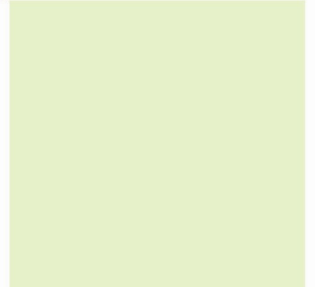
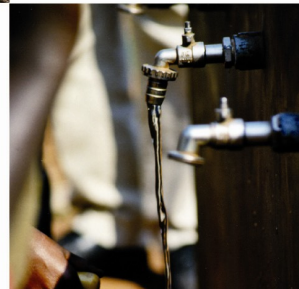




Best Practices re Regulatory Regimes and Incentives to Develop the Audiovisual Sector in the Caribbean

Draft Report on World Best Practices in Legislation,
Regulatory Regimes and Incentives

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**Best Practices re Regulatory Regimes and Incentives to Develop
the Audiovisual Sector in the Caribbean**

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*Les opinions exprimées dans ce rapport n'engagent que les auteurs et ne reflètent pas
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Abbreviations

<i>BBC</i>	British Broadcasting Corporation
<i>CAACI</i>	Iberamerican Audiovisual and Cinematographic Authorities Conference.
<i>CNAC</i>	La Gerencia de Desarrollo Cinematográfico del Centro Nacional Autónomo de Cinematografía (Venezuela)
<i>CII</i>	Ibermedia Intergovernmental Committee
<i>CNC</i>	National Center for Cinematography / Centre National de la Cinématographie (France)
<i>CNCA</i>	Consejo Nacional para Cultura y las Artes / National Council for Culture and Arts (Mexico)
<i>COSIP</i>	Compte de Soutien à l'Industrie des Programmes Audiovisuels (COSIP). France
<i>CRNM</i>	The Caribbean Regional Negotiating Machinery
<i>CSA</i>	Conseil supérieur de l'audiovisuel / Directorate for Media Development (France)
<i>DFFF</i>	German National Film Found
<i>DIAN</i>	Department of Taxes and Customs (Colombia).
<i>EAO</i>	European Audiovisual Observatory
<i>EPA</i>	Economic Partnership Agreement
<i>FONSPA</i>	National Support Fund for Audiovisual Productions / Fonds National de Soutien de la Production Audiovisuelle (Luxembourg)
<i>GATT</i>	General Agreement on Tariffs and Trade
<i>ICASA</i>	Independent Communications Authority of South Africa
<i>IDC</i>	Industrial Development Corporation (South Africa)
<i>IMCINE</i>	Instituto Mexicano de Cinematografía / Mexican Institute of Cinematography).
<i>INCAA</i>	National Institute of Cinema and Audiovisual Arts (Argentina)
<i>NBC</i>	Namibian Broadcasting Corporation
<i>NFO</i>	National Film Office (Hungary)
<i>NFVF</i>	The National Film and Video Foundation's
<i>OFCOM</i>	Regulator for the UK communications industries
<i>PCC</i>	Protocol on Cultural Cooperation
<i>PTAR</i>	Prime Time Access Rule

<i>RECAM</i>	RECAM - Reunião das Autoridades Cinematográficas e Audiovisuais do Mercosul
<i>SABC</i>	South African Broadcasting Corporation
<i>SACOD</i>	Southern Africa Communications for Development
<i>SADC</i>	South African Development Community
<i>SEED</i>	Southern European Economic Discussion
<i>SEP</i>	Secretaría de Educación Pública /Education Secretariat (Mexico)
<i>SOFICA</i>	Les Sociétés de Financement de l'Industrie Cinématographique et de l'Audiovisuel
<i>SRNT</i>	Moroccan State Television
<i>STV</i>	Swazi Television
<i>TVT</i>	Tanzania State Television Broadcast Centre
<i>TWF</i>	Television without Frontiers
<i>UKFC</i>	UK Film Council
<i>UTI</i>	Technical Ibermedia Unit
<i>VOD</i>	Video On Demand
<i>WTO</i>	World Trade Organisation
<i>ZBC</i>	Zimbabwe Broadcasting Corporation
<i>ZNBC</i>	Zambia National Broadcasting Corporation
<i>ZTV</i>	Zanzibar TV

EXECUTIVE SUMMARY

In September 2008, as part of the Project “Establishment of the CARIFORUM-EU Business Forum”, a Study Tour was organized to Europe by CAIC, CEDA and CRNM with the support of the ACP Business Climate Facility (BizClim) for a group of firms and institutions from CARIFORUM countries. The Study Tour served to establish contacts between CARIFORUM and European sector representatives and allowed to identify participants and speakers to be invited to the CARIFORUM-EU Business Forum that was held the 24th and 25th November 2008 in Barbados. The EU-CARIFORUM Business Forum was focused in three sectors (audiovisual, ICT and architecture and interior design). One of the main conclusions of the EU-CARIFORUM Forum was that the CARIFORUM countries have great opportunities in the audiovisual sector.

The regulatory regimes of the Cariforum countries should be adapted and made more appropriate to facilitate greater intra-Cariforum collaboration on audiovisual projects in order to take advantage of the current agreements and start exploiting the opportunities identified for the sector during the Business Forum.

Objectives of the study:

- Create a CARIFORUM model fostering investments in the audiovisual sector and encouraging Caribbean productions.
- Make proposals on how the local productions can be promoted abroad and properly protected.
- Reduce the fragmentation of the Caribbean audiovisual market thanks to the establishment of a more harmonized regulatory framework and regime of incentives in the different Cariforum countries (aiming to create economies of scale and to attract investors to produce content in the region).
- Explore how the Protocol on Cultural Cooperation should be implemented through the encouragement of co-production agreements, movement of professionals, etc.

How:

- The elaboration of a Report on Worldwide Best practices in legislation, regulatory regimes and incentives in force for the Audiovisual Sector including an explanatory matrix to facilitate a clearer understanding.
- The compilation of a Database of CARIFORUM firms and professionals in the audiovisual sector.

- The elaboration of a list of recommendations on how the Protocol of Cultural Cooperation in the EPA should be used to take advantage of its provisions.
- The organisation of a multi-stakeholder workshop to present the findings of research and validate the recommendations.
- The elaboration of a Roadmap for the implementation of the recommendations for the sector

Results:

Through various meetings with Caribbean stakeholders, key assets of the audiovisual sector in Caribbean countries were identified, among which:

- Presence of vibrant artistic resources;
- Strong motivation of audiovisual stakeholders;
- Absolute legitimacy and social cohesion to develop an original audiovisual expression at regional level.

However, international Caribbean market is still in infancy. The lack of economy of scale and structural development and planning between countries, the lack of public policies development to boost audiovisual sector are barriers to a smooth audiovisual industry growth.

Perspectives: Summary of Recommendations

- Make a systematic assessment of public policies in the framework of audiovisual sector (as a first step in the field of regulation).
- Join the European network "EUROPA CINEMAS" through the MEDIA program.
- Make an assessment on opportunity and desirability of audiovisual local quota (before taking any decision aiming to enforce any public measure).
- Make an assessment on opportunity to implement the Prime Time Access Rule model for small market TV channels.
- To strengthen the public broadcasting system in Caribbean countries by implementing obligations for broadcasters, cabling distributors, webcasters to invest a percentage of their turnover in audiovisual content production.
- Local commercial networks need to be developed and encouraged but, in exchange of a license, they need to do their best efforts to invest in local audiovisual industry.

- Implement incentives based on tax breaks
- Take full advantage of the provision settled in the Protocol on cultural cooperation that gives Caribbean works coproduced with European producers a full access to the European television and online market (Caribbean works assimilated to European works under certain conditions).
- Develop relationships between audiovisual producers on both sides to take full advantage of the preference settled in the Protocol on cultural cooperation.
- Develop bilateral co-production agreements between EU countries and some Caribbean countries thanks to the Preferential Treatment provision.
- Consider the creation of a Caribbean Audiovisual Fund for co-productions between Caribbean countries on one side, and between Caribbean countries and EU countries on the other side.
- Request technical assistance (and possibly financial assistance) under the Protocol on cultural cooperation to the creation of the Caribbean Audiovisual Fund is requested.
- Consider the organization of a EURO-CARIBBEAN Festival as a regular meeting point for human and artistic resources and also reciprocal exchanges and access to audiovisual works.
- To build an audiovisual observatory for CARIFORUM countries aiming to collect and share the information on audiovisual production, TV broadcaster, local audiovisual market, legal development and public policies in CARIFORUM countries.
- Caribbean countries shall foster and develop private sector investment frameworks, as well as public and private partnerships. The lack of private support may be prejudicial (whereas regulation and public support for film production, distribution and exhibition are essential, a certain degree of private investment appears necessary).
- Launch an assessment on the copyright protection degree in each Caribbean country and on the implementation of existing legislation on intellectual property (taking into account that massive piracy restrains creativity and innovation in the audiovisual sector and that the absence of audiovisual content protection may have a dissuasive impact on the development of private investment initiatives).
- Encouraging the creation and the promotion of film festivals within each Caribbean country and between Caribbean countries (Regional festival), enhancing the promotion of each national culture.
- Involve a National Tourism Company – or create one, if necessary – in the promotion of international film shooting on national territory. This body could be in charge, with National Film Commission, of the

development and the promotion of attractive shooting conditions and/or tax incentives. Moreover, it should centre on film projects which use Caribbean's island location as itself.

- Caribbean countries are encouraged to draw a new model/strategy of audiovisual sector development and to elaborate its own virtuous circle.
- Create a database on artistic and technical human resources related to audiovisual Caribbean sector. To be successful, the database needs to be up-to-date, precise, attractive, and interactive with various other web information networks in Europe, Latin America, US and Africa.
- Accelerate integration of audiovisual resources at regional level.
- The creation of centers of excellence Some countries in the Caribbean region involved in audiovisual sector should concentrate on one segment of the audiovisual value chain, either on education and training, or on post production, financing and market access, in a way to integrate better the human and artistic resources disseminated in the different Caribbean countries.
- The Better and Less project. To compete on a world market, Caribbean countries and professionals should initiate a project identifying the advantages they have in audiovisual sector (labor costs, creativity, shooting conditions), but also the disadvantages (lack of physical presence and isolation from main audiovisual market, dissuasive costs of access to mainstream audiovisual market) in order to build a specified and original pattern of sustainable audiovisual local production able to compete on a global market.
- Develop a Training Program for Caribbean professionals working in the field and for pre-professionals ready to enter into the industry.
- Considerer training program such as a strategic policy and priorities necessary in order to establish an audiovisual industry in the Caribbean area.
- For this strategy policy to be successful, it needs the support of the audiovisual community, potential partners and the governments of different member countries of CARIFORUM.

Implementation and planning: see Roadmap.

A road map has been developed to clarify the key actions to be undertaken.

I. FOREWORD

In September 2008, as part of the Project, "Establishment of the CARIFORUM-EU Business Forum", financed by the ACP Business Climate Facility (BizClim) a Study Tour to Europe was organised for a group of firms and institutions from Cariforum countries.

The group met in Brussels and Madrid with different audiovisual sector institutions, organizations and representatives of the European audiovisual sector, notably producers and distributors.

The Study Tour served to establish contacts between Cariforum and European sector representatives, as well as to identify through discussions the constraints and opportunities to increase business relations between both regions in the audiovisual sector. The Study Tour also represented a tool to identify participants and speakers to be invited to take part at the Cariforum-EU Business Forum that was held on the 24th and 25th November 2008 in Barbados.

One of the main conclusions achieved at the Cariforum EU Business Forum was that the Cariforum countries have great opportunities in the audiovisual sector but must start working to reverse some weaknesses identified. Many weaknesses exist in the sector and are harmful to achieving the foreseen objectives and take advantage of the opportunities.

Main Forum conclusions regarding the audiovisual sector include:

- Efforts need to be regional: Caribbean countries should coordinate themselves as for example through the future creation of a regional coordination mechanism such an association of creative industries;
- Training programs of Caribbean professionals must be developed;
- Promotion and Marketing of Caribbean Sector Audiovisual Industry is essential and must be coordinated at regional level. Different ways of doing this were tackled for instance the preparation of a showcase of Caribbean products and talent, the support of Caribbean film Festivals, etc.
- Funding is fundamental: in this sense the creation of an audiovisual co production fund for Cariforum-EU productions will be a big achievement as well as the establishment of appropriate incentives and aids to support the audiovisual sector.
- Closer relationship with communities of Caribbean people living abroad (Diaspora) should be developed.
- Acknowledging the great importance of legislation and regulatory frameworks,
- the need for harmonizing the legislation across the region was agreed

- Negotiation of co-production agreements with Spain, France and Italy and the management of the UK co-production agreement. Copyright laws and collection efforts.

The Caribbean Regional Negotiating Machinery (CNRM) requested the present study in order to identify the most appropriate regulatory regimes and incentives for the Cariforum countries as this was identified as a very important challenge for the sector during the EU-Cariforum Business Forum.

This report aims to address three issues:

- First issue: Description of worldwide best practices in legislation, regulatory framework and incentives of the audiovisual sector.
- Second issue: Comments and recommendations on the Protocol on cultural cooperation signed by the European Union and CARIFORUM on 18 October 2008 aiming to launch a cultural cooperation between the two regions with a special emphasis on audiovisual sector;
- Third issue: The compilation of a database of all professional and human resources related to the audiovisual sector in the Caribbean countries.

On the first point, any identification of best regulatory practices in the audiovisual sector inevitably invites reference to the European audiovisual model¹. In the absence of significant practices in the rest of the world (except for Canada, Australia, New Zealand), and to address the interest expressed by CARIFORUM stakeholders to have accurate information on the development of the audiovisual sector in emerging countries, information has been collected on selected countries of the South and indications on the existence of regulation have been included where possible²

This report addresses the need for Caribbean sector to regulate in order to maximize the assets of the audiovisual industry. This report advocates that

¹ See "Existe-t-il un modèle audiovisuel européen?", Yvon Thiec, Frédéric Sojcher, P.J. Benghozi (Ouvrage collectif), L'Harmattan, Paris, 2003.

² All experts committed to analyze the development of audiovisual economics in South are almost deploring the lack of information on the legal framework, see:

- Dr. Verena Wiedemann, ARD (German Public Service Broadcaster) Head of European Public Affairs, "Promoting Creative Industries: Public Policies Fostering Film, Music and Broadcasting" (UNCTAD XI, High-Level Panel on Creative Industries and Development, 13 June 2004)
- Avril Joffe, Nathalie Jacklin "Promoting the Culture Sector through Job Creation and Small Enterprise Development in SADC Countries: The Film and Television Industry, SEED Working Paper No.53" International Labor Office, Geneva (p. 9 "Statistics and other quantitative information are largely absent in this sector")

national public policies in CARIFORUM countries need to seriously consider regulating the audiovisual sector. This industry cannot be driven by market forces alone.

The United Nations have recognized the cultural and economic importance of audiovisual services:

"Audiovisual services, like other cultural industries, have a significance that transcends their economic value. Experts agreed that audiovisual services were a nation-building instrument that ensured due respect for cultural diversity, traditions, national values and heritage. Audiovisual services contribute to the dialogue among cultures that is the basis for long-lasting peace and sustainable human development. They are a means of education, delivering ideas and raising consciousness about public goods. In addition to their primary importance as a carrier of culture, audiovisual services have become increasingly important for economic development, especially in terms of generating employment and wealth, and are creating opportunities for economic diversification into non traditional sectors; in other words, they are a pillar of the new economy. Audiovisual services would also seem to be relevant for international trade, since they help promote the image of a country abroad and thus enhance tourism. Therefore, they have major implications for development"³

Although the economic, social, cultural value of the audiovisual sector is well-known and acknowledged by a growing number of countries in the world, Caribbean countries seem hesitant to address the issue of regulating it properly.

³ United Nations Conference on Trade and Development: Expert Meeting on Audiovisual Services: Improving Participation of Developing Countries, Geneva, 13–15 November 2002. The report also addresses the following issues:

"5. A number of preconditions appear necessary in order for countries to be successful in the area of audiovisual services. These include an appropriate regulatory framework at the domestic level; a dynamic cultural policy; the availability of a critical mass of quality products; the availability of qualified professionals all along the production and distribution chain; access to distribution networks in foreign countries; legal instruments to counteract anti-competitive practices; respect for intellectual property rights; and a favorable environment for enterprise development and employment creation in these industries. In addition, specific measures and positive actions would be necessary to help developing countries build creative and supply capacities in audiovisual services.

6. In many countries, audiovisual services are a highly regulated sector. Markets alone cannot provide the required conditions for the development of audiovisual services, especially in developing countries, and active public policies are necessary to attain this goal. Experts recognized that Governments could play a pivotal role in the development of the sector. They also acknowledged the leading role of regulations in increasing the interaction of the audiovisual services sector with economic development".

Recommendation n° 1

A first recommendation would be to conduct a systematic assessment of existing public policies in the framework of the audiovisual sector as a first step towards regulation. This is required to fit the necessary adaptation of regulation in the audiovisual sector to have a chance of building an industry here. Although more work needs to be done, this report will propose a selection of regulatory measures.

Commentaries and recommendations on the Protocol on Cultural Cooperation are of strategic importance. This Protocol on cultural cooperation is the first of its kind agreed at world level between two regions, EU (27 countries) and CARIFORUM (14 countries).

The Protocol is inspired by the Convention on the protection and promotion of the diversity of cultural expressions adopted by UNESCO on 20 October 2005. Caribbean and European countries, and the EU as such, are signatories to that Convention, and the enforcement of the Protocol is a unique opportunity to translate into reality the rights and obligations of the Convention.

These two regions, vibrant societies proud of their culture and their people, need to achieve that goal successfully.

Recommendations concerning the use of the Protocol on cultural cooperation in the field of audiovisual cooperation will be developed. The assimilation of Caribbean audiovisual works co-produced with Europeans professionals as European audiovisual works is a significative advantage to access the European audiovisual market and should facilitate co-productions between both sides. A whole range of advantages arises from having European works status, and these will be described (see co-productions).

The database of human and artistic resources involved in audiovisual activity in the CARIFORUM countries is a pressing demand of Caribbean professionals. It corresponds to the wish of human and artistic resources divided up in a fragmented area, for whom communication remains problematic, to connect and to enable exchange and collaboration at the regional level. This aim is perfectly legitimate and under the assumption that the database will be created very soon, other steps in exchange and collaboration at regional level will be proposed.

II. INTRODUCTION: AUDIOVISUAL REGULATION FOR CINEMA AND TELEVISION PROGRAMS

We will concentrate on regulatory regimes related to the audiovisual industry. A large range of regulatory measures exist regarding the audiovisual sector (production, exhibition, and broadcasting):

- Quota requirement for theatrical exhibition.
- Public and private television channels' investment obligations.
- Their programming obligations (maximum annual number of films, nationality quotas, programming schedules).
- Broadcasting/investment quotas for independent producers' works.
- Broadcasting/investment quotas for audiovisual works with specific cultural or language aims, e.g., works originally produced in the regional/national language (in certain countries).
- Film release timelines (video, pay per view, encrypted channel, co-producer channel, free-to-air channels).
- National and regional financial support mechanisms (loans, subsidies, special tax on admissions to fund the film industry support account).
- Home market production quotas (in some countries, especially for public service broadcasters).
- Tax incentives and production tax credits.
- Co-production agreements.
- Obligation for content to feature prominently in all new services (web, Internet, etc.).
- Public funding (especially through the license fee) and organization of public service broadcasting.
- Taxes/charges levied on commercial exhibitors to finance public service activities (in some countries).
- Rules on accessing distribution infrastructure (frequencies, "must-carry" obligation for cable networks), including preferential access by public service broadcasting.
- Foreign media ownership restrictions (in some countries).
- Licensing policies

Regulatory measures means measures adopted by a legal authority (government, parliament, or even sometimes an agency with the power to

govern the audiovisual system). This has to be differentiated from self-regulation (in which private companies govern themselves) or co-regulation (rules are jointly decided by the private sector and a governmental authority).

Audiovisual sector development remains largely subject to a regulatory process in Western countries, which is even reaching new countries, like Eastern European countries which, by becoming EU Member States, may regulate their audiovisual system in accordance with European standards and law.

Why such a choice? The history of the film industry paved the way for the choice of a regulatory approach. The audiovisual industry is a "soft" industry: it means the creation, production, distribution of a film, a documentary, a TV fiction, a cartoon, a news magazine - works demanding a huge amount of money and time. These are not "standardized" goods or services, but prototypes. Each work is offered on a market (theatrical, DVD, TV, etc.) where competition between the different offers of audiovisual content is fierce. This is a general rule. To alleviate the harsh market reality (which in the absence of rules is often inclined to support only the strongest media offers), Governmental authorities in Western countries progressively developed a set of rules in order to protect / promote local content, designed to serve pluralism in media, not only pluralism of information but pluralism of audiovisual works and genres⁴ to serve cultural expression.

This is part of a democratic model in which it is not the State's job to interfere or make the choice of what may be seen or thought, but rather – to some extent – to guarantee freedom of opinion and expression and freedom of choice.

The regulatory measures which will be discussed here are quota requirements for local content, either in theatrical exhibition or in TV broadcasting, investment obligations by broadcasters and tax incentives. Co-production agreements, as they are organized by law, are also regulatory measures. These points are of cardinal importance for the preservation and promotion of an audiovisual industry.

⁴ The level of good practices on AV development in the Southern Countries will be considered in another chapter.

III. THE ORIGIN OF AUDIOVISUAL REGULATION

The audiovisual industry started in the 1890s with the development of the film industry, first in Europe and then in the US. The European film industry (split into different national industries) was the leading world film industry before World War I. Thereafter the US film industry took world leadership and began distributing Hollywood-made films overseas, particularly in the European market.

This gave rise to fierce competition between the US film industry and national film industries in Europe. The US film industry's ousting of national film industries in Europe was to give rise to a wide range of new measures to protect national film industries, including tariff barriers, indirect and non-trade barriers. One example of tariff barriers is offered by Great Britain's tax on imported luxury goods, which included roll film for motion picture films. The only effect of these taxes was to increase the costs of importing negatives from the United States: a decision was taken to place an import license on these products.

Theatrical exhibition quotas were introduced in Germany in 1925 and in France in 1928. In the latter case, licenses to import foreign films were contingent on national production export measures. For example, in order to distribute 400 films produced in 1928, the United States had to import 100 French films. This measure was abolished in 1931.

A number of countries (Italy, France, Great Britain) adopted indirect barriers to entry in the form of a requirement to allocate a share of theatrical exhibition time to domestic output. This measure was introduced in 1927 in Great Britain, and required distributors and cinema exhibitors to screen a minimum of 20% British films. This measure was scrapped in 1938 <http://www.planetagora.org/> - note7.

Non-trade – especially language - barriers were also put in place. In Italy, where talking pictures were first shown in 1929, films could not include dialogue in languages other than Italian, so that dubbing became necessary.

Other barriers included a ban on repatriating part of the receipts to the US. A bilateral agreement signed in 1947 between the United States and Great Britain froze the receipts from film distribution on a basis of \$17 million. Similar agreements were concluded with other countries, e.g., France in 1948.

The freeze on a proportion of US assets in distribution countries prompted the studios to invest directly in non-Hollywood film production in the Fifties (other reasons being the existence of production facilities and lower payroll costs). This is also the reason behind current US film industry investment in Colombian films.

The interruption of trade flows with the USA during the Second World War enabled bigger European countries (France, Italy, Germany) to recapture a

substantial home market for their films. In point of fact, the existence of a national film industry addressed not only economic but also ideological dictates, in Germany, Italy and France alike. The result was to squeeze the US movie industry out altogether.

In the aftermath of the war, the US reasserted its presence with the Marshall Plan and bilateral measures to rebuild national economies. The quid pro quo was an obligation to open up markets, especially film markets. Countries with battered economies (France) or which were in the throes of denazification (Germany) were obvious targets.

IV. QUOTA REQUIREMENTS

1. Quota Requirements for theatrical exhibition

1.1. International rules related to quota requirements for theatrical exhibition

Various international law measures came to be taken to protect the cinema industry. The GATT (General Agreement on Tariffs and Trade) Treaty which came into force on 1 January 1948, for instance, includes an Article IV dealing specifically with cinematographic films.

Article IV stipulates that "If any contracting party establishes or maintains internal quantitative regulations relating to exposed cinematograph films, such regulations shall take the form of screen quotas which shall conform to the following requirements:

- (a) Screen quotas may require the exhibition of cinematograph films of national origin during a specified minimum proportion of the total screen time actually utilized, over a specified period of not less than one year, in the commercial exhibition of all films of whatever origin, and shall be computed on the basis of screen time per theatre per year or the equivalent thereof;
- (b) With the exception of screen time reserved for films of national origin under a screen quota, screen time including that released by administrative action from screen time reserved for films of national origin, shall not be allocated formally or in effect among sources of supply;
- (c) Notwithstanding the provisions of subparagraph (b) of this Article, any contracting party may maintain screen quotas conforming to the requirements of subparagraph (a) of this Article which reserve a minimum proportion of screen time for films of a specified origin other than that of the contracting party imposing such screen quotas; Provided that no such minimum proportion of screen time shall be increased above the level in effect on April 10, 1947;
- (d) Screen quotas shall be subject to negotiation for their limitation, liberalization or elimination.
- (e) This article aims to permit measures to promote films of national origin on film theater screens by authorizing a quantitative restriction on trade, specifically in the film industry, for a limited period.

1.2. Application of quota requirements for theatrical exhibitions in Western and Southern countries

These measures are no longer applied in Europe, where no regulation on content distribution in theatrical exhibition exists (see below, co-production and access to theatrical exhibition). In non-Western countries, quotas still exist usually in countries which have a local film production and want to

guarantee its access to theatrical exhibition. In this way, they are using the model developed in pre-War Europe.

Korea operated a quota requirement for theatrical exhibitions which has now been partially withdrawn under pressure from the US.

China imposes a quota of 20 films a year on foreign films seeking exhibition on the Chinese theatrical market. Some experts argue that this quota - in fact a restriction on foreign films - is unfair as affording no access to foreign films.

Brazil has a theatrical quota requirement for local films. Every local single-screen theater must show Brazilian films for at least 28 days a year, with a minimum of two different films. The screen quota rises with the number of screens. For example, multiplexes (4 screens) must screen local films for at least 196 days a year (4 different films minimum). Multiplexes with 10 screens must screen local films over 490 days (10 different films minimum).

Argentina introduced a screen quota to protect local production, requiring all exhibitors to show at least one local film in each quarter year for each screen. Thus, a 16-screen multiplex must show 64 Argentinean films a year. Films may also not be changed midweek, nor taken off if attendance falls to between 6 and 25 percent of capacity. Much of the exhibition sector is foreign-owned.

India seems not to have a quota requirement. Indian languages and culture seem to create a "natural" interest for local films (see India, below).

Over the last two decades, **most of the theatrical market in Europe was dominated by US movies**, 70-80% of the theatrical exhibitions (with one major exception - France, where 48.7% of showings were French films in 2008). Most of the big countries in Europe (UK, Germany, Spain, Italy) have below 20% of national films in theatrical exhibitions. **Signs of progress appeared in 2008 as the market share of European movies reached 28.8% of the theatrical market and US films decreased to 62.7%.** This trend has been perceptible for a few years, and is encouraging.

Although these figures evidence a lack of theatrical exhibition for European films, **no quota requirements for theater showings now exist in Europe.**

Instead of maintaining quota requirements for theatrical exhibitions, Europe has developed a system of incentives for European theatrical film exhibition. **Around 750 theaters in Europe are linked together in a network called "Europa Cinemas".** This network provides financial

support to cinemas that commit themselves to programming a significant number of non-domestic European films and to organizing promotional activities around European films for young audiences. The aim of this network is to boost theatrical releases of European films. Europa Cinemas covers 1945 screens in 758 cinemas across 439 cities in 43 countries⁵. The members of Europa Cinemas have to provide 50% of films of European origin (majority of European films), in return for which Europa Cinemas provides subsidies to help the theater concerned (subsidies for European films in theatrical exhibition could represent up to €30 000 for a six-month period). The incentive is funded by a grant from the MEDIA Program and Council of Europe funding under EURIMAGES (see below). This program is now extended to Latin American countries through the new MEDIA International funding (see below).

Another instrument is the networking of European exhibitors by Europa Cinemas, providing practical information on the film industry and developments in theatrical exhibition (digital cinema, etc.)⁶ (see website).

A similar initiative to promote Caribbean and European theatrical film exhibition should be taken under a purpose-designed EU program. One possible solution would be for a group of theatrical exhibitors duly identified in CARIFORUM to join the Europa Cinemas initiative as a specific branch.

However, since it is not the purpose of this study to pinpoint the theatrical market in CARIFORUM, **a careful status assessment of theatrical distribution is needed** as regards the number of screens, ownership, attendance by the local public, level of presence in local films and professionalism of theatrical exhibitors.

Recommendation n° 2: JOIN EUROPA CINEMAS

A similar initiative to promote Caribbean and European theatrical film exhibition should be taken under a purpose-designed EU program. One possible solution would be for a group of theatrical exhibitors duly identified in CARIFORUM to join the Europa Cinemas initiative as a specific branch.

However, since it is not the purpose of this study to pinpoint the theatrical market in CARIFORUM, a careful status assessment of theatrical distribution is needed as regards the number of screens, ownership, attendance by the local public, level of presence in local films and professionalism of theatrical exhibitors.

⁵ See EUROPA CINEMAS' website: <http://www.europa-cinemas.org/>

⁶ EUROPA CINEMAS organizes an annual conference for exhibitors who are network members.

2. Quota Requirements for Broadcasting

A quota requirement in broadcasting is a cornerstone of the broadcasting rules in the European Union.

The Television without Frontiers (TWF) Directive⁷ is a directive dedicated specifically to audiovisual services at European level. Its aim is to secure free provision of audiovisual services in the common market based on European economic integrations⁸. A broadcast service is licensed in the country of origin and can then be broadcast everywhere in other Member States of the European Union without restriction.

In order to achieve such objective, a set of common principles has been adopted⁹. The main requirements for audiovisual production are laid down in articles 4 and 5 of the TWF Directive. Article 4 stipulates that **EU Member States shall ensure that broadcasters reserve a majority proportion of their transmission time for European works**¹⁰. The definition of European works excludes news, sports events, games, advertising, teletext services and teleshopping. Article 6¹¹ defines what

⁷ TWF Directive 89/552/EEC of 3 October 1989 revised by Directive 97/36/EC of 30 June 1997, revised by Directive 2007/65/EC. Note: in EU legal terminology, a directive is a law applicable to the 27 Member States of the Union.

⁸ Historically, EU integration is based on building on a common market for persons, goods and services. The EU law process aims at enforcing free provisions of goods and services in the EU market. A Court of Justice holds Member States accountable for any infringements. A common monetary union was the second step of EU integration. The European Union is now concentrating on improving freedom to provide services in the common market. The knowledge economy and IPR protection as intangible assets are increasingly vital to development of the EU economy.

⁹ For comment on the new revised directive, see YT article "La directive dite *Services de médias audiovisuels* sans frontières modifiant la directive dite *Télévision sans frontières*", 6 pages, Revue mensuelle LexisNexis Jurisclasseur, Juin 2008. You can read this article, in French only, on www.eurocinema.eu

¹⁰ European works: the definition excludes news, sports, games, advertising, teleshopping. It covers: films, TV movies and series, cartoons, talk shows.

¹¹ **Article 6:**

1. 'European works' means the following:

(a) works originating from Member States;
(b) works originating from European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 2;
(c) works originating from other European third countries and fulfilling the conditions of paragraph 3. Application of the provisions of (b) and (c) shall be conditional on works originating from Member States not being the subject of discriminatory measures in the third countries concerned.

2. The works referred to in paragraph 1 (a) and (b) are works mainly made with authors and workers residing in one or more States referred to in paragraph 1 (a) and (b) provided that they comply with one of the following three conditions:

(a) they are made by one or more producers established in one or more of those States; or
(b) production of the works is supervised and actually controlled by one or more producers established in one or more of those States; or

constitutes a European work. The question of how Caribbean works could be equated to European works will be discussed later (see co-productions).

Article 5 stipulates that **EU Member States shall ensure that broadcasters reserve at least 10% of their transmission time or at least 10% of their programming budget for European works created by producers who are independent of broadcasters.**

A report¹² issued in 2008 by the European Commission shows that transmission time reserved for European works was 63.52% of total transmission time in 2005 and 65.05% in 2006. The average is around 63%, well above the 50% minimum required. Regarding the proportion of European works by independent producers, it represents 36.44% of the total time programming in 2005 and 37.59% in 2006. The average is 25% in 18 Member States. EU countries must abide by the requirement imposed by the TWF Directive. France has a stricter quota requirement than the EU requirement as the TWF Directive allows Member States to comply with more detailed or stricter rules.

The **French quota system** is restricted to audiovisual works, such as films, TV series, TV dramas, cartoons, documentaries, excluding talk shows (which now capture the biggest TV audience share). The quota requirement is up to 60% of works broadcast, 40% of national origin, 60% of European origin (including the 40% nationals). Compliance with this quota is required for "prime time" broadcasting, i.e., when the audience is largest (19.00-23.00), to preclude broadcasters from fulfilling their obligation by broadcasting national and European works at night-time (when the audience is low). These obligations are scrutinized by a special authority (CSA) which can impose penalties on unwilling broadcasters.

(c) the contribution of co-producers of those States to the total coproduction costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

3. The works referred to in paragraph 1 (c) are works made exclusively or in co-production with producers established in one or more Member States by producers established in one or more European third countries with which the Community has concluded agreements relating to the audiovisual sector, if those works are mainly made with authors and workers residing in one or more European States.

4. Works that are not European works within the meaning of paragraph 1 but that are produced within the framework of bilateral coproduction treaties concluded between Member States and third countries shall be deemed to be European works provided that the Community co-producers supply a majority share of the total cost of the production and that the production is not controlled by one or more producers established outside the territory of the Member States.

5. Works which are not European works within the meaning of paragraphs 1 and 4, but made mainly with authors and workers residing in one or more Member States, shall be considered to be European works to an extent corresponding to the proportion of the contribution of Community co-producers to the total production costs.

¹² Eighth Communication on the application of Articles 4 and 5 of Directive 89/552/EEC 'Television without Frontiers', as amended by Directive 97/36/EC, for the period 2005-2006 (COM(2008)481 final) – 22 July 2008

http://ec.europa.eu/avpolicy/docs/reg/tvwf/art_4_5/2008_481_en.pdf

Article 5 of the TWF Directive sets out to promote productions that were independent of broadcasters and media conglomerates with the aim of promoting pluralism in content production.

The European Commission report on the application of articles 4 and 5 (a report issued every two years on the basis of information supplied by EU Member States) states that the European quota requirement has boosted the European content industry by prompting both public and commercial broadcasters to put out broadcast European content. In this case, TV has to finance, buy or invest in local audiovisual productions instead of buying-in only foreign programs like US TV series and films.

The controversial side of this is that most "European" content broadcasted by national broadcasters in the EU Member States is national in origin, the proportion of non-national EU content remains very slim. The plus side of freedom to provide audiovisual (television) services in Europe is to allow nationals of one country free access to other countries' TV programs (German public TV is broadcast everywhere in Europe, French-speaking Belgians can watch the French channels, BBC has good penetration in various countries). It has fostered varying degrees of access to different languages and domestic works from different nations.

The rest of the remaining broadcasting time (non-EU) is mainly dedicated to US origin works (series mostly broadcasted in the morning, afternoon and at night)¹³.

3. Financial Interest, Syndication rules and Prime Time Access Rule

Although the US is believed not to regulate its audiovisual market, this is not completely true! The US authorities favour regulation of the market more by competition law than by regulatory practice. But, as in Europe, the battle between TV and cinema was fierce during the 60s and 70s; the studios were at risk, since TV networks were not only broadcasting but also producing the content they needed. This drove the authorities to implement rules to protect "independent" producers. "Independent" in US language means not the small producers (as in Europe) but producers independent from networks, i.e., the Hollywood studios.

¹³ These programs are available at reasonable prices, the cost having been previously recouped on the US internal market. US movies should not be confused with US series. US movies (films) need access to European market to have a chance of recouping their costs. US movie costs are so high that the US internal market is not sufficient to amortize them. This is the main difference between movies and "basic series". Nevertheless, some series also need access to a global market to be amortized. Dumping is used by the US industry to enter the AV market in order to prevent the local AV industry from competing on tariffs.

The network financial interest and network syndication interest rules (Fin-Syn rules) adopted in 1970 aimed at limiting the networks' right to acquire ownership of the TV series they broadcast or acquire a financial interest in their syndication (i.e. sales of rights for secondary exploitation). These rules designed to block the monopoly power of the main US networks were abolished in the 90s. They had served the interest of a pluralist independent production for more than 20 years, but by the 90s Hollywood's productions were enjoying a rebirth and no longer needed to be protected.

The Prime Time Access Rule (PTAR) was brought in to prevent networks from controlling more than $\frac{3}{4}$ of prime time (19.00 – 23.00) of TV stations in the 50 largest local US markets. This rule boosted the development of local TV, local advertising and independent productions as at least the first hour in prime time had to be given over to non-network productions.

Some other countries have set local content quota obligations for broadcasters. This is the case in many African countries. South Africa imposed it in 1977. Public TV (SABC) must provide 51% local content and commercial TV 45%.

Country	National policy on local content and station policy local content	Percentage of local content	Hours of Broadcast
Mozambique	Info and policy strategy supports media link to development.	56%. Target 60%.	
Namibia	Information policy names media as catalyst for development. NBC has no written policy, strong commitment from current board.	Less than 30%. Target 70%.	24 hours
South Africa	Policy and legislation. Regulation in place. SABC regulated at 25%.	SABC 1 - 40%. SABC 2 - 55%. SABC 3 - 35%.	24 hours
Swaziland	No media policy/ local process begun by independent media sector. STV has commitment to portrayal of Swazi culture but no policy.	Not known	24 hours
Tanzania	Broadcasting Service Act links licensing to development content; 40% local content encouraged, not	75-90% being achieved.	

	regulated.		
	TVT has no policy but strong commitment. Director sees link of media to development.		
Zanzibar	As Tanzania. ZTV has no policy but commitment exists.	70%	7 hour week 14 hours WE
Zambia	None found. ZNBC has "a desire" more than an entrenched policy.	Not stated	7 hours per day
Zimbabwe	Ministry of information document. Links media to development. ZIMPREST national plan calls for Indigenization. ZBC has no policy.	50%	18 hours per day

Source: Promoting the Culture Sector through Job Creation and Small Enterprise Development in SADC Countries: The Film and Television Industry, SEED Working Paper No.53, May 2003 - Joffe, Avril; Jacklin, Nathalie; - Working paper - Table 4.2. Local content and budgets in the SADC region, 2002 (Source: SACOD Advocacy Research Project.)

4. Conclusions

Local content quota is a legitimate policy measure to ensure the presence of domestic audiovisual works. The temptation for many broadcasters, both public and commercial, is to program foreign content acquired at low prices; in certain cases, global media conglomerates are themselves selling their programs at dumping prices to preclude competition from the local audiovisual industry.

At the same time, local quota is a controversial issue (see the audiovisual dispute during the GATS negotiations under WTO supervision in the 90s) and needs precise implementation and regulatory control (which implies the creation of a specific body or authority).

5. Recommendations

Recommendation n° 3

- Audiovisual local Technical assistance on the opportunity and desirability of quota is required before taking any decision aiming to enforce any public measure.
- PTAR (Prime Time Access Rule), as a regulatory model used for small market TV station could be an alternative to a quota system.

These 2 recommendations need to be assessed in light of Recommendation n°1

V. INVESTMENT IN AUDIOVISUAL AND FILM PRODUCTION BY BROADCASTERS

1. Background

Quota requirements were initially brought in for cinema theatrical exploitation in order to keep a room for manoeuvre for the domestic film industry. Quota requirements were extended to TV broadcasting when television became a major tool for content distribution and access in order to keep space for domestic content. The final step in Europe was to introduce a European quota into EU legislation in order to guarantee a large presence of European content on TV. Nevertheless, this type of regulation did not address the problem of film (and other audiovisual content) financing. Shrinking cinema audiences led to a dramatic decline in income from theatrical exploitation in Europe and the US. Meanwhile, TV was broadcasting a growing number of films without investing in film production.

The idea of prompting TV to invest in the film industry and then other audiovisual productions came from the single idea that, as major content users, broadcasters should become major investors in the film (and other audiovisual program) industry. This simple idea was difficult to apply, given the reluctance of broadcasters in most European countries to accept the idea that they should invest in a service (audiovisual content) which gives them the possibility of attracting audience and income (in the case of advertisements). Some countries decided to force broadcasters by law to invest in the film and audiovisual sector (France, Spain - some having more complex legal system).

2. Legal sources and instruments for investment by broadcasters in content programs

Broadcasters' obligations to invest in cinematographic films are based on a range of different instruments.

2.1. Laws

Most countries regulate broadcasters' obligations directly by laws. Rules establishing public service broadcasting play a role, often serving as the basis for agreements that set out practical investment obligations. In Europe, countries which impose investment obligations by legislation include Belgium, France, Greece, Italy, the Netherlands, Poland, Portugal, Spain, Romania and Hungary.

Apart from the Netherlands, where only public service broadcasters are obliged to invest part of their advertising revenue, investment obligations in all these countries apply to both public service and private broadcasters.

2.2. Licensing

Public service and private TV broadcasting license-holders may be obliged to support cinematographic film. The licensing procedure usually provides the opportunity to lay down tailor-made funding obligations for each broadcaster. The Norwegian private broadcaster TV2 is an example. In Switzerland, licenses are granted to private TV broadcasters on condition that certain investment obligations are met. This system is expressly established in the Federal Radio and Television Act.

2.3. Other systems

Investment obligations are often laid down in special film funding agreements. These agreements are signed between broadcasters and state bodies, particularly film funding institutions. An example is the Film/TV Agreement between the Austrian Film Fund and public service broadcaster ORF, establishing co-operation between film and television, in relation to Austrian film production. In Denmark, Germany and Latvia, public service broadcasters are obliged by law to invest in cinematographic film in order to fulfil their public service remit. This obligation has to be discharged through an agreement between the broadcaster and either the government or a state film funding institute. In Denmark, public service broadcasters have signed an agreement under the Broadcasting Act with the Minister for Culture, while those in Germany have concluded a film funding agreement with the Film Funding Institute. Private broadcasters in Germany are also required by the Film Funding Act to sign a film funding agreement.

This combination of a general legal obligation and a separate agreement by which it is implemented is used in Switzerland. The State orders the public service broadcaster to sign such an agreement with partners from the Swiss film industry. This voluntary agreement is designed to fulfil a well-established legal obligation. Swiss radio and television has a statutory obligation to support Swiss film production. Under the terms of its license, Swiss television must stimulate and promote cultural creativity, particularly Swiss film production.

Broadcasting licenses also play a part in the film funding agreements of Swedish broadcasters. Swedish broadcasting licenses contain a general funding obligation which has been fulfilled by means of a film agreement

between the TV companies and the State, film distributors and film producers. Under this agreement, broadcasters must pay monthly contributions. Television and operators' license fees finance the State Television and Radio Fund, from which the Swedish film Foundation receives annual film production aid.

2.4. Voluntary commitments

Voluntary commitments mainly concern public service broadcasters. Their public service remit includes the general obligation to promote public interests, which include cultural objectives, and is always enshrined. By entering into voluntary obligations to support film, public service broadcasters show that and how they mean to fulfil the public service remit. The voluntary commitments of public service broadcasters in Estonia, Ireland and the United Kingdom illustrate the close links between the public service remit and film funding. In all three countries, broadcasting law contains a general obligation which can include film funding.

In the United Kingdom, for example, the Communications Act 2003 contains the general obligation for public service television to fulfil the public service remit, which includes a duty to broadcast feature films. The Croatian public service broadcaster is also obliged by law to support, develop, promote and produce all kinds of national audiovisual works that contribute to the development and production of Croatian art and culture. Private broadcasters are certainly not excluded.

2.5. Forms of investment

Investment support for cinematographic film may be given by various means, such as direct support (own production, co-production, direct funding), or indirect forms like payments into film funds (or similar bodies), payments to film distribution funds, active participation in film funding institutes, taxes (used by the state to support film), broadcasting fees (indirectly used to support film), media services (provision of advertising time, active publicity for cinematographic films, etc), provision of technical equipment or personnel, special access to picture archives, purchase of rights to cinematographic films (including presales).

Ways of calculating how much a broadcaster should contribute are various:

- A proportion of advertising (and sponsorship) income or of the transmission time allocated for advertising;
- A proportion of other income (e.g. subscription fees, state subsidies, income from sale of rights or media services, etc);
- A sum calculated in accordance with the overall programming budget;
- A proportion of the overall annual budget;
- A proportion of gross income;

- A proportion of the broadcasting fee;
- A proportion of the license fee.

2.6. Importance of film funding bodies in the implementation of such obligations

Film funding bodies like film funds and Film Institutes play a crucial role in the relationship between TV broadcasters and film producers. In most countries, broadcasters' film contributions are paid to a film fund or institute. In some countries, broadcasters pay their financial contributions directly to the film funding bodies.

2.7. Impact of broadcasting investment in film production

The impact of broadcasters' film financing is vital as it accounts for almost one-third of all public film aid in Europe. Up to 33% of the budget of public funding bodies is funded from TV contributions, direct public funding by the state accounts for 21% and regional or local administration for 12%.

2.8. Compliance with EU regulations

The Television without Frontiers (TWF) Directive was mentioned earlier in relation to quota requirements and independent production (articles 4 and 5 of the TWF Directive (above). Recital 45 of TWF Directive 97/36¹⁴, states that "the objective of supporting audiovisual production in Europe can be pursued within the Member States in the framework of the organization of their broadcasting organizations, including the obligation to contribute substantially to investment in European production". By this, European law introduces full compatibility between the European regulations and the national rules requiring broadcasters to invest in audiovisual production. In a recent case on Spanish broadcasters' legal obligations to invest, the European Court of Justice confirmed the right of EU countries to compel both public and commercial broadcasters to invest in audiovisual production.

¹⁴ Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

3. Specific examples of legal obligations to invest in production

3.1. France¹⁵

In France, the legal framework is based on the "free" concession of channels in exchange for investment in the production of programming and equal obligations for both public and private channels. "Free" concession means that broadcasters pay no license to broadcast. Broadcasting services have twofold investment obligations in production: direct and indirect. Direct investment means acquisition of rights or co-financing of works (films, TV, fictions). Beside this direct investment in film and TV, broadcasting services, whether public or private, must invest 5.5% of their turnover in a special fund for audiovisual production (COSIP) managed by the National Centre for Cinematography (CNC)¹⁶.

Direct investment in production by broadcasters concerns both cinema and TV production. For cinema, the law¹⁷ provides that broadcasting services must invest (rights' acquisition or co-production) 3.2% of their turnover in European cinematographic works, from which 2.5% must go to French language works. In 2005, it represented for example €32.21m for France2 (main public channel), and €47m for TF1 (main commercial TV channel) (€55m in 2008). In 2004, out of 203 movies, public and commercial broadcasters financed 105 films for a total amount of €124m.

The terrestrial pay channel Canal Plus is required to make more substantial investments because it is a movie channel. Each year, Canal Plus devotes at least 12% of the year's total resources to the pre-purchase of broadcasting rights for European cinematographic works and at least 9% to the pre-purchase of broadcasting rights for "EOF" works. Under a "diversity" clause in the agreement, Canal Plus must put part of its investment into low-budget films – at least 17% of the amount of its obligations in the production of "EOF" works involves films with an initial budget of less than €4 million. In 2004, Canal Plus spent €136.65 million on the pre-purchase of 124 approved films (€130 million in 2008), which meant that Canal Plus' investments represented 17% of all French investment in approved films for that year¹⁸.

¹⁵ Internet sites: Legifrance (<http://www.legifrance.gouv.fr>), Centre national de la cinématographie (CNC – <http://cnc.fr>), Conseil supérieur de l'audiovisuel (CSA – <http://csa.fr>), Directorate for Media Development (<http://ddm.gouv.fr>)

¹⁶ see Freedom of Communication Act No. 86-1067 of 30 September 1986 modified by Act N° 2004

¹⁷ Article 27 (3) of the Act of 30 September 1986¹⁷ : Act n° 86-1067 of 30 September 1986 on freedom of communication, OJ 1 October 1986, amended by Act n° 2004-2669 of 9 July 2004 (OJ 10.07.2004)

¹⁸ See Legifrance (<http://www.legifrance.gouv.fr>), Centre National de la Cinématographie (CNC <http://cnc.fr>), Conseil supérieur de l'audiovisuel (CSA <http://csa.fr>), Directorate for Media Development (<http://ddm.gouv.fr>)

For the investment in audiovisual production (TV), broadcasting channels are required to invest at least 16% of their turnover in French language audiovisual works. This represented €240.63m from TF1 in 2005. France 2 contributes 18.5% of its turnover to European audiovisual works, including 16% to French language works (€184.67m in 2005) and M6 (the second commercial channel) contributes 18% of its turnover to the production of European audiovisual works, including 13.5% to French language works (€95.505m in 2005).

The investment in audiovisual production must primarily be in original drama, creative documentaries, animation and live performance.

A new law provides that in exchange for a reduced length of their license due to the switch to digital TV in 2011, private broadcasters (TF1, M6 and Canal+) will benefit from an additional digital channel on which they will have enhanced investment obligations in production of cinematographic and audiovisual works.

In addition, new frequencies for mobile TV and HD TV services will be subject to an additional contribution of 0.1% of turnover for mobile TV and 0.2% for HD TV to the special fund for audiovisual production (COSIP).

Moreover, the new law will also modernize the fund by enlarging its scope not only to editors of TV services (broadcasters) but also to distributors of TV services in order to include all TV service distribution platforms in a technological neutral way, like cable, satellite or Internet service providers who distribute broadcasting services, especially through triple play offers (Internet access, phone and TV services). The contribution of these distributors ranges from 0.5% of turnover between €10m and €75m to 4.5% of over €530m.

3.2. United Kingdom

OFCOM – the media regulator – has no power "to establish quotas or quantitative obligations for individual broadcasters to produce or broadcast feature films".

There are no legal obligations for broadcasters to invest in film production. A sort of public obligation stemming from the BBC's public service mission urges the BBC to invest £10m in production and buy British and European films (approx. 12 films a year).

The only public service obligation is contained in the Communications Act 2003, section 264, 6 (b): "that cultural activity in the United Kingdom, and its diversity, are reflected, supported and stimulated by the representation in those services of drama, comedy and music, by the inclusion of feature films in those services and by the treatment of other visual and performing arts".

In its review of the Television without Frontiers Directive, the UK Film Council noted under the heading, "Annual obligations of broadcasters": "There are no annual obligations on any broadcasters. However the BBC and Channel 4 have public commitments: BBC is committed to spending

£ 10 million (€ 15 million) on investment in and acquisition of British films (which included European films); this translates into approximately 12 titles per year; Channel 4's Statement of Program Policy, which forms part of its license, is committed to a significant investment in film; in 2002, with the closure of FilmFour Limited, this investment was reduced from around £30 million to £10 million". BBC Film is the feature film-making arm of the BBC. It is firmly established at the forefront of British independent film-making and co-produces approximately eight films a year¹⁹. The BBC uses of 0.7% of its entire program budget towards feature film development and production. In 2002, the BBC invested £ 10 million in feature film development and production.²⁰ The UK Film Council wishes to see the figure increased to £ 40 million per annum.

In February 2006, the BBC and the UK Film Council announced they will join forces to put film and broadcasting at the centre of a brand new partnership²¹. This partnership is underpinned by a signed Memorandum of Understanding between the two organizations. BBC will introduce a new film strategy for broadcast across all its channels and platforms, with a 50% increase in the BBC's budget for film (from £ 10 million a year to £ 15 million a year) and an increase in the proportion of the BBC's acquisition budget allocated to British films with a guaranteed £ 50 million over the next charter period subject to the outcome of the license fee settlement.

BBC strategy is to increase BBC TV channel support for British films with the launch of a new BBC channel strategy for film, including extra commitment to new talent on BBC THREE, increase the proportion of acquisition spend directed to UK film for feature films that could play on BBC ONE and TWO. The BBC will invest a guaranteed £ 5m a year over the next Charter period for this purpose (with scope for a potential further £ 5m a year); BBC wants to help stimulate indigenous British feature film production through a minimum 50 per cent increase to BBC Films' budget.

By the same token, Channel 4 has articulated a comprehensive film strategy. This is linked to its digital service, FilmFour which in 2006 became free-to-view and was joined by a video-on-demand service.

The terms of this strategy include:

- Channel 4's filmmaking arm, Film4, earmarking £10 million each year for investment in development and production. Channel 4 also invests an additional £3-5 million per annum in single dramas and documentaries that are released theatrically.

¹⁹ See <http://www.bbc.co.uk>

²⁰ See <http://www.inside-pictures.com>

²¹ "BBC and UK Film Council announce dynamic new partnership with British films at heart of BBC's film strategy", BBC Press Release of 22 February 2006, available at: http://www.bbc.co.uk/pressoffice/pressreleases/stories/2006/02_february/22/film.shtml

- Film4's development initiatives in partnership with the UK Film Council (UKFC) such as Cinema Extreme and Warp X. Film4 is also involved with four of the UKFC's development super-slates.
- Channel 4 spending more than £ 2 million each year on film-related training, including the British Documentary Film Foundation, the cultural diversity training scheme, Skillset and the National Film and Television School.
- Through the wide range of training, development and production initiatives that it supports, Channel 4 is providing a "training escalator" for new British filmmaking talent, helping them along at each stage of their career path.
- The Film4 channel being available in all UK digital homes, having gone free in July 2006, with a 1% share in multi-channel homes. 40% of its diverse schedule is devoted to British, European and world cinema titles, with some British films enjoying audiences of over half a million viewers.
- Channel 4 continuing to regularly offer the best British films to large audiences on its core channel, while More4 shows a wide range of contemporary documentaries and classic British and other European films.
- Channel 4's VOD service, 4oD, including a dedicated film section with a strong emphasis on British films. The ambition is to make available on demand all the films shown on the Film4 channel along with a deeper archive of related films, under the Film4oD brand.
- Channel 4 thus offering a unique multi-platform approach that expands the range of films available to UK consumers, with smart branding and cross-promotion driving viewers between films on Channel 4, Film4 and other digital channels, and the new 4oD service.
- 4 DVD investing £ 400 000 to re-release a slate of 85 British films from the Film4 back catalogue, with a strong cross-platform marketing campaign. It has also started to reinvest profits back into new British films.
- Channel 4 is an active member of the Media Literacy Task Force, and is expanding its new media activities. FourDocs is a major new media public service initiative that encourages new talent to create short form films. Channel 4 also offers an extensive film website, offering amongst other things the online film show Movie Rush.
- Sky Television is not involved at all in investing in British film: it spends around € 800 million a year on its output deals with the Hollywood majors in order to secure pay-television rights to all their releases.

3.3. Ireland

Ireland is one of the smallest countries in Europe and, as an island, is an isolated country. Ireland was a poor country, but after its integration into the EU, Ireland experienced major development based on new technologies (thanks to the support of EU funding²²). Ireland has also developed a specialty of film production, local productions and films of foreign origin (mainly US). The success of the Irish Film model is widely discussed in Europe as a seeming way for a small peripheral country to switch its economic model from an agricultural to a knowledge economy. Financial tools developed by the Irish authorities are behind this model. Fiscal incentives will be discussed later (see below). The concern here is broadcasters' obligations to invest in productions. Irish law does not oblige broadcasters to invest in cinematographic film.

The Irish Film Board provides development, pre-production and production finance, completion, distribution and marketing funding. It only contributes a maximum of 25% of a film's budget, except in the case of low-budget films. The Film Board's overall budget for 2005 is €14 million. It has a number of schemes including the Regional Film and Television Fund, which aims to encourage audiovisual production in the West of Ireland. It also works in collaboration with other bodies, including the Arts Council, to provide finance for film. In conjunction with the Northern Ireland Film and Television Commission, the Film Board sponsors the "Breakthrough Talent Award", established in 2004.

The Council funds particularly experimental film and community film/video. Its Film and Video Awards Scheme offers €100 000 per annum to film and video projects.

Indirect funding by the State to the film industry comes in the form of tax incentives. Since 1987, successive Finance Acts have made special "section 481"²³ provision for tax relief for investment in cinematographic films to encourage investors to provide finance for the making of films. The Finance Minister renewed it in 2004 for a further five years and increased the upper limit on total investment to €15 million per film. In essence, the section 481 tax provision means a deduction of 80% is available to Irish investors who buy shares in Irish production companies, up to a maximum of €31,750 per year. Section 481 certificates carry requirements regarding employment of Irish personnel and the preparation and furnishing of audited accounts.

There are no legal obligations on public service broadcasters to support cinematographic film as such. Section 4 of the Broadcasting Authority

²² The European Social Fund and European regional fund dedicated to support the less-developed countries in the EU

²³ The section 481 provision is contained in the Taxes Consolidation Act 1997, as amended: www.irishstatutebook.ie

(Amendment) Act 1993 was amended by section 33 of the Broadcasting Act 2001. Section 33 sets the "appropriate amount" to be spent by RTÉ on independent productions at IEP 20 million (€25 million). The amount the RTÉ is required to spend on independent productions at present is around €27 million per year. TG4, the Irish-language television station, established in 1996, invests over €15 million annually in original programming from the independent sector.

While there are no statutory obligations on RTÉ to provide financial support for cinematographic films as such, films funded by the Irish Film Board have had a substantial component of so-called "market money" as an essential element of production finance. This comes in the form of broadcaster investment/license fee, distribution guarantee, pre-sale or sales advance. Filmmakers have succeeded in attracting considerable commercial or external investment, with the result that there has been a very impressive ratio of "external investment" to national film agency support. RTÉ has regularly participated in feature film production with investment ranging from €32 000 to €250 000. RTÉ has been involved in a joint enterprise, called "Frameworks", with the Arts Council and the Northern Ireland Film Council to support animation. RTÉ is also involved in "Short Cuts", a production scheme set up in 1994 to support short film making. There are no legal obligations on private broadcasters.

3.4. Poland

Poland has a range of provisions referring to broadcasters' obligations. Some of these rules stem directly from the implementation of the obligations contained in the Television without Frontiers Directive.

The newly adopted Act on cinematography of 30 June 2005 establishes an indirect support system, aimed at strengthening the domestic cinematographic film market. A body established by this Act, Polski Instytut Sztuki Filmowej (Polish Institute of Film Art) will be responsible for dealing with many different tasks referring to Polish film art support. Co-financing for the preparation of film projects, film productions, film distribution and dissemination, as well as promotion of Polish film creativity and popularization of film culture are expressly included among its tasks. Co-financing of projects by the Institute cannot exceed 50% of the film budget. The new Act provides that broadcasters, digital platform operators, cable television operators, cinema owners, distributors selling or renting film copies in tangible form, as well as enterprises controlled by a commercial body of the aforementioned entities receiving revenues from the activities described in article 19 sec.1-5 of the Act on cinematography, have to make payments in the form of a given percentage of their revenues from certain types of commercial activities (amounting to 1.5%) to the Polish Institute of Film Art.

The public service television broadcaster is obliged to invest not less than 1.5% of its annual revenues obtained from license fees in film production.

3.5. Hungary

The law determines which broadcasters are obliged to contribute to the national film production industry. Both types of broadcasters have to meet the same requirements concerning direct and indirect film funding. If a broadcaster chooses to fulfil the quota specified in the law by direct film funding, it has to spend a set proportion of its advertising revenue directly on film production.

If a broadcaster chooses to fulfil the quota specified in the law by indirect film funding, it has to pay a set proportion of its advertising revenue to a state fund which supports film production.

National and regional television broadcasters, with the exception of broadcasters specializing in programs other than cinematographic works, must allocate six percent of their advertising revenues to the creation of new Hungarian motion pictures. At least half of these must be feature films, documentaries, popular scientific films and animation films, and thirty percent works that are made by others.

If a broadcaster chooses direct film funding, it has to invest in the production of the following genres: cinematographic feature, documentary feature, popular scientific film or animation film. The provision does not specify the national origin of the productions in question; consequently they can be Hungarian films, co-productions with Hungarian participation or other films with Hungarian participation. The Act specifies a quota (30%) for "works made by others". This provision covers works that were not made by the broadcaster itself.

If a broadcaster chooses indirect film funding, it can pay its statutory contribution to a state fund - chiefly the Motion Picture Public Foundation of Hungary, the biggest national public foundation dedicated to supporting film production. If a broadcaster chooses indirect support, the amount paid will be counted twice, which in practice means that only 3% of the advertising revenues will be paid.

4. Conclusions

Cases studies show that **investment by broadcasters is becoming a standard means of funding audiovisual production in Europe**. Most of these funding schemes are concentrated on cinematographic works productions. In a way, the focus on cinema remains part of the European cultural heritage.

As in Ancient Greece, where all cities were proud to compete in the Delphic Games, European countries (even small ones) like to produce cinematographic works in order to exhibit them at big cinema festivals – which, incidentally, have been historically founded in Europe and remain very popular with the world media: Cannes, Venice, Berlin - although other film festivals have been founded in America and in Africa (the well-known FESPACCO).

Countries take great pride in national films winning awards (Cannes Palme d'Or, Venice Leone d'Auro, Berlin Golden Bear, etc. proof of European countries' continuing great attachment to their cultural expressions).

5. Recommendations

Public broadcasters appear not only to be broadcasters but also investors and even producers or co-producers of audiovisual content. The need to **strengthen the public broadcasting system in Caribbean countries** is a major issue and a precondition for developing an audiovisual industry. Local commercial networks need to be developed and encouraged but, in exchange for a license, they need to make every effort to invest in the local audiovisual industry.

Recommendation n° 4

Caribbean countries need to implement obligations for broadcasters, cabling distributors and webcasters to invest a percentage of their turnover in audiovisual content production.

The law needs to fix precisely the conditions of such investments:

- The rate on annual basis;
- The beneficiaries (independent audiovisual content producers);
- The material (feature films, TV series, documentaries, cartoons, etc.);
- The eventual return on investment for investors (right to acquire broadcasting rights for a fixed period);

Technical assistance from the EU and other donors to help national Caribbean authorities to implement such obligations is required (see recommendations on technical assistance).

Creation of a statutory body (center for cinema funding) dedicated to the administration and control of funding by broadcasters.

VI. INCENTIVES

1. Background

A number of European countries support the film and audiovisual sector by means of tax breaks, known as "tax incentives", "tax shelters" or "tax credits". Tax shelters are a method of reducing taxable income resulting in lower payments to tax collection agencies. These new kinds of system – mostly designed to help film production and audiovisual production – were mostly implemented in the 1990s and early 2000s. In a way, these incentives constitute a "new generation" of legal financial measures to help the film industry. The first generation of measures aimed at helping the film and TV industry was direct subsidies provided by the authorities to their local producers. These measures still exist. The second generation was the provision of film and audiovisual financing by legal obligations on broadcasters (either commercial or public) to invest (see above).

Incentives are a third generation of means of financing film and TV productions. Fiscal incentives have a twofold purpose:

- Levying money from taxpayers (individuals or companies, related to the different kind of loans) in order to finance film or audiovisual production;
- A different aim of attracting or keeping shooting on the domestic market.

These incentives are legal measures set up by governmental authorities related to fiscal regimes. In most of the systems, individuals or/and companies, instead of paying tax, are making the choice to invest in film and audiovisual production. It is a costly system for public finance as it results in a lack of tax payment to the treasury. In compensation, governments want either to support their local film industry or / and to attract foreign film production onto their territories. This is clearly a system for wealthy countries with reasonably substantial State budgets. Eight countries in Europe – Italy, Spain, Germany, Belgium, Luxembourg, France and Ireland – have recently established such frameworks. Examples from Belgium, France, Luxembourg, Ireland, Hungary, Germany and the UK will be considered here.

2. Case studies

2.1. Belgium

Belgium has set up a tax shelter to encourage investment in Belgian audiovisual works by Belgian audiovisual companies. These fiscal measures

were first introduced in 2002²⁴. When investing in a Belgian audiovisual production, a Belgian company or a foreign company to which Belgian income tax regulations apply can receive a tax benefit. The investing company can deduct 150% of the investment from its taxable profits. However, the maximum tax-deductible amount must not exceed €750,000 in one fiscal year; this corresponds to an investment of €500,000. Furthermore, the tax-deductible amount itself must not exceed 50% of the company's profits in any fiscal year²⁵. Investments under these tax shelter rules can be made in two different ways: by granting a production loan or investing/participating in the production (and the profits it would generate). Not more than 40% of the total budget raised from this tax shelter financing can come from loans. This means that a minimum of 60% of the budget raised from tax shelter financing needs to be contributed in the form of investment/participation in production.

The total production budget can only be 50%-funded from tax shelter investment. The other 50% has to be raised by the production companies themselves. The production company must spend 150% of the amount allocated by the investor within 18 months of signing the financing agreement. Tax shelter investments can only be made in the production of movies, feature length television fiction movies, documentaries or animated movies destined for movie theatres, and animated series or documentaries which are European works, as stipulated in Article 6 of the "Television without Frontiers" Directive (see above)

2.2. France

France has three different types of fiscal incentives for film and audiovisual production.

- One is a funding structure based on a tax deduction for investments made by individuals or companies - the SOFICA.
- Another is a tax credit for producers. Tax credit means that to some extent producers will not pay tax on the income from these productions.
- Another system created in 2009 aims to attract shooting of foreign productions and co-productions in French territories²⁶.

²⁴ Law of 2 August 2002 and amended by law of 22 December 2003 and law of 17 May 2004;

²⁵ Belgium:

- 1992 Income Tax Code.
- Circular n° Ci. RH 421/566.524 of 23 December 2004.
- www.fisconet.fgov.be; www.cfwb.be/av/; www.vlaanderen.be/media;
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²⁶ **Sources: France**

1. General Tax Code
2. Act n° 85-695 of 11 July 1985 containing Various Economic and Financial Provisions, JO 12-07-1985.

.2.2.1. SOFICAs

SOFICAs may be defined as investment funds for films or audiovisual works qualifying for tax concessions. SOFICAs serve as intermediaries, collecting funds to be invested in the financing of films or audiovisual works approved by the National Film Center (Centre National de la Cinématographie, or CNC). As far as their legal status is concerned, SOFICAs are limited liability companies whose sole activity is the capital financing of films or audiovisual works. SOFICAs must be appointed by the French Ministry of Culture. Two forms of investment are allowed: cash payments under a deed of partnership in the production or capital subscriptions to film or audiovisual production companies.

The law provides that their shares cannot be traded within five years of the date of acquisition. The tax concession is lost if shares are disposed of within five years, as the amount previously deducted is added back to the company's taxable income for the year in which they are sold. SOFICAs are entitled to revenue from the future release of the works in question; the return on their investment fluctuates considerably, as it is wholly dependent on the film's success. SOFICAs are aimed at large taxpayers.

Individuals who are French tax residents have the option of deducting sums paid as capital subscriptions to SOFICAs from their total net income. Such deductions are capped at 25% of that income and limited to €18,000 per tax household. Companies subject to corporation tax can write off 50% of the capital invested in the first year. This is a one-off write-off of the cash sums actually paid for a subscription to the share capital of a SOFICA. Subscriptions by partnerships (not subject to corporation tax) do not qualify for this deduction. In 2006, SOFICAs raised €32.8 million.

.2.2.2. Tax Credits for French Film Production

Tax Credits for French film production were introduced in 2004 for certain film production expenses. This arrangement applies only to production companies for films produced in France, and was designed to keep national film production in France. To qualify, film production companies need to be subject to corporation tax in France, hire technical operators of French or

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3. Decree n° 99-130 of 24 February 1999 on Financial Support for the Film Industry, JO 25-02-1999, consolidated version of 21 March 2006.
 4. Decree n°2006-317 of 20 March 2006, pursuant to Articles 220 *sexies* and 220 F of the General Tax Code relating to Tax Credits for Expenses Incurred in the Production of Films and Audiovisual Works and amending Appendix III to that Code.
 5. Decree n°2006-325 of 20 March 2006 on the Implementation of Articles 220 *sexies* and 220 F of the General Tax Code relating to Tax Credits for Expenses Incurred in the Production of Films and Audiovisual Works and amending Appendix III to that Code.
 6. www.ddm.gouv.fr; www.impots.gouv.fr; www.finances.gouv.fr; www.ina.fr; www.legifrance.gouv.fr; www.service-public.fr

European nationality, and shooting and post-production must take place in France. Films and audiovisual works in the fiction, documentary and animation genres qualify if they meet the following criteria: made entirely or mainly in the French language or a regional language in use in France; accepted for the financial support scheme for the production of films or audiovisual works; made mainly in France and contribute to the development and diversity of the French and European film and audiovisual industry.

The tax credit for each financial year amounts to 20% of total eligible production expenses incurred as part of operations carried out in France. The value of the tax credit is subject to a dual limit. Firstly, the base figure for eligible expenses is limited to 80% of the work's total production budget. The credit for a single work cannot exceed €1 million in the case of films, €1150 per minute produced and delivered in the case of fictional or documentary audiovisual works and €1200 per minute produced and delivered in the case of animated audiovisual works. The tax credit is applied to the corporation tax payable by the delegated production company for the financial year in which it incurred the eligible expenses. It is applied on the date corporation tax is paid.

.2.2.3. Tax Credits for Foreign Productions

The 2009 Finance Act introduced a new tax incentive to attract foreign productions and co-productions onto French territory. The measure is addressed both to the cinema film and TV industries, and will benefit executive producers who are liable to French corporation tax on their fiction/drama and animated works provided they meet 3 criteria: they must not be receiving financial support for production; their dramatic content must include elements connected with French culture, heritage or territory; and they must have eligible expenditure of more than one million Euros made in respect of them, and for works in the fiction genre at least 5 days' shooting in France. The tax credit is equal to 20% of the total amount of expenditure on operations carried out or services provided in France. The measure aims to attract international co-productions, but also to support French-foreign co-productions shot in France in French using French actors, which do not qualify for the many forms of financial assistance available in France.

2.3. Luxembourg

Luxembourg has introduced audiovisual investment certificates to attract risk capital investments in audiovisual production in Luxembourg²⁷. Joint-

²⁷ [Luxembourg](#)

stock companies qualify if they are approved, resident and fully taxable. Their main object must be audiovisual production, and they must actually produce audiovisual works. As well as the main beneficiary, substitute beneficiaries and endorseees of audiovisual investment certificates must also have the legal form of joint-stock companies.

Audiovisual investment certificates are issued only for completed works that meet the following criteria:

- They must contribute to the development of the audiovisual production sector in the Grand Duchy of Luxembourg. The law requires a reasonable degree of proportionality between the concessions granted and the long-term economic, cultural and social spin-offs of the production of such works;
- They must be designed to be made mainly within the Grand Duchy of Luxembourg;
- They must be released or co-released by the production company; in particular, this means the company must actually hold a significant share of the rights for an indefinite period;
- They must offer reasonable prospects of a return on investment.

The scheme is administered by the National Support Fund for Audiovisual Productions (Fonds National de Soutien de la Production Audiovisuelle, or FONSPA). This is the government agency responsible for supporting the production, co-production and distribution of works of Luxembourg origin, by means of financing arrangements established under national legislation. It was renamed Filmfund after being restructured in 1999. Interested production companies submit a written application to the Fund at least six weeks prior to commencing work on the audiovisual production in question. The Fund's board of directors examines the application and forwards it to the competent ministers, who decide whether the project qualifies. Audiovisual investment certificates are issued by a joint decision of the competent ministers, on the advice of the Fund. Holders are entitled to a tax rebate capped at 30% of their taxable income. The procedure and basis for calculating eligible expenses are set out in the Grand-Ducal Regulation of 16 March 1999 implementing the Act of 13 December 1988

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- Act of 13 December 1998 introducing Temporary Special Tax Rules for Audiovisual Investment Certificates, amended by the Act of 15 March 1993 and the Act of 21 December 1998.
 - Act of 11 April 1990 establishing a National Support Fund for Audiovisual Productions.
 - Grand-Ducal Regulation of 16 March 1999 implementing the Act of 13 December 1988 (as amended) introducing Temporary Special Tax Rules for Audiovisual Investment Certificates.
 - Grand-Ducal Regulation of 16 March 1999 implementing the Act of 11 April 1990 (as amended) establishing a National Support Fund for Audiovisual Productions.
 - www.filmfund.lu; www.impotsdirects.public.lu; www.cna.public.lu; www.legilux.public.lu

(as amended) introducing Temporary Special Tax Rules for Audiovisual Investment Certificates.

Audiovisual investment certificates are not transferable and may be endorsed only once. They cannot be split. Their value cannot exceed the total financial contributions made by the applicant company, as specified in the final financing plan for the audiovisual work. It is calculated on the basis of the production costs actually incurred and the amount spent within the Grand-Duchy of Luxembourg. They cover only a certain proportion of costs and expenditure.

2.4. Ireland

Ireland's Section 481 provision was created in 1993. It is a tax allowance automatic scheme. The film does not need to be Irish, it is the spend criteria that matters.

- Projects can benefit up to 20% (for an indigenous film) 18% (more often) of their qualifying expenditure (approx 10%-12% of the budget) as a tax credit;
- 82% of the budget must be in place;
- there is a ceiling of €35 M on qualifying expenditure per project;
- section 481 benefit is made available to the production on the first day of principal photography;
- Qualifying expenditure means the cost of the EU cast and crew working in Ireland, and goods and services purchased in Ireland.

A foreign producer must team up with an Irish-based co-producer. The Irish co-producer applies to the Irish Revenue Commissioner for a section 481 certificate. The issue of this certificate allows the section 481 finance to be raised by the Irish co-producers from financial institutions and advisors. Financial and intermediaries' fees are so high as to make section 481 not worth using for budgets under €1 million. At the time it was created, the country was poor, so that €31,700 was the maximum investment (requiring a large number of investors) and a completion bond was required.

25 productions / year include TV, and many animation projects are eligible.

2.5. Hungary

In Hungary, a tax allowance automatic scheme was created in 2004. As in Ireland, the criterion is: expenditures, not the nationality of the production. Financial costs are eligible.

It is a cash contribution of up to 20% of the Hungarian spent of the budget;

- Hungarian and Non-Hungarian co-productions qualify, if shot in Hungary;
- a non-Hungarian producer enters a service or co-production agreement with local producer which is registered with the National Film Office. The local producer must register the production with the NFO and certify the production costs paid in Hungary;
- Once the NFO delivers a tax certificate, a local financier can disburse the face value of the certificate and reduce its annual corporation tax liability. Since 2004, more than 200 co-production and small budget projects have received help.

Specialized film groups or individual companies with a sufficiently large corporation tax liability raise the money. The Hungarian tax credit can only be used for production-related costs incurred and paid within Hungary. Above-the-line costs may only be covered if the individual pays personal income tax in Hungary. A completion bond is needed in case of a co-production. Hungarian authorities seek to increase the number of films produced - partly or entirely - in Hungary in order to strengthen the Hungarian audiovisual industry (by increasing the production capacity of the country and the number of experts employed in this sector) and thus to generate a positive impact on the entire economy.

2.6. Germany

The new German spend system was created in 2007. More than a tax incentive it is a discount system. No private investors are involved in it.

- 20% of eligible German costs for EU co-production or German film (cultural test).
- 75% of the financing cost has to be in place.
- Need to spend 25% of the production budget in Germany (20% for budgets > €20M).
- Need to start production within three months after receipt of the certificate.
- The budget must be a minimum of €1M (€200,000 for documentaries)
- It can be paid in three equal parts during production, but in that case a completion bond will be needed.

Money comes from a new government fund, the DFFF. €80 M/year for three years has been allocated. A German distributor (with a history of 3 films) for at least 30 prints during a week is requested. It is hard for co-productions to spend the 25% in Germany. No TV projects are eligible.

2.7. United Kingdom

The UK tax credit scheme replaced the sale & lease back scheme in 2006. It is an automatic scheme based on spends in the UK regardless of the nationality. UK spend does not include development spend and legal and financial fees.

- For films up to £20M the rate will be a net 20% (one can claim for 100% of his/her UK expenditure by the UK co producer).
- The tax credit is payable directly to producers.
- For larger budgets, the rate will be a net 16% (you can claim for 80% of your UK expenditure by the UK co-producer).
- Minimum expenditure is 25% (including non UK co-producer spend) to qualify for the credit.
- The production company responsible for the film needs to be within the UK corporation tax net.
- Completion bonds are always needed in the UK to attract investors.

Eligible productions must comply with the following obligations:

- Films must have a British distributor.
- Films must have passed the British cultural test or be a British co-production.
- Achieve a minimum of 25% of UK expenditure.

Producers have expressed reservations about the new cultural test films need to pass before they can access the tax relief. The producer gets the money at the end of each financial year. The UK tax credit is not available for TV projects.

2.8. Puerto Rico

With a view to attract film production and foster economic development and incentives, many states and territories of the US, including Puerto Rico²⁸, have enacted legislation that provides for tradable film production tax credits. It means that film production companies earn a transferable tax credit on the total eligible production costs. The tax credit is directly issued to production companies.

²⁸ Iowa (tax credit: 50%), Puerto Rico (40%), Connecticut (30%), Massachusetts (25%), Rhode Island (25%), Illinois (20%), New Jersey (20%).

In Puerto Rico, a tax credit is granted to the investors of a film project equivalent to 40% of budget items paid to Puerto Rico residents. Films and TV projects can get a 40% tax credit on local spends such as equipment, crew, actors, travel, hotels, stage ground rental. Development and post-production can also qualify.

The tax incentive was set up in 1999 and became internationally known thanks to the film commission and local industry's promotion actions. The tax credit on local spends has unmistakably placed Puerto Rico at the top of film locations. Still being a US commonwealth (since 1952), Puerto Rico represents attractive locations for film shooting. No visas or passports are needed for US cast or crew, and for international crew, the usual US visa process is straightforward. In addition, local crew and equipment are involved in film productions as much as it is possible, in order to maximise the rebate.

The Puerto Rico Film Commission works with the Puerto Rico treasury department to administer the tax credit. Besides, the Puerto Rico Tourism Company plays a vital part in the growth of the island's film industry. The Tourism Company focuses more on films that shoot Puerto Rico as itself and illustrate an aspect of the island's culture, whereas the Film Commission focuses more on projects which use Puerto Rico to double for somewhere else. However that may be, it is clear that films that are shot but not set in the island can still be useful for tourism.

3. Conclusion

Tax incentives are a new generation of support mechanisms for the audiovisual sector in Europe. At least two conditions are required:

- Taxpayers (individuals or companies) are able or willing to invest in the content industry;
- An offer of production material that will attract investment, i.e. quality film, series or documentary projects, as investors often expect a shared return on investment.

While some Caribbean countries need to concentrate their budget revenue on infrastructure, public health and public education, others may have the capacity to develop such incentives to boost their local audiovisual production with the knock-on effect of developing high quality jobs in creative industries.

4. Recommendations

Recommendation n° 5:

Incentives based on tax breaks are a solution that can be recommended for implementation in some Caribbean countries. Technical assistance from the EU is needed to identify countries with the right profile to enter into and implement such legal commitments.

VII. CO-PRODUCTIONS

1. Background

In a study on the place of third countries' film and audiovisual works in European markets²⁹ (May 2008), the European Audiovisual Observatory (EAO) confirmed the positive role played by co-productions with regard to market access: 54% of Latin American films and 42% of African films that have accessed the European market are majority co-productions with Europe. If the co-productions where Latin American or African countries are minority co-producers are also taken into account, the proportions rise to 64% and 74% respectively. In terms of the number of admissions, films co-produced between third countries and EU countries are more successful than those that have not been co-produced. For example, the average number of admissions in the EU for a Canadian film is 58,281, while co-produced (majority Canadian co-production) films averaged 377,818 admissions. The same holds good for African-only films, with 19,495 admissions, while African majority co-productions achieve 81,681 admissions. European majority co-productions on African works amount to 37,966 admissions. Likewise for Latin America, where a co-production (EU majority) film achieves 119,311 admissions compared to 21,316 admissions for a non-co-produced film. The EAO study reveals a new finding: **co-production is not only a way to finance works, but also to facilitate more successful access to the EU market.**

Europe is not structured as one single market for film exhibition and distribution. Exhibition and distribution are specific to each national market (which corresponds to a linguistic market). The 5 big distribution markets are France, the UK, Germany, Spain and Italy. France is the most open market for co-produced works. The EAO study shows that for the period 2002-2006, 525 non-EU films were distributed in France, 520 in the UK, 344 in Spain and 206 in Italy. The best market share is obtained in France (3.6%), followed by Spain (3.1%), the UK (2.9%) and Italy (2.3%). The non-EU films concerned sold 30 million tickets in France for a total of 850 million tickets over the period 2002-2006, Spain 25 million tickets, Italy 11 million tickets, and Germany 10 million tickets for non-EU films for a total 651 million tickets sold. All these figures show the **growing importance of films from third countries on EU markets**. 1,324 third country films were distributed between 2002-2006 accounting for 18.5% of all new titles distributed. The proportion of third country films rose from 14.7% in 2002 to 21% in 2006. Of the 1,324 films distributed in the EU, 546 are of Asian origin, 172 from Latin America, 114 from Canada, 56 from the Middle East, 50 from Oceania and 33 from Africa (the other 319 are non-EU European

²⁹ "The place of third country film and audiovisual works in European markets". Report prepared by the European Audiovisual Observatory for European Day 2008, Martin Kanzler and André Lange, May 2008

films³⁰). Asia includes China (43 films), India (248 films) and Japan (122 films)³¹

With regard regulatory conditions to access theatrical exhibition, as mentioned earlier (see above), no quota requirement for theatrical exhibitions is imposed in the EU. Access to the theatre market is "free" subject to market pressure. Market pressure means the pressure of the US film industry on exhibitors, including by unlawful means through practices such as blind booking and block booking, which are difficult to identify and get around.

Co-production is a joint-venture between two or more producers. Theatrical exhibitions remain the main gateway in EU access to other distribution channels (DVD, pay-TV, free-to-air TV) as distributors usually buy the rights of exploitation for the different "windows" (theater, DVD, pay-TV, free-to-air TV....), and exploitation usually starts with theatrical exhibition. Theatrical exhibition is seen as a tool to promote and market films for sale along the entire window (as theatrical exploitation may attract newspaper reports, critical reviews and even TV reports).

To have a grasp of the presence of third country films in TV, DVD, VOD, the following figures are presented below: 86,739 feature films were broadcast on 118 TV channels in eleven EU countries in 2006. 3,624 feature films originated from third countries (other than the US). 780 films originated from Canada, 666 from Japan, 493 from Australia and New Zealand. Belgium, Sweden, Ireland and UK TV are the broadcasters who show the greatest proportion of films from third countries (Belgium: 9.7% to UK 4%). It is difficult to calculate the real audience as studies amalgamate free-to-air TV and pay TV (which normally attracts a small audience).

DVD is an important access route for works from third countries.

African, Arabian and Asian films are available on DVD in most EU countries and in big European cities, where specialized retailers have a special "world cinema" DVD section. However, the category of "world cinema" is ill-defined since it mixes films from different parts of the world.

Video On Demand (VOD) services are growing in Europe. Large countries may have up to 7 to 10 VOD services offered to the public. These VOD

³⁰ The EU links together 27 Member States. Some are associated via EFTA (Norway, Switzerland agreement).

³¹ The EAO has compiled a database - LUMIERE - to scrutinize admissions to film releases in Europe. This database can be accessed free of charge at <http://lumiere.obs.coe.int> The problem in finding out about admissions to theatrical exhibition in third countries is that there is usually no public access to such information. Data are collected by commercial entities (e.g., Nielsen Institute in Amlat, which sells the information commercially). Collection and processing of data in order to assess AV sector development is also a necessary part of policy to improve the AV industry in most countries. Recommendations will be made on this.

services have a high proportion of films from third countries³². However, the VOD market is still in its infancy as piracy of works remains high and is blocking the development of pay-per-view.

2. Legal aspects of film co-production³³

2.1. Introduction

In a co-production contract, two or more parties agree to:

- (a) collaborate and pool goods, rights or services in order to produce an audiovisual work of some kind,
- (b) attribute ownership of the rights in the audiovisual work resulting from such collaboration, and
- (c) make joint use of the work and share the profits (or losses) arising in agreed proportions.

Co-production makes it possible to combine forces and consequently create a work that either of the co-producers alone would find it difficult to create in any other way.

A distinction must be drawn between co-production and ordinary financial participation, in which the "financial partner" (also called the "financial co-producer") participates in the results of exploiting the audiovisual work without being a co-owner of its constituent elements. Moreover, not all producers who participate in a production are in fact co-producers – only those who have specifically agreed to this in a contract.

The legal nature of co-production may vary considerably, depending on the form agreed in the contract (an unregistered company, a corporation, a partnership, an agreed share in the accounts) and they may even assume different forms at successive stages. The fiscal consequences of adopting one or other form also differ; the advice of a tax consultant should therefore be sought as a first step. Co-production may be undisclosed (where a third party participating with the producer in the results of the production has no desire to be known to third parties, for example, under a participatory account contract) or disclosed (where the co-producers are

³² A first study on VOD was commissioned by EURO CINEMA and FERA from NPA Conseil: "The development of VOD in Europe", May 2006. A second survey on VOD was done by NPA Conseil for the European Audiovisual Observatory, January 2008.

³³ "Legal Aspects of International Film Co-Production", by Enric Enrich, Lawyer, http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en. This report does not set out to discuss contractual conditions of co-productions. On this, see "Cinema and Television - International Coproduction Contracts: Legal Problems and Information Needed", Michel Györy - European Centre of Research and Information for the Cinema and the Audiovisual Sector, Brussels, February 1995 <http://www.obs.coe.int/>

known to be such). Given the lack of clear legal rules governing such a contractual relationship, it is of the utmost importance that the agreements reached by the parties should be set out clearly in the contract so that the relationship between the co-producers cannot be determined by a court decision based on legislation that may not be the most appropriate to the circumstances.

2.2. International co-production

International co-production means co-production in which the co-producers are from different countries. The case may arise of a foreign producer merely making a contribution but not being qualified as a co-producer, or again s/he may be considered as such but the audiovisual work of which s/he is a co-producer is not considered as having the nationality of his/her country.

International co-production has the advantage of the audiovisual work being produced by persons who are established in the various countries and are well acquainted with the national markets where the work is to be shown. The work also has the advantage of being considered a "national audiovisual work" (and therefore eligible for aid and subsidies) in the co-producers' respective countries.

Its disadvantage is that it is more complex in both practical terms (different languages, ways of thinking and working, physical distance) and legal terms (different legal systems have to be harmonized).

2.3. International co-production agreements

International co-production agreements, whether bi- or multi-lateral, enable an audiovisual work produced by a number of producers established in the States party to the agreement to be considered a "national audiovisual work" in each State, and the work may thus obtain advantages and aid from each State³⁴.

3. Co-production in the framework of EU law

The Television without Frontiers Directive first introduced a definition of European works that under certain conditions covers works of third countries.

³⁴ The EAO has recently published information on all bilateral European co-production agreements existing between the various countries in Europe on its website. The available co-production agreements can be downloaded from the Observatory's freely consultable IRIS MERLIN database: <http://merlin.obs.coe.int/> by searching under the topic: *Film - Co-production*. For each co-production agreement the database gives a summary of the content as well as contact details in each country for further information and the date on which the agreement entered into force. In addition, the full text version of each agreement (where available) can also be downloaded (in many cases in both languages).

"(iii) Works that are not European works within the meaning of point (i) but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the Community supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States."

Bilateral co-productions fall under the definition of European works provided the European co-producers supply a majority share of the total production cost and the co-production is covered by bilateral co-production treaties concluded between Member States and third countries. In this case, to be deemed a European work under article 6 of the Television without Frontiers Directive, a work must fulfil two conditions:

- A majority share of the total production cost must be European-owned;
- A bilateral co-production agreement is needed.

4. Co-production under the Protocol on Cultural Cooperation EU-CARIFORUM (PCC)

Co-productions between European and CARIFORUM producers are covered by another provision of this definition:

" - works co-produced within the framework of agreements related to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements"³⁵

³⁵ AVMS directive, 2007/65/EC, 11 December 2007, Article 1, n) i) third indent:

(i) "European works" means the following:

- works originating in Member States,
- works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of point (ii),
- works co-produced within the framework of agreements related to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements,

- application of the provisions of the second and third indents shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned;

(ii) The works referred to in the first and second indents of point (i) are works mainly made with authors and workers residing in one or more of the States referred to in the first and second indents of point (i) provided that they comply with one of the following three conditions:

- they are made by one or more producers established in one or more of those States, or

The new provision was introduced in the latest revision of the Television without Frontiers Directive, renamed the Audiovisual Media Services Directive. Under the new definition, for a work to be treated as a European work "agreements" related to the audiovisual sector need to have been concluded between the Community and third countries.

This first condition – the existence of an "agreement" – is fulfilled in the case of the EU-CARIFORUM Protocol on Cultural Cooperation, since the Protocol corresponds to what is envisaged by the EU legislation.

Article 5.2 of the PCC directly reflects this provision:

Article 5 - Audio-visual, including cinematographic, cooperation

2. The Parties and the Signatory CARIFORUM States, in conformity with their respective legislation, shall facilitate the access of co-productions between one or several producers of the EC Party and one or several producers of Signatory CARIFORUM States to their respective markets, including through the granting of preferential treatment, and subject to the provisions of Article 7 of this Agreement, including by facilitating support through the organization of festivals, seminars and similar initiatives.

Article 5 is reinforced by a direct reference to Article 7 of the Economic Partnership Agreement (EPA)³⁶ and by reference to preferential treatment (Article 5.2 of the PCC)³⁷.

— production of the works is supervised and actually controlled by one or more producers established in one or more of those States, or

— the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States;

(iii) Works that are not European works within the meaning of point (i) but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the Community supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.’;

³⁶ Article 7 of the EU-CARIFORUM States / Development cooperation EPA

1. The Parties recognize that development cooperation is a crucial element of their Partnership and an essential factor in the realization of the objectives of this Agreement as laid down in Article 1. This cooperation can take financial and non-financial forms.
2. Development cooperation for regional economic cooperation and integration, as provided for in the Cotonou Agreement, shall be carried out so as to maximize the expected benefits of this Agreement. Areas of cooperation and technical assistance are set out, as appropriate, in the individual Chapters of this Agreement. Cooperation shall be implemented according to the modalities provided for in this Article, shall be kept under ongoing review and shall be revised as necessary according to the provisions of Article 246 of this Agreement.
3. The European Community financing pertaining to development cooperation between CARIFORUM and the European Community supporting the implementation of this Agreement shall be carried out within the framework of the rules and relevant procedures provided for by the Cotonou Agreement, in particular the programming

Article 5.2, a) 1, 2 & 3 aims at specifying the conditions of such co-productions:

- the co-produced audiovisual works are realized between undertakings which are owned and continue to be owned, whether directly or by majority participation, by a Member State of the European Union or a Signatory CARIFORUM State and/or by nationals of a Member State of the European Union or nationals of a Signatory CARIFORUM State;
- the representative director(s) or manager(s) of the co-producing undertakings have the nationality of a Member State of the European Union and/or of a Signatory CARIFORUM State;
- both (a) the total financial contributions of one or several producers of the EC Party (taken together), and (b) the total financial contributions of one or several producers of Signatory CARIFORUM States (taken together) shall not be less than 20 % and not more than 80 % of the total production cost.

The first indent lays down a condition related to the nationality of the producers or of the company which needs to be European or Caribbean owned.

The second indent fixes the nationality of directors / managers of the co-production company.

The third indent is important since it defines the minimum (20%) or maximum (80%) amounts that both parties must raise to co-produce. The

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- procedures of the European Development Fund (EDF), and within the framework of the relevant instruments financed by the General Budget of the European Union. In this context, supporting the implementation of this Agreement shall be one of the priorities.
4. Commensurate with their respective roles and responsibilities, the European Community and the Signatory CARIFORUM States shall take all measures necessary to ensure the effective mobilization, provision and utilization of resources aimed at facilitating the development cooperation activities provided for in this Agreement.
 5. The Member States of the European Union collectively undertake to support, by means of their respective development policies and instruments, development cooperation activities for regional economic cooperation and integration and for the implementation of this Agreement in CARIFORUM States and at the regional level, in accordance with the complementarity and aid effectiveness principles.
 6. The Parties shall cooperate to facilitate the participation of other donors willing to support the cooperation activities referred to in paragraph 5 and the efforts of the CARIFORUM States in achieving the objectives of this Agreement.

7.

³⁷ Preferential treatment is a cornerstone of the implementation of the UNESCO Convention on the protection and promotion of the diversity of cultural expressions. This key concept, which is central to cultural cooperation, will be discussed in the chapter on implementation and recommendations on the Protocol on cultural cooperation.

Article 16 of the UNESCO Convention on the protection and promotion of the diversity of cultural expressions, Preferential treatment for developing countries: *"Developed countries shall facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries"*.

20% - 80% balance is the current practice for co-production agreements made between EU countries and developing countries (See co-production agreements between Senegal and France, Burkina Faso and France, Cameroon and France, Jamaica and the United Kingdom, based on a 20% - 80% investment balance).

The main consequence of Article 5 for co-productions between EU-CARIFORUM producers is that works will be considered "Made in Europe" and classed as European works.

Classification as a European work has certain **advantages**.

- The first is that co-produced works need not be "covered" by a bilateral (national) co-production agreement. The obligation to collaborate with a European producer as defined in Article 6 ii) is sufficient.
- The second is that the European producer does not need to be the majority stakeholder for the work to qualify as European, as was the previously the case (see above). The only limitations are the 20% - 80% participation limits.
- Access to the European quota for local content made in Europe. Co-produced CARIFORUM-EU works will be counted as European works (giving easier access to the European TV and online (VOD) markets).

As regards **Media program** support for works produced "predominantly" by a producer established in a country participating in the Media program.

Preferential treatment means that works which are co-produced even though "predominantly" European-produced will be treated as European films³⁸ and can access Media program support for various things:

- Development;

³⁸ see definition of a European film:

"European films" are cinematic works or feature films (including animated films) or documentaries, which are at least 60 minutes long and meet the following conditions:

- the work has been produced predominantly by a producer / producers established in the countries that participate in the MEDIA programme;

- the work has been produced with contributions from a significant number of professionals who are nationals of the countries that participate in the MEDIA programme.

European countries that participate in the MEDIA programme : Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom.

Films from countries that have ratified the Council of Europe's Convention on Transfrontier Television shall also be considered to be European films, in particular: Croatia, Moldavia, San Marino, Macedonia, Turkey, the Vatican.

Advertising films, pornographic and racist films, and films inciting to violence are excluded from this category".

- Theatrical exhibition;
- Film distribution;
- Audiovisual distribution;
- Training³⁹.

However, the granting of preferential treatment in this area needs to be clarified. Preference will encourage Caribbean producers to produce with European producers and at the same time will reward European producers for their collaboration with Caribbean producers. This preference, as such, is an important concession for the full application of preferential treatment. The EPA, to which the PCC is annexed, is a cooperation agreement between the EU and CARIFORUM by which the EU should offer more to CARIFORUM in cultural exchanges than the EU receives in return, correcting the unbalanced audiovisual market and reflecting the need to enforce cultural diversity. However, to foster co-production there is a need to develop links between human and artistic resources on both sides of the Atlantic.

The Protocol on Cultural Cooperation (Article 5.2) refers to the **organization of festivals, seminars and similar initiatives**. The exchange of human and artistic resources remains a key priority.

So, it would be desirable to organize seminars and workshops on thematic issues (development, co-production, post-production, distribution, online web production and distribution) bringing together professionals and experts on both sides to bring networking, knowledge and sharing into play in order to promote co-productions.

A EURO-CARIBBEAN Festival as a tool for reciprocal access to audiovisual creation from both sides would be a perfect meeting point for exchanges of artistic resources and works.

5. Implementation of bilateral co-production agreements

Although Caribbean works could be accepted as European works in the conditions described above without any reference to a specific bilateral cooperation agreement, the granting of preferential treatment (Article 5.2 of the Protocol on Cultural Cooperation referring directly to Article 16 of the UNESCO Convention) is certainly conducive to concluding bilateral co-production agreements with EU countries.

³⁹ See Media programme website:
http://ec.europa.eu/information_society/media/index_en.htm

Article 5.1 of the PCC addresses this issue:

"1. The Parties shall encourage the negotiation of new and implementation of existing co-production agreements between one or several Member states of the EU and one or several signatory CARIFORUM states".

The "encouragement" referred to here needs to be discussed between the parties. Can the "encouragement" take the form of financial assistance, for instance? Or to what other practicable solutions does "shall encourage" refer? The wording is not purely passive but is a prescription for a dynamic process of agreement building.

As has been observed by some experts in the case of African films, "given the virtual non-existence of public funding devoted to film production in African countries, the co-production phenomenon is essentially based on support programs established by European countries. However, these programs present problems, including a heavy administrative burden, possible impediments to the development of African film production companies, the dominant influence of European taste and the homogenization of production"⁴⁰.

As far as the **Jamaica/UK co-production agreement** goes, no co-production has been initiated since the agreement was signed despite it being considered as a best practice in most Caribbean countries. The lack of a financial counterpart could eventually be an obstacle to the smooth development of bilateral co-production agreements.

One possible way to address the lack of funding from Caribbean countries could be to set up a **Caribbean Fund for co-productions** open to:

- co-productions between CARIFORUM countries;
- co-productions between CARIFORUM countries and EU countries.

EU technical assistance and even financial⁴¹ assistance would be sought⁴².

A third way needs to be proposed here. Besides the bilateral co-production agreements under the PCC as discussed above, the interaction

⁴⁰ See Emmanuel Cocq's contribution to the UNESCO report "Trends in Audiovisual Markets, Regional perspectives from the South: Audiovisual markets in the developing world, statistical assessment of 11 countries" UNESCO 2006.
<http://unesdoc.unesco.org/images/0014/001461/146192e.pdf>

⁴¹ Some stakeholders have remarked on the difficulty of accessing ACP film funds for Caribbean film production. Clarification is needed of the number of films of Caribbean origin funded by the ACP film fund.

⁴² One example of best practice in regional funding for the film industry is EURIMAGES (33 European countries co-finance a co-production fund. In 2008, EURIMAGES' budget was €21,787 million (co-production support: €20,200,000, i.e., 92.72% of the total budget, distribution support: €854,000, i.e., 3.92% of the total, theatre support: €665,000, i.e., 3.05% of the total, digitization support: €68,000, i.e., 0.31% of the total)

between Caribbean and EU countries also needs to take into account the various funding systems that EU countries have developed to facilitate co-production with southern countries.

The Fonds Sud (France) and IBERMEDIA (Spain) merit special consideration.

The Fonds Sud Cinéma provides support to feature, animation and creative documentary film projects intended for theatrical release in France and abroad. A total of €2M is allocated to the Fund. The average aid awarded to a film is 110,000 Euros, and cannot exceed 152,000 Euros. 25% to 50% of the support is allocated to production spending with southern countries. African, Latin American, Middle East and Asian countries are eligible.

The Iberamerican Support Fund was established in November 1997 as part of the audiovisual policy of the Iberamerican Audiovisual and Cinematographic Authorities Conference (CAACI). Through calls and with financial support, IBERMEDIA intends to create an Iberamerican Audiovisual space in the Member States. Ibermedia's aims are:

(a) Development:

- To promote the development of market-led projects addressed especially to Iberamerican countries.
- To create an appropriate environment for the development and integration in the network of Iberamerican film production companies.

(b) Coproduction:

- To promote, through technical and financial support, the development of co-production projects submitted by Iberamerican independent producers, including the benefit of the audiovisual heritage.
- To support Iberamerican production companies which are capable of developing these projects
- To encourage the integration of these co-productions in the network.

(c) Delivery, Distribution and Exhibition:

- To strengthen and encourage the audiovisual product distribution and exhibition sectors in Iberamerican countries.
- To promote the integration of Iberamerican distribution companies in the supranational network
- To increase promotion and help create content for international sales and markets.

(d) Training:

- To promote the continuing training of professionals in audiovisual management.
- To promote the use and development of new technologies by audiovisual management professionals.
- To promote cooperation and the exchange of knowledge between the professional sectors.

IBERMEDIA FUND is ratified by 18 member States and observers of the CAACI who support the Programme: Argentina, Bolivia, Colombia, Costa Rica, Cuba, Chile, Dominican Republic, Ecuador, Guatemala, Mexico, Panama, Portugal, Puerto Rico, Spain, Uruguay and Venezuela. IBERMEDIA is managed by an intergovernmental Committee (CII), each Member State appoints a representative from an official film body. The Committee defines the policy, the different types of support and undertakes the necessary functioning procedures according to the Regulation clauses of the Iberamerican Programme. The Intergovernmental Committee usually meets once a year to decide the projects and the amount of support. In this structure the Technical IBERMEDIA Unit (UTI) is responsible for the execution and the functioning of the Programme. The financial resources of the Fund mainly come from contribution of the member States and repayments from the loans already granted.

6. Conclusion

Various options are available:

- (a) Co-production works of non-EU non-US origin as the best hope of accessing the European market. This is more likely for films than TV programs.
- (b) Leverage the new Television without Frontiers Directive provision granting European work status to Caribbean works that fall within the Protocol on Cultural Cooperation, are co-produced through a Caribbean-European partnership and satisfy the 20% - 80% investment balance. To maximize co-productions between Caribbean and European producers, links between human and artistic resources on both sides need to be encouraged by using the PCC opportunities (article 5.2: organization of festivals, seminars, etc.). Workshops and seminars between professionals on both sides need to be developed focused on script-writing, co-production and distribution, online and web production and distribution. A EURO-CARIBBEAN Festival showcasing European and Caribbean creative works should be organized on a yearly basis.
- (c) The granting of preferential treatment could help Caribbean countries to negotiate bilateral co-production agreements with EU countries.

- (d) However, where co-production agreements are developed with EU countries, Caribbean countries will have to put up reasonable own resources in order to give full application to the agreement.
- (e) Thought should be given to a mutual fund financed by Caribbean countries which would be used to develop co-productions in Caribbean countries and between Caribbean countries and EU countries (following the example of EURIMAGES, which could act as a template for such a Fund).
- (f) EU technical and financial assistance is called for under the Protocol on Cultural Cooperation

7. Recommendations

Recommendation n° 6

- Caribbean countries need to take full advantage of the provision in the Protocol on Cultural Cooperation that gives Caribbean works co-produced with European producers, full access to the European television and online markets (Caribbean works equated to European works under certain conditions).
- Links between audiovisual producers and both sides need to be developed to take full advantage of the Protocol's preference provisions.
- The granting of preferential treatment is of strategic importance for developing bilateral co-production agreements between EU countries and some Caribbean countries.
- Thought should be given to a Caribbean audiovisual fund for intra-Caribbean and EU-Caribbean co-productions.
- Technical assistance under the PCC and possibly financial assistance for the creation of the Caribbean Audiovisual Fund is called for.
- A EURO-CARIBBEAN Festival should be staged as a regular meeting point for human and artistic resources and also reciprocal exchanges and access to audiovisual works.

VIII. THE SOUTHERN EXPERIENCE IN FILM AND AUDIOVISUAL DEVELOPMENT

In this chapter, we will open fact finding concerning development of audiovisual industry in South countries. No central or transparent data are collected by an organism such as the European Audiovisual Observatory (EAO), where collections of data concerning film industry and TV broadcasting are gathered and are available for professional and public.

The EAO produces equally legal notice on different laws aiming at promoting audiovisual industry in European Member states of the European Union and Council of Europe members. All this information serves the development of audiovisual industry. Concerning the South countries, access to information needs to quote national information when existing, direct interviews with authorities in charge of audiovisual sector (when existing), information by participation to seminars related to south audiovisual development. Special meetings were settled very recently during last Cannes Film Festival to discuss directly with the government authorities of some countries.

Before summarizing and evaluating the development in South countries of audiovisual sector, recommendations need to be addressed.

The **lack of information on audiovisual market and regulation is prejudicial to the development of the sector**. It is of great importance that, at this stage, information is collected and analyzed in order to help development and progress of audiovisual sector on Caribbean market.

For this reason, an audiovisual observatory aiming to assess, collect and store information on audiovisual production and distribution, legal development and public policies initiatives, needs to be created. For this purpose, technical assistance of EU under the Protocol on cultural cooperation is requested.

Recommendation n° 7:

To build an **audiovisual observatory** for CARIFORUM countries aiming to collect and share the information on audiovisual production, TV broadcaster, local audiovisual market, legal development and public policies in CARIFORUM countries.

1. Latin America⁴³

1.1. Venezuela

.1.1.1. Legal framework

The revision of the National Film Industry Act enabled a significant boost in help for the industry. The “Film Platform” links together various institutions: the national film distribution company AMAZONIA CINE, the independent national film board (CNAC), the national film archive foundation, and the Villa del Cine production-house foundation. It is tasked with steering, guiding and monitoring the implementation of the strategic policies laid down by the Ministry of Culture to optimize programs for creation, training, production, and distribution of film and audiovisual productions. The Ministry’s aim is to create the conditions for deep-reaching change in the management of culture.

The conditions laid down by the Ministry notably include these programs provided for in the National Film Industry Act.

- A program enabling at least one movie theater to be set up in every state in the country equipped with the best projection technology and a varied program schedule offering half-price admissions to enable low-income Venezuelans to discover other film types.
- A “Villa del Cine” (Cinema City) program to produce movies rooted in the identity and cultural diversity of the Venezuelan people focusing on the values of freedom, solidarity, justice and peace.
- A program to support national production by promoting non-advertising, non-propaganda films.
- The independent national film board (CNAC) provides support each year to scriptwriting, development, production and post-production projects, as well as minority co-production with countries that have agreements under the IBERMEDIA program. The CNAC also supports the theater releases of Venezuelan films by providing financial assistance for the creation of advertising material and the striking of prints and trailers. It also supports Venezuelan films selected for international festivals.

⁴³ Special thanks to Thierry Forte. Thierry Forte has been appointed by the European Commission to assess the Latin American market for Media International program. Thanks to the information gathered by Thierry Forte, it was possible to summarize here main trends of the Latin American audiovisual market.

.1.1.2. Market development

The big rise in the number of complexes and multiplexes in Venezuela over the past 20 years has gone in hand with the spread of shopping malls in the country's main towns and cities. The two main cinema chains which share the exhibition market in Venezuela are Cines Unidos (32% of screens) and Cinex (25% of screens). Independent theaters in Venezuela account for 15% of the screens nation-wide. On the cultural front, the national film archive foundation has established a network of 12 regional film archives and 117 community film theaters.

To compensate for the lack of rural cinemas, the Venezuelan State has set up a network of cinemas with the national film archive, with an annual program that includes all Venezuelan films and also what is known as "Alternate" (art-house and experimental) films. Commercial cinemas can also program "Alternate" films under the prevailing legislation, for which they receive a subsidy or exemption from payment of the tax for the Film Promotion and Financing Fund - FONPROCINE.

In 2007, the Venezuelan market accounted for: 22 million admissions, 505 first releases and \$84 million in box office receipts. US films alone accounted for 212 films (19 212 929 admissions), or a greater-than 86% market share (1.3 million admissions for Venezuelan films, 1.3 million admissions for all European films).

1.2. Mexico

.1.2.1. Legal framework

Federal governance of the audiovisual industry is in the hands of a number of institutions and organizations, chiefly:

- Secretaría de Educación Pública (SEP). (Education Secretariat).
- Consejo Nacional para Cultura y las Artes (CNCA). (National Council for Culture and Arts).
- Instituto Mexicano de Cinematografía (IMCINE). (Mexican Institute of Cinematography).

In coordination with the CNCA, IMCINE manages the fund for quality film production (FOPROCINE), the film industry investment fund (FIDECINE) and the tax incentive fund for national film production projects (EFICINE), Studios Churubusco-Azteca S.A., Canal 22, Canal 11, TV UNA.

- The Federal Film Industry Act:

The Act's "general provisions" provide that: "the film industry is an artistic and educational means of expression, films are unique and irreplaceable works of art which must be preserved". It provides that the State will be seen to the development of production and

distribution through a policy of a range of subsidies and forms of help. On theater exhibition, the Act says that: “..... Exhibitors must allocate 10% of their screens to national films... for foreign films, prints must be struck and all technical services provided in Mexico save as otherwise subsequently agreed between the states ... including dubbing into Spanish All films released commercially in Mexico must be approved by the classification board.... ”

■ The Tax Exemption Act: (Ley de impuestos sobre la renta)

This law allows Mexican corporate and personal taxpayers to set off against tax 50% of their investment in cultural works generally including the production of feature-length films. Mexico is a major market in volume terms, but tilted very much in favor of North American productions.

.1.2.2. Market development

Mexico has a very high output (over 70 films produced in 2007). There are few co-productions or requests for international assistance because, since it was introduced in 2005, the tax incentive system governed by Decree 226 of the Film Act allows Mexican producers to finance the full cost of a film nationally without resorting to international aid or co-productions in 80% of cases.

Theater releases remain the blot on the landscape. In 2006 and 2007, nearly 50% of Mexican films failed to find a distributor or theater distribution. A recent trend has been for many producers to self-distribute in a bid to get their films shown.

The other extreme is that many Mexican films never achieve a theater screening. Most are sold directly to the state-owned cultural television channels for sums varying between US\$ 5000 and 8000 per title. Video sales of these titles are poor to nil.

.1.2.3. Online development

At present, this market is in its infancy - only 2% of all homes and 4% in urban areas have broadband Internet connections. Only a negligible part of the Mexican population would be in a position to download/stream programs. There are a large number of Internet Service Providers, but all use the Telmex network. There are often “triple-play” packages (cable and phone line bundled at lower cost). In Mexico, Prodigy Internet is the main ISP with an estimated 92% of market share. It is also the leader in WiFi (hotspots) and broadband (DSL) access. The broadband service is called Prodigy Infinitum and is available in speeds of 512kbits/s, 1024 kbit/s, 2048 kbit/s, and 4096 kbit/s. Prodigy Internet in Mexico is part of Telmex (Teléfonos de México) and its sister company Telnor (Teléfonos del Noroeste). WiFi hotspots are available at many points around cities, especially in shopping malls, stores, cafes and restaurants. Many are operated by the Mexican telco Telmex via its Internet Division, Prodigy

Movil. To get online at these points, users must have subscribed to the service or buy a prepaid card.

1.3. Argentina

.1.3.1. Legal framework

Governmental entities and administrative instruments

- Culture: www.cultura.gov.ar
- National Secretariat
- President's Office
- INCAA - National Institute of Cinema and Audiovisual Arts

INCAA:

The National Institute of Cinema and Audiovisual Arts operates as a self-supporting entity under the national Ministry of Culture and Education. Its job is to promote and regulate film production and distribution throughout Argentina and abroad under the provisions of Cinema Act 23 377.

Argentina Film Commission:

Part of the INCAA, a member of the AFCI, an international association of film commissioners.

The commission's main objectives are: to promote nationally and internationally picturesque locations, attractions, historic sites and other areas of the Republic that can be used in audiovisual productions; To promote participation by local cinema and audiovisual industry resources, and to provide a management service for granting the necessary filming permits.

BASET: www.buenosaires.gov.ar Baset / areas / production / industries

Since being set up, the "Buenos Aires Movie Set" has been seen as a central agency to facilitate audiovisual production in the city, to promote the shooting of national and international films and thereby generate new jobs and boost investment in the sector. Its key tasks are to help audiovisual production crews, offer advice and information on production locations and services and manage permits to film in public places.

BaFilm: Filming Commission of the Province of Buenos Aires Government of the Province of Buenos Aires:

www.ic.gba.gov.ar/industrias_culturales/bafilm/bafilm.htm

The Filming Commission was set up to promote and encourage an audiovisual production base in the province of Buenos Aires. It does this by fostering and facilitating the use of locations in Buenos Aires through a range of free services provided to national and foreign film, television, advertising and graphics producers.

All measures to support the production, release and distribution of drama or documentary films come under the INCAA (National Institute of Cinema and Audiovisual Arts) which acts to implement the policy of promoting film and television production.

A production loan for over 50% of the work's budget is available, repayable to the Institute if it achieves box office success. Distribution aid is also available for Argentine films based on the estimated release and program planning of works.

.1.3.2. Market development

In 2007, Argentine films achieved 4 million and foreign films (US) 30 million admissions. With 4,162,587 admissions in 2006 and 3,254,937 in 2007, Argentina holds the greatest share of the national cinema market in all Latin America. According to figures provided by the Argentine Film Institute, 39 European films or European co-productions had theater releases in Argentina in 2006, totalling 1,452,958 admissions. (Accounting for barely 4% of market share). 53 films had theater releases in 2007, attracting 4,238,399 admissions (13.5% of market share). This improvement is distorted by releases of films like Harry Potter – which achieved 1,410,148 admissions alone - and other UK/US or Germany/US co-productions.

Policies to support the cinema industry have been paying off in recent years. Argentina produces on average more than 80 films a year, while many directors have won plaudits at major world festivals. With films selected in Cannes and winning prizes in Berlin, Venice and San Sebastian, Argentine cinema is increasing its international reach, albeit not yet enjoying the success it deserves in Europe.

.1.3.3. Online development

The Internet market is taking off very slowly as is VOD (video on demand).

The video market has been completely wiped out by piracy in all countries in Latin America, and not just for European films which are less present on the market.

1.4. Colombia

.1.4.1. Legal framework

Legislation to develop the film industry, and chiefly the production of Colombian feature-length films, was passed in July 2003. It established a film industry development fund known as: CUOTA O FONDO PARA EL DESARROLLO CINEMATOGRAFICO.

Nearly US\$ 3 million a year has gone into the fund since it was set up, invested in the production and distribution of national films, training, the creation of a technical industry, and heritage preservation.

The fund is financed from:

- 5% of the producer's share of box office.
- 8.5% of the exhibitor's share of box office.
- 8.5% of the distributor's share of box office (foreign films only).

The Act also allows Colombian taxpayers to invest in or gift to projects for strictly national short or feature-length films approved by the Ministry of Culture via the Department for the Film Industry, by allowing them to deduct a hundred and twenty-five percent (125%) of the investment or gift from their taxable income for the investment or gift period, regardless of the amount of income. To qualify for the deduction taxpayers must obtain an investor's or gifter's certificate from the Ministry of Culture. The production of feature-length films has more than doubled in the space of four years to between 10 and 14 films produced, according to the year.

The Culture (General Provisions) Act 1997 enabled the establishment of the Mixed Fund for Film Promotion "PROIMAGENES" in the form of a not-for-profit corporation with the twin purposes of supporting and strengthening the cultural and educational heritage of the moving image and developing the Colombian film industry.

The fund coordinates its efforts with the programs of the Ministry of Culture's Department for the Film Industry to develop financial assistance arrangements for the exhibition, distribution, production and preservation of the heritage. PROIMAGENES EN MOVIMIENTO is a joint private/public venture. The public sector partners are: the Ministries of Culture, Education and Communication, the National University, Colciencias, and the Department of Taxes and Customs (DIAN). The private sector partners are: Kodak, Ciné Colombia S.A, the Fundación Patrimonio Filmico Colombiano film heritage foundation and the Colombian association of film distributors. The production and film making sectors also have members on its management committee.

.1.4.2. Market development

Colombia's theater exhibition market achieved 20 million admissions generating 13 million Colombian Pesos in box office receipts (approximately 49.5 million Euros) in 2007.

As in most Latin American countries, North American movies hold an approximately 80% market share, attracting than 16 million moviegoers. The national film industry, with 10 films on theater release this year, attracted 2,240,834 moviegoers and European films (58 titles) 1,874,295 admissions (counting Harry Potter as a "European film" with 684,000 filmgoers). Capitalizing on the new Film Industry Act 2003, Colombia's film industry released ten new films, capturing a total audience of more than

2.2 million cinema-goers. These first positive achievements have been yielded by a pro-national film industry stance in production, distribution and theater exhibition.

There are a large number of production companies (film, documentary, drama and advertising) but only 8 to 10 companies work on developing and producing 1 or 2 feature-length films every two years on average. Lack of management knowledge and lack of training are undermining the production sector. The different distributors in Colombia buy films on a fixed price all-rights basis, very often for multiple territories in the Andes (Peru, Ecuador, Bolivia) or Central America (Panama, Honduras, Costa Rica, Nicaragua, Guatemala and Belize) regions.

Distributors very rarely advance advertising and publishing costs for national productions. Producers bear the full cost of these outgoings either by including them in the cost of the film or seeking sponsorship for the theater release.

The figures show:

- a 155% increase in the size of audiences for Colombian films (2004: 944,700 admissions / 2007: 2,404,998 admissions)
- a 21% rise in the number of cinema-goers (2004 = 17,122,000 admissions / 2007 = 20,669,000 admissions)
- \$23 million dollars invested in the film industry, \$10.2 million in production of 348 projects and \$8 million under tax exemption arrangements since 2004.

.1.4.3. Online development

Ministry of Communication figures report that 92.1% of the country is Internet-capable (over 1031 municipalities).

New subscribers sign up for broadband Internet connections (up over 24% in the first quarter 2008). By far most on-liners use the Internet for emailing, work and entertainment according to a survey done by the ministry in June 2008.

Piracy has recently begun to emerge with on-liners downloading and illegally copying films to sell them on the market. Only North American films are affected at the moment.

The Internet user base expanded by 28.5% in the first quarter 2008 (1,774,600 subscribers). 60% of subscribers have opted for broadband connections (950,316 homes).

1.5. Chile

.1.5.1. Legal framework

The Culture Act 1991 provides tax incentives to a total value of 50% of gifts for cultural purposes. The giftee must be a not-for-profit organization which must also submit and secure approval of a cultural project from the subsidy-granting committee. Approval entitles the giftee to a certificate issued by the Internal Revenue Service (IBS) for the amounts received. Gifters can use this certificate to substantiate annual income tax deductions of approximately 50% of the amount gifted or to increase the "expenditure" by 100% of the amount and reduce their income tax liability in that way.

It is important to note that the audiovisual producer will not be the primary beneficiary of these gifts, but will have to enter into an agreement with a not-for-profit entity to be able to use the funds for production purposes (e.g., paying suppliers). In most cases, the entity will provide the producer with this "service" on a commission basis, which can vary between 5% and 15%.

Anti-abuse amendments were made to the legislation in 2003 by reducing the maximum amount of its income that a company can invest in the form of gifts from 19% to 2%. But from that time, only the very largest companies could make gifts.

1.6. Brazil

.1.6.1. Legal framework

As a result of tax exemption arrangements to promote private sponsorship by enabling private companies to invest up to 3% of their tax liability in the film industry (Rouanet Act 1990, Audiovisual Act 1996, the creation of the National Cinema Agency in September 2001 and the Funcines, the Brazilian equivalent of France's Soficas - film and audiovisual finance companies), Brazilian film production has risen steadily year over year for 10 years. The BNDES (National Development Bank) is also actively involved in financing production.

One of the other key financing arrangements is "Article 39", which enables US majors to invest in Brazilian productions as part of their due tax on remittances from abroad. This is why the biggest Brazilian productions tend to be distributed by the majors to the detriment of national distributors.

Unlike Argentina, the Brazilian film industry has long spurned international co-productions. The main reasons for this relative isolation from the rest of the world's film industries are plentiful national financing, its language identity and the size of the home market.

This situation is changing under the impetus of ANCINE (National Cinema Agency) which has entered into or renewed many co-production

agreements and introduced financial arrangements to encourage producers to seek out partnerships with foreign partners.

A long series of countries are linked to Brazil by bilateral agreements: Argentina, Germany, Canada, Chile, Spain, France, Italy, Portugal and Venezuela. Brazil is also involved in multilateral programs like the Ibero-American Integration of Cinematography Agreement and the Latin-American Cinematographic Co-production Agreement. Brazilian producers make plentiful use of these programs through the Ibermedia program for example.

Likewise, the "Cinema do Brasil" program was set up in 2006 as a partnership between the Ministry of Culture and Ministry of Foreign Trade (APEX) supported by ANCINE and the Ministry of Foreign Affairs. This program to finance the international activities of Brazilian producers and distributors has seen the Brazilian presence strengthened in festivals, markets and industry gatherings the world over. The number of international co-productions rose from 5 in 2003 to 32 in 2007.

Almost all international co-productions are majority Brazilian films. Reciprocity remains nigh-impossible inasmuch as Brazilian financing mechanisms are not available to foreign projects and there is no financial incentive to attract foreign filming in Brazil such as exists in South Africa, for example. One of the first Brazilian minority co-productions was filmed in 2007 however: *Birdwatchers*, an Italian film made entirely in Brazil and co-produced by Gullane Films. The next will be *Amazonia*, a wildlife adventure film with a 12 million Euro budget produced by Gédéon Films and co-produced – once again – by Gullane Films.

ANCINE is looking into new financing arrangements that are apt to strengthen this trend. Bilateral financing funds were first set up with certain countries like Portugal (approximately \$600 000 to help 2 majority and 2 minority Portuguese-Brazilian co-productions) and regions like Galicia. There are also plans to set up a specific ANCINE fund for international co-productions because it is not uncommon for a Brazilian project to find one or more international co-producers and yet remain blocked for want of national financing.

Brazilian commercial movies are also distributed by the majors, whose domination is exerted on Brazilian popular film through legislation that allows them to co-produce and distribute the most commercial local productions practically risk-free. Article 3 of the Audiovisual Act allows Brazilian distribution companies to claw back 70% of the taxes owed on royalty remittances abroad if the funds are invested in the co-production of a Brazilian film. This system has become one of the main sources of financing of the Brazilian film industry (40% in 2006), especially for the most commercial feature-length films. In 2007, it was behind 15 Brazilian films released by the majors, including the biggest box-office attractions (*Tropa De Elite*).

In fact, all but a very few of Brazil's biggest box-office grossers of recent years have been released by the Hollywood majors, which merely

strengthens their hand in imposing their ground rules on exhibitors. Such acute dependence on this source of financing is not conducive to the implementation of policies that are apt to limit the position of the majors' subsidiaries in Brazil.

And yet the Brazilian film industry enjoys fairly favourable legislative conditions, such as the Brazilian film programming quotas that exhibitors must fulfil. The quota for single-screen cinemas is 28 days a year with a minimum of 2 different Brazilian films, rising with the number of screens, such that 4-theater complexes must show Brazilian films 196 days a year (at least 4 different films), 10-screen multiplexes 490 days (10 films), etc.

In fact, there is no public policy to encourage film diversity in Brazil: distributors pay high taxes for the right to screen foreign films in Brazil (the "CONDECINE" - Contribution to Development of the Film Industry = more than 1000 Euros for each media: film theaters, video, pay-TV, over-the-air TV), when remitting guaranteed minimums out of the country and by customs.

.1.6.2. Market development

Brazil keeps no official statistics on annual film production, so we can only go by the number of first theater releases of Brazilian films.

- In 2007, 82 Brazilian films were released through cinemas, including 28 documentaries and 54 dramas. This was a record in the history of the Brazilian film industry.
- The estimated average budget for Brazilian films is between 1.5 and 2 million Reais (between 600 and 800 000 Euros).
- Aggregate tax-exempted funding invested in the production of films amounted to 146.9 million Reais in 2007, equal to approximately 60 million Euros.

2. Asia (India)

There is no Ministry of Culture in India. Information has long been under State monitoring. Today, the Ministry of Information and Broadcasting (MIB) is responsible for audiovisual regulation in India. It defines national audiovisual policy and is in charge of public radio and television, and the film industry.

In the film sector, the MIB supervises film training, film festival organisation, and censorship. The Central Board of Film Certification constitutes a decisive step for the future of film in India (especially imported films) and controls films that flout public order, decency and morality

2.1. Broadcasting sector: from public monopoly to 350 channels

The audiovisual landscape changed radically at the start of the 90s. The liberalisation of the audiovisual sector means that radio and television companies have to cope with competition.

Public service broadcasting (the Doordarshan, consisting of 20 channels in Hindi or regional languages) is responsible for covering all national major political, cultural and social events, regardless of viewing figures. As a consequence, public service channels face competition from satellite and cable broadcasters' successful offers and contents.

A third of Doordarshan financing comes from the State budget, and 25% from institutional and ministerial campaigns or "great causes". Advertising, and above all, program sponsoring, contribute to the financing of Indian public service broadcasting.

India has at least 50 movie channels among the 300 channels available. Only Bollywood channel and Hollywood channel have a national audience. Four categories of channels dedicated to cinema can be distinguished:

- Bollywood channels ("must carry"), in Hindi: the recent big productions are broadcast first on these channels, supported by high marketing costs, soon after film release.
- Hollywood channels, in English: they play a key role in familiarising audiences with western cinema.
- Regional channels: each region develops its own cinema. As a consequence, regions have their own movie channels.
- Catalogue channels: dozens of channels show vintage films.

Three "World Cinema" channels were also launched in 2008, providing real opportunities for foreign countries' films.

2.2. Production⁴⁴

The Indian cinema industry receives no support or subsidy. Films are produced and run in accordance with free market rules. Films' lifetime on screens is often short (one week).

In 2006, cinema in India obtained "industry" status, allowing it to raise finance on the market. Investors are investing in films as they invest in the stock exchange, bearing in mind that theatrical exploitation brings in immediate receipts due to the importance of releasing, unlike the European system.

⁴⁴ Focus 2009, World Film Market Trends, *European Audiovisual Observatory*

With a total of 1,132 Indian feature films in 26 languages certified in 2006, up 41 films from the previous year, India remains the film industry with by far the highest production output in the world. Films in Hindi accounted for 22% of total output, followed by Telugu and Tamil films accounting for 21% and 13% respectively.

Despite growing production figures, the Indian film industry sees the need for correcting a development which saw production budgets soar mainly due to inflated talent costs. As many of these big budget productions did not meet box office expectations in 2008 and fresh financing has become difficult to raise, production companies are focusing on reducing production costs by re-negotiating pay packages for the films' stars and reducing marketing expenditure. While historically talent and key technical cost accounted for about 30% of the budget, its share had increased up to about 75% in past years.

2.3. Distribution and exhibition⁴⁵

2008 was considered a somewhat difficult year for the Indian box office, with many of the big releases failing to attract enough admissions to recoup their high production costs, particularly in the first half of 2008 where the lack of high quality films and Indian Premier League cricket matches negatively impacted cinema attendance.

However blockbusters like Ghajini and Rab Ne Bana Di Jodi released in the last quarter lived up to expectations and contributions to Indian gross box office revenues increased by 12%, reaching INR 80.2 billion (USD 1.8 billion) in 2008.

The growth in multiplex screens was considered a major growth driver. The first quarter of 2009 saw producers in dispute with exhibitors over re-negotiating revenue-sharing terms. In order to underpin their demands the United Producers Forum declared a strike from April 4 onwards, permitting no new releases in multiplexes, which now account for 65% to 70% of India's total box office, and not single screens. To counter the low occupancy rate caused by a light release schedule and the sentiment of a general economic downturn many multiplex operators significantly reduced ticket prices in early 2009. Generally considered rather an e-cinema market, India counted a total of 35 digital screens by mid-2008. Piracy is estimated to cost the Indian film industry about USD 1 billion a year and remains a problem particularly in times of economic crisis.

Film festivals:

1) The International Film Festival of India (IFFI) is a ten-to-eleven days film festival organized by the Indian Directorate of Film Festivals and the Ministry of Information and Broadcasting and the Entertainment Society of

⁴⁵ See footprint n°2

Goa. Permanently held in Goa since 2004, this ten days festival screens both international and Indian films. The IFFI festival is a platform for promoting Indian films and world cinema as a whole. Perfectly situated in the small town of Panjim in Goa, this Festival still remains a quite heavy (government) structure whose organization could be improved.

2) Organized for the first time by the Mumbai Academy of Moving Image (MAMI) in 1997, the Mumbai Film Festival is the only International Film Festival in India organized by an independent body of practicing film professionals (International Competition for the First Feature Films of Directors, World Cinema, Indian Showcase, Mumbai Dimensions and Retrospectives). Supported since 2008 by the Reliance Big Entertainment Group, the Festival should take a new dimension.

3. Africa

In Africa two different models of film production coexist: a low-budget, high volume industry supported by video sales and a more conventional industry, in international terms, based on existing production, distribution and exhibition networks.

The Nigerian film industry, Nollywood, leads the first model based on video production (DVD, VHS and TV) across the continent. Inspired by Nollywood's success, other African countries, like Kenya and Ghana, are increasingly producing local low-budget films.

Film-making in South Africa and Morocco, by contrast, operates in a much more structured environment comparable to international film industries. Morocco plans to establish itself as a centre for both international and national film productions.

3.1. South Africa

South Africa has a growing film industry, becoming internationally competitive. Local and foreign filmmakers are taking advantage of the country's locations, low production costs and favourable exchange rate. These make it up 40% cheaper to make a movie in South Africa than in Europe or the United States, and up to 20% cheaper than in Australia.

The government has identified the film industry as a sector with excellent growth potential. The industry employs around 30,000 people.

According to the Department of Trade and Industry, South Africa's entertainment industry is valued at around 7.4 billion rand, with film and television generating more than 5.8 billion rand in economic activity each year.

Historically, the South African audiovisual sector was characterized both by isolation and fragmentation (a "pro-Afrikaners" use of public funding has perverted the public funding system).

In the post-Apartheid South African cinema, film schools have become vital to expose students to international cinema and to focus on technological, social, aesthetic and political highlights in the development of cinema. The South African film industry aims to find an audience and struggles against Hollywood domination.

Cinema admissions and level of local production are still low compared to European countries. Production and financing opportunities are growing, despite a lack of private sector investment in film production. However, in South Africa there is no director's guild or cinema club.

.3.1.1. Incentives and support

The state, via the National Film and Video Foundation, the Industrial Development Corporation and the Department of Trade and Industry, is the chief investor in the local film production industry.

The National Film and Video Foundation's (NFVF) key role

The National Film and Video Foundation helps the industry to access funds, promotes the development of South African film and television audiences, develops talent and skills in the country, with a special emphasis on previously disadvantaged groups, and helps filmmakers represent and market their work internationally. It also funds training and education (allowing bursaries).

The National Film and Video Foundation is a positive development for the industry and has initiated a number of activities and programmes, including establishing co-production agreements with the Member States of the European Union (with Italy, Germany and the United Kingdom) and with Canada. A total of 4 co-production treaties have been concluded. Co-productions with international companies result in the direct investment of millions of rand into the national economy.

South Africa also has a memorandum of understanding relating to film with India.

The NFVF supports South African-owned production companies, and prioritises projects or organisations of national importance and proposals that contain local content and have an empowerment or training component.

Nevertheless, the NFVF has very low funding so that it cannot cover the entire training, production, distribution and exhibition needs of the film industry.

As regards as exhibition, cinemas do not succeed in attracting big audiences due to several factors including the location of cinemas, lack of management skills, low levels of income of potential audiences, lack of marketing and a lack of audience development.

Industrial Development Corporation

The Industrial Development Corporation is a state-owned development financing institution that seeks to create a sustainable film industry in which skills have been transferred to people from groups disadvantaged under Apartheid and “home-grown” films are made and watched by South Africans.

The IDC’s Media and Motion Pictures Strategic Business Unit finances film, broadcasting and post-production projects. By June 2008, the IDC had invested more than 500 million rand and funded more than 30 films in South Africa.

Department of Trade and Industry

The Department of Trade and Industry offers industry-specific incentives to foster local content generation as well as attract international productions. The film and television production incentive has been recently revised (March 2008) in order to attract more large-budget overseas film and television productions to South Africa (Location Film and Television Production Incentive Scheme) and to provide more financial support for locally-owned productions and co-productions, allowing rebates (South African Film and Television Production and Co-Production Scheme).

.3.1.2. The South African broadcasting sector

Television was introduced in South Africa in 1976 and until the mid 1990s the South African Broadcasting Corporation (SABC) functioned as South Africa’s public broadcaster with a virtual monopoly of broadcasting services. The SBC is now the official public service broadcaster with the aim of providing protection for local cultures to reflect reality from a unique local perspective.

A free-to-air television station and a private channel have been created. Since then, the government has approved three levels of broadcasting (public, private and community).

The Independent Communications Authority of South Africa (ICASA) has taken over the regulation of the broadcasting sector.

The legislative and policy framework in South Africa is supportive of local content. Local content quotas were imposed on broadcasters in 1977. In addition, producers and broadcasters acknowledge a link between broadcasting and development and expect public service broadcasting to perform this role. Local content quotas can support the development of indigenous film and television industries to the extent that they result in an increased demand for local programming, promoting the country’s heritage stories.

South African broadcasters have begun exploring opportunities to distribute local productions in the rest of Africa through direct sales and a form of bartering, where content is exchanged for advertising airtime. This is expected to increase the demand for locally-produced TV content.

3.2. Nigeria

.3.2.1. Film industry

The Nigerian film industry has emerged as the fastest growing sector in the Nigerian economy, with an average annual growth of 20% compared to the national average growth rate of 3%. The Nigerian film industry is called "Nollywood".

It has contributed over USD 100 million to the national economy, and has created huge employment opportunities in the country.

In 2005, 872 films were produced in video format, which puts Nigeria on an equal footing with India in terms of film production.

With over 1000 movies produced per year, Nollywood ranks among the most prolific industries worldwide in terms of film output and employs some 300 000 Nigerians. An average feature film takes 10 to 14 days to shoot and costs between USD 15 000 and USD 20 000.

The Nollywood success model is easy to understand: this is a production system based on the use of digital video material, reducing production costs. Films are shot on digital video, edited on home computers, and most go directly to the home video market, generating estimated revenues of USD 250 million a year. An average film sells about 40 000 copies, bestsellers between 200 000 and 400 000 units. About 65% of the films are shot in the English language. While originally targeting the Nigerian audience, particularly the 15 million people living in Lagos, Nollywood films have become increasingly popular throughout Africa and are shown on the growing cable networks in the continent. These films meet demand for local stories and plotlines that relate to audiences' everyday lives and reflect an unfiltered view of African culture.

In terms of production volume, the Nigerian film industry is now rated 2nd largest in the world⁴⁶. Nollywood has overtaken Hollywood, and closed the gap on India, the global leader in the number of movies produced each year (1091 feature-length films in 2006).

However, its share of this huge revenue from global sales is estimated at less than 5% for several reasons:

⁴⁶ See UNESCO Institute of Statistics (UIS), *Information Sheet No.1, Analysis of the UIS International Survey on Feature Film Statistics*, May 2009, (UIS/FF/2009/01)

- The sector remains under-invested;
- Financial institutions and investors are unaware of the huge potentials that abound in the film sector;
- The industry remains without a blueprint to guide its development;
- The artistic and entertainment components of film remain dominant over the business aspect of industry;
- The lucrative distribution and exhibition sub-sectors of film remain unstructured and ineffective, thus limiting the attraction of investors to this business;
- Policies and laws governing the entertainment sector are outdated and sometimes overlap and conflict with the laws of other states in the Federation;
- The negative consequences of piracy limit film production profitability.

The government initiatives are presented below:

- Reviewing investment policies and laws to make them private sector-friendly, and create a level playing-field for investors both within and outside the country;
- Reviewing the National Film Policy;
- The new emphasis is on creating an enabling environment for private sector participation in Nigeria;
- A professional body, the Motion Picture Council of Nigeria (MOPICON), is being established. A steering committee is currently working on the Act. It will set standards for the industry and check unwholesome and unprofessional practices;
- In collaboration with the Nigerian Copyright Commission, the Nigerian Film Corporation is in the process of launching a campaign to check piracy and other illegal activities in the industry;
- The Nigerian Film Corporation is also creating awareness on issues of rights acquisition and ownership in the film sector, which is critical to the development of film as business;
- Based on projections, if the Nigerian film industry should reach 60% of its estimated peak, it will generate revenues in excess of USD 1 billion from the various business activities in the industries.

.3.2.2. Broadcasting

Regarding the funding of television and radio broadcasting in Nigeria, the Senate last month (April 2009) encouraged the development of private TV stations. It called for further liberalization of private television operating

licenses. The funding of the government-owned institutions is not encouraging. The Senate emphasizes that by the type of funding given to media, a country ensures the further development of democracy, information dissemination and transparency in government. One Senator advocated liberalization of television and radio station licensing in the country, and called for increased regulation to ensure adequate monitoring of their activities.

3.3. Morocco

Foreign producers' love affair with Morocco as a destination of choice for international productions is a key contributor to the emergence of a cinematographic sector in Morocco, becoming a genuine industry and material driver of Moroccan economic growth.

.3.3.1. International production shooting location / Tax incentives⁴⁷

Film shooting in the studios located in Ouarzazate generates an average annual revenue stream of USD 100 millions and provides around 3,000 direct jobs plus indirect economic activities for around 90,000 people annually. The production of cultural goods or services brings a multiplier effect. Each link in the production chain needs to be highly developed in the country otherwise the multiplier effect may be diminished.

In Morocco, culture is seen as a resource for local development. Thanks to a program established by the "Centre Cinématographique Marocain" and the Souss-Massa-Drâa Regional Council, the film industry contributes actively to economic and social development in the region. Shooting of international productions generates more than 90,000 jobs (artisans, extras, technicians, engineers, innkeepers, shopkeepers, etc.).

⁴⁷ Assets and incentives:

- VAT exemption for all goods and services acquired in Morocco by a foreign company for the production of a film;
- Production costs 50% cheaper than in the United States;
- Facilities for temporary importations of weapons and munitions for action films;
- Significant discounts granted on air traffic;
- International airport operating between Morocco and the rest of the world;
- Shooting material cleared through customs within a day;
- Shooting visas granted promptly via the "Centre Cinématographique Marocain";
- 3 film studios;
- Film school;
- Landscape diversity;
- Ethnic diversity;
- Competitive and numerous labour force. The « Centre Cinématographique Marocain » requires involvement by Moroccan producers, technicians or actors in films shot on Moroccan territory. This requirement is essential in that it fosters both training in new film techniques and market opportunities for Moroccan service providers;
- Human resources: extras, experienced artists, highly qualified technicians.

Furthermore, expanding its capacities to host film shooting and improving tax incentives has led to a material rise in the number of films shot in Morocco.

.3.3.2. Support Fund for national film production

This Support Fund was established in 1980 as an «outright grant» support in aid of film productions destined for theatrical distribution. The Fund resources essentially consist of: a percentage of the tax on advertising, the Fund for promotion of national audiovisual landscape, as well as the tax on film exhibition.

In 2004, the Fund became an “advance against takings”. This transition shows the efforts made by the Moroccan audiovisual sector and reflects its dynamism.

The Moroccan cinema industry is now able to prospect and negotiate financing and co-production agreements both internationally and nationally. Since 1977, Morocco has entered into co-production and film exchange agreements with a variety of countries: France, Belgium, Argentina, Italy, Canada, Spain, Egypt, Tunisia, and countries of the Arab Maghreb Union.

An annual amount of 60 million dirham (5.3 million Euros) is currently allocated to the Support Fund. Government projections are that the budget will top 180 million dirham (16 million Euros) in the run-up to 2014.

From 1980 to 2008, 182 feature films have been supported by the Support Fund for national film production. All in all, some 83% of Moroccan feature films have benefited from the Support Fund.

This Fund is certainly helping to maintain stability of national film production.

.3.3.3. National film production stability

One key contributor to stable production is the clear fact that Moroccan films are seen in Morocco - despite the small number of movie theatres (about 73).

There is an evident need to support the expansion of the Moroccan cinema with a genuine action in favour of film theatre development. To that extent, the Moroccan government and national stakeholders are conducting a major operation to build cinema complexes and multiplexes, as well as refurbish existing theatres.

Film production support must be accompanied by dissemination plans. Thus, the Support Fund is also dedicated to film festivals.

.3.3.4. Broadcasting companies' obligations to invest in national audiovisual production

SRNT and Soread 2M – the leading national broadcasters – merged on 15 February 2006.

Among the requirements, public service obligations aim to promote cultural diversity and to encourage national culture by fostering creativity.

30% of broadcasters' annual budgets must be allocated to and invested in national production, Soread 2M's specific status and public service missions as a public service broadcaster are laid down by law. It is therefore required to allocate a relevant place to national production in its programming, to strictly respect pluralism and the principle of independence in its treatment of information.

The end of the State monopoly in the audiovisual sector will revitalize the audiovisual sector, benefiting Moroccan producers and giving them access to competitive and diversified markets.

4. Conclusion

The analysis of audiovisual sector in different countries of Africa as well as in India shows clearly the diversity of methods and policies dealing with audiovisual industry. The different models coexisting combine tax incentives, support fund for national films, investment obligations for broadcasters, quotas requirements for local content. India and Nigeria represent powerful film industries. Moreover, they are largely focusing on the production of national films contributing to the promotion and the protection of local culture. Other countries are setting themselves apart from being attractive and competitive shooting locations, with relevant studios.

The lack of intellectual property protection remains a critical issue. It is clear that where a large film production exists, an appropriate and effective copyright legislation is necessary.

5. Recommendations

Recommendation n° 8:

- Whereas regulation and public support for film production, distribution and exhibition are essential, a certain degree of private investment appears necessary. Caribbean countries shall **foster and develop private sector investment frameworks, as well as public and private partnerships**. The lack of private support may be prejudicial.
- The lack of efficient **intellectual property rights protection** might draw our attention. It is obvious that massive piracy restrains creativity and innovation in the audiovisual sector and in the cultural industries in general. The intellectual property issue must be tackled absolutely. It is therefore advisable to launch assessment on the copyright protection degree in each Caribbean country and on the implementation of existing legislation on intellectual property. Furthermore, the absence of audiovisual content protection may have a dissuasive impact on the development of private investment initiatives. Piracy of audiovisual works affects both international and domestic contents. The strength, the steadiness and the influence of national film industries depend, amongst others, on the mechanisms dedicated to fight against piracy.
- Encouraging the **creation and the promotion of a pan-Caribbean film festival** enhancing the promotion of various Caribbean audiovisual expressions. This recommendation is based on the genuine success of film festivals in African countries, and in Europe as well, which leads to the conclusion that festivals participate in the development of the audiovisual sector and in the world wide influence of a national film industry. In addition, festivals should encourage and increase cinema attendance, which is another key vector of audiovisual sector development. It is essential to respect and reinforce cultural diversity and local heritage.
- **Tax incentives or tax credits for shooting** are purely to stimulate local spending and generate jobs for locals. Local crews and professionals (technicians, actors, tourism sector...) shall be involved in film projects, as far as possible. Regarding touristic issue, it is advisable to involve a National Tourism Company – or create one, if necessary – in the promotion of international film shooting on national territory. This body could be in charge, with National Film Commission, of the development and the promotion of attractive shooting conditions and/or tax incentives. Moreover, it should centre on film projects which use Caribbean's island location as itself.
- Caribbean countries are encouraged to draw a **new model/strategy**

of audiovisual sector development and to elaborate its own virtuous circle.

IX. MATRIX

MEASURE	AIM	LEGAL REFERENCES	IMPLEMENTATION	APPLICATION TO CARIBBEAN COUNTRIES
Quota Requirement in Theatrical Exhibition	Ensure the exhibition of cinematographic films of national origin during a specified proportion of the total screen time	Article IV of the GATT (General Agreement on Tariffs and Trade).	Korea, China, Brazil, Argentina, India and Mexico.	Some countries have implemented this measure (Barbados). A careful assessment of the existing situation is needed before possible extension of this measure to other Caribbean Countries
MEASURE	AIM	LEGAL REFERENCES	IMPLEMENTATION	APPLICATION TO CARIBBEAN COUNTRIES
Quota Requirement for Broadcasting	Ensure a majority proportion of broadcasting transmission time for local audiovisual works.	EU: Television without Frontiers directive 89/552/EEC of 3 October 1989. South Africa: The Independent Communications Authority of South Africa (ICASA) has taken over the regulation of the broadcasting sector.	European Union (27 Member States). Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zanzibar, Zambia, Zimbabwe.	Technical assistance from EU on the opportunity and desirability of implementation of audiovisual local content quota for broadcasters is needed.

MEASURE	AIM	LEGAL REFERENCES	IMPLEMENTATION	APPLICATION TO CARIBBEAN COUNTRIES
Investment by Broadcasters	Broadcasters are required to invest in film and audiovisual productions either by law, by licensing, by film funding agreements or on voluntary commitments. Forms of investment: co-production, direct funding, participations to film funding, taxes, broadcasting fees, technical support...	■ TWF directive (89/552/EEC) ■ National dispositions: ■ Belgium (Décret de la Communauté française sur la radiodiffusion du 27 février 2003); ■ France (Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication, JORF 1er Octobre 1986); ■ Greece (Loi n° 1866/1989) ■ Italy (Decreto legislativo n. 177/2005); ■ the Netherlands (Mediawet (The Media Act) 1987); ■ Poland (Loi relative à la cinématographie, 30 juin 2005, JO 132 de 2005), ■ Portugal (Lei n° 42/2004, article 25), Spain (Ley 15/2001 de 9 de julio), ■ Romania (Ordonance gouvernementale n°36 du 14 juillet 2005) ■ Hungary (Act I of 1996 on Radio and Television Broadcasting). ■ Norway (Norsk Filmfond), ■ Switzerland (LRTV, 21 June 1991, ORTV, 6 October 1997). ■ Austria (Film/Fernseh-Abkommen, 12 October 1981), ■ Denmark (Broadcasting Act, n°506, 10 June 1994), ■ Germany (Filmförderungsgesetz,	Belgium, France, Greece, Italy, Netherlands, Poland, Portugal, Spain, Romania, Hungary (Legal obligations) Norway, Switzerland (Licensing). Austria, Denmark, Germany, Sweden (Film funding agreements). Morocco	Implementation of obligations for broadcasters, cabling distributors and webcasters to invest a percentage of their turnover in audiovisual content production. Prior to this, fix by law, conditions of such investment. Creation of a statutory body (center for cinema funding) dedicated to the administration and control funding by broadcasters.

- 22 December 2003, article 67),
Sweden (2006 Film Agreement).

MEASURE	AIM	LEGAL REFERENCES	IMPLEMENTATION	APPLICATION TO CARIBBEAN COUNTRIES
Tax Incentives for Audiovisual Productions	Tax incentive aiming to encourage the production of audiovisual works and films. A company, or a person, investing in audiovisual productions can deduct a percentage of the sum of its investment from its taxable income.	Belgium (1992 Income Tax Code, Circular n° Ci. RH 421/566.524 of 23 December 2004); France (General Tax Code, Act n° 85-695 of 11 July 1985; Luxembourg (Act of 13 December 1998 introducing Temporary Special Tax Rules for Audiovisual Investment Certificates). Mexico (The Tax Exemption Act: (Ley de impuestos sobre la renta, 01-10-2007), Argentina (Cinema Act 23 377), Colombia (Culture Act, 1997, Mixed Fund for Film Promotion "PROIMAGENES"), Brazil (Rouanet Act 1990, Audiovisual Law nr. 8685 of June 20, 1993, Audiovisual Act 1996, National Cinema Agency 2001, the Funcines,), Morocco (Audiovisual Law, December 2004), South Africa (film and television rebate scheme, Section 24F of the Income Tax Act - South African Revenue Service (SARS)), Chile (The Culture Act 1991).	Belgium, France, Luxembourg, Ireland, Hungary, Germany, United Kingdom, Puerto Rico. Mexico, Argentina, Colombia, Brazil, Morocco, South Africa, Chile	Incentives based on tax breaks are a solution recommended for implementation in some Caribbean Countries. A technical assistance from the EU is needed to identify countries with the right profile.

MEASURE	AIM	LEGAL REFERENCES	IMPLEMENTATION	APPLICATION TO CARIBBEAN COUNTRIES
Legal Status of Audiovisual Co-Productions	Co-production is a joint venture between two or more producers in order to combine forces in order to create a work that either of the co-producers alone would have found difficult to create. International co-productions (co-producers are from different countries). Main advantages: know-how of each of national producer on its national market (where the work is to be shown); the work is considered as a "national audiovisual work" and therefore eligible for national subsidies in the co-producers' respective countries.	Co-production in the framework of EU law: Available co-production agreements can be downloaded from the Observatory's freely consultable IRIS MERLIN database: http://merlin.obs.coe.int/	Largely implemented in EU countries. Other countries like Colombia, Brazil, Argentina, South Africa, Argentina, Morocco have implemented various co-production's agreements (with various countries). Regarding Jamaica, only one coproduction agreement (with UK) has been implemented.	Caribbean countries need to take full advantage of the provision in the Protocol on Cultural Cooperation that gives Caribbean works co-produced with European producers full access to the European television and online markets The granting of preferential treatment could help Caribbean countries to negotiate bilateral co-production agreements with EU countries. A mutual fund financed by Caribbean countries aiming to develop co-productions in Caribbean countries and between Caribbean countries and EU countries. EU technical and financial assistance is called for under the Protocol on Cultural Cooperation

X. IMPLEMENTATIONS AND RECOMMENDATIONS ON THE PROTOCOL OF CULTURAL COOPERATION

Protocol III is annexed to the Economic Partnership Agreement on Cultural Cooperation.

1. Assessment and recommendations

Due to the dual nature of audiovisual services (tradable and cultural), the EU's general policy is not to enter into any commitments in this sector in the WTO. The architecture of the EPA followed this broad approach. No commitments on the audiovisual sector were given in the body of the EPA. All audiovisual-related policy objectives (including on cinematographic works) are laid down in Protocol III on cultural cooperation. The sources of this protocol are to be found in:

- the ACP Cotonou Agreement;
- the UNESCO Convention on the protection and the promotion of the diversity of cultural expressions.

The Cotonou Agreement deals with culture in terms of cooperation between the parties involved and do not addresses market access for cultural products and services.

Article 27 of the Cotonou Agreement states that:

Cooperation in the area of culture shall aim at:

- integrating the cultural dimension at all levels of development cooperation;
- recognizing, preserving and promoting cultural values and identities to enable inter-cultural dialogue;
- recognizing, preserving and promoting the value of cultural heritage;
- supporting the development of capacity in this sector;
- developing cultural industries and enhancing market access opportunities for cultural goods and services.

The UNESCO Convention on the protection and promotion of the diversity of cultural expressions⁴⁸

This Convention, adopted in 2005, has for fundamental aim the protection and promotion of the diversity of cultural expressions⁴⁹.

Relevant articles in relation with the Protocol on cultural cooperation EU-CARIFORUM are Articles 12, 13, 14, 15 and 16.

- Article 12 focuses on promotion and international cooperation between the ways and means to strengthen international cooperation. Article 12, e) is addressing the conclusion of co-production and co-distribution agreements. Article 5,2 of the Protocol mirrors this provision.
- Article 13 addresses the interesting issue of integrating culture into sustainable development. How to achieve a balance between cultural development and sustainable development remains an open question. The better and less project (see chapter 10 - Recommendations on the database and follow-up) aims to combine cultural development and sustainable development fully in accordance with article 13 and requires the full support of the EU in compliance with the Protocol
- Article 14 is a very substantive article defining a range of issues for promoting development cooperation. It is a key provision for CARIFORUM countries as it identifies ways to strengthen the cultural industries in developing countries. Many of the Protocol's provisions reflect this article.
- Article 16 – Preferential Treatment for developing countries is to a certain extent a cornerstone in the enforcement of the Convention.
- "Developed countries shall facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries".
- The Protocol takes this "provision" into account through a direct and specific reference to preferential treatment in article 5.2, so a few words must be said about it here.

⁴⁸ For a quick statement on the notion of cultural diversity, see Yvon Thiec's paper on ASEM seminar (15-16 December 2008) Hanoi, Vietnam "Preserving and promoting the diversity of cultural expressions" (www.eurocinema.eu)

⁴⁹ The Convention has been ratified by EU Member States and by EU itself. This is one of the few international convention where the European Union is signatory as such. This creates direct obligations for the EU (for more information, see on www.eurocinema.eu issues on cultural diversity, various legal statements on the Unesco Convention on cultural diversity and its implementation in EU legal order).

- A substantive commentary on Preferential Treatment can be found in the draft operational guidelines laid down for implementation of the UNESCO Convention⁵⁰
- "Article 16 sets the goal of facilitating cultural exchanges between developed and developing countries. Preferential treatment to be granted by developed to developing countries, through appropriate legal and institutional frameworks, is the tool prescribed by Article 16 to achieve, inter alia, the emergence of a dynamic cultural sector in developing countries and wider and more balanced cultural exchanges."

"Article 16 creates an obligation for developed countries in favour of developing countries with regard to:

- a) artists and other cultural professionals and practitioners;
- b) cultural goods and services".

"Developed countries shall therefore play a pro-active role by putting in place national policies and measures at the appropriate institutional level, as well as multilateral, regional and bilateral frameworks and mechanisms to implement and operationalize Article 16."

"Developed countries are encouraged to provide opportunities, to developing countries, which are beneficiaries in the preferential treatment framework and schemes, to articulate their own needs and priorities, which should be duly taken into account when putting in place such frameworks and schemes. Developing countries are encouraged to put in place national policies for the efficient implementation of preferential treatment."

"Developed countries should also assist in putting in place national policies and measures in developing countries beneficiaries to enable them to benefit from an efficient implementation of preferential treatment frameworks and schemes."

"Preferential treatment as defined by Article 16 is wider than the narrow trade meaning. It is to be understood as having both a cultural and a trade component."

⁵⁰ Annex – Decision 2.EXT.IGC.4 – Draft operational guidelines, Preferential Treatment for Developing Countries, Article 16 (25 March 2009). See also the expert's paper presented during the March session of the Intergovernmental Committee: Introductory remarks by Pierre Defraigne in French, UNESCO paper (not quoted). M. Defraigne argues that the UNESCO Preferential Treatment is a "cultural preference" and makes a very strong case for it. This paper needs to be carefully analyzed by developing countries when addressing cultural treatment issues.

"Legal and institutional frameworks that could be used by the Parties are organized, as the cases may be, around the following dimensions:

- the cultural dimension;
- the trade dimension;
- -a combination of the trade and cultural dimensions."

Cultural cooperation is a core element of preferential treatment.

2. Observations

- The Protocol on Cultural Cooperation chimes perfectly with the relevant articles of the UNESCO Convention on the protection and promotion of the diversity of cultural expressions.
- Preferential Treatment - also called " cultural preference" - is of major importance for the CARIFORUM countries in order to take full advantage of the Protocol.
- Article 5 of the PCC focuses on audiovisual issues, including cinematographic cooperation (see chapter on co-production).

This issue has been discussed specifically. Other points of specific interest in the PCC have been identified.

The following table identifies the different provisions and assigns them a level of importance.

Items boxed in red =	highly important
Items boxed in green =	medium importance
Items boxed in yellow =	not relevant to the audiovisual sector.

- Scope of the PCC (article 1):

- Facilitating exchanges of cultural activities, goods and services, including in the audiovisual sector (article 1.1).
- Improving the conditions governing exchanges of cultural activities, goods and services and redressing the structural imbalances and asymmetrical patterns which may exist in such exchanges (article 1)

- Section I – Horizontal provisions

- Fostering capacities to determine and develop their cultural policies, developing their cultural industries and enhancing exchange opportunities for cultural goods and services of the Parties, including through preferential treatment (article 2.1).

- Common understanding and enhanced exchange of information on cultural and audiovisual matters through an EC-CARIFORUM dialogue (article 2.2)
- Good practices in the field of IPR (article 2.2).
- Facilitate entry and temporary stay in their territories of artists and other cultural professionals and practitioners (article 3.1). Addition to previous schedule / complementary questions will be examined (visas).

a) For shooting of cinematographic films or television programmes, or

b) artists and other cultural professionals and practitioners such as visual, plastic and performing artists and instructors, composers, authors, providers of entertainment services and other similar professionals and practitioners from the other Party involved in cultural activities such as, for example, the recording of music or contributing an active part to cultural events such as literary fairs, festivals, among other activities, provided they are engaged in selling their services to the general public or in supplying their services themselves, do not on their own behalf receive any remuneration from a source located within the Party where they are staying temporarily, and are not engaged in the supply of a service in the framework of a contract concluded between a legal person who has no commercial presence in the Party where the artist or other cultural professional or practitioner is staying temporarily and a consumer in this Party (article 3.1. – second item).

- This entry into and temporary stay in the territories of the EC Party or of the Signatory CARIFORUM States, when allowed, shall be for a period of up to 90 days in any 12-month period (article 3.2).

- Facilitate, in conformity with their respective legislation, the training of, and increased contacts between artists and other cultural professionals and practitioners such as theatrical producers, singer groups, band and orchestra members, authors, poets, composers, sculptors, entertainers (article 3.3)⁵¹.

- Technical assistance in the development of their cultural industries, development and implementation of cultural policies, and in promoting

⁵¹ The list of interested people in a) b) c) d) e) doesn't cover AV

the production and exchange of cultural goods and services. (article 4.1).

- Support, through different measures, inter alia, training, exchange of information, expertise and experiences, and counseling in elaboration of policies and legislation as well as in usage and transfer of technologies and know-how (article 4.2)
- Facilitate the cooperation between private companies, nongovernmental organisations as well as public-private partnerships (article 4.2.).

■ SECTION 2 – SECTORAL PROVISIONS

ARTICLE 5 – AUDIOVISUAL, INCLUDING CINEMATOGRAPHIC, COOPERATION.

- Encourage the negotiation of new and implementation of existing co-production agreements between Member States of the EU and CARIFORUM States (article 5.1.)
- facilitate the access of co-productions between producers of the EC Party and producers of CARIFORUM States, including through the granting of preferential treatment, and facilitating support through the organisation of festivals, seminars (article 5.2.)
- Co-produced audiovisual works shall benefit from the preferential market access, qualification as European works (Article 1(n)(i) of Directive 89/552/EEC. (article 5.2. a). Conditions are fixed on Article 5.2 a) (1-2-3).
- undertakings owned directly or by majority participation, by a EU Member State or a CARIFORUM State
- director(s) or manager(s) of the coproducing undertakings have the nationality of a EU Member State and/or of a CARIFORUM State;
- financial contributions of both Parties involved (taken together), need to raise 80% of the budget (max) or 20% minimum of the total production cost.
- Monitoring the implementation of paragraph (a) and report any problem (article 5.2.b)
- Preferential schemes for the promotion of local or regional cultural content are established by one or more CARIFORUM States - > extension to the works co-produced between producers of the EC party and of CARIFORUM States (article 5.2.c)
- Use of international and regional standards in order to ensure compatibility and interoperability of AV technologies (article 5.3)

- Facilitate rental and leasing of the technical material and equipment necessary such as radio and television equipment, musical instruments and studio recording equipment to create and record AV works (article 5.4)

- Facilitate the digitalisation of audio-visual archives in Signatory CARIFORUM States (article 5.5)

- Encourage the promotion of each Party as a location for the purpose of shooting cinematographic films and television programmes (article 6.1)

- Allow the temporary importation to carry out the shooting of cinematographic films and television programmes (article 6.2).

Other sectoral provisions are not relevant for AV sector.

Article 7 – performing artists

Article 8 – Publications

Article 9 – Protection of sites and historic monuments

Most of the provisions are clear and straightforward, and so require no comment here.

If CARIFORUM countries agree with the color-coded ranking, they should bear in mind the different provisions described here when discussing implementation of the Protocol with EU Member States, as these provisions are a "tool box" they need to use to secure facilities, advantages and undertakings from EU countries to leverage their cultural and audiovisual resources, bearing in mind that reference to Article 16 of the UNESCO Convention creates an obligation for developed countries in favor of developing countries.

This report addresses a number of recommendations that are directly applicable bearing in mind the provisions set out in the Protocol on Cultural Cooperation and articles 14 to 16 of the UNESCO Convention on the protection and promotion of the diversity of cultural expressions.

For instance, technical assistance (article 4.1) systematically applied – if done correctly – is a time/experience/cost efficient way of helping CARIFORUM countries to identify their regulation, exchange, training, and market opportunity needs.

We will conclude with some observations on article 3 of the Protocol on cultural cooperation. Article 3 – Artists and other cultural professionals and practitioners – is of special importance

"1. The Parties shall endeavour to facilitate... the entry into and temporary stay in their territories of artists and other cultural professionals and practitioners: artists, actors, technicians and other cultural professionals and practitioners involved in the shooting of cinematographic

films or television programmes". "This entry into and temporary stay shall be for a period of up to 90 days in any 12-month period."

This provision is consistent with Article 5 (improvement of co-production between CARIFORUM / EU producers). Creative activity in the audiovisual sector means practical participation in pre-production, production (shooting), and post-production. Facilitation of entry for temporary stay is a reasonable way of giving concrete shape to such collaboration.

The States parties on both sides are fully committed to honor the provision described here as it is a substantive undertaking in the Protocol.

So far as need be, it is recommended that both parties and their artistic resources, beneficiaries of this provision should develop a system for assessing cases where entry and temporary stay have clearly been subjected to disproportionate administrative requirements by the country of destination.

3. Recommendations

Recommendation n° 9:

This Protocol on Cultural Cooperation between CARIFORUM countries and EU countries is directly inspired by the UNESCO Convention on the protection and promotion of the diversity of cultural expressions, and especially articles 12, 13, 14 and 16.

Article 16 – Preferential Treatment – also called “cultural preference”, creates an obligation for developed countries in favor of developing countries with regard to artists and other cultural professionals, practitioners and cultural goods and services. When applying the different provisions of the PCC, CARIFORUM countries need to bear these provisions in mind at all times when cooperating with other parties (the EU and its Member States) to implement the Protocol. This report offers up a series of recommendations on the audiovisual sector and services which reflect the spirit not only of the Protocol on Cultural Cooperation but also of the UNESCO Convention on the protection and promotion of the diversity of cultural expressions, especially Article 16.

Article 3 of the Protocol on Cultural Cooperation is of key importance in offering entry and temporary stay in both signatory parties’ territories to enable collaboration on creative works.

The States parties on both sides are fully committed to honor the provision described here as it is a substantive undertaking in the Protocol.

So far as need be, it is recommended that both parties and their artistic resources, beneficiaries of this provision should develop a system for assessing cases where entry and temporary stay have clearly been subjected to disproportionate administrative requirements by the country of destination.

XI. RECOMMENDATIONS ON THE DATABASE AND FOLLOW UP

1. Database: A way to enforce the Audiovisual Regional Dimension

The request to create a database received strong support from Caribbean professionals. The current facing audiovisual sector in Caribbean countries situation is characterized by an enormous fragmentation since the various centers of audiovisual activities⁵² are not connected to each other and are not in regular contact. Most of the professionals of one country don't know professionals of other countries and have few opportunities to meet⁵³.

The database needs to be first a "who is who" of the Caribbean audiovisual sector. The first goal of the database is to be a meeting place to enforce collaboration and exchange, and to share competency with professionals from other countries that are lacking in the country of origin. To be efficient, the database must carefully identify each professional and each different job in the value chain of the audiovisual sector. A person who is producer and film director needs to be identified twice. The same when a person is a script writer and film maker. For each entrance, a short bio mentioning experience of the person needs to be joined. It would be even of big interest to attach (as it would be an attractive database) moving pictures of last works done (a small extract of the works). To be attractive, the database needs to be regularly refurbished and completed by pages on recent information on Caribbean audiovisual sector⁵⁴.

Links with other sources must be done. For Europe, the access to the Cineuropa⁵⁵ (<http://cineuropa.org/>), the database KORDA⁵⁶.....(others)

This database intends to be an incubator to enforce the links between the profession on a regional basis. Film commissions and film offices need also to participate, being identified in the database but also offering interactivity to address information on the new development in the respective countries.

⁵² The identified centers are: Barbados, Trinidad and Tobago, Saint Lucia, Dominica, Jamaica, Santo Domingo and to a certain extent, Belize.

⁵³ The film group in Barbados invites other films makers during the Film Festival in June, each year.

⁵⁴ There is actually an extremely damaging lack of information between professionals.

⁵⁵ Cineuropa is a good entrance (and free) to have news and information on cinema from a European point of view.

⁵⁶ The European Audiovisual Observatory's public funding database KORDA <http://korda.obs.coe.int> aims to provide companies with increased opportunities to generate diversified and innovative European audiovisual content. The service is designed to help to identify the most appropriate funding programs for your organization and your projects. The two main target groups for the database are i) creative and production professionals ii) fund-administrators and policy-makers.

Professional's request for a database aiming at enforcing the relationships at regional level is a first step to cooperation at regional level but is not sufficient. Some other ways to enforce regional cooperation are identified here.

- Need to create a board representing the audiovisual sector at regional level;
- Regular meetings of the board to enforce regional cooperation;
- Cooperation of public authorities in order to enforce audiovisual at regional level, on the example of regional coordination in South America (see Specialized meeting of Cinema and Audiovisual Authorities of MERCOSUR (RECAM - Reunião das Autoridades Cinematográficas e Audiovisuais do Mercosul) aiming at linking the film sector in MERCOSUR⁵⁷

Two reflexions aiming at enforcing the regional cooperation in audiovisual need to be proposed: i) the creation of centers "of excellence" and ii) the "better of less" initiative.

1.1. Centers of Excellence

The current situation is that each country "specialized" in audiovisual in the Caribbean region is assuring the different functions of the audiovisual chain, from education and training to production.

Education and training of future scriptwriters, film directors or producers is an activity that requires specific expertise and quality standards. It would be commendable to propose to create in one of the Caribbean countries, a school dedicated to audiovisual and film training, as a center of excellence in education and vocational training, opened to all CARIFORUM countries residents who want to specialize in audiovisual media.

Production is a complex activity, running from pre-production (development scriptwriter to production and post production). A center of excellence for post production and editing, settled in another country of the CARIFORUM would be a great achievement to enforce competence and technological resources. High speed cable network would made possible connections between production zone and postproduction centers. A part from being an artistic activity, post production is a technical activity which requires some technical devices and technologies that a center for excellence will afford.

⁵⁷ <http://www.recam.org>

Other centers of excellence could be defined:

- A yearly film festival gathering all visual productions, together with a film markets⁵⁸ and also being a meeting point for EU-CARIBBEAN professionals;

A center of excellence providing technical devices (lighting, camera...) on the model of Canada⁵⁹

All these different centers of excellence will intervene at a point of the value chain of audiovisual production and distribution and will foster the regional integration.

1.2. The “Better or Less” Project

New countries need to imagine new patterns when achieving a business sector. In the audiovisual sector, replication of the US model is impossible (even for Europeans) due to the exorbitant cost of the works produced in US. But for most emerging countries, including Caribbean countries, even European audiovisual economical model remains unaffordable due to the production and distribution costs, even if it is still cheaper than the US one.

Without going to the other extreme, Nigeria – where medium cost for a video is 20.000\$ (but the quality is under normal standard) – creates an economical and technical model enforcing the quality, the style of works "made in C" , but without replicating the dissuasive cost of "western" film industry is highly commendable.

The Better should identify:

- Better technical conditions;
- Better education and training;
- Better access to technical devices;
- Better cluster of technicians;
- Better cluster of artists;
- Better post-production;
- Better distribution;
- Better marketing;

⁵⁸ See e.g. Buenos Aires Film Market as announced during the Cannes Film festival (May 2009)

⁵⁹ For creation of these centers of excellence, technical assistance of EU under the PCC may be required.

- New financing model.

The Less should be identified:

- Less low quality works;
- Less works without markets;
- Less works without development;
- Less works without enough investment;
- Less works unknown.

This initiative is deeply linked with increasing regionalization of audiovisual sector and creation of centers of excellence. The crossing of Better and Less data could conduct to a new pattern of development for audiovisual content.

This initiative is also driven in the line of article 13 of the UNESCO Convention to combine cultural development and sustainable development and needs major support from CARIFORUM and EU countries in order to define a sustainable economic model for Caribbean audiovisual sector, major condition to secure a long term development⁶⁰

2. Recommendations

Recommendation n° 10

The database on artistic and technical human resources related to audiovisual Caribbean sector is a prerequisite.

To be successful, the database needs to be:

- attractive (moving pictures)
- precise and concise (standardized CV of various stakeholders)
- up-to-date
- be interactive with various other web information networks in

⁶⁰ On the major problem facing audiovisual development in South countries, see Pierre Sauvé's introduction to the UNESCO's report on Trends in audiovisual market, regional perspectives from the South (2006): *"The economic and regulatory analysis of cultural industries remains complex and data, whether on market trends or on regulatory regimes, is largely deficient, especially in developing countries"*.

Europe, Latin America, US and Africa.

BUT, the database is not sufficient in itself. There is an urgent need to accelerate integration of audiovisual resources at regional level.

Two initiatives need to be launched:

1) The creation of centers of excellence:

- Center aiming to identify a few strategic activities in the value chain of audiovisual;
- Center of excellence for education and training
- Center of excellence for post-production and editing
- Center of excellence based on a yearly films festival and market, meeting place for EU-Caribbean professionals.
- Center of excellence for rental and lending of technical devices (camera, lighting, ...).

2) The Better and Less project

Emerging new models of financing and producing audiovisual content need to be created. Under the patronage of appointed experts and with technical assistance under the Protocol on cultural cooperation, a specific pattern of development of audiovisual content production needs to be envisaged in order to build an audiovisual production sector able to amortize and to be remunerator. This is of importance since US and EU contents patterns are financially unaffordable.

This initiative is also driven in the line of article 13 of the UNESCO Convention to combine cultural development and sustainable development and needs major support from CARIFORUM and EU countries in order to define a sustainable economic model for Caribbean audiovisual sector, major condition to secure a long term development.

XII. A TRAINING PROGRAMME FOR THE CARIBBEAN COUNTRIES

1. The New Situation

The audiovisual sector is characterized, among other things, for its comprehensiveness in a competitive market; and in giving value to intangible concepts such as ideas, information and talent, and working in liaison and networking with multiple sources of information and collaboration.

In turn, digitizing facilitates the process of production and post-production and increases the number and types of paths available for distribution of audiovisual products. Digitizing also introduces concepts like Vision 360°, branding and The Long Tail theory in application to these multiple channels of exhibition.

Therefore, if we are to address this new situation we must also understand the new conditions. Distance, location and geography are irrelevant now that we work in a global space, and considering this we believe that these factors create an OPPORTUNITY for Caribbean countries - especially for artists and creators. These opportunities require creativity, flexibility, exploration of new forms of expression and a new set of values to be applied to the audiovisual process.

Everyday we see how the entertainment industry is producing new alliances and how new distribution systems are being created. This means that professionals are being forced to rethink goals and procedures, to try to find trends and to predict changes.

Profitability cannot be the only value considered. The impact of the audiovisual industry also affects the lives of viewers or consumers of audiovisual products; there are perceptions of culture, satisfaction, quality, beauty and a long series of other values which affect individuals, on a personal level. This is the social impact. And it is the last, but not least important, reason that the Caribbean countries should take action and establish a foundation for developing their own audiovisual industry.

The value of content in a Digital Industry

It is certainly arguable, that content is the most important asset of this entire sector; which is why the most powerful groups, owners of infrastructure, are seeking entry to the content industry. Also, it is clear that there is a general imbalance between content supply and demand. Today there are many distribution possibilities and means but there is also a clear shortage of content – a shortage of content that interests the public.

But there are other issues to consider as well: For content producers in countries like those in the Caribbean area, it is very difficult to access distribution channels - theatres, TV channels, cable and other markets. The

lack of a developed and established industry is at the heart of this problem.

2. Questions to consider

Some questions arise from this situation are:

- How can audiovisual professionals be helped to enhance their creativity and professionalism so that they can enter, compete, or just survive in the market?
- How audio-visual projects produced by independent producers reach a wider audience than strictly that of the local level?
- How can films, television programs, or multimedia products be produced to meet genuine interest from the public?
- Are the professionals and executives of content producing companies aware of the opportunities created by digital technology?

3. Solutions

There is only one answer to all of this. The answer is through INTEGRATED support policies for the industry; as reflected in this very report, World Wide Best Practices in Legislation, Regulatory Regimes and Incentives for the Audiovisual Industry. Within the development of policies, these best practices play a key role in the training of practicing professionals. Is not within the realm of this report to go into education policy and the teaching of subjects in educational institutions but we do consider it our role to point out a path to follow for the subjects of training and the updating of professionals in the Caribbean countries in particular.

It is therefore our aim to promote a plan of INITIAL AND CONTINUOUS TRAINING, in order to improve and promote employment, updating and preparing professionals and businesses to compete in the market. In other words, it is aimed at professionals whose specialties are constantly evolving. This is the case with scriptwriters, directors, producers, editors, directors of photography, sound technicians, assistants, clerks, documentarians, lighting, camera staff, etc. These professionals may work for company or independently, but are in need of intensive training on various subjects, through short courses with accurate and updated information and tools that are not adequately available within the existing training available.

In the present situation, the following are considered the five areas most sensitive and the most in need of updating:

- **Creative Area.** Since this field affects a main part of the value chain, training activities within this area, are justified by the strong market competitiveness and the low profitability for local production.
- **Management Area.** Weak business in the audiovisual sector is one of the characteristics of the Caribbean countries and other similar

geographical areas. There is a strong deficit of trained businesspeople in the sector, which affects the producers' strategic plans and therefore their results. The absence of medium and long term business plans and the sector fragmentation and its decapitalization characterize the sector.

- **Technological Area.** The digitization of audiovisual processes has radically changed some occupational fields and has led to the emergence of new ones. Besides the impact on the picture and sound, digitization has deeply changed all the processes of post-production and the production of special effects. Beyond this appears the process of interactivity, which can be considered one of the sectors that will revolutionize the audiovisual industry. If today interactivity is clearly manifested in the video games, its introduction into other forms of production is only a matter of time –its effect on production processes for digital television channels will be especially interesting.
- **Film Support Crew Area.** If until now the argument for training needs has been based on technological change, the traditional crafts and crew are still needed in film. In this context, the training of painters, carpenters, masons and electricians is strictly necessary. In no other institution or program are they implementing the specialized training as needed for these specialists, without which one cannot think of permanent facilities audiovisual production.
- **Project Development Area.** This area links two clearly related themes: Training and Development, for example, the practical implementation of techniques and procedures that apply to the projects that a producer or a group of producers is working on.

From these concepts we can derive a foundation to establish a **comprehensive training program specifically for the Caribbean audiovisual sector**⁶¹:

How to face this new situation?

Initial training for pre-professionals and continuous vocational training for professionals as a top strategy for the Caribbean audiovisual policy.

⁶¹ The following proposal was originally presented as a Powerpoint presentation during the meeting in Barbados, 1-2 June, 2009.

4. Recommendations

Recommendation n°11

In order to set up an audiovisual industry, all Caribbean development projects must incorporate a comprehensive training programme (See model proposed in annex 1) which is targeted at pre- professionals and professionals working in the field.

For this strategy policy to be successful, it needs the support of the audiovisual community, potential partners and the governments of different member countries of CARIFORUM.

XIII. SET OF RECOMMENDATIONS

1. Recommendation n°1: Public policies in the field of audiovisual assessment.

A first recommendation would be that a systematic assessment of public policies in the framework of audiovisual sector will be conducted as a first step in the field of regulation. This examination is necessary to fit the necessary adaptation of regulation in the audiovisual sector to get a chance to build an industry here. Although, more work needs to be conducted, this report will propose some set of regulatory measures.

2. Recommendation n°2: Join Europa Cinemas

A similar initiative to promote Caribbean and European theatrical film exhibition should be taken under a purpose-designed EU program. One possible solution would be for a group of theatrical exhibitors duly identified in CARIFORUM to join the Europa Cinemas initiative as a specific branch.

However, since it is not the purpose of this study to pinpoint the theatrical market in CARIFORUM, a careful status assessment of theatrical distribution is needed as regards the number of screens, ownership, attendance by the local public, level of presence in local films and professionalism of theatrical exhibitors.

3. Recommendations n°3: Quotas

- Technical assistance on opportunity and desirability of audiovisual local quota is required before taking any decision aiming to enforce any public measure.
- PTAR (Prime Time Access Rule), as a regulatory model used for small market TV station could be an alternative to a quota system
- These two recommendations need to be assessed in the framework of recommendation 1 (public policies in the field of audiovisual assessment)

4. Recommendations n°4: Public and commercial broadcasters

- Public broadcasters appear not only to be broadcasters but also investors and even producers or co-producers of audiovisual content. The need to enforce the public broadcasting system in Caribbean countries is a major issue and a precondition to develop an audiovisual industry.
- Local commercial networks need to be developed and encouraged but, in exchange of a license; they need to do their best efforts to invest in local audiovisual industry.

- Caribbean countries need to implement obligations for broadcasters, cabling distributors, webcasters to invest a percentage of their turnover in audiovisual content production. The law needs to fix precisely the conditions of such investments:
 - The rate on annual basis;
 - The beneficiaries (independent audiovisual content producers);
 - The material (feature films, and TV series, documentaries, cartoons, ...).
 - The eventual return on investment for investors (rights to get the broadcasting right for a fixed period);
- Technical assistance from EU to assess and implementation of such obligations are required (see recommendations on technical assistance).
- Creation by law of a body (center for cinema funding) dedicated to the administration and control of funding by broadcasters

5. Recommendation n° 5: Tax incentives

Incentives based on tax breaks are a commendable solution to be implemented in some Caribbean countries. Technical assistance from EU is requested to identify countries having the adequate profile to enter such legal commitments and to implement them

6. Recommendations n° 6: Co-productions

- Caribbean countries need to take full advantage of the provision in the Protocol on Cultural Cooperation that gives Caribbean works co-produced with European producers full access to the European television and online markets (Caribbean works equated to European works under certain conditions).
- Links between audiovisual producers and both sides need to be developed to take full advantage of the Protocol's preference provisions.
- The granting of preferential treatment is an important provision for developing bilateral co-production agreements between EU countries and some Caribbean countries.
- Thought should be given to a Caribbean audiovisual fund for intra-Caribbean and EU-Caribbean co-productions.
- Technical assistance under the PCC and possibly financial assistance for the creation of the Caribbean Audiovisual Fund is called for.
- A EURO-CARIBBEAN Festival should be staged as a regular meeting point for human and artistic resources and also reciprocal exchanges and access to audiovisual works

7. Recommendation n°7: Audiovisual observatory

To build an audiovisual observatory for CARIFORUM countries aiming to collect and share the information on audiovisual production, TV broadcaster, local audiovisual market, legal development and public policies in CARIFORUM countries.

8. Recommendations n°8: The Southern experience in film and audiovisual development

■ Private investment in audiovisual sector.

Whereas regulation and public support for film production, distribution and exhibition are essential, a certain degree of private investment appears necessary. Caribbean countries shall foster and develop private sector investment frameworks, as well as public and private partnerships. The lack of private support may be prejudicial.

■ Fair implementation of copyright.

The lack of efficient intellectual property rights protection might draw our attention. It is obvious that massive piracy restrains creativity and innovation in the audiovisual sector and in the cultural industries in general. The intellectual property issue must be tackled absolutely. It is therefore advisable to launch assessment on the copyright protection degree in each Caribbean country and on the implementation of existing legislation on intellectual property.

■ Fight against piracy.

Furthermore, the absence of audiovisual content protection may have a dissuasive impact on the development of private investment initiatives. Piracy of audiovisual works affects both international and domestic contents. The strength, the steadiness and the influence of national film industries depend, amongst others, on the mechanisms dedicated to fight against piracy.

■ Creation and promotion of film festivals.

Encouraging the creation and the promotion of film festivals within each Caribbean country and between Caribbean countries (Regional festival), enhancing the promotion of each national culture. This recommendation is based on the genuine success of film festivals in African countries, and in Europe as well, which leads to the conclusion that festivals participate in the development of the audiovisual sector and in the world wide influence of a national film industry. In addition, festivals should encourage and increase cinema attendance, which is another key vector of audiovisual sector

development. It is essential to respect and reinforce cultural diversity and local heritage.

- Shooting location.

Tax incentives or tax credits for shooting are purely to stimulate local spending and generate jobs for locals. Local crews and professionals (technicians, actors, tourism sector...) shall be involved in film projects shooting, as far as possible. Regarding touristic issue, it is advisable to involve a National Tourism Company – or create one, if necessary – in the promotion of international film shooting on national territory. This body could be in charge, with National Film Commission, of the development and the promotion of attractive shooting conditions and/or tax incentives. Moreover, it should centre on film projects which use Caribbean's island location as itself

- New model of audiovisual development

Caribbean countries are encouraged to draw a new model/strategy of audiovisual sector development and to elaborate its own virtuous circle.

9. Recommendations n° 9: Protocol on cultural cooperation

- Cultural Preference.

Article 16 – Preferential Treatment – also called the cultural preference, creates an obligation for developed countries in favor of developing countries with regards of artists and other cultural professionals, practitioners and cultural goods and services. In the framework of the enforcement of the different provisions of the Protocol on cultural cooperation, CARIFORUM countries need to have constantly in mind these provisions while cooperating with other parties (the EU and its Member States) to implement the Protocol. Various recommendations are proposed in this report, related to audiovisual sector and services, reflecting the spirit of the Protocol on cultural cooperation but also of the UNESCO Convention on the protection and promotion of the diversity of cultural expressions and its Article 16.

- Entry and temporary stay

Article 3 of the Protocol on cultural cooperation is of major importance since it offers entry and temporary stay in both signatories parties territories, to allow collaboration or creative works. States parties on both sides are fully committed to respect the provision here described as it is a substantial commitment in the Protocol. If necessary, we recommend both parties and their artistic resources, beneficiaries of this provision to build an assessment system

to verify cases in which facility on entry and temporary stay was manifestly subordinated to disproportionate administrative exigency by the country of destination

10. Recommendation n°10: Database and follow-up

- The database on artistic and technical human resources related to audiovisual Caribbean sector is a prerequisite.

To be successful, the database needs to be:

- attractive (moving pictures)
- precise and concise (standardized CV of various stakeholders)
- up-to-date
- be interactive with various other web information networks in Europe, Latin America, US and Africa.
- BUT, the database is not sufficient in itself. There is an urgent need to accelerate integration of audiovisual resources at regional level. A first step would be to create centers of excellence and a specific model of audiovisual development adapted to Caribbean characteristics

- Centers of Excellence

Creation of centers of excellence such as:

- Center aiming to identify a few strategic activities in the value chain of audiovisual;
- Center of excellence for education and training
- Center of excellence for post-production and editing
- Center of excellence based on a yearly films festival and market, meeting place for EU-Caribbean professionals.
- Center of excellence for rental and lending of technical devices (camera, lighting, ...).

- The Better and Less project

Emerging new models of financing and producing audiovisual content need to be created. Under the patronage of appointed experts and with technical assistance under the Protocol on cultural cooperation, a specific pattern of development of audiovisual content production needs to be envisaged in order to build an audiovisual production sector able to amortize and to be remunerator. This is of importance since US and EU contents patterns are financially unaffordable.

This initiative is also driven in the line of article 13 of the UNESCO Convention to combine cultural development and sustainable development and needs major support from CARIFORUM and EU countries in order to define a sustainable economic model for Caribbean audiovisual sector, major condition to secure a long term development.

11. Recommendation n°11: CARIMEDIA Training Program

In order to set up an audiovisual industry, all Caribbean development projects must incorporate a comprehensive training program.

The initial training program is targeted at pre- professionals and the continuous training program is targeted at professionals working in the field. Both structures are based on the following criteria:

- Excellence
- Coherence
- Flexibility
- Progressiveness

For this strategic policy to be successful, it needs the support of the audiovisual community, potential partners and the governments of different member countries of CARIFORUM.

XIV. ANNEXES

1. Annex 1: Carimedia Training Program

1.1. Objectives

To provide Caribbean professionals with the training, advisory support, competence and abilities necessary to work efficiently in building a Caribbean AV industry, particularly in the fields of:

- Script-writing techniques and storytelling including techniques for the development of new audiovisual programme types.
- Economic, financial and commercial management, including the legal framework and techniques for the financing, production and distribution of audiovisual programmes.
- Application of new technologies, and in particular digital technologies, in the production and distribution of audiovisual

1.2. Required Skills: Key words

- Management and development of creative elements during the development period; Team work culture.
- Development of skills related to the aspects of business planning.
- Continual updating of skills necessary in the efficient use of new audiovisual technologies.
- National and international relations and contacts; updated and reliable information.
- Training on specialised and specific matters.

1.3. Initial Training versus continuous training

Initial Training

Training which enables people to gain a vocational qualification, targeted at postgraduates-

- Specialised Master's degrees
- Intensive courses

Training Focus:

- Application of new technologies
- Economic, financial and commercial management
- Scriptwriting and storytelling techniques
- Specialised and specific matters

Continuous Vocational Training

- Intensive courses
- Long-term training
- Training through projects in development

1.4. Modules Identified

.1.4.1. Initial Training

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Modules to be considered:

- Regulation of audiovisual industry
- Organisation of audiovisual companies
- Project development
- Company development
- Business plan
- Financial aspects and co-productions
- Marketing and promotion
- Intellectual property and authors rights
- Economics and legal aspects of the audiovisual and multimedia industry
- Advanced creative techniques for development, production and post-production.

- New media and convergence of content
- Development of interactive content
- Scriptwriting
- Script-editing

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Modules to be considered:

- Introduction to projects development techniques
- How to set up an audiovisual product brand
- How to produce a low cost audiovisual product
- Management of an independent audiovisual company
- The art of pitching
- Entertainment formats for TV
- Specific introduction to: avid editing, animation 3D, visual effects, digital sound, etc.

.1.4.2. Continuous Training

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Modules to be considered:

- Scriptwriting development in fiction, animation, interactive scenarios and creative documentaries
- Interactive scriptwriting
- Project development
- Pitching
- Financial and legal aspects
- Intellectual property and authors' rights
- Production management
- Company Management
- Marketing

- Sales and Distribution
- Regulatory Framework of the Caribbean Audiovisual Industry
- Archive Management
- Advanced Creative Techniques for Development, Production and Post-production
- Audiovisual and Multimedia Companies: Set up and Management
- Specific modules for animation
- Specific modules for Film Commissioners
- Specific modules for training of trainers
- Specific modules for internships programmes

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Module to be considered for Training Through Projects

- Presentation of the project
- Identifying strengths and weaknesses of the project
- Analysing audience's characteristics and development
- Script development sessions
- Financial and legal aspects of production progress
- Product's access to screening/ audience and final sale
- Ongoing advice during development and pre-production process
- Consultancy and follow up

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We are talking about the idea of development in its wider sense. Creative and managerial matters should work together. This is the context where Training + Development makes sense (or R&D in the general industry).

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1.5. Training Structures

Training structures are based on:

- Excellence
- Coherence
- Flexibility
- Progressiveness

Excellence

- Quality of the training provided; applying best practices and updated techniques
- Quality of trainers and their international experience; tutors with a proven track-record who bring credibility to the program.
- Meeting Point for professionals; facilitating networking and creating new opportunities
- Exchange of trainers and trainees; bring synergies into the system
- Links between training centres and companies at local and international levels; multiply the impact of the program
- Dissemination of content: publications, web sites and other media; have multiplier effects

Coherence

- Quality of the training provided; applying best practices and updated techniques The program must be developed with a Caribbean dimension
- Conceived from both Vertical and Horizontal strategies: from the initial concept through product exhibition, and also from a view of a specific issue across the industry.
- Coordination of initiatives: including all training activities.

- Development of a map of all training actions to be implemented.

Flexibility

- Adaptability to the needs of Caribbean professionals
- Cultural diversity of the region
- Striving for a geographical balance, in programme development
- On-line training
- Travelling programmes for access throughout the islands

Progressiveness

- Based on the concept of a Lifelong Learning Society:
- New labour market situation and emergence of new professions: Jobs are no longer reliable for one's entire career
- Conscious of the need of continuous training: Updating training formulas
- Permanent innovative attitude
- Training for professionals in the AV industry has a social value, in regard to the future of the AV industry in the Caribbean.

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Excellence	Coherence	Flexibility	Progressiveness
Best Practises	Initiative Coordination	Adaptable to Professional Needs	Updating Training Models
Synergies	Caribbean Dimension	Cultural Diversity	Social Value
Multiplier Effects	Vertical and Horizontal Strategies	Itinerant Programme	Emerging New Professions
Impact in the market	Training Map	Online Training	Innovation

1.6. Potential Partners

The following institutions have been identified:

- University of Trinidad and Tobago (UTT)
- University of The West Indies (with campuses in Barbados, Jamaica and Trinidad and Tobago)
- Escuela Internacional de Cine y Televisión de San Antonio de Los Baños (Cuba)
- Escuela de Cine de Santo Domingo (Dominican Republic)

1.7. Financing

The programme should be financed through the following means:

Public Funding:

- Media International Programme (Media Mundus)
- Sources from ACP Countries
- Caribbean Governments

Private Funding

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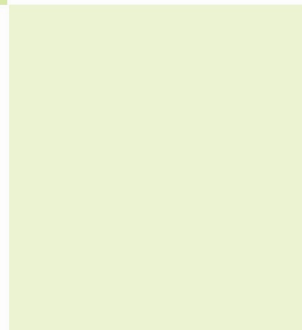
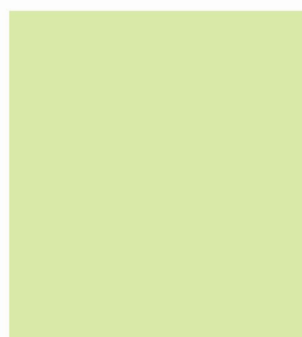
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