



Association des Cinémathèques Européennes (ACE)

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ACE PROPOSAL

to be included in the DRAFT COMMUNICATION FROM THE COMMISSION ON STATE AID FOR FILMS AND OTHER AUDIOVISUAL WORKS

http://ec.europa.eu/competition/consultations/2012_state_aid_films/draft_communication_en.pdf

About ACE

The Association des Cinémathèques Européennes (ACE) is an affiliation of 42 film heritage institutions (FHIs) from all over Europe. All of them are not-for-profit organisations with a public interest mission.

ACE's joint role is to preserve and restore the European film heritage thus ensuring that the audiovisual records survive and can be enjoyed and studied by future generations. FHIs collect any type of film works: feature and short films, documentaries, newsreels, animation and advertising films, trailers etc. but also film related materials (stills, posters, drawings, text documents etc.). FHIs have a long tradition in providing access: most FHIs constantly screen film classics and play a key role in the diffusion of films that otherwise would not reach its audience. Thanks to the collaboration among ACE members, FHIs contribute to the diffusion of cinema beyond each country's border, thus increasing Europe's cultural diversity. FHIs provide access in many other ways, such as viewing on the premises or DVD production and distribution. In recent years, they also provide online access for educational and cultural purposes. ACE initiated the internet portal "The European Film Gateway" which is linked to the cultural heritage portal "Europeana".

General Remarks

Cinematographic works receive state aid because they profit from an exemption in the TFEU¹. They are an essential manifestation of the richness and diversity of European cultures and they constitute a cultural heritage that has to be collected and safeguarded for future generations. The Draft Communication refers to film heritage in 5.3:

"39. Films should be collected, preserved and accessible for future generations for cultural and educational purposes. Therefore, as a condition of the aid, it is recommended that Member States require and support producers to deposit a copy of the aided film suitable for long-term preservation in the Film Heritage Institution designated by the funding body."

¹ According to Article 107 (1) of the "Treaty on the Functioning of the European Union", state aid is prohibited because it could distort competition and trade between Member States. There are exemptions like Article 107 (3) (d) TFEU for aid to promote culture, if this aid does not affect competition and trading conditions.

ACE welcomes this paragraph, but considers it as not far reaching enough to ensure long-term preservation and access.

Therefore, as a condition of receiving state aid, ACE proposes to amend the paragraph on film heritage as follows:

5.3 Film heritage

5.3.1 Collection and Preservation

As a condition of receiving state aid, it is recommended that Member States require and support producers to deposit a copy of the aided film in the Film Heritage Institution (FHI) designated by the funding body. In application of the 2005 EP and Council Recommendation on film heritage, Member States have listed their FHIs.² Mechanisms for legal or compulsory deposit exist in many EU Member States, but in most cases they prescribe the deposit of elements that are not adequate to the purpose of long term preservation of the work (as, for example, simply a release print). Appropriate elements for the deposit of analogue productions should *at least* include: for preservation purposes an inter-negative or duplicate positive with separate sound masters accompanied by one new release print; and for future access purposes one or more release prints in pristine condition.

However, analogue film prints will become generally unavailable and most new works will exist only in digital form. In the case of D-Cinema content, the FIAF Technical Commission recommends the deposit of a Digital Cinema Distribution Master (DCDM) and/or an unencrypted Digital Cinema Package (DCP) for digital long term preservation.³ If the material is encrypted, it should be delivered with the decryption key.⁴ For non-theatrical films, a production master format, such as HDCAM SR or Quicktime HD should be deposited.

As a general rule, FHIs should collect film works in the proper formats and at the time of distribution.

Many member states prescribe that the deposited material is quality-checked. In few cases like in Sweden, this obligation is enforced,. This good practice should be generalized.

To summarize, the main functions of any deposit mechanism by contractual obligation is to ensure not only the long-term preservation of the work but also that in the future new viewing elements can be produced - in the format originally used for the distribution of the work, or in any format that technological evolution will impose. .

In compliance with the Council Conclusions on European film heritage⁵, the contract between the funding authority and the beneficiary should include a clause by which the beneficiary

² The list is available on <http://ec.europa.eu/avpolicy/docs/reg/cinema/institutions.pdf>.

³ FIAF Technical Recommendation on the Deposit and Acquisition of D-cinema Elements for Long Term Preservation and Access: http://www.fiafnet.org/pdf/D-Cinema_deposit_specifications.pdf.

⁴ "Encrypted content without the archival institution possessing the decryption credentials ('key') renders any preservation activities useless. An institution may faithfully preserve the encrypted material over generations, but will be unable to execute data and format migrations to avoid material and format obsolescence." Challenges of the Digital Era for Film Heritage Institutions. Final report, p. 66. http://www.ace-film.eu/wp-content/uploads/2012/05/final_report_en.pdf.

⁵ Council Conclusions on European Film Heritage, Including the Challenges of the Digital Era (November 2010): http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/117799.pdf.

authorizes the designated FHI to carry out all and any technical procedure required in order to preserve and/or restore the original work, this might include (but it is not limited to) processes such as photochemical reproduction, media and/or format migration, mirroring, etc.,

5.3.2 Access

In addition, contracts between the beneficiary of the public funding and the funding body should include a clause that explicitly allows designated FHIs to use the deposited material for cultural and educational purposes. Examples for cultural and educational uses are:

- Screening on the premises of the FHI without paying a fee
- Consultation of the material through a password-protected internet connection
- Use extracts of the material in exhibitions of FHIs
- To make excerpts of the material available online (at least 3 minutes) on the website of the FHI and on cultural heritage websites like Europeana⁶

This could be accompanied by measures aimed at protecting the legitimate economic rights of the producer. For instance, provisions would specify that the contractual transfer of rights for cultural and educational uses would only become effective after a given number of years after the end of production. Such a provision would allow normal commercial exploitation of the work. Usually, after 5 or 6 years, the revenues produced by a work are minimal.⁷

The above measures would allow the European taxpayers to enjoy those works whose creation they contributed to.

Moreover, they would ensure that European film heritage that is currently unavailable to the European citizens as well as not revenue-generating for the right-holders, can be at least used for film literacy and education. This would in turn translate into an increased interest in and demand for European cinema.

Some Member States have already linked film funding with the cultural/educational use of film heritage. We ask the Commission to encourage this practice through the application of Article 107 (3) (d) of the TFEU. In particular, we request that such a link, and the mechanisms to ensure its implementation, become one of the criteria for the assessment of the compatibility of state aid to the film industry based on the ‘cultural exception’, and that they are explicitly added as such to the new Cinema Communication.

Best Practices in the Member States:

Denmark

Law on legal deposit: <http://www.pligtaflevering.dk/loven/bekendtgoerelse.htm>

⁶ <http://www.europeana.eu/>

⁷ Revenues for European feature films are roughly structured as follows: 60% of potential revenues in year 1: theatrical release, 20% of revenues in year 2: theatrical release in other EU countries and sale to pay-TV, 10% of revenues in year 3: sale to non-pay TV, 5% in years 4 and 5: home video and some further domestic broadcast. After year 4 and 5, revenues are basically statistically irrelevant. See Challenges of the Digital Era for Film Heritage Institutions, p. 14.

§ 21. The deposited films are stored at the Danish Film Institute.

Section. 2. Deposited films, which have received subsidy according to the Film Law, can with respect to the preservation obligation be shown without fee to a paying audience as part of the institute's film cultural activities.

Section 3. The Danish Film Institute stipulates, in accordance with the preservation obligation, the terms for preservation/storage and use of the material that a producer has delivered and subsequently requests for loan.

Section 4. The Ministry of Culture after discussion with the Danish Film Institute recommends regulation regarding the de-acquisition of deposited materials.

Malta

Malta Film Fund, Guidelines for Applicants: <https://opm.gov.mt/file.aspx?f=5051>

Clause 14: "The Culture and Audiovisual Unit and The Malta Film Commission will hold the rights to non-commercial screenings of any production receiving support from the fund at overseas cultural events. Such screenings shall not conflict with any commercial opportunities of the production."

Latvia

Financing contracts contain a clause which transfers the rights for non-commercial film distribution (non-exclusive license) to the National Film Center. The National Film Centre has rights to distribute the film in educational institutions, libraries, festivals, Latvian film promotion events etc. This practice is based on a mutual agreement between film producers and the National Film Centre. By law the State Archive receives a quality standard copy of any film supported by the Latvian State.

Spain:

The Spanish legislation (Article 17 of the Orden CUL/2834/2009, of 19 October published in BOE on 24 October 2009) already requires that beneficiaries of public funding must give a perfect copy of the film subject of the aids to the Filmoteca Española (Spanish Film Archive). The film can be used by the Institute of Cinematography and Audiovisual Arts for foreign promotion and also in the Institute's website for promotion in the form of extracts. In addition, it can also be used for diffusion of the Spanish film heritage by the Filmoteca Española two years from its premiere. The producers can oppose or condition this right if they reasonably consider that it may damage the commercial exploitation of the film.

Sweden

Declaration of Deposit by Contractual Obligation; see Annex1

DECLARATION OF DEPOSIT BY CONTRACTUAL OBLIGATION

The following conditions and terms apply for producers receiving production subsidy as of January 1st, 2012

Title of the film:.....
Production company:.....
Distribution format(s):.....

The main function of deposits by contractual obligation is to ensure the long-term preservation of the film and its auxiliary materials, but also to make possible the making of new viewing elements in original formats and to use the deposited elements as source elements for viewing copies in new formats.

Preservation elements and auxiliary material are to be deposited by producers receiving production subsidies (film commissioner subsidy or marketing subsidy), or box office-related support (PRS) from the Swedish Film Institute. All material is to be deposited with the Swedish Film Institute no later than six months after the film's Swedish release. For films only applying for PRS, the subsidy is given only *after* the elements are deposited. All deposited elements are stored under optimal conditions, at no cost to the producer.

All digital material is to be delivered on a Mac- or NTFS-formatted hard-drive (which upon request will be returned to the depositor after its data has been transferred by the Swedish Film Institute).

Film elements

Preservation elements on digitally distributed films

The following elements are to be deposited for films that are mainly distributed in digital format in Sweden

DCDM (Digital Cinema Distribution Master)

- uncompressed images in the form of DPX or TIFF files, or as lossless compressed JPEG2000 files, with a linear bit-depth of 10,12 or 16, and with RGB colour space.
- each audio track on a separate channel in WAV format (24-bit, 48kHz)
- any titles as an unencrypted XML file

and

DCP (Digital Cinema Package)

- unencrypted according to DCI-standard, with X'Y'Z' colour space
- titles (if any) as an unencrypted XML file

Preservation elements on films distributed on film

The following elements are to be deposited for films that are mainly distributed on film in Sweden, but also in digital format

- DCDM and DCP, according to the above specifications

and

- two new, unscreened, 35mm viewing prints

The following elements are to be deposited for feature-length films only distributed on film (with the exception of feature-length films where the negatives have been used to make five or less viewing prints)

- a complete inter-mediate positive on polyester, including opening and end credits, made from the negatives at the time when viewing prints with correct grading were struck.
- a positive polyester print with an optical sound-track made from the film's sound negative. The print is to be certified by the film's grader and be delivered directly from the laboratory.

The following elements are to be deposited for short films only distributed on film (and for feature-length films where the negatives have been used to make five or less viewing prints)

- a new, unused low-contrast print on polyester, with an optical sound-track, in the format in which the film was distributed. The print should be struck in a way that guarantees the optimal picture and sound quality (slow printing) and be struck at the time when viewing prints with correct grading were struck. The print is to be certified by the film's grader and be delivered directly from the laboratory.
- The picture and sound negatives used for striking viewing prints are to be deposited no later than twelve months after the film's release.

Preservation elements on co-productions

The following elements are to be deposited for co-productions released in Sweden in digital format, where the main production company is non-Swedish

- an unencrypted DCP according to DCI standards with the colour space X'Y'Z' with titles (if any) as an unencrypted XML file

The following elements are to be deposited for co-productions released in Sweden only on film, where the main production company is non-Swedish

- a new, unscreened viewing print with Swedish sub-titles (if any)

Auxiliary material

The following material is to be deposited for films whose main production company is Swedish

- shooting script in pdf format
- dialogue list (also in other languages than Swedish should they exist) in pdf format
- music score sheet in pdf format
- opening and end credits in pdf-format
- PR-material (press kit, etc) in printed and/or in digital format. Printed material is to be delivered in two copies, and digital material to be delivered in pdf format.
- posters and poster originals. Printed posters are to be deposited in two copies for each motif and size. Poster originals shall be deposited as a ready-to-print, full-size pdf.
- stills (set/scene/making-of/portrait etc). The deposit should include all stills received by the producer, including stills not used in press kits. The stills should be full size, not being compressed or in any other way distorted. All stills should be delivered as TIFF files in the size and with the bit-depth that the photographer's equipment allows. The photographer's name should be credited to all stills.

- two dvd copies of the film

For co-productions where the main production company is non-Swedish only opening and end credits, two dvd copies and material used for the Swedish release needs to be deposited, as specified above.

Terms

The final cost report, needed to be submitted by the producer in order to be entitled to full subsidy, will only be approved after a certified deposit by contractual obligation. A producer does not have the right to apply for production subsidy or PRS for new projects until the final cost report has been submitted to the Swedish Film Institute (see further in *General terms for all production subsidies*).

If the Swedish Film Institute after inspection finds that the deposited film preservation and auxiliary materials do not meet the requirements, new material have to be made by the producer and deposited without any cost for the Swedish Film Institute.

Upon request from the producer, the Swedish Film Institute are obliged to give access to contractually deposited film preservation elements within four weeks, only charging a handling fee. The elements will be given access to in the same format as they were deposited.

The Swedish Film Institute have permission to use all contractually deposited auxiliary material in its daily activities. Dvd copies can only be consulted individually by members of the public at the premises of the Swedish Film Institute library.

By signing this declaration, I accept the above-mentioned conditions and terms for the contractual deposit of film preservation elements and auxillary material.

I also hereby give my permission to the future migration of the deposited material onto new formats and carriers, should the Swedish Film Institute decide that such actions are needed to ensure the long-term preservation of, and access to, the film.

Signature

Place, date

Name in block letters