[FR] Media chronology: proposals from mediators prior to legislative reform

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Mediators Dominique d'Hinnin and François Hurard, who were appointed by the government to promote an agreement on media chronology, have submitted a "compromise scenario" to the professionals in the cinema and audiovisual sector with a view to "shortening all the sequences for exhibiting" cinematographic works and, "consequently, the theoretical periods of exclusivity" of the various channels for broadcasting. In view of the stalemate in the professional negotiations and the urgent need to adapt regulations that most of the parties concerned find rigid, anachronistic and inappropriate, Minister for Culture Françoise Nyssen appointed the mediation mission in October of last year, prior to revising the 2009 professional agreement that currently governs the matter.

Informed by about forty interviews carried out since the start of the year and by a number of written contributions, the scenario presented and revealed in the press envisages exclusivity in cinema theatres for four months, or three months in the case of a waiver. If the film is not as successful as expected, it could - after three months - be shifted to the windows for DVD and video on demand (VOD). For a film to have the benefit of this waiver, the rightsholders would have to submit a declaration to the national cinema centre (Centre National du Cinéma and de l'Image Animée - CNC) on the basis of the actual or extrapolated number of tickets sold. The cinema mediator could intervene in the event of disagreement.

The window for pay television (including Canal Plus), which currently opens eight months after a film's first screening, would be brought forward to seven months (or six in the case of a successful application for a waiver), from which point operators in this sector would have exclusivity for eight months. A list of eligibility criteria has been drawn up for this first window: the stakeholders must abide by the French regulations; pay the CNC tax; conclude an agreement with the professional organisations in the cinema sector under the auspices of the CNC; be commissioned by the national audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA); and make a financial commitment in favour of the cinema (the amount would vary according to the number of subscribers). A second window would open fifteen months after a film's first screening for pay television channels making less of a contribution to cinema financing.

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The free-to-view television channels (TF1, M6, France 2, etc.) would be entitled to broadcast films 19 months (or 17 months in the case of a successful waiver application) after their first screening in a cinema, compared with 30 months at present, with an 8-month period of exclusivity. The application of this sequence would be conditional on concluding an interprofessional agreement that included catch-up TV and an extension of the perimeter of the obligations to the "group". Virtuous broadcasters would also have to reserve 3.2% of their turnover for the cinema. Without an agreement, the window for free-to-view television services that devote less money to the cinema (D8, W9, TMC) would not open until 27 months after the first screening, that is to say, at the same time as the window granted to operators of video-on-demand services to subscribers (subscription VOD). Subscription VOD platforms could be granted this window on condition that they meet a number of criteria, including devoting 21% of their turnover to the pre-financing of works. As for SVOD services headquartered outside France (Netflix, Altice Studios) which observe the AMSD regulations and devote less than 15% of their turnover to investment in new French works, their window would not open until 35 months after the first screening (instead of 36 months at present).

Lastly, the final window, devoted to free-to-view VOD on YouTube or Dailymotion, would open 43 months after a first screening, instead of 48 months as at present.

The parties concerned have until 19 March 2018 to make their opinions on these proposals known. If a consensus is reached, a professional agreement would then be drafted and prepared for signature. Otherwise, the Ministry of Culture has let it be known that the government has not excluded the possibility of passing legislation along the lines sketched out by the mediation mission.

The SACD's reaction to this in a press release was to deplore the fact that, "despite some progress" mainly with regard to bringing the windows forward generally, the proposed new chronology created distortion and unequal treatment between the digital platforms operating by subscription which, with the same investment obligations as for pay television services, would find themselves subjected to a very unfavourable broadcasting regime. It also deplored the fact that compliance with the legislation on intellectual property was not one of the virtuous conditions that would allow the windows for premium television channels, and in particular Canal Plus, to be brought forward to seven months, whereas it was for digital platforms on subscription. It should be recalled that the SACD and Canal Plus have been tussling for months: the SACD claims that Canal Plus shows films and fiction and animation works on most of its television services without obtaining authorisation from their authors.

« Scénario de compromis » pour l'évolution des fenêtres de diffusion des films

"Compromise scenario" for changes in windows for showing films

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