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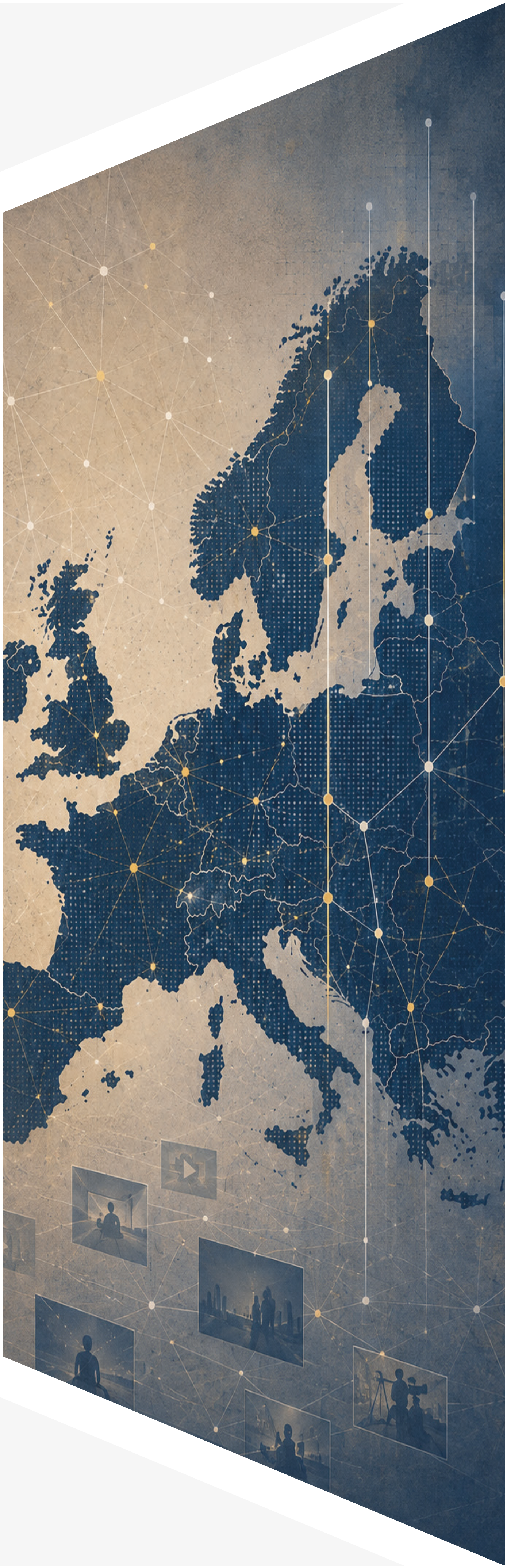
EUROPEAN AUDIOVISUAL POLICY BETWEEN QUOTAS AND DIGITAL BORDERS

RETHINKING ACCESSIBILITY



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ACCESS POINTS

Publication Series of the Centre for Advanced Study
Access to Cultural Goods in Digital Change
at the University of Münster

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Stefan Klatt, Daniel Schlageter

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#14

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Cover illustration: Daniel Schlageter, 2026.

Centre for Advanced Study Access to Cultural Goods in Digital Change, Münster
Published in Germany 2026

ISSN: 3054-4092
ISBN: 978-3-69012-014-2
DOI: 10.17879/99838680907
URN: urn:nbn:de:hbz:6-99838682037

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliographie; detailed bibliographic data are available on the Internet at https://dnb.dnb.de.

The Centre for Advanced Study Access to Cultural Goods in Digital Change is funded by the Deutsche Forschungsgemeinschaft (DFG, German Research Foundation) (Project number: 449836922).

Funded by
Deutsche Forschungsgemeinschaft
German Research Foundation

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Contents

1 Introduction

Since its inception, European audiovisual policy has operated at the intersection of cultural and economic regulation.[1] The audiovisual sector simultaneously serves as a vehicle of cultural identity and as a domain of market competition. This dual character is reflected in a combination of legal instruments, economic incentives, and coordination mechanisms whose shared objective is to support European production while at the same time fostering the development of the internal market for audiovisual services.

One of the key strategic objectives of this policy is to enhance the cross-border availability of European audiovisual works—that is, their capacity to circulate across Member States and to reach audiences beyond their country of origin. This objective derives both from the Union's cultural mandate (Article 167 TFEU) and from the economic logic of the internal market (Articles 114 and 173 TFEU). The EU has also committed itself to the protection and promotion of cultural diversity at the international level through the ratification of the 2005 UNESCO Convention. At the internal level, cultural and linguistic diversity constitutes a fundamental value of the European Union enshrined in primary law, including, for example, Article 2 TEU, Article 3(3) TEU, Articles 11(2) and 22 of the Charter of Fundamental Rights of the European Union, and Article 167 TFEU.

The cross-border availability of European works has a dual significance: cultural—supporting pluralism and cultural exchange—and economic—allowing for a more efficient return on investment, strengthening the competitiveness of the European audiovisual industry, and reducing structural market fragmentation.

In this article, the concept of accessibility is used in a specific sense. Rather than referring to accessibility in the context of disability inclusion, affordability, subtitling, or digital inclusion—meanings frequently associated with the term in EU policy and media studies—the article focuses on territorial accessibility. Accessibility is understood here as the practical possibility for audiences located in one Member State to lawfully access audiovisual works originating in another Member State through existing distribution channels. The concept therefore overlaps with notions such as availability, circulation, and cross-border distribution, while placing particular emphasis on the audience's ability to obtain access to a work irrespective of national territorial boundaries.

The article analyses two key instruments of European audiovisual policy: (1) quota-based regulation governing the presence of European works in broadcasting and in the catalogues of video-on-demand (VOD) services, and (2) legislative measures aimed at establishing a

1 Cf. Cosmin Ionut Roman & Michaela Franke: *Audiovisual and Media Policy*. Fact Sheets on the European Union, European Parliament (May 2026), https://www.europarl.europa.eu/factsheets/en/sheet/138/audiovisual-and-media-policy [3 August 2026]; Kristina Irion & Peggy Valcke: "Cultural Diversity in the Digital Age: EU Competences, Policies and Regulations for Diverse Audiovisual and Online Content," in: Evangelia Psychogiopoulou (ed.): *Cultural Governance and the European Union*, London: Palgrave Macmillan, 2015, 75–90.

single audiovisual market. The central argument of the article is that these instruments do not effectively achieve the declared objective of promoting the cross-border circulation of European works and, in some respects, further reinforce the structural fragmentation of the European audiovisual market. The article adopts a policy-analytical and normative approach. Its assessment of existing EU audiovisual policy instruments is based primarily on a critical review of the scholarly literature, policy documents, legal sources, and empirical findings published by the European Audiovisual Observatory and the European Commission. Rather than presenting original empirical research, the article synthesizes existing evidence to evaluate the effectiveness of current policy instruments and to develop an alternative policy proposal aimed at improving the cross-border accessibility of European audiovisual works. The study's conclusions serve as an argumentative basis for revising the existing instruments of EU audiovisual policy and for proposing a new cultural policy measure that would pursue the objective of cross-border availability in a more systematic and effective manner.

2 Quotas Between Cultural Protection and the Logic of the Internal Market

Quotas for European works were introduced in the late 1980s as part of the harmonisation of television broadcasting (Television without Frontiers Directive 89/552/EEC). Their purpose was to respond to market liberalisation, the commercialisation of broadcasting, and the growing dominance of American production. The regulatory framework combined two objectives: to enable the free movement of broadcasting through the country-of-origin principle, which prohibited Member States from restricting the retransmission of broadcasts originating in other Member States,[2] and at the same time to protect European audiovisual production through content-related obligations.

Paradoxically, the liberalising logic of the internal market was thus complemented by quantitative content regulation: broadcasters were required to reserve a majority of their transmission time for European works and an appropriate proportion for works produced by independent producers. The Directive did not set an absolute percentage threshold; rather, it formulated an obligation concerning a "majority" of transmission time, thereby establishing a flexible yet binding framework for the promotion of European production. The principal implicit motivation for the introduction of quotas was the concern over the economic and cultural dominance of the United States, whose audiovisual production was more cost-efficient, technologically advanced, and more attractive to audiences than most European output. The quotas were intended to stimulate European production—particularly that of production

2 The country-of-origin rule, applied for the first time in the Television Without Frontiers Directive (Art. 2), stipulates that Member States shall ensure that television broadcasting is subject to the legislation of the Member State in which the broadcaster is established and that they do not restrict the retransmission of broadcasts from other Member States for reasons falling within areas harmonised by the Directive. Exceptions to the prohibition on restricting the retransmission of television broadcasts were very narrow (e.g., serious violations of the protection of minors or public order) and were subject to procedural review by the Commission.

companies independent of television broadcasters—strengthen employment in the cultural industries, and protect the cultural identity of the Member States. At the same time, they sought to remove barriers between national markets by encouraging the production and distribution of European programmes, as reflected in the preamble to Council Directive 89/552/EEC.

Another significant reason for the introduction of European quotas was regulatory asymmetry among the Member States. Certain States, notably France, already operated strict national quota regimes, while others imposed no comparable obligations. These national systems restricted the free movement of services by discriminating between domestic and foreign programmes and by creating unequal conditions for works originating in other Member States. The European legislator was thus faced with a choice: either abolish national quotas or harmonise them at Union level. The harmonisation ultimately adopted possessed both liberalising and protective features—it eliminated discriminatory national regimes, yet replaced them with a uniform European quota framework.

The gradual transformation of the Television without Frontiers Directive (89/552/EEC) into the Audiovisual Media Services (AVMS) Directive reflected the digitalisation of broadcasting and the emergence of non-linear services, which the original framework had not encompassed. As early as the 2007 revision, the scope of the Directive was extended to include video-on-demand services, while at the same time reinforcing the binding nature of cultural objectives for linear broadcasting: Member States are required to ensure that broadcasters reserve a majority of their transmission time for European works and at least 10% of their transmission time or programming budget for works created by independent producers. For non-linear services, however, a more lenient regulatory approach was adopted at that stage. The rationale lay in the lower degree of editorial control exercised by the provider over the individual choices of users, and thus the need for a differentiated regulatory model. At the same time, the country-of-origin principle was extended to VOD services, with the aim of reducing legal fragmentation and facilitating the cross-border provision of services.

A fundamental shift was introduced only with the 2018 revision of the AVMS Directive, which responded to the rapid growth of global platforms. A new requirement was established that at least 30% of VOD catalogues must consist of European works and that such works must be given sufficient prominence for users. At the same time, Member States were granted the possibility to impose investment obligations on both broadcasters and VOD providers—either in the form of direct investment in the production of European works or through financial contributions to national funds. The principal justification for this reform was the need to ensure a “level playing field” between linear broadcasting and online platforms, to limit regulatory fragmentation among Member States, and to respond to findings that VOD providers invest significantly less in European production than traditional broadcasters. The introduction of investment obligations was also intended to prevent so-called forum shopping, a situation in which providers establish themselves in Member States with more lenient regulatory regimes while targeting audiences in other States.

Quotas were normatively justified by reference to the protection of cultural diversity and the promotion of European integration through the exchange of works. At the same time, they were presented as an instrument for ensuring the long-term sustainability of the European audiovisual ecosystem in the digital environment and as a means of strengthening the cross-border circulation of European content within the internal market. The extension of quotas and investment obligations to VOD services was intended not only to level competitive conditions between linear and non-linear services, but also to enhance the accessibility and visibility of European works across the Member States.

Empirical evidence, however, reveals a tension between the two objectives pursued simultaneously by the regulation: on the one hand, the protection and strengthening of national audiovisual industries; on the other, the promotion of the internal market and the genuine cross-border circulation of European works. Measures focused on domestic production and national financing do not necessarily lead to the cross-border movement of works and may, on the contrary, reproduce the territorial fragmentation of the market.

2.1 Quotas in Linear Broadcasting: From Production Support to Market Fragmentation

At the core of the problem lies the very construction of the concept of a "European work." The AVMS Directive defines a European work through production, residence, and financial criteria—namely the seat of the producer, majority financial participation by European entities, and their decisive influence over the production. The substantive or cultural dimension of the content is not determinative. This economic-industrial definition creates a paradox: works without a distinct European cultural reference may qualify as European, while culturally significant films financed outside the EU may not.[3] The regulation thus primarily pursues the objective of supporting European production infrastructure, rather than guaranteeing a specifically European cultural expression or fostering genuine cross-border exchange.

The quota system likewise fails to differentiate between types of content in terms of their cultural contribution or international appeal.[4] Empirical studies[5] consistently demonstrate that broadcasters tend to comply with quotas primarily through domestic production, often in the form of low-cost formats (soap operas, reality shows, game shows). Rather than fostering cultural diversity, the system thus frequently results in the reproduction of globally standardised formats in national versions—leading more to the homogenisation than to the heterogenisation of content.

The structural tension inherent in the quota system lies in the contradiction between the protection of national markets and the promotion of European integration. On the one

3 Cf. Shalini Venturelli: *Liberalizing the European media: Politics, Regulation and the Public Sphere*, Oxford: Clarendon, 1998.

4 Cf. Philip Schlesinger: "From Cultural Defence to Political Culture: Media, Politics and Collective Identity in the European Union," *Media, Culture & Society* 19/3 (1997), 371–372.

5 E.g. Václav Štětka: "Jednota, či rozmanitost? Kulturní cíle evropské audiovizuální politiky a jejich aplikace v prostředí české televizní scény," *Sociální studia* 3 (2007), 61–87; European Audiovisual Observatory: *Yearbook 2006: Film, Television and Video in Europe*, Strasbourg: EAO, 2006.

hand, quotas are intended to shield domestic audiovisual industries from external dominance—particularly from the United States; on the other, they are meant to encourage the circulation of works among Member States. Empirical data, however, indicate that quotas have primarily strengthened domestic production, while the share of non-domestic European works has remained persistently low.[6] This is further illustrated by data on the geographical origin and audience share of programmes broadcast by the three main terrestrial television channels in the Czech Republic (ČT1, Nova, Prima) between 2002 and 2006. During prime time (20:00–23:00), both public service and commercial broadcasters (with the exception of ČT2) predominantly aired domestic programmes, reflecting the strong orientation of Czech audiences towards national reception patterns and the limited interest in content from other European countries.[7] The Directive does not distinguish between domestic and foreign European programmes and thus allows quotas to be fulfilled exclusively through national production. Language requirements in certain Member States, audience preferences, and broadcasters' programming strategies further increase the transaction costs of cross-border distribution.[8] In effect, quotas tend to stabilize national audiovisual spaces rather than to create a genuinely European market.

Moreover, the quantitative nature of the regulation alters broadcasters' production strategies. The obligation to fill a specified volume of European works incentivises the allocation of resources across a larger number of lower-cost productions, rather than investment in a smaller number of high-quality and internationally competitive titles.[9] Instead of fostering export-oriented projects with strong cross-border potential, the system encourages the expansion of low-budget domestic production.[10] Europe thus produces more content, but not necessarily content with a greater capacity for transnational reach. In addition, quotas may be fulfilled in a merely formal manner—through the repeated broadcasting of older programmes, the scheduling of European works outside prime time, or the reliance on inexpensive "flow" formats—without resulting in sustained investment in the development of European audiovisual capital.

The overall consequence has been a deepening of fragmentation within the European audiovisual market. While harmonisation removed certain national barriers, it simulta-

6 Cf. European Commission: Sixth Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 89/552/EEC 'Television without Frontiers' (24 October 2007), https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0452:FIN:EN:PDF [3 August 2026]; Andrea Esser: "Audiovisual Content in Europe," *Journal of Contemporary European Studies* 15/2 (2007), 173–190; David Graham & Associates Limited (for the European Commission): Impact Study of Measures (Community and National) Concerning the Promotion of Distribution and Production of TV Programmes Provided for under Article 25(a) of the Television Without Frontiers Directive. Final report (24 May 2005), https://op.europa.eu/en/publication-detail/-/publication/34ea216b-95ec-4fdc-8c6e-3cff704ff0a3 [3 August 2026], 183.

7 Cf. Štětka: "Jednota, či rozmanitost?"

8 Cf. Graham & Associates Limited: Impact Study of Measures.

9 Cf. Daniel Biltereyst & Caroline Pauwels: "Our Policies Keep on Reinventing the Past: An Overview of EU Policy-making in the Audiovisual Domain," in: *Western Broadcast Models*, Berlin / Boston: De Gruyter, 2007, 25–59.

10 Cf. Graham & Associates Limited: Impact Study of Measures.

neously introduced a uniform quota framework that reinforced an orientation towards domestic production across all Member States. Non-domestic European works thus found themselves at a structural disadvantage: within a limited broadcasting space, they compete both with domestic productions used to fulfil quota obligations and with commercially attractive American content.[11] Paradoxically, therefore, a regulatory framework designed to curb U.S. dominance has indirectly contributed to stabilizing its position, as American production continues to serve as the preferred source of high-quality non-domestic content.[12]

Quota policy was historically an understandable response to the structural weakness of the European audiovisual industry. Its design, however, is grounded in an industrial logic of production support, whereas its declared objective—strengthening cross-border circulation—requires a distributive logic. This structural mismatch explains why quotas have contributed to the development of national production sectors while simultaneously entrenching the fragmentation of the European audiovisual space.

2.2 Quotas in the Digital Environment: A Production Tool Without a Guarantee of Circulation

The extension of quota regulation to non-linear services through the AVMS Directive was intended to establish a "level playing field" between linear broadcasting and VOD services. This principle, however, overlooks the fundamental technological differences between the two modes of distribution. Whereas linear broadcasting is constrained by temporal capacity—so that allocating airtime to one item of content necessarily displaces another—the catalogue of VOD services is neither time-bound nor capacity-limited. The availability of one work does not restrict access to another.

In the digital environment, therefore, the quota does not operate as a mechanism for redistributing scarce broadcasting time, but rather as a structural condition shaping catalogue expansion. Even prior to the introduction of the 30% requirement for European works, global platforms already offered a substantial volume of non-domestic European content—often to a greater extent than traditional broadcasters, which had long displayed a preference for national production.[13] The technological nature of on-demand distribution—a unified platform architecture, user-driven selection, and multi-territorial licensing—thus in itself creates more favourable conditions for cross-border availability.

In the VOD environment, quotas therefore do not primarily increase the availability of European works, but rather shape investment structures. The expansion of non-European content is made conditional upon the parallel increase of European titles, which may result

11 Cf. European Audiovisual Observatory: *Yearbook 2005: Film, Television, Video and Multimedia in Europe,* vol. 5: *Television Channels–Programme Production and Distribution*, Strasbourg: EAO, 2005, 65.

12 Cf. Jean K. Chalaby: "American Cultural Primacy in a New Media Order: A European Perspective," *International Communication Gazette* 68/1 (2006), DOI: 10.1177/1748048506060114, p. 48.

13 Cf. European Audiovisual Observatory: *Yearbook 2018/2019: Key Trends*, Strasbourg: EAO, 2019, https://rm.coe.int/yearbook-keytrends-2018-2019-en/1680938f8e [3 August 2026], 26.

either in the reduction of part of the non-European catalogue or in the formal fulfilment of the percentage requirement without any tangible impact on viewership.[14] As in the case of linear broadcasting, the fundamental weakness of a quantitative approach becomes apparent: the regulation increases the volume of supply, but not necessarily its attractiveness, visibility, or actual consumption.

The argument for introducing the 30% quota was based on the low level of investment by VOD services in original European production in the years 2013–2014.[15] However, this situation reflected a particular stage of market development rather than a regulatory deficit.[16] Many services initially focused on building a user base through licensed content and only subsequently began investing in original production.[17] The example of Netflix demonstrates that substantial investment in original content typically follows market consolidation and the stabilisation of subscriber bases.[18] Low levels of VOD investment in the initial phase should therefore not be interpreted as a structural market failure, but rather as part of a deliberate business strategy.

At the same time, the global investment logic of platforms generates new asymmetries. Production is concentrated primarily in larger Member States with greater export potential, while smaller linguistic markets remain less attractive due to localisation costs and limited returns on investment.[19] As a result, a two-speed structure of the European VOD market is emerging: large States benefit from global distribution capacity, whereas smaller ones remain peripheral. Some Member States have responded by introducing additional linguistic or national requirements beyond the European quota. Yet such measures may further fragment the market and weaken the very cross-border circulation that European regulation originally sought to strengthen.

As in the case of linear broadcasting, the digital environment likewise confirms the structural tension between the industrial logic of production support and the objective of

14 Cf. Catalina Iordache, Petar Mitric & Tim Raats: “Content Quotas: At the Crossroads Between Cultural Diversity and Economic Sustainability,” in: Heritiana Ranaivoson, Sally Broughton-Micova & Tim Raats (eds.): *European Audiovisual Policy in Transition*, London: Routledge, 2023, 177–197.

15 Cf. European Commission: Commission Staff Working Document: Ex Post REFIT evaluation of the Audiovisual Media Services Directive 2010/13/EU (SWD(2016) 170 final) (25 May 2016), 38.

16 Cf. Piero Papp: *The Promotion of European Works: An Analysis on Quotas for European Audiovisual Works and Their Effect on Culture and Industry*, Working Paper No. 50, Stanford / Vienna: Transatlantic Technology Law Forum, 2020.

17 Cf. Thomas McPhail & Steven Phipps: *Global Communication: Theories, Stakeholders, and Trends*, Malden, MA: Wiley-Blackwell, 2019, 125; Papp: *The Promotion of European Works*, 80.

18 Cf. Gina Keating: *Netflixed: The Epic Battle for America’s Eyeballs*, New York: Portfolio / Penguin, 2012; Gavin Bridge: “Netflix Released More Originals in 2019 Than the Entire TV Industry Did in 2005,” *Variety*, 17 December 2019, https://variety.com/2019/tv/news/netflix-more-2019-originals-than-entire-tv-industry-in-2005-1203441709/ [3 August 2026].

19 Cf. Adelaida Afilipoaie, Catalina Iordache & Tim Raats: “The ‘Netflix Original’ and What It Means for the Production of European Television Content,” *Critical Studies in Television: The International Journal of Television Studies* 16 (2021), 304–325, DOI: 10.1177/17496020211023318; Catalina Iordache: “Local Strikes Back? A Comparison of Streaming Offerings in Flanders,” *A decade of Netflix in Europe: Lessons from a small media market*, Brussels, 3 June 2021 [conference talk].

creating an integrated European audiovisual space. Quotas for VOD services address the volume of supply and investment, but not the actual mobility of content across Member States or its effective consumption. The result is a regulatory framework that strengthens production capacities, yet contributes only to a limited extent to the strategic objective of enhancing the cross-border circulation of European works.

The failure of quotas to effectively promote cross-border circulation does not, however, mean that the EU has abandoned the objective of creating a genuinely integrated audiovisual space. Alongside production-oriented instruments, the Union has long sought to remove legal barriers to cross-border distribution through the harmonisation of internal market rules. If quotas represent an industrial response to fragmentation, market integration through legal harmonisation constitutes an institutional response. The following section therefore examines the extent to which internal market instruments succeed in advancing the same strategic objective—namely, improving the cross-border availability of European works.

3 The Single Audiovisual Market: Legal Integration Without Genuine Integration

Alongside production-oriented instruments, represented by quota regulation, European audiovisual policy also pursues the economic objective of establishing a single market based on the free movement of services. If quotas constitute an industrial response to fragmentation, harmonizing legislation is intended to remove legal barriers to cross-border distribution. The question remains, however, whether legal obstacles are in fact the primary cause of the limited circulation of European works.

As early as the Television without Frontiers Directive, the country-of-origin principle was introduced, according to which a provider is subject only to the regulation of the Member State in which it is established. This principle was later extended to the online environment through the AVMS Directive. The objective was to prevent the cumulative application of national regulatory requirements and to facilitate the cross-border provision of audiovisual services. From the perspective of the regulatory framework, this development led to a significant reduction in legal fragmentation.

At the same time, the territoriality of copyright was preserved, forming a fundamental economic pillar of financing European production. The model of pre-selling rights to individual distributors in national markets allows investment risk to be spread and ensures the recoupment of production costs. Shortly after the adoption of the Television without Frontiers Directive, the Satellite and Cable Directive (SatCab, 93/83/EEC) was therefore adopted, introducing the country-of-origin principle for satellite broadcasting. Under this legal fiction, the act of communication to the public is deemed to occur solely in the Member State where the signal is introduced into the chain of communication under the control of the broadcaster, meaning that it is sufficient to obtain a licence in the country of origin of the broadcast. Although this mechanism facilitated the cross-border transmission of satellite programmes, the contractual freedom of rights holders continued to permit the territorial limitation of licences.

Recent legislative initiatives have thus mitigated certain practical effects of territoriality and reduced transaction costs for selected types of services, yet they have not altered its systemic logic. The question therefore remains whether the limited cross-border circulation of European works truly stems from insufficient legal harmonisation, or whether it reflects deeper structural causes. Empirical data on the availability and distribution of European content across Member States suggest that the problem lies not primarily in regulatory barriers, but in the underlying economic organisation of the market itself. The following section therefore examines the actual impact of EU instruments on the cross-border distribution of audiovisual content.

Europe produces an exceptionally high number of audiovisual works; their cross-border availability, however, remains limited.[20] Non-domestic European works account for only a small proportion of VOD catalogues in individual Member States, and their availability varies significantly depending on the size and purchasing power of the market.[21] Consumers in the largest Member States have access to a substantially broader range of titles than users in smaller countries,[22] while productions originating from Central and Eastern European States are among the least represented.

The low mobility of European works is also reflected in their limited international competitiveness. Although significantly more feature films are produced annually in Europe than

20 Ivana Kostovska, Tim Raats & Karen Donders: "The Rise of the 'Netflix Tax' and What It Means for Sustaining European Audiovisual Markets," *Innovation: The European Journal of Social Science Research* 33/4 (2020), 423–441; Ib Bondebjerg, Eva Novrup Redvall, Rasmus Helles et al.: *Transnational European Television Drama: Production, Genres and Audiences*, Cham: Springer International Publishing, 2017; Martin Kanzler & Julio Talavera: "Public Funding for Film and Audio-Visual Works in Europe: Key Industry Statistics 2010–2014," in: Paul Murschetz, Roland Teichmann & Matthias Karmasin (eds.): *Handbook of State Aid for Film: Finance, Industries and Regulation*, Cham: Springer International Publishing, 2018, 153–174.

21 In the catalogues of VOD services across individual Member States, non-domestic European works account for only a marginal share—for example, French works represent 5.3%, German and Italian works 2.2%, and Czech works merely 0.2% (cf. European Commission: Commission Staff Working Document: European Media Industry Outlook (SWD (2023) 150 final) (18 May 2023), https://digital-strategy.ec.europa.eu/en/library/european-media-industry-outlook [3 August 2026], 27). The sample of catalogues used to measure the availability of non-domestic European works covered VOD services provided in the following countries: Germany, France, Italy, Spain, Denmark, the Netherlands, Sweden, Poland, and Finland.

22 European consumers, within their respective national online audiovisual service offers, have access on average to only 14.1% of all film titles available in the catalogue offerings of streaming services across the 27 EU Member States. This availability varies significantly depending on the Member State of residence—more specifically, on the income level and market size of the State concerned. Whereas consumers in Germany have access to 43% of audiovisual titles, consumers in Greece have access to only 1.3%, and those in the Czech Republic to 16.3%. The research sample used to measure availability consisted of 31,828 unique film titles (irrespective of the number of language versions) across a total of 75 SVOD and TVOD platforms operating in 27 EU countries, as recorded in the Lumière database (cf. Annette Broocks, Nestor Duch Brown, Maria Estrella Gómez Herrera et al.: *Geo-Blocking: A Literature Review and New Evidence in Online Audiovisual Services*. JRC Digital Economy Working Paper 2020-01 [Joint Research Centre, European Commission], https://www.econstor.eu/bitstream/10419/247405/1/jrc120267.pdf [3 August 2026], 22).

in North America, the majority remain confined to their domestic markets.[23] Linguistic and cultural fragmentation, limited budgets, and the small size of national audiences hinder the exploitation of economies of scale and reduce the return on investment.[24] As a result, European policy supports production, but not necessarily circulation. The smaller the market, the greater the reliance on public support. Contrary to economic logic, it appears that the smaller the population of an EU Member State, the more films it produces per capita.[25]

The instruments adopted within the framework of the Digital Single Market strategy have not fundamentally altered this situation. The Regulation on the cross-border portability of online content services removed obstacles to user mobility, but did not affect the territorial limitations of the content offer itself. The Directive on online broadcasting extended the country-of-origin principle only to narrowly defined ancillary services of broadcasters and to categories of content for which interference with territorial licensing would be minimal. The Regulation on unjustified geo-blocking expressly excluded audiovisual services from its scope.

Although these instruments have reduced certain transaction costs and strengthened legal certainty for service providers, they have not led to a substantial expansion of the cross-border availability of European works. The assumption that the principal barrier to circulation lies in the costs associated with multi-territorial licensing thus appears to be misguided.

The territorial fragmentation of the European audiovisual market is primarily the result of business models rather than insufficient legal harmonisation. A key factor is the cultural and linguistic diversity of the European space, which fundamentally structures audience demand for audiovisual content. Viewer preferences, sensitivity to themes, and levels of comprehensibility vary significantly from one State to another. Moreover, content localisation increases costs and limits universal commercial potential, leading distributors to target specific national or linguistically homogeneous markets. The territorial fragmentation of licensing thus reflects, above all, the cultural reality of the European audiovisual market.

The pre-sale model of rights is of fundamental importance, as it enables production financing through the sale of territorially exclusive licences to individual distributors. Presales constitute a significant share of the production budget for an audiovisual work and are based on the sale of an exclusive territorial licence to an investor or prospective film distributor for a work that has yet to be produced. To date, this financial model has not

23 Cf. European Audiovisual Observatory: *Yearbook 2023/2024: Key Trends*, Strasbourg: EAO, 19 March 2024, https://www.obs.coe.int/en/web/observatoire/-/key-trends-2023/2024-report-just-published [3 August 2026], 21; Huw D. Jones: *Transnational European Cinema: Representation, Audiences, Identity*, Cham: Palgrave Macmillan, 2024.

24 Cf. Martin Kanzler: *Fiction Film Financing in Europe: A Sample Analysis of Films Released in 2021*, Strasbourg: European Audiovisual Observatory, 2024, https://rm.coe.int/fiction-film-financing-in-europe-2023-edition-m-kanzler/1680af8262 [3 August 2026].

25 Cf. Joost Poort, P. Bernt Hugenholtz, Peter Lindhout et al.: *Film Financing and the Digital Single Market: Its Future, the Role of Territoriality and New Models of Financing*, Brussels: European Parliament, Policy Department for Structural and Cohesion Policies, 2019, 37–61. For example, in Estonia in 2016, the production of an average of 15.2 feature films per 1 million inhabitants was supported. In comparison, in Germany in the same year, the production of 3.12 feature films per 1 million inhabitants was supported.

been supplanted by any alternative business structure. Emerging alternative models for financing European film production—such as crowdfunding or product placement—remain marginal within the audiovisual sector.[26] Typically, the producer sells exclusive territorial licences to individual distributors for specific States or regions. Each distributor assumes the economic risk associated with releasing the work in its respective market and invests in localisation, marketing, and distribution. This model enables the producer to maximise the value of the work by segmenting rights territorially, while ensuring that distribution is handled by entities with in-depth knowledge of local market conditions. For European films, international success is typically dependent on domestic performance or recognition at major international festivals. The exploitation cycle of a European film therefore tends to be significantly longer than that of American productions. In other words, the foreign distribution of festival-acclaimed European films—where sales agents play a crucial role—is, unlike Hollywood production, not territorially synchronised and often lags behind domestic release. The value of a licence for potential future distribution of a European title in a foreign market is thus protected through the geo-blocking of online access to content made available in its home territory. If a producer has not yet sold the rights for a particular territory, geo-blocking ensures that consumers in that territory cannot access the content via a VOD service available in the country of origin, thereby preserving the potential licence value for a future local distributor. The territorial fragmentation of film rights is therefore not an accidental by-product of legal regulation, but a functional element of the European film industry's business model, linking producers, regional distributors, and local audiences.

European distributors have traditionally operated within defined national or regionally affiliated markets, where they possess detailed knowledge of audience preferences and established distribution infrastructures. Specialisation in a specific territory enables more effective marketing, better timing of releases, and the optimisation of investment returns. For most distributors, acquiring a pan-European licence would therefore not constitute an economically rational strategy. An exception is represented by global platforms capable of acquiring rights on a multi-territorial basis. However, their business strategies simultaneously tend to favour production originating from the largest markets.

Empirical experience demonstrates that the limited cross-border availability of European works is not primarily the result of high legal transaction costs, but rather of rational business strategies. The production of audiovisual works is largely financed through the pre-sale of territorially exclusive licences, enabling producers to spread investment risk and secure a substantial portion of the production budget before a project is completed. Distribution is organised along linguistic, cultural, and economic boundaries that structure audience demand. Audiovisual content remains strongly nationally oriented, and producers as well as distributors adapt their strategies accordingly. The fragmentation of the European market thus reflects segmented demand rather than insufficient harmonisation. It is not a failure of legal integration, but a consequence of an economic model based on territorial exclusivity.

26 Cf. Poort, Hugenholtz, Lindhout et al.: *Film Financing and the Digital Single Market*, 88–91.

Legal instruments may reduce transaction costs, yet they cannot alter the incentives of market actors who lack an economic interest in pan-European distribution.

Attempts at further legal integration therefore encounter a structural limit: even if formal regulatory barriers are removed, the economic rationality of territorial licensing persists. The creation of a genuinely unified audiovisual market would require intervention in the very financing model of European production, which is fundamentally built upon territoriality. Such a step, however, could destabilize the system that has thus far enabled the creation of a substantial share of European works.

Like production quotas, market integration through legal harmonisation fails to address the underlying structural causes of fragmentation in the European audiovisual space. Quota regulation has increased the volume of European—predominantly national—production, yet it has not ensured its systematic cross-border circulation. Conversely, harmonisation measures and the partial reduction of transaction costs in rights clearance have removed certain formal regulatory barriers, but have not resulted in a substantial expansion of the availability of European works across Member States. Neither production-oriented intervention nor legal integration has therefore fulfilled the declared objective of enhancing the cross-border circulation of European content. Market fragmentation persists because its roots lie primarily in a business model based on territorial exclusivity and segmented demand, rather than in insufficient legal harmonisation.

Two principal conclusions follow from the foregoing analysis. First, neither quota regulation aimed at increasing the volume of European production nor harmonisation measures designed to reduce transaction costs in rights clearance have led to a substantial improvement in the cross-border availability of European works. Second, the barriers to their circulation are predominantly commercial in nature and are structurally linked to the model of territorial exclusivity and pre-sales, which remains central to the financing of European audiovisual production.

The foregoing analysis suggests that the limited cross-border circulation of European works should not be understood as a single problem. Three distinct diagnoses can be identified. First, there is a quantitative diagnosis, according to which the supply of European works is insufficient. This diagnosis underlies quota policies. Second, there is a qualitative diagnosis, according to which European works are available, but their composition does not adequately support cross-border circulation because catalogues remain dominated by domestic content. Third, there is a distributive diagnosis, which this article considers the most significant: many European works are produced and may even be commercially successful in their home markets, yet they never become available to potential audiences in other Member States. The policy proposal developed below primarily addresses this third problem.

If, therefore, it is not realistic to expect that further regulatory integration or additional quantitative support for production will bring about a fundamental change, it becomes necessary to seek a solution that respects the underlying economic logic of the film ecosystem while simultaneously addressing its most problematic side effect—the long-term unavailability of works outside licensed territories.

Instead of a strategy of "conquering foreign markets," which presupposes active export expansion and competition for limited external demand,[27] an alternative approach may be adopted: the systematic opening of the digital borders of domestic markets in all EU Member States to foreign users in situations where commercial exploitation in a given territory has failed or has not taken place. Such a strategy does not seek to weaken the system of territorial financing or to replace the pre-sale model of rights. Rather, it aims to complement it with a fallback availability mechanism at a stage when the economic potential of the exclusive licence has already been exhausted. The following section therefore advances a concrete proposal, generally applicable within the European Union, designed to improve the availability of national audiovisual works across Member States without disrupting the fundamental structure of their financing.

4 Opening Domestic Markets with National Audiovisual Works to Foreign Audiences

4.1 Premises

This section presents a concrete proposal aimed at improving the availability of national audiovisual works within the European Union, without disrupting the fundamental model of their financing. Unlike traditional recommendations focused on export promotion and the "conquest of foreign markets," the proposed approach proceeds from the opposite logic: rather than actively penetrating external markets, it seeks to open the digital borders of domestic markets in individual Member States to foreign users who already demonstrate an interest in other European productions but encounter territorial restrictions on availability.

The proposal is inspired by an initiative submitted by the organisation Communia on 22 September 2022 during a roundtable discussion on access to and availability of audiovisual content in the EU organised by the European Commission (specifically by the Commissioner for the Internal Market, Thierry Breton).[28]

Today, the dominant mode of audiovisual content distribution is digital delivery via video-on-demand (VOD) services. Digital transmission does not require physical logistics and occurs instantaneously, significantly reducing distribution costs compared to traditional models. This does not mean, however, that digital distribution is free of barriers. Audiovisual

27 However, we do not mean to suggest that it is pointless to strengthen support at the EU and national levels for the international distribution of audiovisual works, for international collaboration among key value chain actors—particularly producers, directors, and sales agents—or to place greater emphasis on the quality and export potential of a smaller number of projects rather than simply increasing production quantitatively. In this text, however, we intend to focus on an alternative form of support for the export of national production, based on opening the borders of national territories to foreign audiences interested in local audiovisual works.

28 Communia Association: Proposal for a Fallback TVOD Service for Publicly Funded AV Works, Communia Association, 2022, https://communia-association.org/wp-content/uploads/2022/09/220923Proposal-for-a-fallback-TVOD-service.pdf [3 August 2026].

works are generally not available on a pan-European basis, as their cross-border accessibility remains constrained by territorially defined licensing agreements, localisation costs, and differing regulatory requirements among Member States. The obstacles thus do not lie in the technical act of making content accessible to end users, but rather in the stages of licensing and market release within a specific territory.

Most VOD services operate on a territorial basis and have no economic incentive to acquire rights on a pan-European scale. Territorial fragmentation reflects linguistically and culturally conditioned demand, as well as the costs associated with localisation. This reality is mirrored in the contractual practice of granting exclusive territorial licences, the protection of which in the online environment is ensured through geo-blocking. Geo-blocking safeguards the value of distribution rights from both the producer's perspective and that of the local distributor, who invests in marketing and releasing the work in a specific market. For the producer of an audiovisual work, geo-blocking of cross-border access preserves the value of distribution rights for sale into additional foreign territories. For example, if Austrian viewers were able to watch a film via a German VOD service, no Austrian distributor would be willing to acquire the rights for online distribution of that film in Austria. From the distributors' perspective, geo-blocking protects their territorially limited rights, particularly where the acquired licence is exclusive and guarantees the distributor a territorial monopoly for the exploitation of the specific work.

A key element of this model is the pre-sale of territorially exclusive licences, which enables producers to finance the production of a work. According to data from the European Audiovisual Observatory, pre-sales constitute a significant component of the budgets of European films. Production itself typically commences only once the producer has secured the necessary financing. Without the guarantee of territorial exclusivity, distributors would be unwilling to assume the associated investment risk, and the financing of production would be significantly jeopardised. Territorial licensing is therefore not an incidental by-product of legal regulation, but a functional economic mechanism of the European film ecosystem.

The problem arises at a later stage in the life cycle of a work. If a producer fails to sell a film into additional territories within the ordinary exploitation window, its availability may remain permanently limited, even though a potential audience may exist. In practice, it is common that, after several years, a producer's incentive to market the work abroad declines in proportion to the passage of time, as audience interest in older titles naturally diminishes. Producers may also encounter limited interest from international sales agents in lower-budget films or in titles originating from peripheral (i.e., smaller, economically and demographically weaker) markets. In many cases, for the reasons outlined above—including culturally and linguistically conditioned demand, as well as localisation and marketing costs exceeding expected revenues—the producer ultimately fails to secure foreign distribution. The level of interest from foreign audiences is simply insufficient to justify a local distributor's investment in acquiring the licence, localizing the work, and promoting it within the territory concerned.

This raises a legitimate question as to what economic value geo-blocking is actually protecting when, after a reasonably long period, the producer has been unable to sell the work for foreign distribution. In such circumstances, geo-blocking no longer safeguards a genuine licence value, but effectively prevents further economic and cultural exploitation of the work. Cross-border inaccessibility thus becomes a side effect of a model that is otherwise rational and functional.

Although the interest in viewing a film outside its country of production may be relatively limited in quantitative terms, certain groups within the population attach particular importance to cross-border access to audiovisual culture. These include linguistic and cultural minorities, long-term migrants, film enthusiasts, and individuals interested in the language and culture of another country. Geo-blocking prevents such audiences from participating in the cultural life of a given community, as access to the work is determined solely by the location from which the user connects to the internet. This type of restriction may be described as territory-based discrimination, distinct from traditional forms of discrimination based on sex, age, or ethnicity. Individuals permanently residing outside the territory in which a work is officially distributed are denied the opportunity to access it via VOD services, thereby placing them at a disadvantage in their access to cultural content.

This problem is particularly salient in the case of works financed from public sources. National and European public funds—whether in the form of selective grants, automatic support schemes, or tax incentives—play a crucial role in financing national production, including international co-productions. According to a study by the European Audiovisual Observatory, public funding through selective support accounts for 26% of production budgets; in reality, this share is likely even higher, as public service broadcasters—largely financed through public (licence fee) funds—also frequently contribute to the financing of audiovisual works.[29] Public support is normatively linked to the principle of "public money, public good," according to which resources provided from public funds should generate value accessible to the public. Citizens who finance the creation of cultural works through taxation have a legitimate expectation that these works will be available under reasonable conditions throughout the EU. The current reality, however, often falls short of this expectation.

Although rightholders are under no general statutory obligation to ensure the pan-European availability of a work, the legal framework—including Article 22(1) of Directive (EU) 2019/790—proceeds from the assumption that rights granted under a licence should be genuinely exploited and that, where such exploitation does not take place, mechanisms for the revocation of the licence may apply. By analogy, one may envisage a contractual mechanism which, in the case of publicly funded works, would respond to situations in which rights remain unexploited in a given territory over an extended period of time.

29 Cf. Martin Kanzler: *Fiction Film Financing in Europe: A Sample Analysis of Films Released in 2018*, Strasbourg: European Audiovisual Observatory, 2020, https://rm.coe.int/fiction-film-financing-in-europe-2020-edition-/1680a1719d [3 August 2026].

For the purposes of this proposal, a publicly funded work should be understood as an audiovisual work receiving selective public support above a minimum threshold. The precise threshold would ultimately be a matter for policy design. One possible approach would be to apply the mechanism only to works for which selective public funding exceeds 20–30% of the production budget, thereby limiting the obligation to projects that substantially rely on public resources while avoiding disproportionate interference with predominantly privately financed productions.

4.2 Proposed Solution

The proposed solution builds on the foregoing considerations: the introduction of a contractual obligation applicable to publicly funded works, whereby, after the expiry of a reasonable exploitation period, such works could be made available in unlicensed territories through a fallback TVOD platform. This mechanism would preserve territorial exclusivity during the commercially relevant phase of exploitation, while, once that phase has been exhausted, opening the possibility of lawful cross-border access.

As a condition for granting selective public support from national or regional film funds within the EU Member States, the decision awarding such support would stipulate that, after the expiry of a sufficiently long exploitation period (for example, five to seven years from the premiere, corresponding approximately to the period during which most European films complete their primary theatrical, television, physical media, and initial VOD exploitation cycles),[30] the producer must make the work available through a designated national or publicly supported TVOD platform in all EU Member States where no distribution licence has been granted. Alternatively, eligibility for support could be made conditional upon proof of the inclusion of a so-called residual clause in the licensing agreement with the operator of such a platform, ensuring that the work will be made available in the future once its commercial potential has been exhausted.

The fallback TVOD platform would operate dynamically: content would be made available only to users in those Member States where the work is not commercially accessible through licensed distribution channels. In countries where the work is officially distributed, access would remain blocked, or the platform would redirect users to the existing distributor. The mechanism would thus fully respect the prevailing contractual practice of territorially defined exclusive licences. Operationally, such a mechanism would not require continuous manual monitoring of rights availability. The platform could rely on a centralised rights-management database maintained by participating producers or public funding bodies. Access conditions could be updated automatically when territorial licensing agreements are

30 The precise duration would require empirical calibration and stakeholder consultation. The proposed period is intended only as an illustrative benchmark indicating a stage at which the commercial value of territorial exclusivity is likely to have substantially declined.

concluded or expire, in a manner comparable to existing geo-localised rights-management systems used by commercial streaming services.

Online availability would be based on a separate non-exclusive licensing agreement between the producer and the platform operator. The producer would receive a share of revenues (for example, a percentage of individual transactions), while the agreement would include a clause permitting termination in the event of a subsequent sale of rights in the relevant territory. At the same time, it would be appropriate to establish a compensation mechanism for the platform operator, covering costs related to technical infrastructure, promotion, or possible localisation of the work. The solution thus creates an additional source of revenue in situations where standard licensing avenues have already been exhausted, without interfering with the producer's contractual freedom. The proposal does not entail a compulsory licence, a transfer of rights, or a limitation of copyright ownership. Participation would result from contractual conditions voluntarily accepted in exchange for public funding. Producers would remain free to determine licensing strategies during the commercial exploitation period and would retain the possibility of withdrawing works from the fallback mechanism if a new territorial licensing opportunity emerged.

In the initial phase, works could be made available in their original language versions; subtitles or additional language versions could be introduced progressively, depending on demand indicators. From a regulatory perspective, it would be appropriate to consider applying the country-of-origin principle, whereby compliance with the public law requirements of the Member State in which the service provider is established would suffice. This would facilitate cross-border availability and reduce administrative burdens.

Institutionally, the solution could be implemented through a newly established or existing publicly supported platform, or in cooperation with already operating specialised VOD services. Its operation could be financed partly from revenues and partly from public funds, in line with the cultural-policy rationale underlying public support. Inspiration may also be drawn from the practice of national film archives, which often possess the technical infrastructure to provide online access to archived works—particularly those no longer commercially available—either through free or paid streaming models that include revenue-sharing arrangements for rightholders. The proposed model would extend this principle to the post-commercial exploitation phase.

4.3 Benefits

The proposed fallback TVOD platform would enhance the pan-European availability of publicly supported audiovisual works without destabilizing the pre-sale model or the system of territorial exclusivity. It represents a structural complement to the existing framework: preserving its economic rationality during the commercially relevant exploitation period, while mitigating its adverse effects at a stage when territorial protection no longer serves a genuine economic function and instead impedes the objective of improved cross-border circulation of European content.

The proposed mechanism also reflects the cultural-policy principle often summarised as "public money, public good." This principle should not be understood as an absolute ethical obligation, but rather as a normative point of departure characteristic of the fields of culture and media. Public support for audiovisual production pursues not only economic objectives, but also the promotion of cultural diversity, accessibility, and the sharing of cultural content. In this context, it is legitimate to require that the outcomes of publicly financed creation not remain accessible only to a limited audience over the long term, but—while respecting the legitimate commercial interests of producers—be made available to the broader European public.

The proposed solution creates economic incentives for all actors involved. For producers, it creates an opportunity to generate additional revenue from territories where standard licensing agreements have not been concluded—markets that would otherwise remain without economic exploitation. For platform operators, it allows the expansion of their catalogues with works that are otherwise difficult to access, the engagement of new user groups, and the development of an additional revenue stream.

From a broader perspective, such a mechanism may contribute to opening national audiovisual cultures to European audiences and to strengthening the function of audiovisual policy as an instrument of cultural exchange and the promotion of cultural diversity in the digital environment. The proposed model thus reconciles the economic rationality of territorial licensing with the objective of broader cross-border availability of European works, without disrupting the fundamental structure of the European audiovisual market.

Unlike quota-based interventions, the proposal does not seek to increase production volume. Unlike further market harmonisation measures, it does not attempt to alter the territorial financing model on which European production depends. Instead, it directly addresses the specific problem identified throughout this article: the long-term unavailability of European works in territories where no commercial distribution has emerged despite the existence of potential audience demand.[31]

31 This work was supported by the European Regional Development Fund project "Challenges of Access to Cultural Heritage in the Digital Age" (reg. no.: CZ.02.01.01/00/23_025/0008719). The authors would like to express their sincere gratitude to the members of the Centre for Advanced Study "Access to Cultural Goods in Digital Change" at the University of Münster for their insightful comments and valuable suggestions. Their constructive feedback significantly contributed to improving and refining the manuscript. The discussions that made this exchange possible were supported by a grant from the Ministry of Education, Youth and Sports of the Czech Republic awarded to Palacký University Olomouc (IGA_FF_2025_021), which contributed to the related travel expenses.

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EUROPEAN AUDIOVISUAL POLICY BETWEEN QUOTAS AND DIGITAL BORDERS

This study examines European audiovisual policy with a focus on improving the cross-border availability of European audiovisual works. It analyses two main policy instruments: quota regulation for European works in broadcasting and video-on-demand services and legislative measures aimed at creating a single audiovisual market. Based on a critical review of the literature and secondary analysis of data from the European Audiovisual Observatory, the article argues that neither instrument effectively promotes cross-border circulation. Quotas mainly strengthen domestic production and reinforce national markets, while legal harmonisation has not significantly expanded availability because fragmentation is driven primarily by territorial licensing and culturally segmented demand. The article proposes an alternative approach based on opening digital borders after commercial exploitation has ended through a publicly funded fallback TVOD mechanism enabling access in unlicensed territories.

ISBN: 978-3-69012-014-2
DOI: 10.17879/99838680907
www.accesspoints.eu