the risk of others free-riding on those efforts.

3.1.3 Harm of increased cross-border access

The 2016 report found that increased cross-border access would mean a *de facto* loss of territorial exclusivity, reducing broadcasters' and distributors' valuation of content, as well as their willingness to commit to its acquisition in advance. The 2016 report considered two scenarios.

First, it estimated the impact in the short run, in which it was assumed that there would be no industry response to a loss of territorial exclusivity. In this scenario, consumers would adjust their consumption patterns to take advantage of cross-border opportunities; while buyers of content would adjust their valuation rights to account for the loss of territorial exclusivity. Under this scenario, the report identified the potential scope of the impact of the changes on overall industry revenues, output and welfare.

Second, it considered the long-run impact, in which it was assumed that traders would adjust their strategy to take advantage of the opportunities created by the new system and to minimise any harm to their business.

Ultimately, the 2016 report found that a loss of territorial exclusivity would translate into a reduction in content investments as the risk producers face increases and the revenues they expect to receive decline. Consumer welfare would fall as smaller budgets would mean lower-quality productions and/or a decreased quantity and variety of new content.

The 2016 report also identified the likely reduction in broadcaster and online service revenues from consumer pricing arbitrage, as international differences in content availability, prices and timing may lead consumers to switch from paid services in their domestic territory to products from cheaper international providers. This potential arbitrage due to a lack of exclusivity would further reduce a broadcaster or online service operator's ability to pay for content or to commit to pre-sales.

Finally, the 2016 report estimated that these effects would have an adverse impact on producers of up to €8.2bn, and that up to 48% of TV and up to 37% of film content might not get made. From the perspective of consumers, the analysis suggested that welfare could decline by up to €9.3bn per annum, as a result of higher prices, less access to existing works and a reduction in the volume of new content being made (particularly for consumers in lower-income member states).

3.2 Territorial exclusivity underpins value generation

Below, we highlight a number of important value-generating distribution strategies that would be undermined if AV were included within scope of the Regulation, even subject to a requisite rights limitation. These were uncovered by our industry survey and supporting discussions with industry participants.

In this section, we explain why these strategies rely on territorial exclusivity, before assessing how this would be affected if AV were in the scope of the Regulation, subject to a requisite rights limitation, in section 3.3.

3.2.1 Continued importance of territorial exclusivity

As set out in section 2, there has been significant evolution in the AV industry since 2016, with the entry and expansion of new players and an emergence of DTC business models. In order to remain competitive and to differentiate their services, it is increasingly important for broadcasters and online services to have distinctive, high-quality content with exclusivity over the territories they operate in. For example, as described in section 2.4.1, 81% of respondents to our industry survey said exclusivity has become 'more important' or 'much more important' to their businesses since 2015.

Furthermore, the rising production costs and shift towards original productions described in section 2.5.2 mean that producers' ability to raise finance from a variety of sources remains critical to their business. In particular:

- the increasing budgets associated with the cinema-quality drama expected by consumers make it increasingly important for producers to access a wide range of pre-financing;

- collaborative funding through international co-productions allows European broadcasters to raise the finance required to produce the high-quality, original works needed to remain competitive in the new AV landscape;
- the scale of finance at risk and the increasing intensity of competition in the AV industry makes the ability to distribute risk across the value chain critical to the greenlighting of new works.

Consistent with the 2016 report, evidence from our industry survey shows that territorially exclusive pre-sales remain a critical element of traders' business models. For example, in our survey of industry 92% of respondents said that territorially exclusive pre-sales are 'important' (8% of responses) or 'very important' (84% of responses) to the functioning of their business.[28]

Our research also found that there is an increasing reliance on co-production to raise sufficient finance and share the risks associated with new projects. As outlined in section 2.5.3, our discussions with industry participants revealed that in some cases, high-quality local productions would not be possible without these co-financing agreements. Effective territorial exclusivity underpins these financing mechanisms. For example, TV productions for broadcasters and online services will typically rely on pre-sales as a source of financing, which gives those traders the exclusive rights to exploit the work in a given territory. Similarly, for films, a material proportion of the financing will typically come from pre-sale agreements for individual territories. In order to effectively exploit these works and recoup investment costs, traders need to tailor their promotion, marketing and release strategies to the individual territories they operate in. The ability to effectively prevent cross-border cannibalisation is key to mitigating the risks associated with making these investments.

Furthermore, it is important to note that investment costs are not limited to the production of a work, but also its local marketing and distribution. For example, during our discussions with industry participants, one international producer-distributor explained that it spent around 5–10% of its investment on promoting in local territories, with the remainder paid by the local distribution partners. If there is cannibalisation that hinders a distributor's ability to effectively promote a work in a given territory, then the entire value chain from cinemas to broadcasters and online services will suffer as a result.

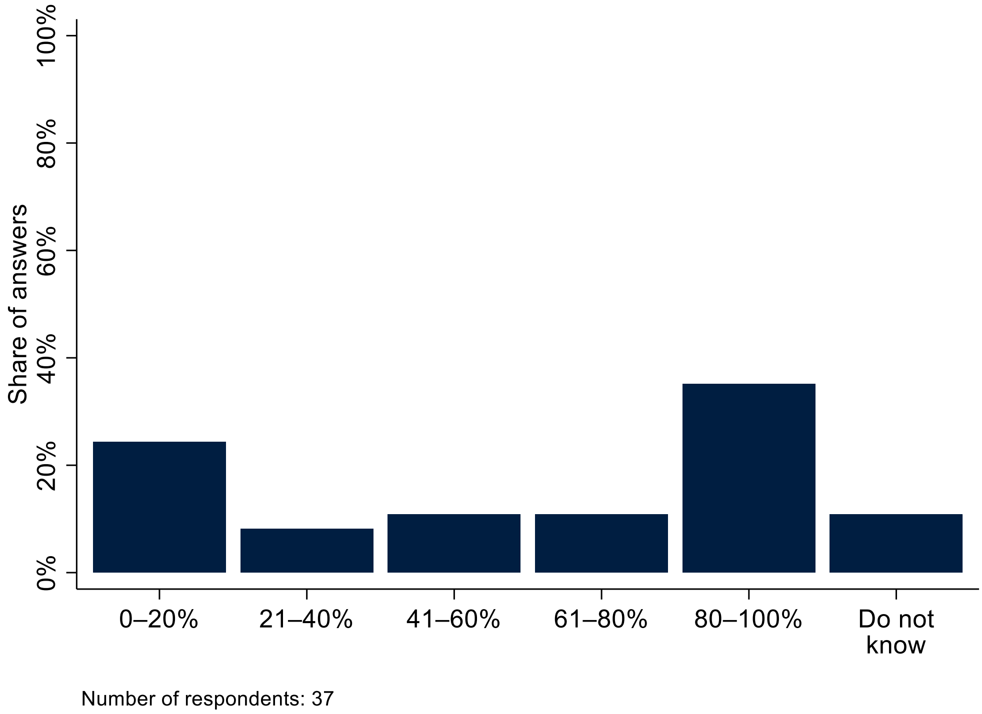
3.2.2 Staggered release strategies

Staggering the release of works on a territory-by-territory basis is common in the European AV industry. Tailoring the localisation and promotion of works to individual territories allows traders to adapt their strategies to variations in consumer preferences and local conditions between member states. We discuss this further in section 3.2.4).

Figure 3.3 shows that it is relatively common for traders to hold the rights for additional territories at the time of exhibiting a work in one EU territory. For example, 35% of respondents said that between 80% and 100% of their content is exhibited in one territory while the rights to other territories are still being held.

[28] Responses to the Oxera industry survey question: 'Thinking about how you operate today, how important are territorially exclusive presales to the functioning of your business?'. (N=44).

Figure 3.3 Proportion of content exhibited in one territory, while holding the rights to other territories in which the work is not being exhibited

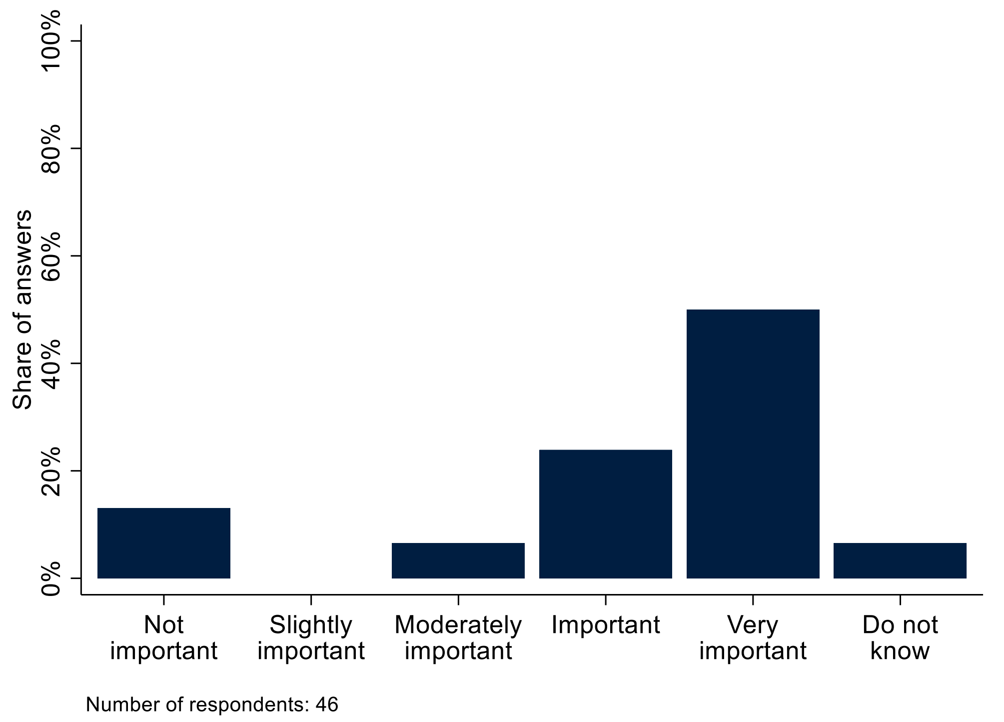


Note: Responses to the survey question: 'What proportion of your content do you exhibit in one EU territory while still holding the rights for other EU territories in which the work is not (yet) being shown?'. Excludes 'Not applicable' responses.

Source: Oxera, based on a survey of 52 industry members.

Film production is an inherently risky endeavour. Producers and distributors adopt a variety of strategies to maximise the value of their rights, to give themselves the best possible chance of recouping their investment. As Figure 3.4 shows, our industry survey found that 74% of respondents said that staggering the release of new content across different EU territories is 'important' or 'very important' in this regard.

Figure 3.4 The importance of staggering the release of new content across different EU countries for recouping investments



Note: Responses to the survey question: 'How important is it for you to be able to stagger the releases of new content between the different EU countries you serve in order to maximise revenues?'. Excludes 'Not applicable' responses.

Source: Oxera, based on a survey of 52 industry members.

From our industry survey and interviews with industry participants, we have identified three ways in which a staggered release of content across territories can be important for value generation throughout the AV value chain:

- for certain works, producers might use the domestic territory as an incubator for works ahead of issuing rights to non-domestic territories;
- highly localised tastes and requirements need to be tailored for when marketing and releasing content across territories;
- local distributors and broadcasters are increasingly adopting a 'wait-and-see' approach, delaying the acquisition of the rights to a work until it has first demonstrated success.

Furthermore, in some cases, these staggered release strategies are the only way in which content can be sold, especially for productions which need to build a track record in film festivals and in their local market before they are picked up by foreign distributors. In other words, these strategies are sometimes not a matter of choice, but of necessity.

In the following sub-section, we explain how these approaches help build value through the value chain and maximise the chances of recouping investment, before considering how a prohibition of geo-blocking with a requisite rights limitation could undermine this.

3.2.3 The incubation strategy

For certain pieces of content, producers pursue a strategy of incubating their work. This involves releasing the work in its domestic territory to create a 'buzz' of consumer interest around the content, which acts as an opportunity to demonstrate its commercial success, ahead of licensing the rights to non-domestic territories.

'We benefit from 'incubating' works in the domestic territory to build critical acclaim before later selling those works into foreign territories or to international online service operators'

European producer-broadcaster

Through our research we have found that this strategy has been pursued by both independent producers and vertically integrated producers active at the retail level.

During our interviews with industry participants both international and European vertically integrated producers highlighted the important role of the incubation phase for their business.

'Incubating works in domestic territories is critical. In the timeline of selling rights, it is almost always the case that a show is exhibited in specific territory to gain traction ahead of the sales of international rights. The domestic release provide evidence of the commerciality of the content'

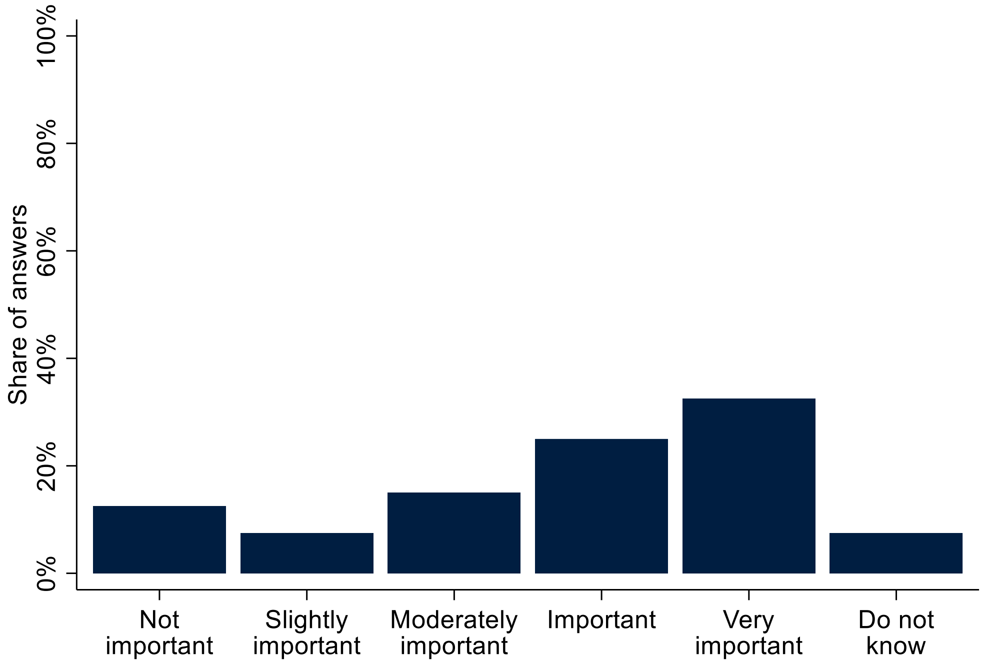
International producer-distributor

Where this strategy is successfully employed, it provides producers with a greater potential upside. In some cases, this increase in the expected revenues could be critical for the decision of whether to produce the content.

Furthermore, the results of our industry survey, shown in Figure 3.5,

Figure 3.5 indicate that 58% of respondents said that incubating a work in their domestic territory in order to create a consumer buzz before selling the rights in non-domestic territories is 'important' or 'very important'.

Figure 3.5 The importance of incubating a new work in its domestic territory before selling the rights in other EU territories



Number of respondents: 40

Note: Responses to the survey question: 'How important is it to 'incubate' a new work in its domestic territory in order to create consumer buzz before selling it into additional EU markets?'. Excludes 'Not applicable' responses.

Source: Oxera, based on a survey of 52 industry members.

Below, we present an example of how the Spanish TV programme benefited from this incubation effect. Gran Hotel was first released domestically in 2011, before being picked up by broadcasters in other European territories once the series had proven commercially successful in Spain.

Box 3.2 Case study: Gran Hotel

- Gran Hotel is a Spanish television crime drama series that has had phenomenal success internationally.
- First broadcast on Spanish channel Antena 3 in October 2011, the series gained critical acclaim domestically, going on to have two further seasons.
- Following its success in the domestic Spanish market, the series was sold to traders around Europe, being broadcast in, for example, France, Germany, the UK, Estonia and Poland.

- The series has since experienced global success, with the original Spanish-language version viewed by consumers all over the world. There have also been several international remakes of the series, including in the USA, where Grand Hotel, starring Eva Longoria, premiered in 2019.

Source: Oxera. Wikipedia (2020), 'Gran Hotel (TV series)', https://en.wikipedia.org/wiki/Gran_Hotel_(TV_series)#cite_note-7, accessed 21 February 2020.

Importantly, this strategy of incubating works domestically is underpinned by territorial exclusivity. The work must be exclusively available in the domestic territory ahead of international release, in order to incubate the work and preserve its exclusivity for future international sales. The buzz around the work will increase the future value of rights in the non-domestic territories only if they can be licensed on a territorially exclusive basis.

'Some content benefits significantly from staggered releases in different territories, as it allows for localised release schedules and tailored marketing campaigns'

European cinema chain

3.2.4 The importance of local tastes and requirements

Another reason that the ability to stagger content releases can be important for value generation is that traders frequently need to tailor the promotion and release of a work to individual territories. Taking account of local tastes and circumstances is necessary to optimise the exploitation of rights across territories.

'Local marketing campaigns around specific works, targeted toward consumer tastes in certain territories are much more valuable for building the content brand'

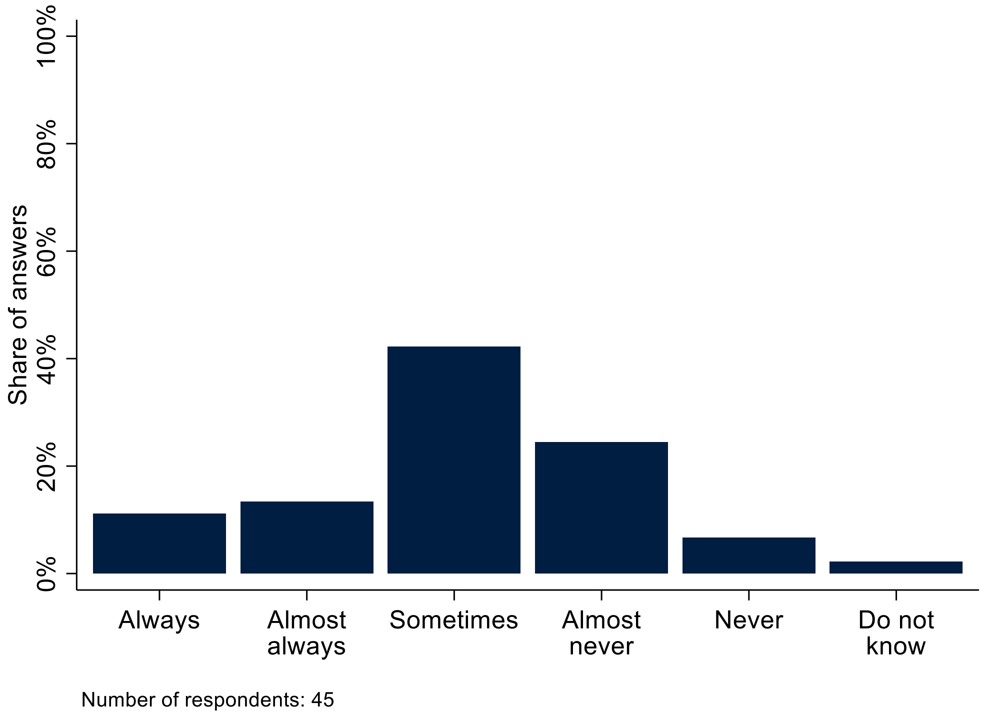
International producer-distributor-broadcaster

National promotion of content by dedicated local representatives remains a critical aspect across EU territories. Traders will often tailor marketing campaigns to individual territories—for example, by using particular talents that resonate with local audiences to promote the work; or adapting the trailers, billboards and other artwork to be carefully pitched towards the most effective marketing in their territories.

In addition to the tailoring of the promotional material, timing is a crucial dimension as regards the marketing and release of a work. EU territories have different public holidays and holiday periods. For example, broadcasters and online services may be highly unlikely to launch or promote new content in a given territory during its national holiday seasons and around national events, such as in Scandinavia during June or France in July.

As shown in Figure 3.6, the results from our industry survey suggest that asynchronous releases of a work into a new window across EU territories is fairly common. 31% of respondents said that they 'almost never' or 'never' synchronise the release of a work into a new window.

Figure 3.6 Prevalence of asynchronous releases across EU territories



Note: Responses to the survey question: 'How frequently is the release of a work into a new window (e.g. Home Ent, PTV, VOD, etc.) synchronised across the EU countries you serve?'. Excludes 'Not applicable' responses.

Source: Oxera, based on a survey of 52 industry members.

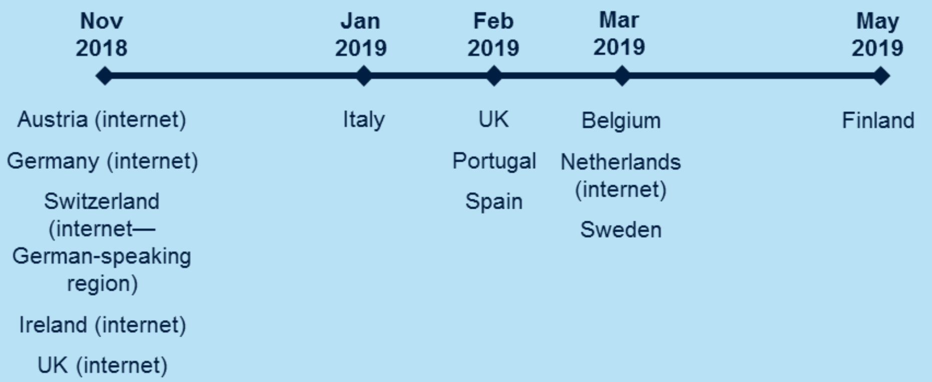
Furthermore, for certain works with large merchandising potential, the launch timing in a given territory needs to coincide with the launch of the consumer product business in that territory. If these are not aligned, there is the risk of undermining the potential to generate revenues from the work. For such titles, this expected revenue stream can be a critical consideration for the production decision and can be particularly relevant for greenlighting additional series following the success of a title.

Staggering the release of content across different territories can be particularly relevant for multi-territory broadcasters that need to schedule the exhibition of content across the different territories. In each territory where the broadcaster operates, it may hold the rights in different combinations of works, for different periods of time. For example, it might hold the rights to certain locally specific programming (such as national sporting events) in one territory, which is not relevant to its other territories. However, the scheduling of this local content—which may be time-sensitive—interacts with the scheduling of the content rights held in multiple territories (such as a film or TV series). In order to optimally exploit the rights in each territory, the trader may need to schedule differently in each to ensure that consumers receive a consistent selection of fresh, quality content.

By way of example, Box 3.3 presents a case study on the Sky Original production Das Boot. This illustrates how the release of a work may need to be staggered across multiple territories that one trader operates in.

Box 3.3 Case study: Das Boot (2018)

- Das Boot is a co-production between Bavaria Fiction and Sky Deutschland. Season 1 sold to more than 100 territories worldwide, including across Europe, the USA and Australia.
- The series is the most successful Sky Original series for Sky Deutschland, the highest-rated launch of a non-Italian-language Sky Original series for Sky in Italy, and the most successful non-English-language Sky Original series for Sky in the UK.
- Sky Studios, the commissioning and production arm of Sky across Europe will fund and distribute future seasons of Das Boot.
- The series is in three languages—German, English and French—with characters speaking their respective languages. In the UK release, the German and French is subtitled into English.
- The figure below presents a timeline of the release of Das Boot across Europe. This illustrates that a broadcaster might schedule the release of the same work at different times across territories.



Source: Oxera analysis of Sky press releases and IMDb website, 'Das Boot Release Info', https://www.imdb.com/title/tt5830254/releaseinfo, accessed 11 December 2019.

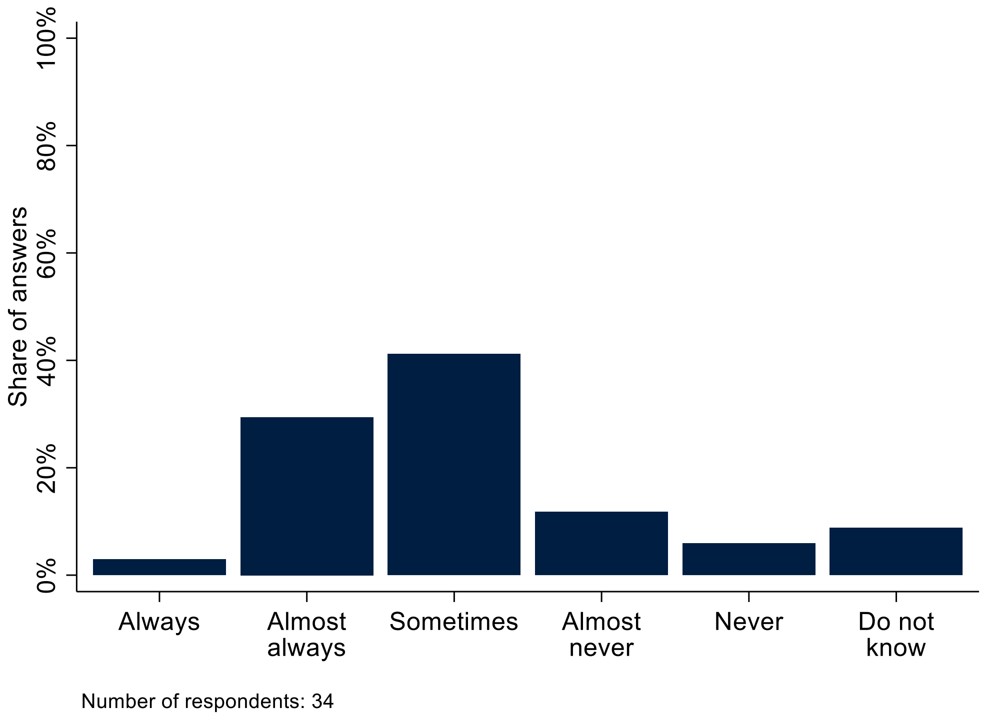
The marketing and release of content is highly localised. Traders will frequently tailor the promotional strategy of a work and its release timing to best suit individual territories. It may also be regulated by local laws or film subsidy conditions. The ability to protect territorial exclusivity is vital to capitalise on effective marketing campaigns and optimise the release timing taking into account local circumstances.

3.2.5 The wait-and-see strategy

While in some cases it might be a producer that chooses to incubate its work in its one territory before releasing internationally, in others it may be that distributors, broadcasters and online services operators choose to adopt a wait-and-see strategy before acquiring rights to an unknown work. This strategy involves delaying the acquisition of the rights until the work has been completed and has demonstrated commercial success in its domestic territory, or a sub-set of territories.

As shown in Figure 3.7, responses to our industry survey suggest that the wait-and-see strategy is reasonably common among traders. For example, 32% of respondents said that they 'always' or 'almost always' use this strategy, while 41% of respondents said that they sometimes use this strategy.

Figure 3.7 Frequency of adopting the wait-and-see strategy



Note: Responses to the survey question: 'When considering content originally produced for another EU market, how often do traders wait to observe the content's domestic success before licensing the rights?'. Excludes 'Not applicable' responses. Restricted to those with distribution, aggregation, platform and theatrical activities.

Source: Oxera, based on a survey of 52 industry members.

Moreover, several respondents to our industry survey mentioned that the wait-and-see approach is becoming increasingly common. For example, one international producer claimed that content licensees are increasingly waiting to observe the success of a piece of content before acquiring rights; while a European distributor confirmed that it prefers to purchase content only after it has proven successful in its domestic territory.

> **'[L]icensees are increasingly willing to wait to see how a TV series fares in its domestic territory. However, there is a tension between heading risk and losing out on a title to increased competition…'**
>
> International producer-distributor-broadcaster

While this strategy is clearly not ubiquitous, for certain works and/or distributors/broadcasters, it can be very important. For example, certain pieces of non-domestic content might be perceived as being particularly risky in certain territories. Distributors and broadcasters might only be willing to acquire the rights once they have observed the content's domestic success. This can mitigate the risks associated with acquiring the rights, and ultimately give the distributor/broadcaster greater certainty over the expected revenues from their content and marketing investments.

> **'It is better to wait to see if the mentioned title is a success in its domestic release before you buy if for your territory'**
>
> European distributor

Once again, effective territorial exclusivity is key to the wait-and-see approach. If a local distributor or broadcaster is to wait and observe a work's success, the exclusivity (and therefore value of the rights) will only be preserved if the local distributor/broadcaster can be sure that the work will not already have been accessed by consumers in its domestic territory by the time it acquires the rights at a later date.

3.3 A requisite rights limitation would not prevent harm

Given the uncertainty over expected revenues, and the need to recover costs across a portfolio of hits and misses, it is vital that traders are able to tailor their strategies to optimally exploit the rights. Therefore, traders are likely to adopt different particular release strategies—or a particular combination of several strategies—in different territories to maximise the chances of recovering costs of each individual work.

The following sections examine the potential impact of the Regulation with a requisite rights limitation. We start by defining what a requisite rights limitation means in practice. Next, we explain how cross-border cannibalisation can erode the value of rights, before examining how a prohibition on geo-blocking with a requisite rights limitation would undermine contractual freedom and affect the European AV value chain.

3.3.1 Defining a requisite rights limitation

A requisite rights limitation to the Regulation would leave producers and distributors free to license exclusive rights for a given territory, but would prohibit broadcasters and online services from geo-blocking access to their service based on a customer's nationality or place of residence (e.g. identified by IP address) provided they hold the requisite rights to exhibit the work in the relevant territory.

In practice, the requisite rights limitation would apply to any trader active across several member states that holds the requisite rights to multiple territories simultaneously. For example, a producer with a DTC offering that wished to include a work on its own service in one EU territory would be prohibited from geo-blocking access in any territory for which it still held the rights. Similarly, a broadcaster that acquired rights to more than one EU territory would be prohibited from geo-blocking its services between those territories. In each case, the trader would be prohibited from geo-blocking its services for consumers located in the territories for which it holds the requisite rights.

However, if a trader acquired rights for a single territory (e.g. Germany) it would still be able to geo-block consumer requests from another EU state (such as Austria or France). Similarly, if a multi-territory trader acquired the rights to Germany, France and Austria simultaneously, it could not geo-block its service between those countries but it *could* geo-block any *other* state (e.g. Poland, Italy) for which the requisite rights are *not* held. Nonetheless, a multi-territory broadcaster may wish to release the work on a territory-by-territory basis in order to optimise the value generated by those rights. Moreover, the rights might have been acquired for different territories at different prices and on different terms.

Similarly, a trader exhibiting a work within the EU while owning the rights to additional member states would be prohibited from geo-blocking access to its services for any consumers in EU territories for which the requisite rights are held. This could, for example, be the case for a producer operating a DTC service such as Nordic Entertainment Group's Viaplay (see section A1.3.2 for further details). This trader might want to stagger the exploitation of these rights across EU territories, either by exhibiting the work on its own online service at different times, or by licensing to local broadcasters and online services in territories in which it does not operate at a later stage.

As detailed in section 3.2.2, evidence from our industry survey suggests that traders frequently hold the rights for multiple territories, with 35% of respondents reporting that this is the case for between 80% and 100% of their content. As such, there are likely to be a significant number of cases in which traders could be considered to hold the requisite rights to a work in the meaning of the Regulation.

3.3.2 Cross-border cannibalisation erodes rights values

Prohibiting geo-blocking where the requisite rights are held would introduce the risk of cross-border cannibalisation between the relevant territories, eroding the value of those rights. For example, if a vertically integrated producer created a work that it wished to include in its DTC service, any rights that had not been actively licensed would begin to diminish in value from the point at which the work is first exhibited on its own online service.

The simple risk that consumers could have previously accessed the work—thereby undermining the territorial exclusivity of the content—would reduce the future sales value of the rights. For example, through our industry interviews, one international producer-distributor explained that it had to provide a rebate to a distributor after it was found that consumers had been able to access a work via an online service in another international territory (see Box 3.4).

'Under a requisite rights limitation, the future value of the rights to a work in one territory would be undermined if they are not pre-sold at the time a producer puts the work on its DTC service in another territory, since consumers could not be prevented from accessing the work cross-border'

Vertically integrated producer-distributor

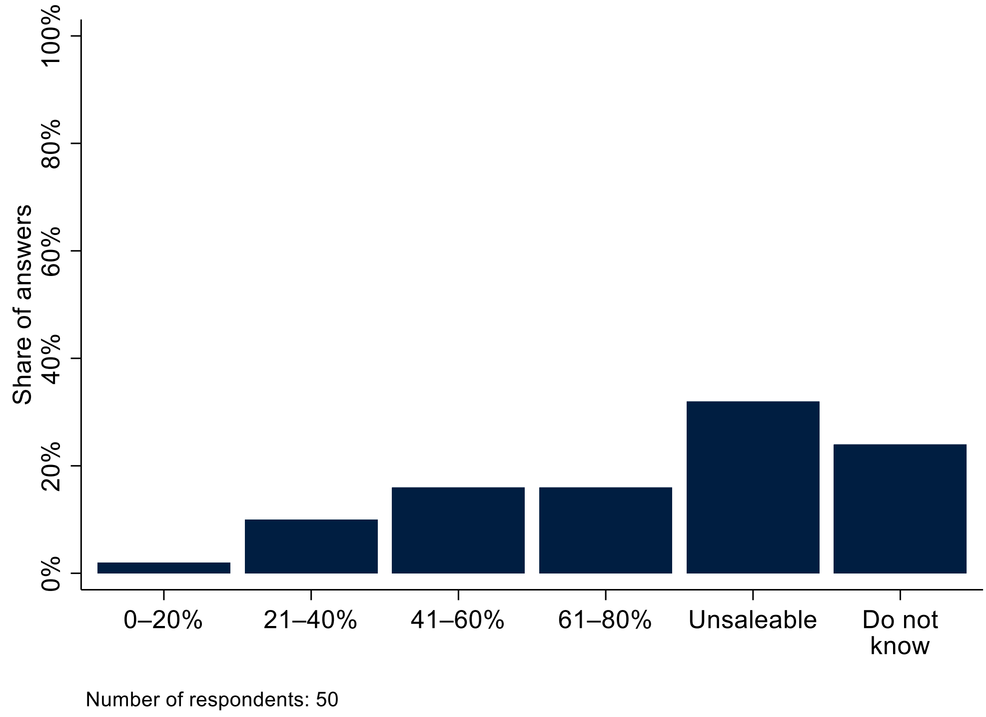
Box 3.4 Case study: cross-border cannibalisation in international territories

- An international distributor selling content to a broadcasting partner in Australia was forced to offer compensation when the title was not sufficiently geo-blocked in the USA.
- Although not actively marketed to Australian consumers, the availability of the content online spread through word of mouth, leading to a decrease in the value of those content rights in Australia due to a lack of exclusivity.
- As a result, the international broadcaster was forced to offer the Australian broadcaster compensation equivalent to a reduction of around 30–40% of the overall rights value.

Source: Oxera, based on input from our industry interviews.

Indeed, evidence from our industry survey, presented in Figure 3.8, shows that 74% of respondents said that the value of exclusive rights would be diminished where the content is already available, but not actively promoted, in a given territory. Notably, 32% of respondents anticipate that the rights would become completely unsaleable.

Figure 3.8 Impact on the value of exclusive rights where content is available, but not actively promoted, in a given territory



Note: Responses to the survey question: ‘How much less are exclusive content rights worth if they have already been available, though not actively promoted, in a given territory (e.g. from a foreign OTT service)?’. Excludes ‘Not applicable’ answers.

Source: Oxera survey of 52 industry participants.

We also found the threat to future rights values was highlighted by industry participants during the interview process.

‘If we were not allowed to geo-block international customers from accessing certain content on our online service, there would be a large impact on the value of saleable rights to international distributors’

Vertically integrated producer-broadcaster

Cross-border cannibalisation is a key concern for many industry participants given the importance of territorial exclusivity for generating value to recoup development, production, marketing and distribution investments. Where such cannibalisation materialises, or even has the potential to occur, it can have a negative impact on the value of those rights.

Importantly, there can be a negative impact on the value of rights even if no or little cross-border cannibalisation materialises. The simple fact that there is the potential for cross-border cannibalisation can undermine the rights value for traders. For example, one European vertically integrated producer-broadcaster-online service provider explained that:

> if content has been available to consumers in that territory … the international distributor is unable to claim ‘exclusive premier’, regardless of how many viewers have seen the work.

This creates further uncertainty over the expected revenues that can be generated from a work in a given territory.

3.3.3 Mitigation strategies reduce contractual freedom

Cross-border cannibalisation might be a particular concern for vertically integrated producer-broadcasters and/or DTC operators. To avoid diminishing the value of rights, these traders may be forced to license the rights to all territories they do not wish to exploit the rights in ahead of the first exhibition. This way, the traders only hold the rights for the territories in which they want to exploit the work at the time of its first exhibition. However, this could require significant delays to the release of content, which may not be commercially viable, may complicate financing agreements or may undermine important value-generating strategies. For example, if a vertically integrated trader were forced into licensing the rights for a work it produced ahead of the work being exhibited in its domestic territory, this would undermine the incubation strategy that many traders rely on. Alternatively, if the trader continued to hold the rights as it exhibited the work domestically, the incubation strategy would be undermined due to the risk of cross-border cannibalisation, which would diminish the future rights value in the territories it would have subsequently licensed to following the incubation period.

It would also limit the contractual freedom of vertically integrated producers that may wish to exhibit works on their own DTC services—for example, hosting the worldwide premiere as part of the DTC value offering—ahead of international sales. In our discussions with industry participants, local online service providers said this was an important value-add to their service and brand.

‘Original content will typically premier on our service ahead of international releases. This creates value for our users, and can also act so as to create a buzz around the work internationally.’

European vertically integrated producer-broadcaster-online service provider

However, licensing ahead of the first exhibition would not be sufficient to protect the value of rights licensed to multi-territory online services and broadcasters in all cases.

If the vertically integrated producer had licensed the rights to an online service provider or broadcaster in an individual territory, the online service provider or broadcaster could legitimately geo-block non-domestic territories, and territorial exclusivity would be preserved.

However, in cases where the rights to multiple territories are licensed to a single online service or broadcaster, the requisite rights limitation would apply, in effect being transferred down the value chain. Therefore, the multi-territory online service or broadcaster would be unable to geo-block between the countries in which it operates. This re-introduces the risk of cross-border cannibalisation and would undermine the ability of the online service or broadcaster to stagger the releases in different territories, as described in section 3.2.2.

As discussed in section 3.3.1 above, it is common for traders to exploit the rights in a sub-set of territories in which the rights are held, and staggering releases across territories is crucial for recouping investments in development, production, marketing and distribution. Therefore, cross-border cannibalisation would diminish the value of the rights to the downstream multi-territory online service or broadcaster. This would reduce the valuation of the rights, and have a negative impact on the financing that the upstream producer would be able to generate.

Furthermore, multi-territory online services and broadcasters typically acquire the rights to a work in different territories at different prices or on different terms. This reflects the diverse characteristics of local territories, including the different values that consumers ascribe to the same works across territories. These differences will be reflected in the subscription price for a service. Prohibiting geo-blocking between a group of territories could allow consumers in one territory to access the content through an online service or broadcaster in another territory, potentially at a lower price. This might undermine the economic case for acquiring the rights to a work in certain territories, or lead to an increase in price in others, as highlighted in the 2016 report.

In addition, as described in section 3.2.4, the marketing and release of content is highly localised. A prohibition on geo-blocking with a requisite rights limitation could undermine this strategy. This would introduce cross-border cannibalisation where the requisite rights are held, which could undermine the effectiveness of tailored promotional campaigns, local releases and scheduling. This could impede traders' ability to generate value from the rights to a given territory.

Finally, from the perspective of those acquiring rights, the wait-and-see strategy, described in section 3.2.5, would be undermined if vertically integrated producers increasingly rely on licensing works ahead of their first exhibition to mitigate cross-border cannibalisation. This would prevent licensees from observing the work's success ahead of acquiring the rights, potentially forcing them to take on additional risk or face the prospect of missing out on a hit series that could differentiate the online service or broadcaster and attract subscribers.

Alternatively, if vertically integrated producers do not issue rights ahead of exhibiting on their distribution channels they may have difficulty finding a distributor or broadcaster willing to acquire a work that might have already been seen by a proportion of their territory.

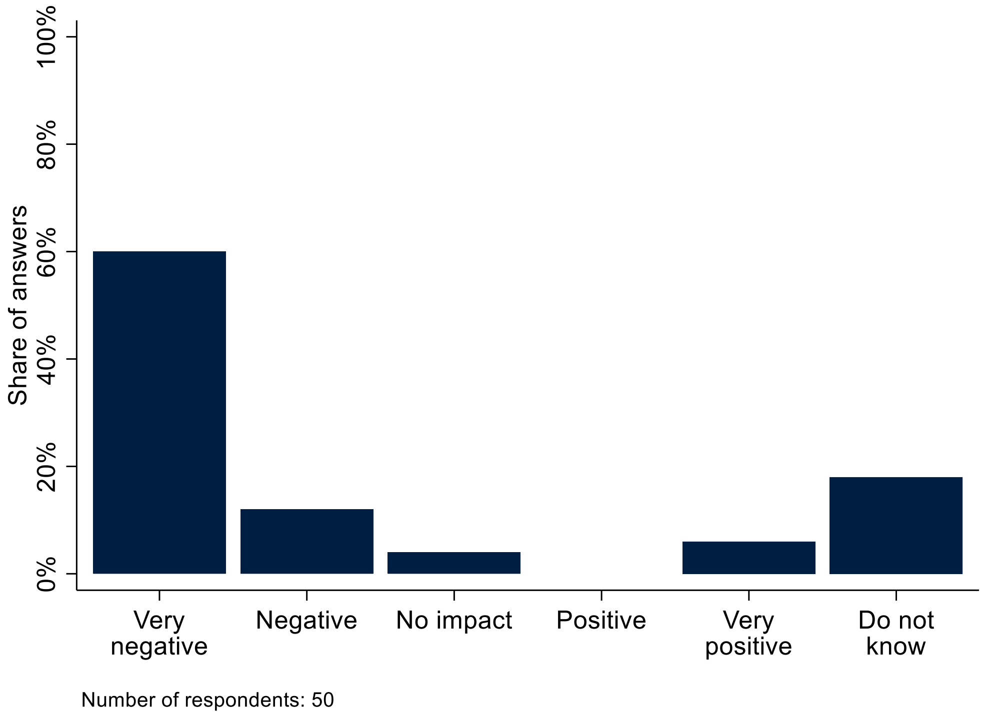
3.3.4 Negative effects are felt throughout the value chain

The requisite rights limitation would have a ripple effect throughout the value chain. It would enable cross-border cannibalisation, which would increase the level of uncertainty over the expected revenues and diminish the value of rights. Ultimately, this would be likely to have a knock-on effect on the complex financing mechanisms that exist within the AV industry, and harm the quantity and/or quality of content.

For a given work, there is a complicated set of interdependent value propositions, across windows. The price in each window is related to its surrounding windows, and consumers make a trade-off based on the price, viewing experience and timing of viewing content in a given window. The potential for cannibalisation from another window might put downward pressure on the price in that window, and would have a ripple effect throughout the windows. For example, if there is the possibility that consumers could access a work from a TVOD service in another territory while it is in the theatrical window domestically (or shortly thereafter), the theatrical promotion and release would be undermined. Consumers make a value-based trade-off considering both the price and format of their viewing. While the domestic windows are scheduled to optimise this trade-off, allowing each window the chance to recoup its investment, cross-border access would disrupt this balance.

Overall, the evidence from our industry survey shows that most industry participants consider that prohibiting geo-blocking—even with a requisite rights limitation—would have a significant, detrimental impact on their business. As shown in Figure 3.9, 71% of respondents anticipate that prohibiting geo-blocking with a requisite rights limitation would have a negative effect, with 60% of respondents saying that it would have a 'very negative' impact on them.

Figure 3.9 Perceived detrimental impact of prohibiting geo-blocking with a requisite rights limitation



Note: Responses to the survey question: 'Overall, what impact would prohibiting geo-blocking with a 'requisite rights' limitation (i.e. only where you have exhibition rights for a territory) have on your business?'. Excludes 'Not applicable' responses.

Source: Oxera survey of 52 industry participants.

3.4 Conclusion

The findings in the 2016 report remain relevant to Europe's AV industry today. Securing finance from multiple sources in exchange for territorial exclusivity and the need to distribute risk across the value chain is vital. In some cases—due to the increased importance of holding rights to exclusive content coupled with the increase in production costs and need—this has become more important. Territorial exclusivity continues to underpin the key sources of finance required to produce content.

Evidence from our industry survey and interviews with industry participants suggests that contractual freedom is critical to the functioning of the industry. The ability to optimise releases across territories and adopt the most suitable local promotion strategies are key tools that are used to generate value. Eroding this contractual freedom threatens to undermine the revenue generation and the functioning of the sector.

While a requisite rights limitation does not go as far as entirely removing territorial exclusivity, it does erode its scope and reduces traders' contractual freedom. This could have an adverse effect on the AV industry and create a ripple effect throughout the value chain, with a knock-on effect on the complex financing and localised promotion mechanisms present in the industry. Therefore, our findings suggest that the risks to the quality and quantity of new works highlighted by our 2016 report would persist.

4 Language exclusivity in rights holding

In the Film Financing report, the authors seek to explore how national barriers to the Digital Single Market could be removed, while acknowledging that financing AV works is a costly investment featuring large up-front spending and risk taking by producers for highly uncertain outcomes. The authors recognise territorial exclusivity as a vital tool for producers to manage the expected returns on their investments and greenlight new projects.

In considering possible alternatives that could promote cross-border access within the Digital Single Market, the report highlights that the EU has almost as many languages as member states. It suggests that language divisions largely—although not completely—coincide with territorial areas, suggesting that language exclusivity may be a 'natural alternative' to territorial exclusivity as a licensing model.[29]

In this section we examine the likely effects of this suggestion, considering:

- some practical limitations to applying language exclusivity within the EU;
- consumer preferences for the conversion of language in the foreign content they watch, highlighting how a language-exclusive regime could lead to worsened outcomes for consumers;
- the likely short- and long-run impacts on industry and consumers of a move to a language-exclusive rights regime.

In doing so, we describe how the costs and revenues flowing through the value chain could change and how this might hinder the use of language-exclusive rights as an effective licensing model.

4.1 Practical implications of language exclusivity

In the Film Financing report, the authors explain that:

> Exclusive language rights could be granted either in dubbed (synchronised) versions or in versions subtitled in a specific language. Such translated versions qualify under copyright law both as adaptations of the original audiovisual work, and as derivative works subject to copyright protection in their own right…

Therefore, in principle it is possible to license different language versions separately and concurrently, given the prevailing copyright regime around the EU. However, there are several practical challenges associated with moving to a model of language exclusivity.

First, we find that a key assumption made in the Film Financing report—that language provides a good approximation of national, cultural or even socio-economic boundaries—is highly problematic.

Second, the Film Financing report itself highlights that the automatic translation tools could become more prevalent and sophisticated with the rise of artificial

[29] Poort, J., Hugenholtz, P.B., Lindhout, P. and Til, G. van (2019), 'Research for CULT Committee – Film Financing and the Digital Single Market: its Future, the Role of Territoriality and New Models of Financing', European Parliament, Policy Department for Structural and Cohesion Policies, Brussels, p. 101.

intelligence (AI), negatively affecting the allocation of language-exclusive rights.[30]

Third, the report acknowledges that language-exclusive rights would not work for a co-production between traders in separate territories that share the same language, such as Germany and Austria.[31]

Ultimately, the report suggests that the changes required under a model of language exclusivity, would require changes to the current financing model of EU films. We briefly examine these practical challenges below.

4.1.1 Proliferation of language skills in the EU

Foreign language skills are prolific throughout the EU, with many citizens speaking multiple languages. Furthermore, many countries or regions of Europe have a multitude of official languages, with even more in common use by consumers. This significantly undermines the usefulness of language exclusivity as a licensing model.

As discussed in section 3.2.4, a principal reason that production and distribution partners agree to territorial exclusivity is to raise production financing and to organise the optimal distribution through the release of new works according to local market conditions, tastes and preferences. For instance, billboard advertising, radio announcements, merchandising and the talents used to promote a work can all be adapted to local specificities. In many instances, dedicated local distributors effectively create demand for foreign titles. One example of this is the low-budget Danish film The Guilty, as discussed in the box below.

Box 4.1 Case study: The Guilty

- The Guilty is a low-budget, Nordisk Film production that enjoyed significant success in French cinemas as a result of French distributors creating a market for the film in France.
- Released in France on 18 July 2018 by the distributor ARP Selection, the film was shown in 76 cinemas for 11 weeks, drawing 266,000 viewers.
- As well as being one of Denmark's leading films of 2018 (with 140,000 admissions) it was also a hit in Benelux (with nearly 100,000 viewers).
- The film spent a year in development and was produced on a very low budget of around €450,000. It went on to become Denmark’s official entry in the Best Foreign Language Film category at the Academy Awards.

Source: Sponsors input and Europa Cinemas website, ‘The Guilty, a European success of the New Danish Screen’, Interview with Mette Damgaard-Sørensen, https://www.europa-cinemas.org/en/news/cinema-culture/the-guilty-a-european-success-of-the-new-danish-screen

Currently, under an exclusive territorial rights system, a local distributor in multi-lingual territories would typically license several languages to provide consumers with a choice at the time of its promotion and release. In doing so, the distributor is able to capitalise on a locally tailored marketing campaign across all consumers in the territory, while consumers benefit from having access to the work in their language.

[30] Poort, J., Hugenholtz, P.B., Lindhout, P. and Til, G. van (2019), ‘Research for CULT Committee – Film Financing and the Digital Single Market: its Future, the Role of Territoriality and New Models of Financing’, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels, pp. 74–75.
[31] Poort, J., Hugenholtz, P.B., Lindhout, P. and Til, G. van (2019), ‘Research for CULT Committee – Film Financing and the Digital Single Market: its Future, the Role of Territoriality and New Models of Financing’, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels, p. 75.

'[viewers] mainly search for films, which have been screened in cinemas and of which they have heard of because of marketing and promotions campaigns of local distributors and cinemas'

European cinema chain

In contrast, under a language-exclusive regime the release of different language versions within a multi-lingual state may no longer be under the control of a dedicated local distributor. This could result in different language versions being made available to consumers at different times and without locally tailored promotion, as the release and marketing strategies are optimised for the 'main' territories of each language.

For example, consider the case of Belgium, which has three official languages in use throughout the country (French, Dutch and German). In each case, there is a much larger population in the 'main' member state that speaks these languages (France, the Netherlands and Germany, respectively). The release and promotion of multi-territory language-exclusive rights by a single distributor throughout the EU would be likely to be optimised for these larger territories, which could be at different times for local reasons (as described in section 3.2.4).

For Belgian consumers, this could cause confusion and frustration as advertised works may be available in some languages (e.g. French) but not others (e.g. Dutch or German) at a given moment. From the distributor's perspective, this is likely to mean a less effective marketing campaign in Belgium, as the promotion and release of the work are uncoordinated, reducing the revenue potential of that work. For example, the distributor of a film is unlikely to launch a billboard campaign in Brussels if there is a significant time difference between the Dutch- and French-language releases. This could have a particular impact on titles that are heavily linked to merchandising (such as animated works linked to children's toys).

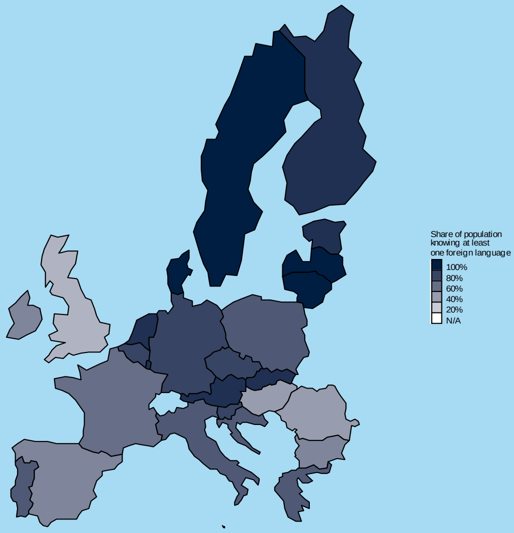
Box 4.2 highlights the important differences between the official languages of the EU—as referenced in the Film Financing report—and the diversity of languages used in any given member state.

Box 4.2 One language per member state?

There are 24 official languages for the 28 member states in the EU as at December 2019. At face value, this seems to indicate a close correlation between languages and territories (as alluded to in the Film Financing report). However, in some member states multiple official EU languages are in frequent use, while in others there are many local languages that are not necessarily official languages of the EU. For example:

- in Italy, it is estimated that 70% of the population of South Tyrol speaks German, representing more than 300,000 people;[1]
- in Estonia, the most spoken language is Estonian (69%). However, roughly 30% of the population speaks Russian as a mother tongue, representing more than 80% of the population in some areas to the east of the country;[2]
- in Bulgaria, the majority of people speak Bulgarian (86%) as a mother tongue. However, there are Turkish-speaking communities in the south and east of the country, representing approximately 9% of the population. There are also Romani-speaking communities in the south and west, representing approximately 4% of the population.

On top of this, foreign language skills are widespread throughout the EU. This is illustrated in the map to the right, showing the share of population knowing at least one foreign language for each EU country. Across the EU, 75% citizens from 25 to 64 years old report speaking at least one foreign language, ranging from 34.6% (in the UK) to 96.6% (in Sweden).



Source: [1] Data from South Tyrol Information website, 'Languages in South Tyrol', https://www.suedtirol.info/en/this-is-south-tyrol/people/languages/, accessed December 2019. [2] Data from UN Data Retrieval System, 'Population by language, sex and urban/rural residence', http://data.un.org/Data.aspx?q=languages&d=POP&f=tableCode%3a27, accessed December 2019. Oxera analysis of Eurostat data on 'Number of foreign languages known (self-reported), by age'.

4.1.2 Automatic language conversion

AV content can be translated into different languages by a number of means, including:

- dubbing—where the original soundtrack is replaced with local-language voice actors;
- subtitling—where the work includes the original soundtrack and on-screen text provides a local-language translation;
- voice-overs—where the original soundtrack is dampened but retained and local-language voice actors are added over the top.

The report suggests that separate language-exclusive rights could be issued for distinct language versions of a work. However, this would be undermined by automatic translation technology that could, for example, apply subtitles to an original or dubbed version. While the Film Financing report highlights this as an issue that may arise in the future, Box 4.3 describes how AI is already being used to produce content translations in real time.

Box 4.3 AI content translation

Automatic captioning, subtitling and dubbing are no longer the realm of science fiction: these technologies are present today, made possible by recent advances in AI and computing power.

For example, YouTube already offers viewers the possibility of auto-generating subtitles for any content on the service; and can translate those subtitles into a wide range of different languages.

This demonstrates that the technology is already available to convert content into many languages. While this may not (yet) reflect the quality of translation a consumer would expect for a high-end production, for certain works (such as informational works) the quality may already be sufficient; and that quality is likely to improve as technology advances.

Furthermore, combining this with emerging AI voice technologies could, in the future, result in automated dubbing. We already see the necessary technologies emerging, with near real-time AI voice-overs available from services such as Google Translate and Skype video calling.

Source: Oxera.

If this technology becomes widely applied, in AV content playback devices for example, it would mean exclusive language restrictions becoming unenforceable as viewers would have access to alternative (perhaps cheaper) versions of the content from which they could readily create unauthorised translations into their own language.

While this type of content translation may not be a substitute for local-language voice actors in dubbing territories in the foreseeable future, it could present a significant challenge in subtitling territories and across all territories for certain types of work (such as documentaries) that are not typically dubbed.

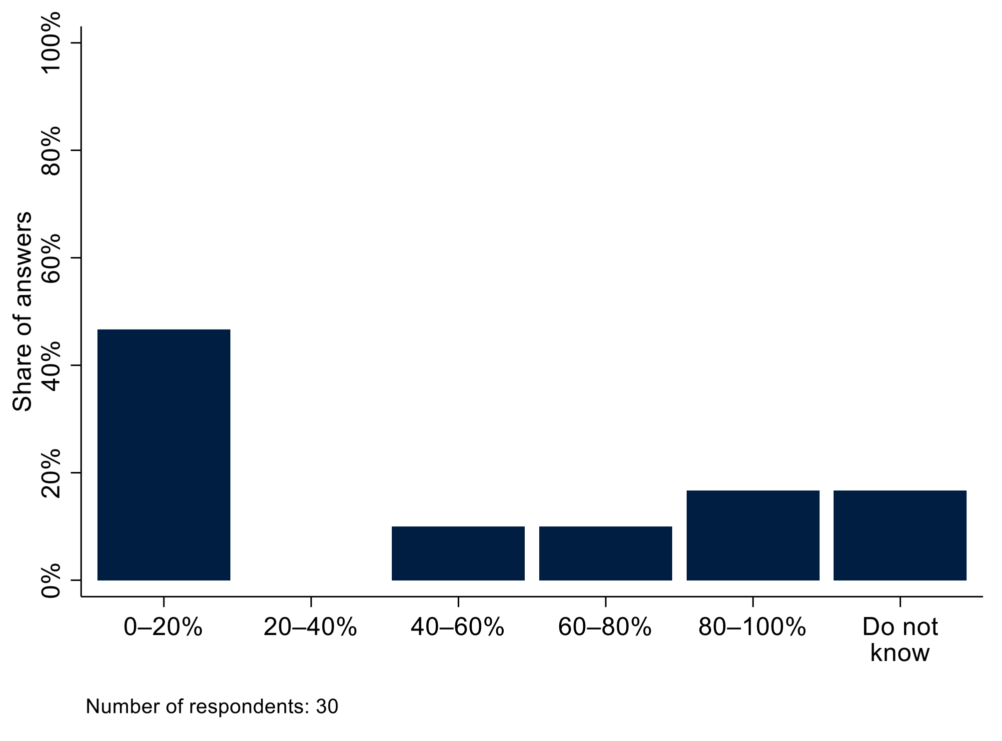
4.1.3 Co-productions across territories

The Film Financing report acknowledges that language exclusivity would create issues for works co-produced by traders from separate territories that share the same language. For example, with territorial licensing, a co-production between a German and an Austrian producer would typically grant each producer the exclusive rights to their own domestic territories. However, in a language-exclusive system, the German language rights would be co-owned by both producers.

This is likely to have a dampening effect on producers’ incentives to enter into co-productions of this type, just as the importance of co-productions is increasing as a means of content financing. As discussed in section 2.4.1, with competition among AV online services increasing—plus the emergence of DTC offers from producers—high-quality original content is becoming an increasingly important factor in both the competitive positioning and long-run sustainability of local broadcasters.

The annual number of co-productions grew from 297 in 2007 to 425 in 2016 (a 43% increase), with an increasing number of works being co-produced across territories, including 22% of European fictional feature films.[32] Furthermore, as Figure 4.1 shows, our survey of industry participants reveals that many co-productions are between traders that share the same home language (such as Germany and Austria or France and Belgium), for which exclusivity in their domestic territory is crucial.

Figure 4.1 Proportion of works with a co-producer or pre-sale in the same linguistic region



Note: Response to survey question: 'What proportion of your content has been co-produced or pre-sold but within the same linguistic region (e.g. Austria-Germany; France-Luxembourg-Wallonia; etc.)?'. Excludes 'Not applicable answers'. Restricted to those with production activities.

Source: Oxera survey of 52 industry participants.

4.2 Consumer preferences for content language

Besides intrinsic content quality and cultural tastes, language presentation is an important determinant of the commercial success of AV productions.

In this section, we examine how consumers around Europe prefer to receive foreign content and note that, in many territories, rights contracts include multiple language versions, giving consumers a choice of how to watch.

4.2.1 Preferences for language conversion

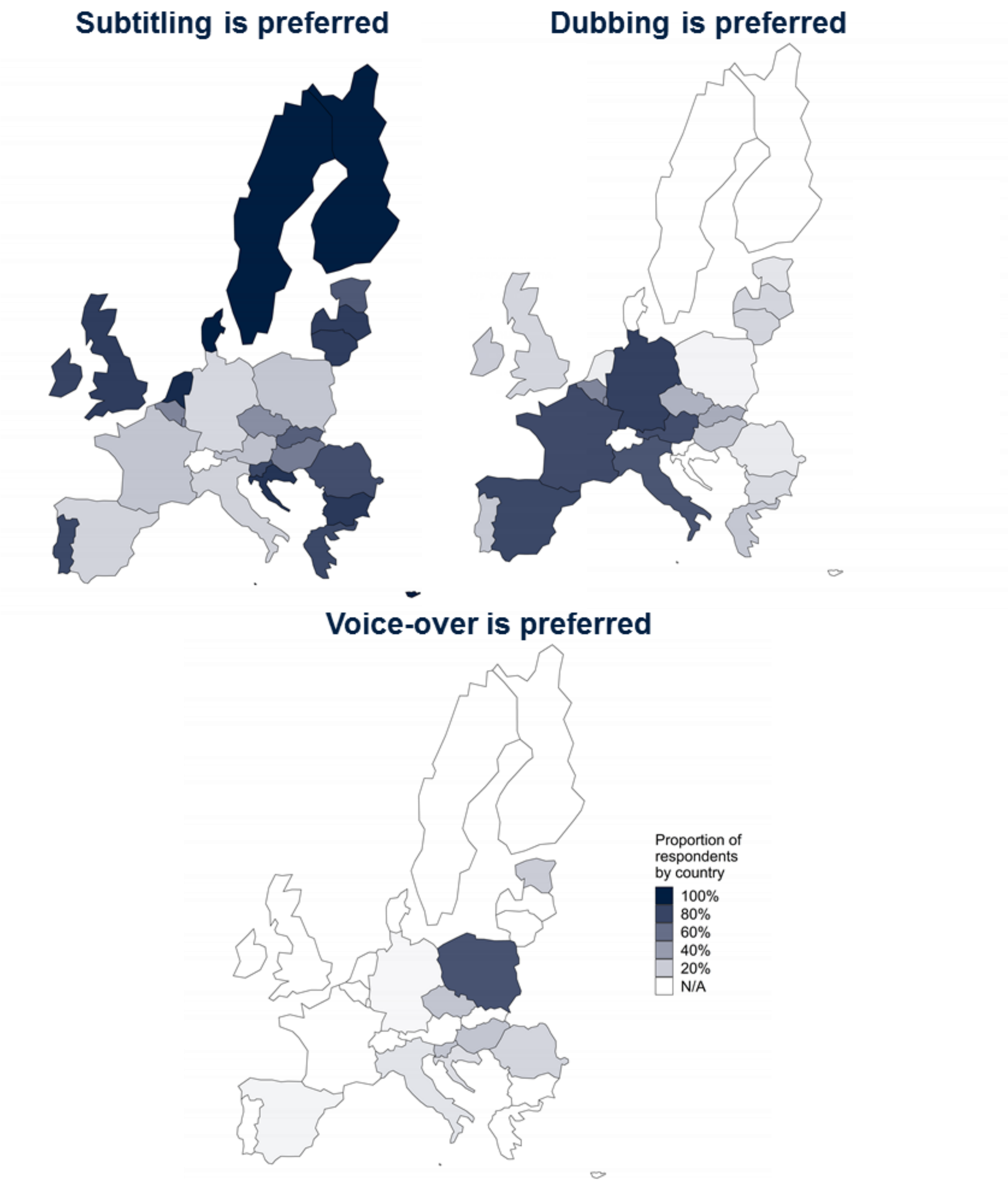
In the 2016 report, we explored consumer preferences for the way that foreign content is presented.[33] We found that just as there are cultural differences in

[32] Cabrera Blázquez, F.J., Cappello, M., Enrich, E., Talavera Milla, J. and Valais, S. (2018), 'The legal framework for international co-productions', IRIS Plus, European Audiovisual Observatory, Strasbourg, p. 3. European Audiovisual Observatory (2019), 'Yearbook 2018/2019: Key trends', p. 14, footnote 4.
[33] Oxera and Oliver & Ohlbaum (2016), 'The impact of cross-border access to audiovisual content on EU consumers', pp. 26–28.

the type of foreign content that consumers want to watch, there are also differences in the *way* that content is translated and presented across the EU.

Language conversion preferences may depend on the type of content (for example children's content is always dubbed) or may depend on local tastes. For instance, Figure 4.2 shows that consumers have a strong preference for subtitling in Greece, Portugal, Romania and the Nordics; for dubbing in France, Germany, Italy and Spain and much of Central and Eastern Europe; and for voice-overs in Poland. This provides another need for territorial licences as the localisation costs (including translation, marketing and promotion) are typically born by the local distributor in return for the exclusive rights to a given territory or territories.

Figure 4.2 Preferences for language conversion methods in the EU



Note: Answers to the survey question: 'Thinking about mainstream content for adults (such as films or TV dramas), please indicate which of the EU countries you serve prefer Subtitling/Dubbing/Voice-over'. Respondents may give multiple answers to this question. The percentage is computed as the share of answers for a given subtitle mode in total responses for this country.

Source: Oxera, based on a survey of 52 industry members.

Furthermore, the approach taken to translating foreign content will have an impact on content's popularity and related commercial success in different countries. For example, viewers in a country where subtitling is prevalent would be unlikely to put the same value on dubbed content, since the original audio, including the actors' vocal expressions, is considered an important and integral part of the viewing experience.

4.2.2 Demand for multiple language versions

Currently, territories and languages are licensed together, with exclusive territorial licences defining the terms for the languages that are included. Local languages are typically exclusive, while the original version may or may not be exclusive. Through our interviews with industry participants, we learned that in certain territories (e.g. Germany and Spain), rights are typically acquired for both the original and dubbed versions, allowing consumers to switch between content in their own language and the original soundtrack (particularly if that is in English).

Similarly, certain content—such as hit international TV series—can be offered on a 'day-and-date' release basis, aired as close as possible to the first exhibition in the USA. As well as being part of the consumer value proposition for premium retail services, our interviews revealed that a key objective of this practice is to mitigate piracy as a result of consumers being frustrated at being 'behind' on a storyline when illegal versions are easily available on the Internet.

'Our business model is based on the ability to retain exclusive content rights across multiple territories … The major threat to this model, however, is from piracy and the growing ability to access this content via illicit means.'

Integrated producer/distributor

In some cases, content is even shown in English (with or without subtitles) before being shown dubbed shortly after. An example of this practice was with Game of Thrones in Germany, broadcast by Sky in its original language within hours of the US broadcast, before being dubbed and repeated a few days later.

However, under a model of language exclusivity, it is likely that exhibiting content in this way would be unfeasible. Acquiring the rights to non-domestic languages would be impractical and prohibitively expensive for broadcasters, distributors and/or online services; while if different rights are held by separate traders, consumers would have to subscribe to multiple services to have access to multiple language versions.

It is likely, therefore, that there would be a detrimental impact on consumers as their ability to access original versions of works would be reduced; and on traders as their reduced ability to offer original language versions and day-and-date releases would result in reduced willingness to pay among subscribers and would be likely to lead to increased piracy.

4.3 Impact of a language-exclusive regime

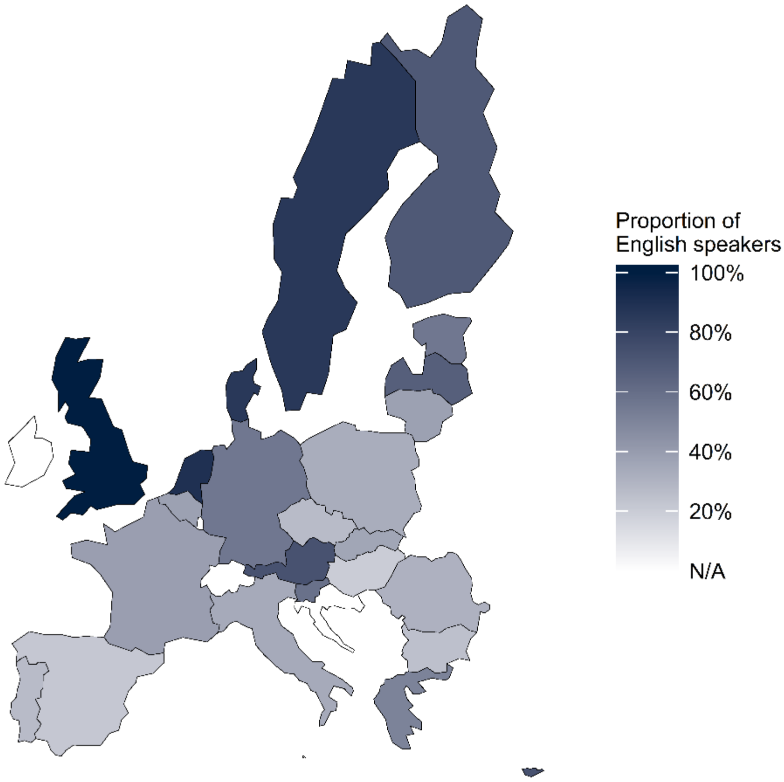
In this section, we first examine how consumers are likely to respond to the availability of alternative language versions in the short run and the effect of that on the costs and revenues of different stakeholders. Then we consider the potential long-run responses of Europe's AV businesses and the impact that these could have on consumer outcomes.

In order to focus on the economic implications of a move to language exclusivity, we make the simplifying assumption that AV services are included in the scope of the Regulation and producers react by employing a model of multi-territorial single-language exclusivity. For example, we assume that a French trader acquiring the exclusive rights to the French-language version of a work would be granted the rights to exhibit that content in any EU member state; while at the same time, a Dutch provider acquiring the exclusive rights to the Dutch subtitled version would also get the rights to exhibit that version across the EU.

4.3.1 Short-run impact of language exclusivity

In the short run, the use of language-exclusive contracts would affect industry participants at all levels of the value chain, as there would be a disparity between the local distributors' valuations and the value that producers require for multi-territory language rights in order to close production budgets and recoup development and production costs. For example, the English language is widely spoken throughout the EU, as illustrated in Figure 4.3. This means that the potential demand for English-language content rights is very large. However, local broadcasters, distributors and/or online services would be unable or unwilling to pay *more* for the rights, as they may not have the infrastructure in place to exploit those rights around the EU.

Figure 4.3 Proportion of English speakers in the EU, by country



Source: European Commission (2011), 'Study on the use of subtitling'; and Eurobarometer (2013), 'Europeans and their languages'.

Under a territorial licensing regime, a producer may sell a particular language version of a work (e.g. English) to different local distributors in different member states, each of which pays for the exclusive rights to distribute in its territory. Indeed, we observe this in practice, with distributors, broadcasters and online services in certain territories typically acquiring the rights to multiple language versions in order to provide consumers with choice (as discussed in 4.2.2).

In contrast, under a language-exclusive regime, the exclusive rights could be sold to only a single distributor, which would then be able to exploit those rights across all EU territories. For instance, an Irish broadcaster seeking to acquire the English-language rights to a hit US series could no longer limit those rights to Ireland. Instead, under a language-exclusive regime, it would be forced to acquire the English-language rights for the whole of the EU. Since this is a much larger potential audience, the price required by the producer could be prohibitively high, given the limited reach of the local Irish provider.

As such, a model of language exclusivity would be likely to suit multi-territory distributors, broadcasters and online services with the infrastructure to exploit the rights across many territories, with the resulting possibility of concentration in the industry. Additionally, a move towards language-exclusive contracts could result in the erosion of value attributed to rights for less widely spoken languages. For certain national languages, this could mean that the content would simply not be translated. This could happen if the English-language version of the work is made available before a local-language version, which is common given that language conversion processes takes time. In this case, within a particular territory, some viewers may prefer not to wait for the locally dubbed version, instead watching the English-language version as soon as it is released.

For instance, Slovenian is spoken by approximately 2.5m people worldwide; however, approximately 59% of the Slovenian population, and virtually all young people in Slovenia, speak English at a conversational level.[34] Content is typically subtitled in Slovenia, meaning consumers are used to watching English-language content. With language-exclusive rights, it could be hard to find a local Slovenian distributor willing to bear the financial risk of translation and subtitling. Given that a substantial proportion of the population could already have viewed the content in English, the revenue potential of a subtitled version may be limited. This was the case for one major European distributor that purchased German-language rights for a work that had already been made available in English in Germany (see Box 4.4).

Box 4.4 Case study: territorially non-exclusive language rights

A major European distributor purchased the exclusive German-language rights for a show that was also available in Germany in English.

At the time of purchase, there had been interest and a financially viable model to resell these rights, but in the year ahead of the air date the market evolved quickly and there was no demand left for territorially non-exclusive rights, even *with* language exclusivity.

This lack of interest included retailers from the full range of distribution methods, including streaming services, free-to-air, pay-TV and public service broadcasters. The current market continues to evolve, but market participants now believe that there is no business case for any form of territorially non-exclusive rights, undermining the value of those rights.

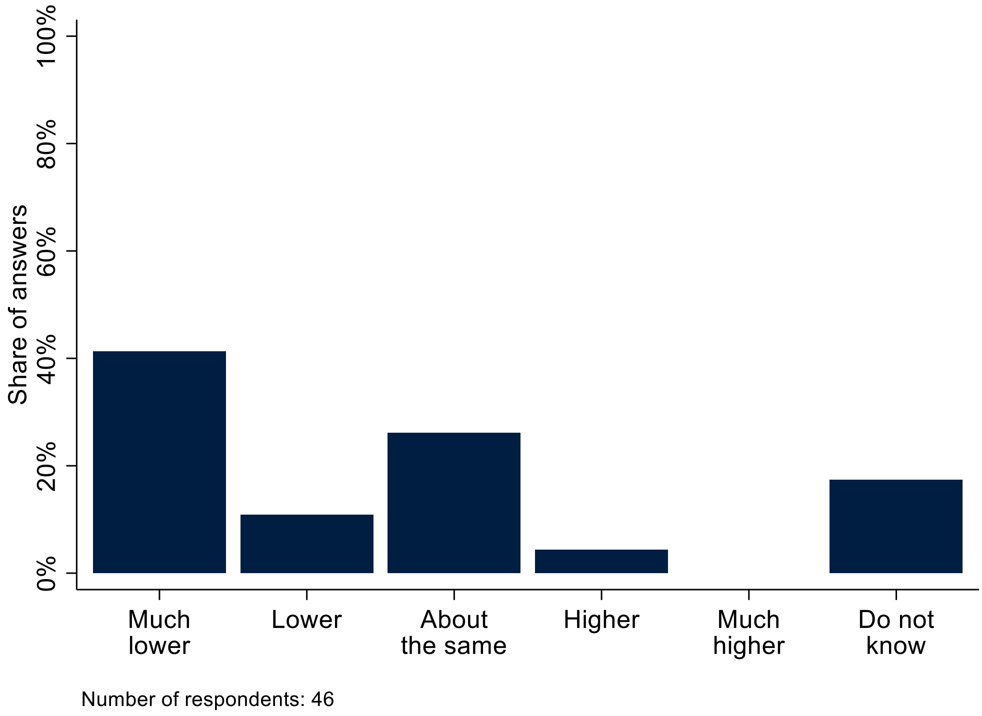
Source: Interview input.

With increased uncertainty over recoupment of investments and revenue potential, local distributors would be unwilling to invest in the conversion of works into local languages. This would harm both consumers—who no longer have the option of watching content in their local language; and producers—who face a loss of sales to those viewers that *would* have taken a local-language version but not a foreign-language version.

Furthermore this will have a knock-on negative impact on producers' ability to fund content. Figure 4.4 shows the results from our industry survey, confirming this negative effect is anticipated by industry, with 52% of respondents saying that the value of language-exclusive rights would be 'lower' or 'much lower' than the equivalent territorial exclusive rights.

[34] See Republic of Slovenia Statistical Office (2015), 'Slovene: a South Slavic language spoken by about 2.5 million speakers in the world', https://www.stat.si/StatWeb/en/News/Index/5004; and Travel Slovenia (2016), 'Slovenia is one of the easiest countries for English speakers to travel in', 26 November 2016, https://travelslovenia.org/english-speakers-travel/, accessed February 2020.

Figure 4.4 The value of language exclusivity vs territorial exclusivity

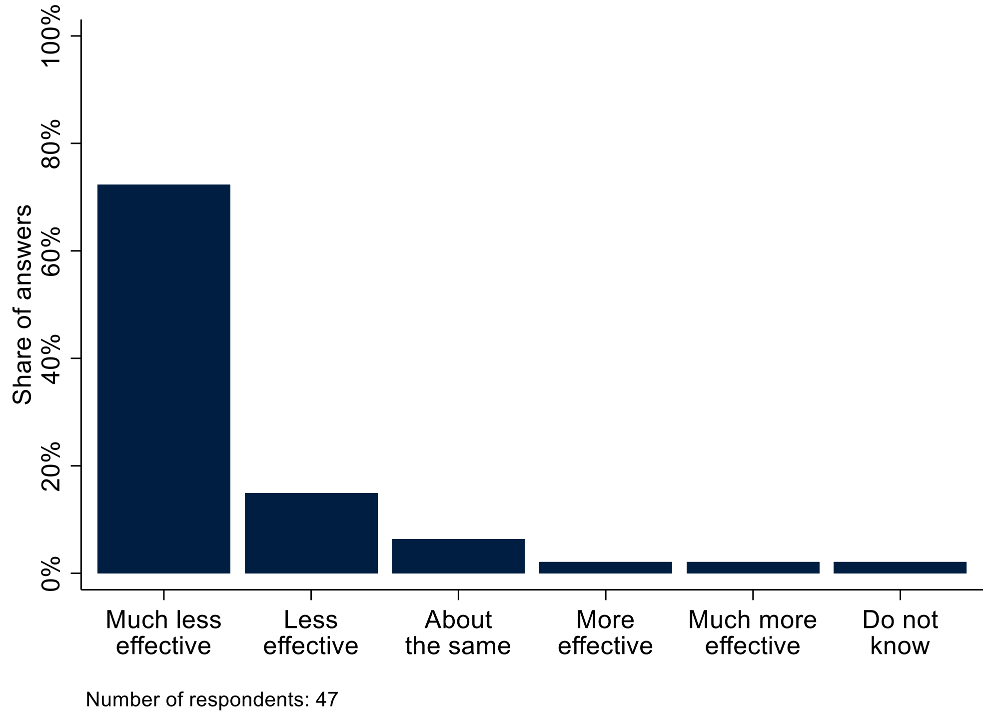


Note: Response to survey question: 'How does the value of language exclusive rights compare with comparable territorially exclusive rights (e.g. French language exclusivity vs. territorial exclusivity in France)?'. Excludes 'Not applicable answers'.

Source: Oxera survey of 52 industry participants.

More generally, Figure 4.5 shows that 87% of surveyed respondents indicated that language exclusivity would be 'less effective' or 'much less effective' than territorial exclusivity as a way of raising revenues, increasing the risk that they are unable to recoup their investments.

Figure 4.5 The effectiveness of language exclusivity vs territorial exclusivity



Note: Response to survey question: 'Thinking about your business, how effective would language exclusivity be as a way of maximising revenues compared with territorially exclusive rights?'. Excludes 'Not applicable answers'.

Source: Oxera survey of 52 industry participants.

Finally, since a language-exclusive regime would be likely to hinder the revenue potential of local distributors, we would expect this to have a knock-on effect on the type and diversity of content available to consumers. Indeed, as described in section 3.2.4, local distributors often play an important role in the success of a work by creating local demand for the content by providing localisation of content, promotion and marketing.

4.3.2 Impact of likely industry response

In the longer term, we can expect an industry-wide response to the changing commercial dynamics that a model of language exclusivity would introduce, in order to mitigate the effects arising in the short run. Given the importance of exclusivity to production financing, producers and distributors might use a combination of contractual provisions, including on time exclusivity, in order to preserve the value of the rights to different language versions of a work.

In some cases, this could mean a substantial impact on the availability or timing of translated content in the desired format (particularly in subtitling territories), in order to prevent the cannibalisation of alternative versions between territories. In other, smaller territories, language exclusivity could mean that the content is not translated *at all*, given that the availability of alternative language versions (particularly in English) would erode the already small potential audience for local distributors.

The precise strategies employed are likely to be highly dependent on the specifics of the work and the territory. For example, the original language of the work would have an impact on the degree of cross-border access that is likely between member states; while its anticipated target audience may determine which territories are given priority based on the expected revenues and the preferred language conversion method (e.g. subtitling or dubbing). Notwithstanding the high degree of uncertainty, we consider a number of worked examples to examine the potential long-run effects that a model of language exclusivity could have.

An English-language work in subtitling territories

An important consideration for producers will be the extent to which the original language of the production is spoken across the EU. In cases where the original language is widely spoken (such as with English), a subtitled version of the work could be particularly prone to erosion of value of rights due to cross-border access. For example, suppose an English-language work is translated for exhibition in Croatia, where subtitling is preferred. The subtitled work would retain the original, English-language soundtrack, meaning it could be understood by any English-speaking consumer. If a local Croatian trader offered the subtitled Croatian-language version at a lower price than alternative language versions around the EU, it would be possible for the content to be accessed in any higher-priced territory that has a high proportion of English language speakers. Importantly, this does not impinge on just the English-language version of the work, but also any version for which the local consumers have a high level of English comprehension (e.g. the Netherlands or the Nordics).

In order to preserve the value of alternative language versions, a producer might include a contractual provision requiring that the Croatian-language version be *dubbed*, rather than subtitled. That is to say, they would *not* grant a licence for a subtitled version of the work with the original soundtrack. For Croatian consumers, this would mean being forced to accept a Croatian version with the actors' voices dubbed—considered less desirable than subtitling. For Croatian distributors, this would significantly increase the cost of the language conversion process (see Box 4.4 and Figure 4.6) and reduce revenues as consumers place a lower value on what is perceived as a worsened viewing experience.

It is also likely that a dubbed version would be slower to arrive than the original language or subtitled versions, given the additional time needed to translate and recreate the soundtrack. As such, a proportion of consumers may choose to view the original language version of the work via a foreign service. For a smaller language population, the combination of increased translation costs and reduced potential audience could mean that no distributor wishes to undertake the dubbing.

For example, one interviewee explained to us that in the case of small states with only one or a few cinemas, a distributor could expect to receive only a small amount (e.g. €7,000–€10,000) from the theatrical release. In these territories, dubbing costs of even a few thousand euros would be prohibitive. For traders, this would mean forgone sales since: (i) the work would receive little dedicated

'With language exclusivity, this would likely mean content might not be language-converted for release in single cinema states'
European cinema chain

local promotion, thus reducing consumer awareness; and (ii) some consumers would purchase the subtitled version, but not the original language version.

Box 4.5 The language conversion process

The language conversion process typically starts once a film or AV content has been finalised. A digital copy of the film is then provided to translators, alongside the transcript of the dialogues. From our stakeholder engagement, we understand that the cost of the language process is typically born by local distributors. AudioVisual Translators Europe, the European federation of national associations and organisations for media translators, provides insights on the process of language conversion, as follows.

Subtitling

The process of subtitling can be split into three steps.

1. **Spotting**: dialogues are broken down into segments, and it is located where each subtitle should be placed.
2. **Adaptation**: the process of transforming the dialogue into subtitles (e.g. shortening long sentences).
3. **Simulation**: a joint on-screen review of the subtitles by the translators and their clients.

According to the respondents in our survey, on average this step takes 2 weeks and costs around €1,250 for 60 minutes of content. However, as seen below in Figure 4.6, this can vary widely, depending on factors such as the languages being converted, the location of the translators and the timescales required.

Dubbing

The process of dubbing can be broken down into three steps, as follows.

1. **Detection**: a technician records relevant technical information for the translator, such as actors' breathing and shot changes.
2. **Adaptation**: the translator writes the script using a dubbing software that shows the technical information recorded in the detection phase.
3. **Verification**: the translators and their client jointly inspect the dubbing work.
4. **Acting**: actors are hired by the distributor to perform the dubbing.

According to the respondents in our survey, on average this step takes around 5 weeks and costs around €14,500 for 60 minutes of content. Again, Figure 4.6 shows that this can vary widely depending on the languages, timings, voice talents used and location.

Voice-over

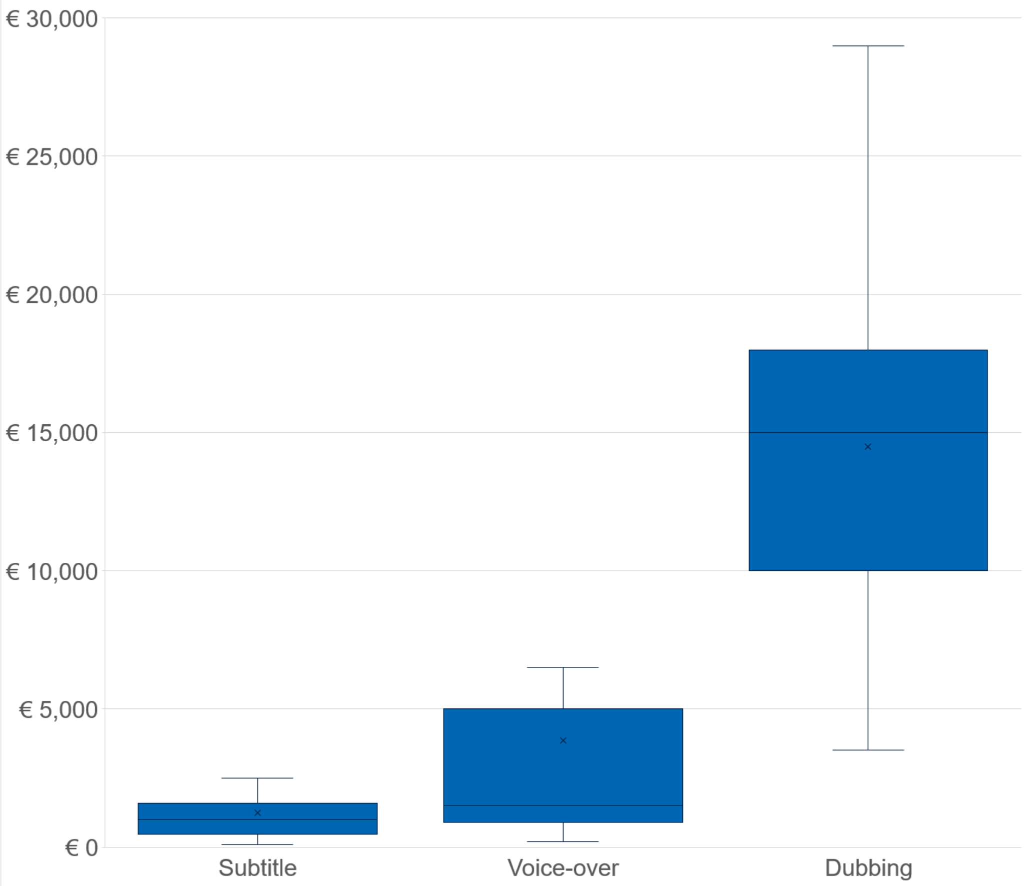
Voice over is often used in documentaries, news reports or reality TV shows. The language conversion process is typically done in two steps.

1. **Research**: the translators conduct research on the topic they will be translating, ensuring the correct translation of technical terms.
2. **Narration**: an actor is hired to read the translated text over the original content.

According to the respondents in our survey, on average this step takes 2.2 weeks and, as seen in Figure 4.6, costs around €3,900 on average.

Source: Oxera industry survey and interviews.

Figure 4.6 Language conversion cost for 60 minutes of content



Note: The box shows the 25th, 50th (median) and 75th percentiles. 'X' represents the mean value, and the 'whiskers' show the minimum and maximum value.

Source: Oxera industry survey.

Non-English-language works *around the EU*

It is not just the release of English-language content that would be affected by a shift to language-exclusive rights. Take, for example, a French-language work being sold in different languages around the EU.

In the case of subtitling territories, the same issues arise as found for English-language content. The producer would be unwilling to jeopardise the domestic territory by allowing the French-language soundtrack to be included on foreign subtitled versions, such as in the Croatian example given above.

Additionally, the producer may choose to strategically time the release of different dubbed language versions, in order to minimise the risk of cross-border access that would erode the value of different territories. For example, the French work may be released in less common languages (such as Croatian or Slovenian) before it is released in English, which is widely spoken around the EU. This would help preserve the value of rights for local distributors in these smaller territories, since the first accessible version for those consumers would be the dubbed version in the local language (rather than an English version).

However, the resulting delay to the English-language release would diminish the consumer experience in English-language territories (since the work would not be available until other language versions had been fully exploited). This would have the knock-on effect of reducing the rights value to local distributors in those territories, as the work would be less current.

For producers, this is likely to mean reduced revenues as distributors would have a lower valuation of the content—due to both the risk of cannibalisation and the reduced currency of the work. The negative impact on raising production finance may mean that in many instances, producers will simply not be able to close production budgets and greenlight projects.

Ultimately, release strategies relying on language exclusivity are likely to be very complex, and heavily dependent on the type of work and the territories under consideration. In certain cases there would be delays and reduced access to works, relative to a model of territorial exclusivity.

4.4 Conclusions

Based on the analysis above, we consider that language versioning would be unsuitable as a basis for exclusivity given consumers' differing preferences for subtitling, dubbing and original language viewing (particularly of English-language works) throughout the EU.

Traders seek to license by territory in order to raise production financing and to manage the release of new works according to the need to create local audiences for all content—national and foreign—and to respond to local tastes and preferences. However, with multiple language versions available, a local distributor has no guarantee that its investment in the acquisition of rights and in localisation and promotion will be met with additional content sales as consumers could watch an alternative language version instead.

We find that for common languages (such as English), a model of language exclusivity would better suit international distributors, broadcasters and online services with the infrastructure to exploit the rights across many territories. Local distributors, broadcasters and online services that do not have the required infrastructure in place may no longer be able to afford the rights to content with multi-territory appeal. Given the crucial role that local distributors play in the success of a work by creating an audience, providing localisation of content, promotion and marketing, this would have a knock-on impact on the type and diversity of content available to consumers.

For less common languages (such as Slovenian), a move towards language-exclusive rights may lead to local distributors being unwilling to invest in the acquisition of rights and conversion of works into local languages. This would harm both consumers (who miss out on content in their language) and producers (which forgo potential sales). Furthermore, this could have a negative knock-on effect on the production of new content more generally, since distributors in these territories may no longer be willing to provide pre-sale funding.

In the long run, producers seeking to prevent the devaluation of content rights due to cross-border access may enforce dubbing and strategically delay the release of content in certain territories where possible.

5 Concluding remarks

Given the diversity of the European AV industry in respect of the significant heterogeneity of both the content produced and of traders' business models, retaining the contractual freedom to optimise the financing and exploitation of an individual piece of content at all levels of the value chain is key to the success of the AV ecosystem.

There is no one-size-fits-all approach to financing and exploiting AV content. In our discussions with industry participants, we understand that different traders will adopt different approaches to financing content depending on the specific work and their business model. For some traders, there is an increasing reliance on selling content to online service operators; while for others, it remains preferable to raise finance from a collection of European co-production and future distribution partners, in return for the exclusive rights in those territories.

The genre of a work also plays an important role in the optimal approach. There are a multitude of genres of content, which vary across a range of dimensions. Different works require different budgets, have different risk profiles, and need to be tailored to local attitudes and characteristics. For example, feature films or serialised high-production-value works—such as Dunkirk—require a substantial budget ($100m) but will generally (although not always) travel well across Europe;[35] while a niche documentary—such as Homeland, a Dutch documentary about right-wing populism in Western Europe and life in the Flemish suburbs—might only require a small budget and be very culturally specific.

Moreover, the localisation of works can vary across different types of content. For example, in the case of documentaries, while the narrative elements might be tailored to the local territory by means of dubbing, the interview segments will typically use the original speech with subtitles to preserve their factual nature. In contrast, the language conversion for dramas will typically be tailored to the prevailing preference in a given territory for either subtitling, dubbing or voice-over. The required language conversion type has implications in terms of both cost and the time taken to convert.

Given this significant diversity across different types of content, it is vital that traders retain the contractual freedom to tailor their strategy to each individual work. Including AV in the scope of the Regulation, even with a requisite rights limitation, would erode contractual freedom.

'We value the contractual freedom of deciding how and when to licence a specific work depending on the specific properties of each individual title'

Vertically integrated producer-distributor

This would be likely to undermine territorial exclusivity, as traders holding the rights to multiple EU territories would be prohibited from geo-blocking between those states. This could have a negative impact throughout the value chain, reducing access to content for consumers and ultimately undermining the ability to finance and monetise new, high-quality content.

Similarly, a model of language exclusivity would reduce the contractual freedom of traders at all levels of the value chain. Smaller, local broadcasters

[35] Oxera analysis of IMDb website, 'Dunkirk', https://www.imdb.com/title/tt5013056/, accessed 3 March 2020.

may find themselves unable to afford the rights to content with multi-territory appeal; while producers may be unable to find distributors willing to invest in the acquisition of rights and localisation of content in less widely spoken local languages. This would mean that consumers receive less tailored content and the commercial potential of the work is reduced.

In the long run, we would expect an industry-wide response to the changing dynamics of language-exclusive rights, in order to mitigate these losses. Producers and distributors could use a combination of contractual provisions and time exclusivity in order to try to preserve the value of the rights to different language versions of work. However, this is likely to have a substantial impact on the availability or timing of translations for certain languages; with others, particularly those in smaller territories, not being offered at all. The net effect could, therefore, be to hamper the cultural diversity of AV content available throughout the EU.

Ultimately, either including AV within the scope of the Regulation with a requisite rights limitation, and/or moving to a model of language exclusivity, could have a range of distinct negative effects on consumers and the AV industry. Furthermore, the scale and scope of these effects will vary between member states, with this variation attributed to local differences, such as consumer tastes and preferences, languages spoken and technology uptake. Appendix A1 highlights this, examining the anticipated impact on a selection of territories in more detail.

A1 Differing implications around the EU

Given the substantial cultural, linguistic and technological differences between territories, the impact of a requisite rights limitation or a move to language-exclusive contracting can be expected to vary between EU member states. For example given the increased popularity of Spanish-language content globally over recent years, a Spanish producer could be particularly affected if a requisite rights limitation reduced its ability to incubate works at home. This would hinder its opportunity to demonstrate the commercial attractiveness of the work to foreign distributors and therefore limit its international revenue potential.

Similarly, in the Czech Republic many works are produced targeting consumers in neighbouring territories (with languages similar to Czech). If producers' ability to grant territorial exclusivity is undermined, local distributors would be uncertain of their ability to recoup the costs of acquisition and marketing, as it is possible for the work to be accessed by consumers in neighbouring countries.

For other territories, such as Germany and the Nordics, a move to language-exclusive contracts may be particularly problematic. For example:

- Germany is one of the largest producing territories in the EU, including many co-productions with producers from other German-speaking nations. These co-productions would not be feasible under a model of language exclusivity, as the producers would not be able to guarantee exclusivity to distributors in their domestic territory;
- given the English proficiency levels in the Nordics, a switch to language-exclusive contracts could significantly reduce the revenues of local Nordic distributors, which would be unable to afford to purchase the English-language rights, and would therefore be disincentivised from purchasing local-language rights to foreign titles. This would in turn have a negative impact on the viability of such distributors' business activities in the Nordic territories with a resulting loss of outlet for national content and less choice of services for consumers in those territories.

In all cases, the resulting outcomes would be negative for both industry and consumers. A decrease in revenue means reduced recoupment opportunities and reduces the funds available to invest in a diverse range of high-quality content projects; while mitigation strategies—such as forced dubbing or delayed release—reduce the quality, quantity and range of works available for EU consumers.

The following section will outline regional differences and emerging trends in a representative selection of EU countries. The section will also outline the potential impacts of a requisite rights limitation and language-exclusivity proposal on these countries.

A1.1 Spain

- **Population:** 46.4m
- **Consumer total AV spend 2018:** €490.1m
- **TV households:** 18.9m
- **Consumer spend on AV, 2018 vs 2017:** +47.4%
- **Home entertainment spend per HH 2018:** €25.90
- **Box-office revenue 2018:** €585.7m

Note: All statistics are from 2018 unless specified otherwise.

Source: International Video Federation, European Audiovisual Observatory.

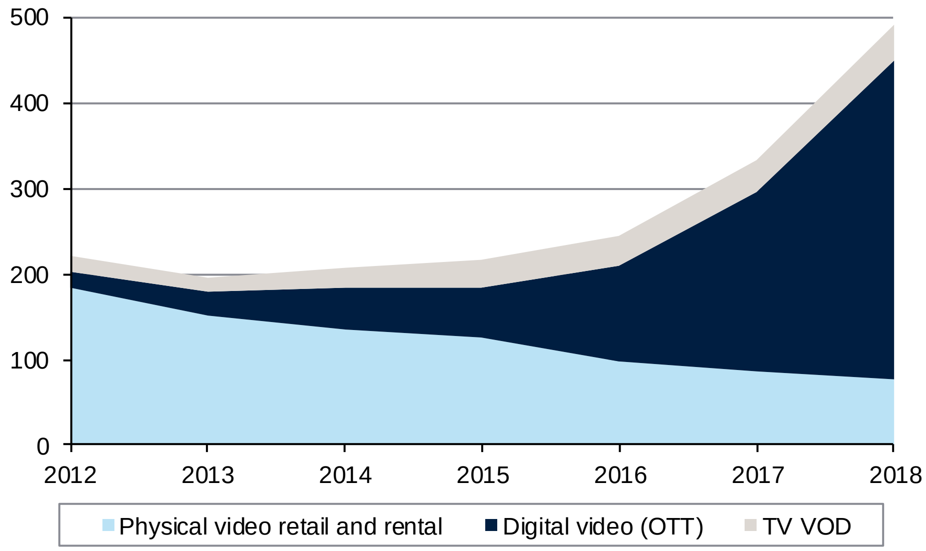
A1.1.1 Emerging trends in the Spanish AV industry

Consumers in Spain—a territory where 99% of households own a television—watch the second largest amount of TV per day in Western Europe behind Italy.[36] Pay-TV accounts for approximately 70% of the overall video entertainment sector, with growth being attributed to the strong uptake of IPTV.[37]

Although public broadcasting and pay-TV remains relevant in Spain, since 2016 there has been a boom in consumer take-up of digital services, which can be seen from the increase in consumer spending (see Figure A1.1). In fact, 38% of Spanish consumers say that they regularly use the Internet to stream or download AV content—this is up 9% since 2015.[38]

[36] Audiovisual Finland (2017), 'The broadcast market report. France-Spain-Italy', October.
[37] Advanced Television (2019), 'Report: Pay-TV and SVoD flourishing in Spain', 29 October, https://advanced-television.com/2019/10/29/report-pay-tv-and-svod-flourishing-in-spain/, accessed in January 2020.
[38] European Commission (2019), 'Flash Eurobarometer 477a – February – March 2019 "Accessing content online and cross-border portability of online content services"', April.

Figure A1.1 Consumer spending by segment in Spain, 2012–18 (€m)



Source: Oxera analysis of International Video Federation (2019), 'Market Information: Spain'.

The growing popularity of Spanish content abroad also makes the Spanish AV industry distinct from some other European territories. In recent years this has been intensified by the rise of international online services, which are increasingly releasing Spanish-language content on a global scale.

'In the last couple of years we have developed a diversification strategy, responding to the growth of online services by developing a production studio and having a growing focus on international territories. [This studio arm] produces content with online players in mind.'

Spanish broadcaster (now also producer)

A1.1.2 The impacts of a requisite rights limitation in Spain

As outlined in section 3.2.3, a requisite rights limitation may prevent the incubation of work in a domestic territory to build critical acclaim before exhibiting internationally.

Given the increasing popularity of Spanish content around the world, the loss of the ability to incubate work in the domestic territory could particularly hurt Spanish producers and distributors that commonly use this strategy before selling Spanish-language works in the rest of the EU. For example, as shown in Box A1.1, Gran Hotel was first released domestically in 2011 and was not picked up by broadcasters abroad until months or even years later, when the series had proven commercially successful in Spain.

It was Atresmedia's choice to first air the series only in Spain that consolidated the value of the international rights. Without the domestic incubation, if content had been available internationally from the outset, the international rights to the series would have been valued considerably lower. This is because the producer would have been unable to demonstrate to potential buyers the value and success that the series had first experienced in Spain.

Without the opportunity for a domestic incubation period, it is likely that it would be more difficult for a future Spanish work to have the same worldwide impact that Gran Hotel was able to achieve. By hindering a Spanish producer or distributor's ability to sell, or depressing the value of, the international rights a requisite rights limitation may harm this growing revenue stream of the Spanish AV industry.

As Spanish producers generate less revenue, they therefore have less funding available for future projects. This could mean a decrease in the quantity or quality of original AV content available for Spanish consumers.

Box A1.1 Case study: Gran Hotel

- Gran Hotel is a Spanish television crime drama series that has had phenomenal success internationally.
- First broadcast on Spanish channel Antena 3 in October 2011, the series gained critical acclaim domestically, going on to have two further seasons.
- Following its success in the domestic Spanish market, the series was sold to traders around Europe, being broadcast in, for example, France, Germany, the UK, Estonia and Poland.

- The series has since experienced global success, with the original Spanish-language version viewed by consumers all over the world. There have also been several international remakes of the series, including in the USA, where Grand Hotel, starring Eva Longoria, premiered in 2019.

Source: Oxera. Wikipedia (2020), 'Gran Hotel (TV series)', https://en.wikipedia.org/wiki/Gran_Hotel_(TV_series)#cite_note-7, accessed 21 February 2020.

A1.1.3 The impact of language-exclusive contracts in Spain

As mentioned in section 4.2.2, in Spain it is not uncommon for consumers to have the freedom to choose between the Spanish- or English-language soundtrack for a title.

In order to be able to provide consumers with this choice, it requires the distributor or broadcaster to have acquired both the Spanish- and English-language rights. This is common practice under the current territorial regime, where, for example, a Spanish broadcaster could acquire the exclusive rights in Spain for all languages, thus giving it the ability to provide consumers with the option to watch with a variety of soundtracks.

However, this is unlikely to be feasible under a regime involving language exclusivity. Acquiring the rights to multiple languages with exclusivity would be prohibitively expensive to all but the largest pan-European broadcasters and online services, especially if one of the desired languages is English. As a result, the Spanish consumer viewing experience would be significantly worsened under a model of language exclusivity, as they would be unable to flit between languages as and when they choose, instead having access to just one language version.

A1.2 Germany

Population:
83.7m

Consumer total AV spend 2018:
€2,361.1m

TV households:
39.5m

Consumer spend on AV, 2018 vs 2017:
+11.3%

Home entertainment spend per HH 2018:
€59.70

Box-office revenue 2018:
€899.3m

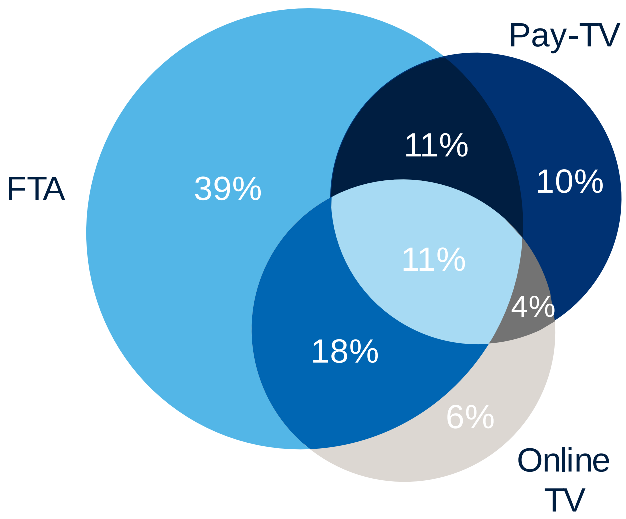
Note: All statistics are from 2018 unless specified otherwise.

Source: International Video Federation, European Audiovisual Observatory.

A1.2.1 Emerging trends in the German AV industry

Traditionally, the popularity of FTA services in Germany has been among the highest in Europe. As seen below in Figure A1.2 this is still the case today, with 79% of German consumers surveyed saying that they watch FTA services at least some of the time.[39] This is a substantially higher proportion than other EU countries such as the UK and Sweden where the popularity of FTA has reduced over the last few years, with only 47% of consumers surveyed in 2019 saying that they watch FTA services some of the time.[40]

Figure A1.2 Proportion of German consumers using various TV services at least 'some of the time' in 2019



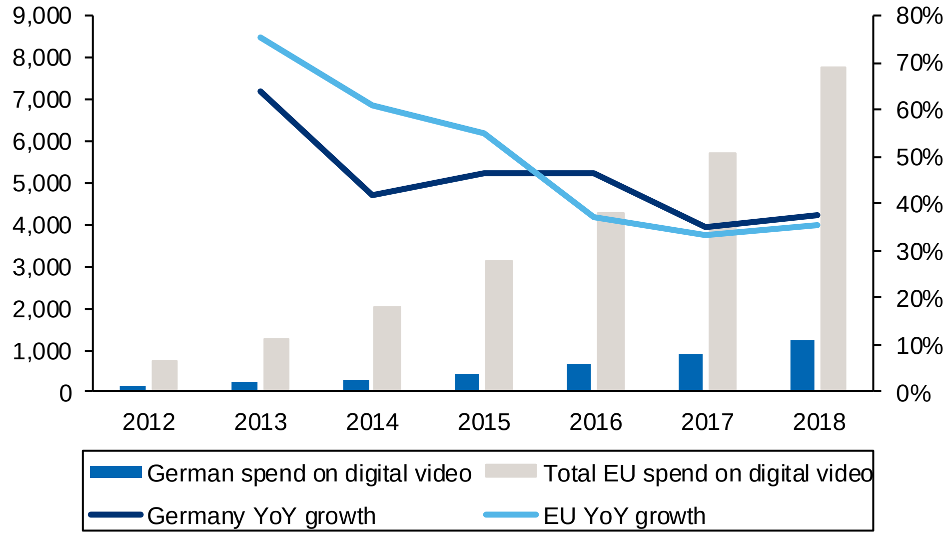
Source: Oxera analysis of NScreenMedia 2019 survey data, 'TV Universe- UK, Germany, Sweden: How people watch television today'.

Arguably, the pervasiveness of FTA services in Germany has made it more difficult for digital paid offerings to enter the territory, and Germany has

[39] NScreenMedia (2019), 'TV Universe- UK, Germany, Sweden: How people watch television today'.
[40] NScreenMedia (2019), 'TV Universe- UK, Germany, Sweden: How people watch television today'.

therefore experienced slower uptake of digital services than some other EU countries. As shown in Figure A1.3, between 2012 and 2015 Germany was experiencing slower year-on-year growth in digital spending than the total EU AV sector.

Figure A1.3 Germany vs EU spending on digital video, 2012–18 (€m), and year-on-year growth rate



Source: Oxera analysis of International Video Federation (2019), 'Market Information: Germany'.

However, from 2016 onwards Germany has experienced considerable take-up of online AV services, and German consumers now contribute 16% of Europe's total consumer spending on digital video and TV VoD.[41] There are now approximately 11 million SVOD subscribers in Germany, paying an average of €14.60 per month for streaming services.[42]

A1.2.2 The impacts of a requisite rights limitation in Germany

As a territory, Germany is a prolific producer of AV content, including many TV fiction releases, for which Germany is the lead producer in Europe.[43] Given the sheer number of productions, there is the potential for the German AV industry to be hit disproportionately by the introduction of a requisite rights limitation. For example, if, as mentioned in section 3.2.4 a requisite rights limitation were to mean that a producer or distributor may be unable to rely on different release times in different territories around local tastes and preferences.

An example of where this has been crucial to the success of a German work is Das Boot, referenced in Box 3.3.

A1.2.3 The impact of language-exclusive contracts in Germany

Given the prevalence of the German language in multiple EU territories, it is unsurprising that, as a nation, Germany is one of the largest co-producers in Europe, and partnerships with producers from other German-speaking territories such as Austria and Switzerland are commonplace. In fact, in 2018

[41] International Video Federation (2019), 'Market Information: Germany'.
[42] European Audiovisual Observatory (2019), 'FOCUS 2019 - World Film Market Trends'. NScreenMedia (2019), 'TV Universe- UK, Germany, Sweden: How people watch television today'.
[43] European Audiovisual Observatory (2018), 'Yearbook 2017/2018 Key Trends'.

42% of German feature films produced were the result of a co-production partnership.[44]

Normally such productions include territorially exclusive agreements, where each producer retains the rights to the title in their domestic territory. For example, in a German–French co-production, the German producer would subsequently hold the exclusive rights for the content in Germany, and the French producer in France, granting them the contractual freedom to distribute as they please.

These types of agreement are particularly crucial when the producing nations are within a common language area, for example, a German-language feature film co-produced by a German and an Austrian producer. The exclusive nature of the territorial agreement provides each producer with enough incentive to raise finance for the project, as they know that the exclusivity in their domestic territory will guarantee them recoupment opportunities and some return.

However, if contracts were to be structured towards language exclusivity as opposed to territorially, these co-productions between the German-language territories would no longer be viable, as, for example both the German and the Austrian producer would be unable to rely on the exclusivity of the content for distributors and broadcasters in their domestic territories. This would drastically reduce the valuation of rights for such content, ultimately meaning that the project would be unlikely to be financed in the first place.

Language exclusivity would therefore substantially lower the feasibility of German-language co-productions, harming German consumers as less AV content would get made.

A1.3 The Nordics

Population:
Sweden: 10m
Denmark: 5.8m
Total: 15.8m

Consumer total AV spend 2018:
Sweden: €547.8m
Denmark: €517.7m
Total: €1,065.5m

TV households:
Sweden: 4.7m
Denmark: 2.3m
Total: 7m

Consumer spend on AV, 2018 vs 2017:
Sweden: +12%
Denmark: +23%

Home entertainment spend per HH 2018:
Sweden: €117.50
Denmark: €221.40
Total: €152.21

Box-office revenue 2018:
Sweden: €230.7m
Denmark: €180.0m
Total: €410.7m

Note: All statistics are from 2018 unless specified otherwise.

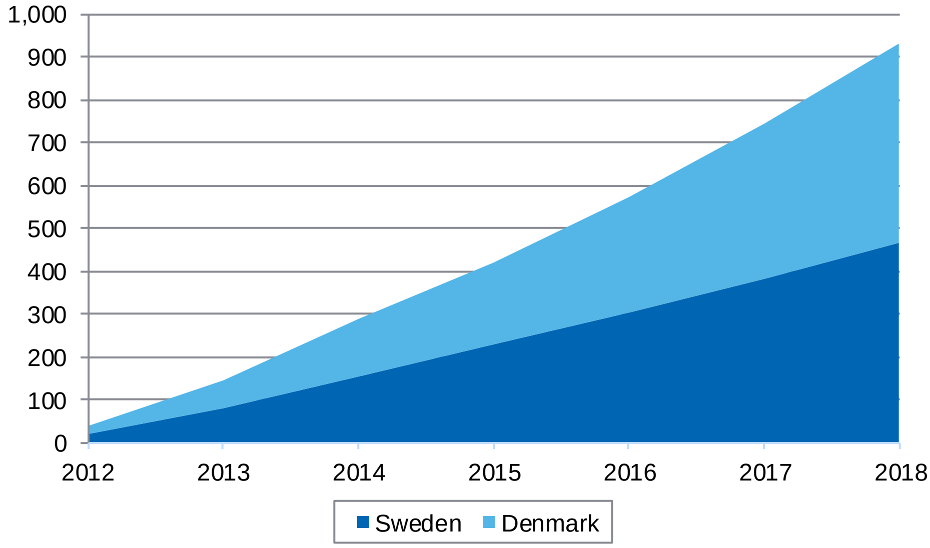
Source: International Video Federation, European Audiovisual Observatory.

A1.3.1 Emerging trends in the Nordic AV industry

Since the introduction of digital AV business models, the Nordic countries were among the first to experience a large uptake in digital paid offerings. As seen in Figure A1.4, both Sweden and Denmark have experienced consistent and considerable growth in consumer spending and digital video since 2012.

[44] European Audiovisual Observatory (2019), 'FOCUS 2019 - World Film Market Trends'.

Figure A1.4 Consumer spending on digital video, 2012–18 (€m)



Source: Oxera analysis of International Video Federation (2019), 'Market Information: Denmark' and 'Market Information: Sweden'.

It seems likely that this growth will continue in future, as nowadays Nordic consumers represent some of the highest spenders on home entertainment in Europe.[45] In Sweden, 31% of consumers say that 'online' is their primary source of TV, this is compared with just 20% of UK consumers, which is arguably one of the other EU territories with a high digital adoption. For younger generations, this figure is much higher, with 61% of 18- to 24-year-olds surveyed in Sweden listing 'online' as their primary TV source.[46]

In Sweden, consumers subscribe to an average of 2.4 streaming services, and the popularity of such services is reflective of the large number of online offerings in the territory.[47] Unlike in some other European territories where Netflix and Amazon prevail, in the last few years a number of other digital services, and noticeably DTC services, such as HBO and Viaplay, have launched and are also enjoying success in the Nordic territories.

A1.3.2 The impacts of a requisite rights limitation in the Nordics

The Nordics may be particularly affected by a requisite rights limitation, given the popularity and growth of DTC offerings in the territories. A requisite rights limitation may force vertically integrated players to choose between including an original as a first-release on a DTC service, or preserving international revenue potential. A specific example of a how a DTC service in the Nordics may be affected is shown in the box below.

[45] When compared with the other country profiles published by the International Video Federation, for example International Video Federation (2019), 'Market information: Sweden'.
[46] NScreenMedia (2019), 'TV Universe- UK, Germany, Sweden: How people watch television today'.
[47] NScreenMedia (2019), 'TV Universe- UK, Germany, Sweden: How people watch television today'.

Box A1.2 The requisite rights limitation and Viaplay

- Available to consumers in the Nordics, Viaplay is a premium online streaming and VOD service owned by Nordic Entertainment Group (NENT).
- The service includes the latest international TV releases, original drama and all-time classics and film premieres.
- Crucially, content on Viaplay is available to all consumers in the Nordic territories at the same time, and often NENT original content premieres on the service ahead of international releases.
- Given the large number of online services including DTC in the Nordics and fierce competition for customers, NENT considers the inclusion of first releases of its original content as a crucial differentiator for attracting customers to the service.
- However, as NENT owns the requisite rights to its own productions, a requisite rights limitation would mean that NENT would no longer be able to prohibit EU consumers outside the Nordics from accessing titles on the Viaplay service if they still own the requisite rights to that territory.
- Even if not actively marketed, this would have a significant detrimental impact on the value of the international rights to the title, as NENT would be unable to guarantee exclusivity to local distributors abroad, who would therefore have a lower valuation of the rights.
- As a result, NENT would be forced to choose between upholding the potential value of the international rights and including original content premieres on the Viaplay service.

Source: Oxera.

A1.3.3 The impact of language-exclusive contracts in the Nordics

A large majority of consumers in the Nordics speak English as an additional language. In fact, Swedes have been ranked as the best non-native English speakers in the world more than once.[48] Unsurprisingly given the high level of English proficiency, as shown in Figure 4.3, the preferred method of language conversion for consumers in the Nordic countries is subtitling, and in many cases consumers will choose to watch the original version with no subtitles at all.

In the example of an English-language work, given the relative size of the Nordic countries and their scope for exhibition, it is unlikely that a local distributor could afford to purchase the English-language rights for the whole of Europe. Indeed, given the likely high cost of these rights it is probable that the purchase of these rights may only be attractive to a pan-European player with a presence in many territories.

However, a local Nordic distributor, e.g. a Danish distributor, would also have very little incentive to purchase the rights to the work with Danish-language exclusivity. Given the levels of English proficiency, as soon as an English-language version is exhibited in the territory there will be very little residual demand for the Danish-language version. Given that language conversions take time and are relatively costly, it is also likely that an English release would occur before a local-language version. This means that the ability of a local Nordic

‘the value of rights in the Nordics would be significantly diminished if a prohibition on geo-blocking meant consumers could watch English versions broadcast from the UK or other territories.’

Vertically integrated Nordic producer-distributor-broadcaster

[48] Education First website, ‘Sweden’, https://www.ef.co.uk/epi/regions/europe/sweden/, accessed January 2020.

distributor to recoup its investment on the local-language acquisition would be subject to even greater risks than before.

Therefore, given the levels of English proficiency in these countries, a switch to language-exclusive contracts could significantly reduce the revenues of local Nordic distributors, which are disincentivised from purchasing both the English- and local-language versions of English-language works. This would in turn have a negative impact on the distributors’ overall business prospects with a resulting negative impact on the distribution opportunities for local content. This would lead to a detrimental effect on choice of content available for local consumers.

‘At least 50% of [our] co-produced content is in English’

Vertically integrated Nordic producer-distributor-broadcaster

Furthermore, there are a significant number of English-language co-productions in the Nordics that are made possible precisely because producers are able to grant territorial exclusivity. Under a move to language-exclusive contracts, these co-productions are unlikely to be viable, as a Nordic distributor would be exposed to local consumers accessing the content in other English-speaking territories and, as a result, would place a lower value on the content.

A1.4 Czech Republic

Population: 10.6m

Audiovisual industry revenue 2017: €640.0m

Annual growth of AV industry—2018/2014 +8.1%

Box-office revenue 2018: €101.0m

Note: AV industry revenue includes motion picture, video and TV programme activities.

Source: European Audiovisual Observatory.

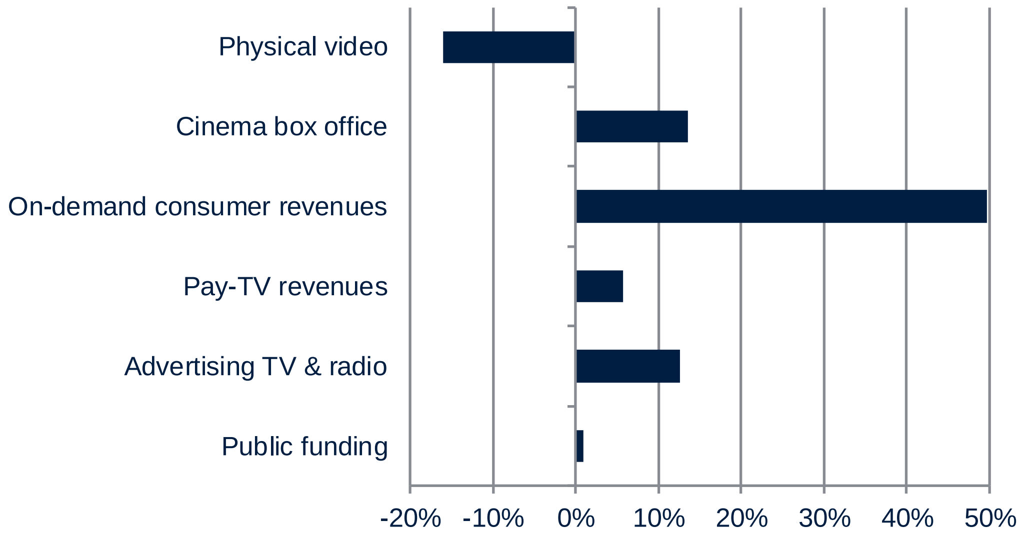
A1.4.1 Emerging trends in the Czech Republic’s AV industry

In recent years, the Czech AV industry has grown considerably, with an annual growth rate of 8.1% from 2014 to 2018, compared with an EU-28 average of just 1.9%.

As seen in Figure A1.5, most of this growth can be attributed to on-demand consumer revenues, although the theatrical box office also shows strong growth, with cinema admissions increasing 93% in the last 15 years.[49]

[49] From 2005 to 2019, cinema admissions in the Czech Republic almost doubled. Increasing from 9.5m in 2005 to 18.3m in 2019, a 93% increase. Source: UNIC.

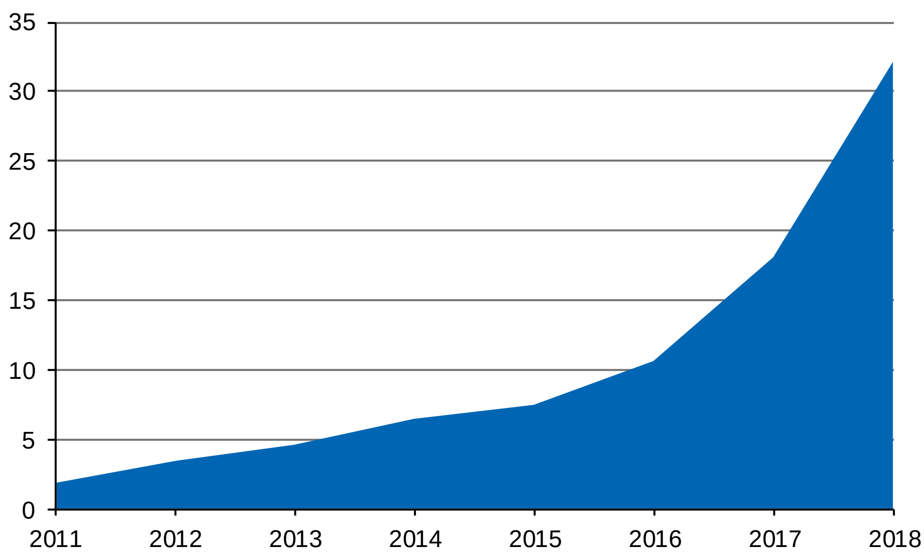
Figure A1.5 Czech Republic AV industry annual growth by industry segment (2018/2014)



Source: European Audiovisual Observatory (2019), 'Country factsheet – Czech Republic'.

Although initial growth in revenues for on-demand AV services was slower than in some other European countries, Figure A1.6 shows that this growth has accelerated considerably since 2015.

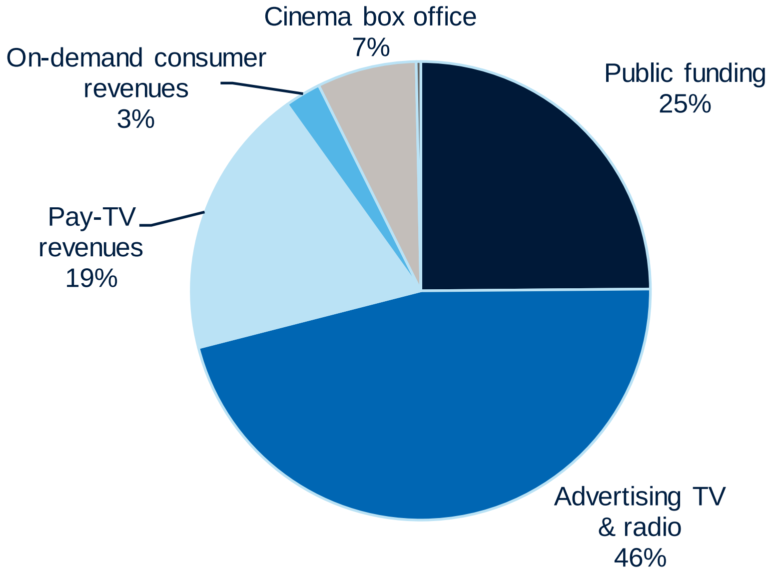
Figure A1.6 Consumer revenues for on-demand AV services in the Czech Republic, 2011–18 (€m)



Source: Oxera analysis of Statista data.

Although growth in the Czech AV industry has mostly come from the digital sector, the majority of revenue is still coming from traditional channels such as public funding and advertising. As Figure A1.7 shows, on-demand revenues still comprise only 3% of total industry revenues.

Figure A1.7 Czech Republic AV industry services revenues (2018)



Source: European Audiovisual Observatory (2019), 'Country factsheet – Czech Republic'.

On the supply side, the Czech Republic is one of the top 5 producing countries in the EU.[50] Producing many television originals for both the domestic territory and abroad. Indeed, the Czech Republic represents one of the European hubs that broadcasts linear TV channels targeted at consumers in other territories (the other hubs are the UK and France). For example, in Slovakia, Czech TV shows are very popular, with shows either received directly in border regions or carried by pay-TV providers.

A1.4.2 The impacts of a requisite rights limitation in the Czech Republic

As highlighted in section 3.3.2, a requisite rights limitation could result in works being accessed by consumers in other territories. This effect could be particularly large given the cultural and linguistic similarities between the Czech Republic and some of its neighbours. As a result, there would be an erosion in rights value of Czech works, which would be especially harmful considering the relatively small overall size of the Czech AV industry.

A1.4.3 The impact of language-exclusive contracts in the Czech Republic

Due to the similarities between the Slovak and Czech languages, Czech works are exhibited in their original soundtrack in Slovakia. As a result, a move to language instead of territorial exclusive contracts could hurt Czech domestic players.

In some cases, a Czech producer may sell the rights to a broadcaster active in both Slovakia and the Czech Republic, in which case a move to language-exclusive contracts may not have much impact. However, if this is not the case, a move to language-exclusive contracts would mean that a Czech producer will no longer be able to sell the original language work to separate distributors in Slovakia and the Czech Republic, as they will not be able to grant the distributors territorial exclusivity. Without territorial exclusivity, the local distributors would be unlikely to recoup their costs as it would be possible for the work to be accessed by consumers in neighbouring territories. As a result, the producer of the work would only be able to sell the rights to the work

[50] European Audiovisual Observatory (2018), 'Yearbook 2017/2018 Key Trends'.

once, not twice (for both territories) and therefore would lose out on revenue, reducing its chances of recouping investment. This reduction of revenue would have an impact on the quantity and quality of future Czech works.

A2 Industry survey

A2.1 Data collection process

To understand the evolution of the European AV industry since the 2016 report, the impact of the requisite rights limitation and the language-exclusivity proposal, Oxera conducted a survey of 52 industry participants throughout Europe, supplemented by a series of in-depth interviews with senior staff at key companies.

The full list of survey respondents is shown Table A2.1. Each respondent below is considered as a data point in the analysis presented in this report, which means that even if two respondents are part of a larger organisation, they are considered as separate entities for the purpose of the survey.

Data collection ran from November 2019 to January 2020.

The survey consisted of 51 questions and covered the three main themes of this report. The full list of questions is shown in section A2.3 below.

To contextualise the answers and better pinpoint how different parties would be affected by the policy changes, we also asked questions on the survey respondents' business activities.

Table A2.1 List of survey respondents

Organisation	Larger group
A+E Networks EMEA	Hearst
A CONTRACORRIENTE FILMS	
Anagram Sverige Ab	Anagram Produktion Ab
Atresmedia	Grupo Planeta
Belga Films SA	Belga Films Group
B-Reel Films AB	
BIM DISTRIBUZIONE	WILD BUNCH AG
Bio Illusion	
Bravado Fiction	VOFTP
CBS	ViacomCBS*
CG Entertainment	
Chimney Group	
Cineplexx Kinobetriebe GmbH	Constantin Film Group of Companies, Austria
eksystent Filmverleih	
Element Pictures	
Filmlance International AB	Endemol Shine
Entertainment One*	Hasbro
epo-film produktionsges.m.b.h.	
film and music austria	federal chamber of commerce Wko
Fremantle	RTL Group / Bertelsmann
Fudge Park	
Gaumont*	
GF Studios AB	
GMfilms	
KINEPOLIS GROUP*	
Mediengruppe RTL Deutschland	RTL Group and Bertelsmann

Organisation	Larger group
mk2 FILMS	mk2 Holding
NBCUniversal International	Comcast Corporation
Netflix	
Nice Drama	Nordic Entertainment Group
ODEON Cinemas Group	AMC Entertainment
Paramount Pictures	ViacomCBS*
PATHE FILMS AG	PATHE
ROAD MOVIES	
SF Studios (Production)	Bonnier AB
Sony Pictures Entertainment ('SPE')	Sony Corporation
Stellanova Film	
Storytelling Media AS	Trondheim Kino Utvikling AS
Studio 100 Benelux	Studio 100
Studiocanal Ltd	Canal+ Group, Vivendi
The Searchers	
TS Productions	
TV4 Media	Telia Company
ViacomCBS International Media Networks	ViacomCBS*
Warner Bros.	AT&T
X-Filme Creative Pool GmbH	X-Filme Holding GmbH
YellowBird Film & TV Productions, Jarowskij Sverige AB, Nordisk Film TV Produktion	Banijay Group
Zentropa Trust Nordisk	Zentropa Production

Note: Based on responses to the survey question: 'If your organisation is part of a larger group, what is the name of that group?'. * These organisations provided more than one survey response, often from individuals representing different departments.

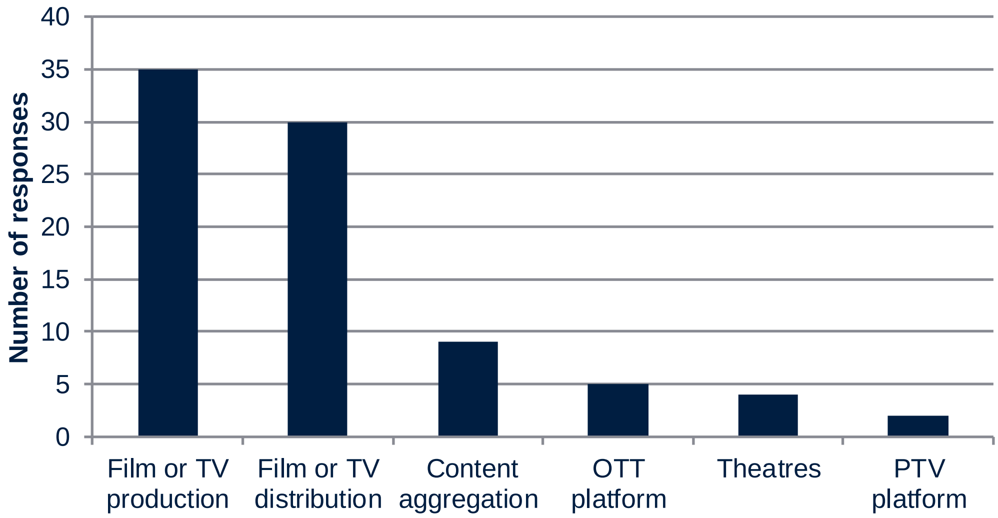
Source: Oxera survey.

A2.2 Sample representativeness

The survey respondents are active at different stages of the AV industry throughout the EU. These represent a diverse sample of the European AV industry, which is likely to make our results relevant for the industry as a whole.

Indeed, as shown in Figure A2.1, the respondents are active in a wide range of activities, from TV and film production to online services. They also cover a wide geographic area, with activities in the EU-27 and the UK, for their production and distribution activities, as illustrated in Figure A2.2. The sample also includes businesses of all sizes, some producing hundreds of productions every year and others producing only one (see Table A2.2).

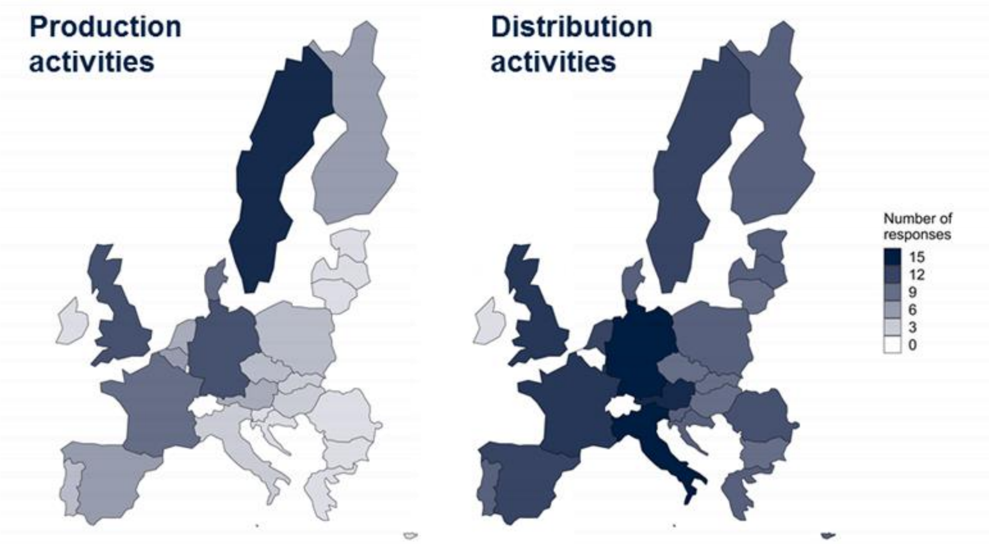
Figure A2.1 Activities of the survey respondents



Note: Respondents may give multiple answers to this question.

Source: Oxera, based on a survey of 52 industry members.

Figure A2.2 Location of the survey respondents' activities



Note: Answers to the survey questions: 'Which EU countries do you produce content for (as a domestic market)?' and 'Which EU countries do you distribute or operate channels / platforms in?'. Respondents may give multiple answers to this question.

Source: Oxera, based on a survey of 52 industry members.

Table A2.2 Number of productions acquired and produced by our survey respondents

	Mean	Median	Minimum	Maximum
Acquisition	274.9	20.0	0	2,211
Production	28.8	6	1	350

Source: Oxera, based on a survey of 52 industry members.

A2.3 Survey questions

A2.3.1 About you

- Contact name
- Contact email address
- What is the name of your organisation?
- If your organisation is part of a larger group, what is the name of that group?
- Please indicate with an 'X' which activity/activities are included within this response:

  Film production

  TV production

  Film or TV Distribution

  Content aggregation (channels)

  PTV platform

  OTT platform

  Theatres

For content producers:

- Which EU countries do you produce content for (as a domestic market)? (please separate with commas)
- Approximately how many productions (films or TV series) have/will you produce in 2019?

For distributors, content aggregators and platforms:

- Which EU countries do you distribute or operate channels / platforms in? (please separate with commas)
- Approximately how many productions (films or TV series) have/will you acquire in 2019?

A2.3.2 Evolution of the industry since 2016

- Thinking about how you operate today, how important are territorially exclusive presales to the functioning of your business?
- How has the importance of exclusive content as a differentiator for attracting viewers changed since 2015?
- Thinking about your business today, how frequently do you conclude multi-territory licensing agreements?
- How many countries are typically included in your multi-territory license agreements?

- Please explain your answers, giving specific examples if possible. How has the importance of concluding contracts with international OTT services changed for your business, since 2015?
- How has the importance of concluding multi-territorial contracts changed as a result of the growth of international OTTs?
- How has the importance of territorial exclusivity changed in light of the growth of international OTTs and the rise of DTC propositions from producers?
- What effect (if any) has the rise of international OTTs and DTC offers had on the prevalence of cross-border viewing by consumers to date?
- Please explain your answers, giving specific examples if possible.
- New content discovery mechanisms (such as personalised recommendations) mean the average viewer is watching more foreign content than in 2015.
- These new content discovery mechanisms are reducing the value and importance of marketing and promoting content on a local, territory-by-territory basis.
- Please provide any further details about the impact new content discovery mechanisms have had on your business and the wider AV sector since 2015, with specific examples if possible.
- The Portability Regulation and removal of territorial restrictions from content licences has increased the number of consumers consuming content across borders
- Increased cross-border consumption of content with the EU would have a net positive effect on my business.
- Please explain your answers, giving specific examples if possible.

A2.3.3 Requisite rights

- When concluding rights contracts, how common is it to negotiate rights for a ‘bundle’ of territories simultaneously as multi-territory license?
- In negotiations for multi-territory licenses, how common is it for discounts to be given when rights are issued/acquired for a 'bundle' of territories:
- If you answered 'Always', 'Almost always' or 'Sometimes' to the above, what would be the typical magnitude of discount?
- How important is it for you to be able to stagger the releases of new content between the different EU countries you serve in order to maximise revenues?
- How frequently is the release of a work into a new window (e.g. Home Ent, PTV, VOD, etc.) synchronised across the EU countries you serve?
- When considering content originally produced for another EU market, how often do traders wait to observe the content's domestic success before licencing the rights?

- How much less are exclusive content rights worth if they have already been available, though not actively promoted, in a given territory (e.g. from a foreign OTT service)?
- Overall, what impact would prohibiting geo-blocking with a 'requisite rights' limitation (i.e. only where you have exhibition rights for a territory) have on your business?
- Please explain your answers, giving specific examples if possible.
- What proportion of your content do you exhibit in one EU territory while still holding the rights for other EU territories in which the work is not (yet) being shown?
- How frequently is your content released on a DTC or other OTT service in one EU state before it has been shown on pay-TV in another member state?
- How important is it to 'incubate' a new work in its domestic territory in order to create consumer buzz before selling it into additional EU markets?
- Please explain your answers, giving specific examples if possible.

A2.3.4 Language exclusivity

- Thinking about mainstream content for adults (such as films or TV dramas), please indicate which of the EU countries you serve prefer:

  Dubbing (i.e. original narrative replaced by local-language voice actors)

  Voiced-overs (i.e. local-language narrative over top of original soundtrack)

  Subtitles (i.e. local-language text on-screen with original soundtrack unchanged)

- Has the proportion of works that are being dubbed or voiced-over changed in the last five years?
- Who typically bears the cost of language conversion?
- What is the approximate cost (in EUR) and time (in weeks) required to convert 60mins of content using each of the following language conversion methods?

  Subtitling / Dubbing / Voice-over:

- Do these differ significantly (per 60-mins of content) between film and TV content?
- Do these differ significantly (per 60-mins of content) between languages?
- If you answered 'Yes' to any of the above, please provide further details.
- Please list any EU languages which are not cost-effective for dubbing (e.g. due to the low expected penetration of a given work in that language):

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