



Release windows in Europe: a matter of time

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**Francisco Javier Cabrera Blázquez, Maja Cappello, Gilles Fontaine,
Julio Talavera Milla, Sophie Valais**



Foreword

The word *window* brings to mind images of an opening onto the world that provides a house with a nice view, sunlight, and a breath of fresh air.

This publication has, however, very little to do with this idyllic picture. When we talk about release (or exploitation) windows, we are talking about a business model whereby cinematographic films are exploited in different markets (cinema theatres, VOD, Pay TV, and free TV) at different times in order to maximise profits by avoiding competition between those markets. This model is all about time. Or rather, it is about time exclusivity, if you prefer. During a certain period of time, a film can only be exploited in cinema theatres, before being exploited successively on other platforms: VOD, DVD and Blu-ray, TV. This is why the French prefer the term *chronologie des médias* or media chronology.

Anyway, call it what you like, the fact is that the model of release windows or media chronology is undergoing quite a revolution, fuelled by the surge, among other things, of new online players like Netflix and Amazon Prime. Recent controversies during the film festivals in Cannes and Venice around Alfonso Cuarón's *Roma*¹ and Alessio Cremonini's *Sulla mia pelle*² have brought the topic into the limelight. Some say that this revolution is even having an impact on the definition of what a cinematographic film is. See, for example, what a certain Steven Spielberg thinks about it:

*“Once you commit to a television format, you’re a TV movie ... You certainly, if it’s a good show, deserve an Emmy, but not an Oscar. I don’t believe films that are just given token qualifications in a couple of theaters for less than a week should qualify for the Academy Award nomination.”*³

That is just Mr Spielberg's opinion. Mr Cuarón, the director of *Roma*, obviously has a different take on the matter:

*How many theaters do you think a Mexican film in black and white, in Spanish that is a drama without stars – how big of release do you think it will be in a theatrical release?*⁴

He also said that streaming coupled with a limited theatrical model can *elevate cinema, and more importantly can create a diversity in cinema.*

There are certainly many other opinions on this topic. Now the question is: why should anybody, be it the state or an industry association, tell a producer how to exploit his or her film? Why should a producer follow this chronology if he or she does not want to? A

¹ [https://en.wikipedia.org/wiki/Roma_\(2018_film\)](https://en.wikipedia.org/wiki/Roma_(2018_film)).

² [https://en.wikipedia.org/wiki/On_My_Skin_\(2018_film\)](https://en.wikipedia.org/wiki/On_My_Skin_(2018_film)).

³ See “Steven Spielberg Doesn't Think Netflix Movies Deserve Oscars”, <https://variety.com/2018/film/news/steven-spielberg-netflix-movies-oscars-1202735959/> and “Steven Spielberg vs. Netflix: A Preview of the War for Cinema's Future”, <https://variety.com/2019/film/columns/steven-spielberg-vs-netflix-a-preview-of-the-war-for-cinemas-future-1203159522/>.

⁴ Alfonso Cuarón Champions Netflix Limited Theatrical-Streaming Model As 'Roma' Wins Two Golden Globes, <https://deadline.com/2019/01/alfonso-cuaron-champions-netflix-streaming-limited-theatrical-model-as-roma-wins-two-golden-globes-1202529703/>.

lawyer could even ask the question: is such a system legal? Is it compatible notably with competition law? With the freedom to provide services and goods? More pragmatically, a producer may be interested in knowing the different systems operating in Europe.

These and many other questions are answered by the present publication. Chapter 1 sets the scene by explaining what release windows are and why they exist. Chapters 2 and 5 remove any doubt about their legality from the point of view of EU law, while Chapters 3 and 4 describe the many different systems that apply in EU member states. Chapter 6 rounds up the publication by providing an overview of the current discussion around this fascinating topic.

Strasbourg, October 2019

Maja Cappello

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Executive summary

Chapter 1 aims at setting the scene, especially by providing a definition and a brief history of release windows and analysing the economic rationale that underlies them. Windows refers to the various practices, laws, regulations or legislations defining the time that must pass between the release of a theatrical film in an exhibition window and its subsequent distribution through other channels, such as video-on-demand. Across Europe, the timeframes for these windows are set either by common trade practices, gentlemen's agreements between producers or distributors, industry agreements, or by law, according to a country's political choice. Nevertheless, most European countries that regulate release windows approach the issue either through national legislation or through industry agreements. In all cases, the implementation of windows is based on an economic rationale of maximising revenues in each exploitation format. Films are released following a system of successive windows based on the estimated willingness of consumers to pay for earlier access to the film. Hence, the chronological order ranges from windows with higher revenues for rightsholders to those with lower potential incomes.

The origin of this window system stems from the Paramount Decision in 1948 in the United States, which abolished the vertical integration of the main studios. In 1983, France introduced the first legislation in Europe requiring minimum theatrical windows of six months before home video release. Afterwards, the Council of Europe's European Convention on Transfrontier Television (1989), followed two years later by the Television without Frontier Directive (1989), set a two-year lapse between the theatrical release and the broadcasting of a film. In this regard, Chapter 2 explains that these rules were abolished in favour of agreements between rightsholders in order to allow them and the member states more flexibility. The European Union's current rule in the Audiovisual Media Services Directive (AVMSD) concerning windows, namely Article 8, provides for a general obligation for member states to "ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rightsholders".

Chapters 3 and 4 provide an overview of release windows at national level. Since Article 8 of the AVMSD provides only for a general obligation, different regulations on release windows have been developed across Europe, ranging from legislative and regulatory approaches to free-market-contractual and sectoral-industry-agreement approaches. The various frameworks of windows depend on the national and cultural characteristics of each country. While many of them have opted for a minimum requirement, as in the AVMSD, by referring to contractual or industry agreements to organise release windows, others have implemented a more elaborate framework for release windows through legislative or regulatory provisions. The third chapter focuses on the different legislative or regulatory approaches in a selection of countries in the European Union, namely Bulgaria, France, Austria, Germany, Ireland, Italy, The Netherlands and Sweden.



While France and Bulgaria have adopted specific or general legislative provisions on release windows, all the others have chosen to organise windows through film support rules. In these countries, access to public support is, indeed, conditioned upon the respect of release windows by the film concerned. The fourth chapter examines self-regulatory approaches, either through industry agreements or free contracts, in a set of countries, such as Belgium, Denmark, Spain and the United-Kingdom, where release windows are set up through a case-by-case contractual practice.

Chapter five deals with the *Cinéthèque* case of 11 May 1985 of the European Court of Justice as well as the European Commission's decision in the *Nederlandse Federatie voor Cinematografie* case (1995). In the *Cinéthèque* case, the Court endorsed the principle of media chronology, and the European Commission followed its ruling. Whereas the system of windows in itself does not violate the EU internal market rules or the EU competition rules, in practice, its application may create effects prohibited under those very EU laws. However, for both the Court and the European Commission, such systems can nevertheless be acceptable under EU law given their aim of promoting film production.

The final chapter presents an overview of the state of play of release windows in Europe and discusses the different approaches advocated on the issue with regard to their relevance or obsolete nature. This chapter also provides an insight into the discussions on the topic that took place at the "Cinema windows across Europe" conference which was organised by the European Audiovisual Observatory in Rome on 17 June 2019.

1. Setting the scene

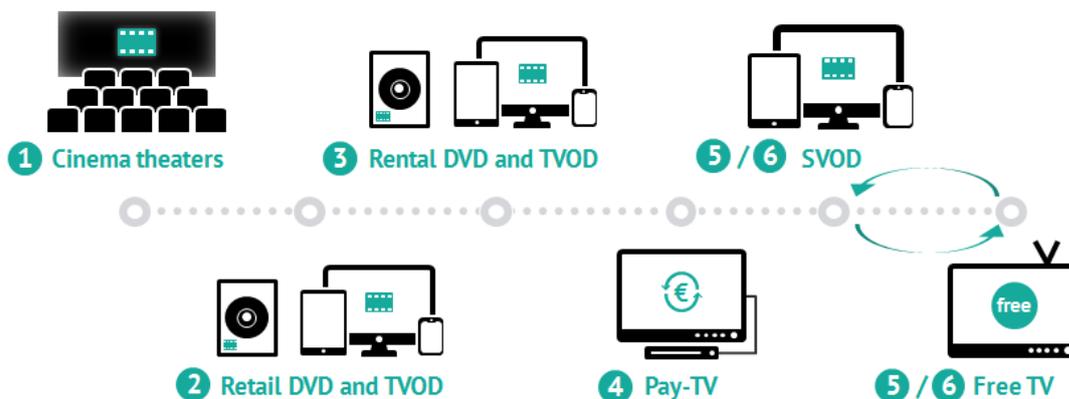
1.1. Definition and brief history

1.1.1. What windows are and how they work

Release windows, statutory windows, release patterns, exploitation windows' regulations or media chronology; there are many terms to refer to the more or less flexible practices or territory-based legislation regarding the time that must pass between the release of a theatrical film in an exhibition window and its distribution in the following one. In some countries, only common trade practices can be observed; in others, there are gentlemen's agreements between producers, distributors and exhibitors to respect a certain margin of time between windows; and there are also countries where industry associations have signed agreements to establish the framework for release windows. In a few countries, the release windows are regulated by law.

The release windows are conceived in chronological order going from windows with higher potential revenues for the rightsholders and a lower number of potential viewers to those with lower potential revenues for the rightsholders and a higher number of potential viewers; to date, by and large, the common chronology would be as follows: cinema theatres, TVOD/Physical retail, TVOD/Physical rental, pay-TV, SVOD and free TV (although the position of the last two can be interchangeable or simultaneous).

Figure 1. Typical release window schedule



Source: European Audiovisual Observatory

There is always a buffering zone between two consecutive exploitation windows, notably in the case of paying windows, during which there seems to be a sharp decline in the



potential earnings through the first window – in other words, most revenues are collected at the beginning of the window, but the film is not yet released in the next one; this buffering period can be a deterrent for viewers waiting for the next window to access the film. Conversely, the effect of market and advertising campaigns fades away quickly; moreover, it is worth noting that the first window of exploitation represents the lion's share of investment in marketing and advertising – sometimes all of it. The discussion over release windows lies at the core of the dichotomy between trying to stretch and squeeze the possibilities of each window and taking advantage of the buzz generated by the film in the preceding window.

An approach with release windows not ranked in the traditional chronological order has been tested, with day-and-date releases (simultaneous release in different windows) and an alteration of the order of the windows, these being rather the exception to the rule.⁵ Even in those cases where day-and-date was positive for the overall revenues of the film, it is difficult to assess the potential results a traditional release would have had and to what extent it was the novelty effect that made consumers eager to test the new possibility – in other words, to what extent this formula may have worked because of its exceptionality.

1.1.2. The history and evolution of windows

The pre-history of the release window system can be found in the American exhibition structures during the Hollywood studio system era. Prior to the US Supreme Court's Hollywood Antitrust Decision⁶ in 1948 (also known as the Paramount Decision), which put an end to the vertical integration of the main studios, Hollywood majors owned and controlled the production, distribution and exhibition of their films, enjoying a position of power when negotiating with independent cinema theatres. According to the Decision, "*the five majors in 1945 had interests in somewhat over 17 per cent of the theatres in the United States [...] Those theatres paid 45 per cent of the total domestic film rental received by all eight defendants.*"⁷ Until then, de facto, each of the majors had its own exhibition circuit (its own theatrical window) and independent theatres only got to show studio movies wherever each major did not own a theatre or did not have enough capacity for the planned launch of each film. Otherwise, their offer was limited to showing re-runs or films produced outside the studio system. Even after the Decision, a distinction can be made between first-run and second-run theatres, showing first releases and re-runs respectively. Therefore, even before television appeared on the scene, there were several sub-windows within the only available window.

Broadcasting has been blamed for the drop in cinema attendance; however, although it certainly played an important role, the reality seems to be more complex than

⁵ Ranaivoson, H., De Vinck, S., Van Rompuy, B. (2014) *Analysis of the Legal Rules for Exploitation Windows and Commercial Practices in EU Member States and of the Importance of Exploitation Windows for New Business Practices*, iMinds and SMIT, Gent.

⁶ *United States v. Paramount Pictures*, 334 U.S. 131 (1948), <https://cdn.loc.gov/service/ll/usrep/usrep334/usrep334131/usrep334131.pdf>.

⁷ Three of the majors, known as the Little Three did not own theatres.



that. Demographic changes along with the diversification of entertainment and leisure activities after WWII certainly played a fundamental role in the decline of the exhibition sector in developed countries all around the world. When television reached a relevant household penetration rate (early 1950s in North America, and soon after in Europe), broadcasting started to be perceived as a challenge to the theatrical exhibition sector, but also as an opportunity for production companies. By this time, several years after the Paramount Decree, the American production sector was mostly detached from the exhibition sector; therefore, their interests were rather different, with Hollywood majors willing to license theatrical content to television, yet keeping new productions for the theatrical circuit due to the pressure of the exhibition sector but also in order to maximise their gains, and in so doing, establishing a first form of window system. Moreover, in 1956, AMPEX developed the VTR (video tape recorder), making it possible to broadcast recorded programmes; in parallel to some unsuccessful, limited experiments by American majors with pay-TV offers, including theatrical films, most Hollywood majors took advantage of this new technical development to produce TV content.

Betamax and VHS brought in another release window (home video) in the mid-1970s, making it possible for theatrical films to enter into the consumers' living rooms. In this case, as opposed to television, the video window was not competing in content with the cinemas (most of the home video supply were theatrical films), so the key for the studios was to define a clear release window schedule. A "six-month window was the compromise reached between Hollywood studios, theatre owners, and video retailers",⁸ but it progressively narrowed to the point that sometimes home video releases were announced while the film was still on in theatres. This trend continues to date; according to NATO (National Association of Theatre Owners), the DVD release window has shrunken by three weeks in the last five years (3 months and 7 days since theatrical release in 2018).⁹

In any case, the correlation between the appearance of television and home video and the decline in theatrical admissions is quite illustrative. For instance, in the United Kingdom, admissions went from a peak 1.6 billion admissions in 1946 to 1.1 billion in 1956 and 288 million in 1966.¹⁰ In other territories, such as Japan, the story is quite similar: from 1.1 billion admissions in 1958 to less than half (511 million) five years later, down to under 200 million for most of the 1970s.¹¹ In Australia, in spite of a sharp population hike – 43% between 1957 and 1974 – theatrical admissions sunk over that same period by 45%, dropping to 68 million in 1974.¹² In the United States, average admissions per capita went from above 35 in the mid-1940s down to 15 in the mid-1950s, falling to an all-time low of

⁸ Tryon, Chuck (2009). *Movies in the Age of Media Convergence*. Rutgers University Press.

⁹ http://www.natoonline.org/wp-content/uploads/2019/03/Major-Studio-Release-Windows-DVD-3_7_19.pdf.

¹⁰ BFI Statistical Yearbook 2018, <https://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-statistical-yearbook-2018.pdf>.

¹¹ Motion Pictures Producers Association of Japan (EIREN), http://eiren.org/statistics_e/index.html.

¹² Screen Australia, <https://www.screenaustralia.gov.au/fact-finders/cinema/industry-trends/historical-admissions/1954-1974>.



circa three admissions per capita in 1971, with around 5 admissions per capita a year ever since, until it started a very mild decline in the mid-2000s.¹³

The first legislation on release windows in Europe came from France in a law developed by a Decree in 1983¹⁴, which established a minimum theatrical window of six months before home video release. At European level, the European Convention on Transfrontier Television of 1989 initially set a two-year lapse between theatrical release and broadcasting.¹⁵ Later that same year, the EEC “Television Without Frontiers” Directive mirrored this requirement.¹⁶ However, successive updates of these two latter pieces of legislation have eliminated this requirement (see chapter 2). Currently, most European countries regulating release windows approach the issue either via national legislation (see chapter 3) or through industry agreements (see chapter 4).

The first commercial VOD offer dates back to the 1990s, mostly through set-top boxes (offered by cable and IPTV operators). Higher household penetration rates for Internet access along with a higher bandwidth have allowed OTT services (streaming VOD services through the Internet, such as iTunes, Hulu or Netflix) to progressively gain momentum since the beginning of the century. VOD has ushered in two main changes of different magnitudes: firstly, for the home video window, with TVOD (transactional video-on-demand) progressively replacing both the video rental and retail markets – a technological change which has no major implications for the business model or the overall market share of the home video industry (TVOD and physical videos combined); and more importantly, through SVOD (subscription video-on-demand) services, where a catalogue of content (significantly films, including theatrical films) is made available to the user for a monthly fee. Some parallelisms can be drawn between the irruption of SVOD and television. On the one hand, it has been perceived as a threat to the exhibition sector (as well as to traditional pay-TV), as it means one more slice to be shared from an already shrinking cake; on the other hand, it has also been considered as an opportunity for those producing content.

What is clear is that this multiplication of windows is pushing for a reduction of the window width; the retail TVOD window, aka EST (Electronic-sell-through), has experienced an acute reduction – by one month over the last five years, down to an average of 2 months and 25 days in the United States.¹⁷ In France, the new 2018 legislation on release windows foresees a delay of four months between theatrical exhibition and DVD or TVOD releases, introducing a new exceptional three-month delay between theatrical exhibition and

¹³ McMahon, James (2018). *Is Hollywood a Risky Business? A Political Economic Analysis of Risk and Creativity*, New Political Economy, Taylor & Francis, London, pp. 1-24.

¹⁴ Décret n° 83-4 du 4 janvier 1983 portant application des dispositions de l'article 89 de la loi n° 82-652 du 29 juillet 1982 sur la communication audiovisuelle (Decree 83-4 of 4th January 1983 applying the provisions Article 89 of Law 82-652 of 29th July 1982 on audiovisual communication), <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000858045&dateTexte=20140711>.

¹⁵ European Convention on Transfrontier Television, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007b0d8>.

¹⁶ Article 7, Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31989L0552>.

¹⁷ http://www.natoonline.org/wp-content/uploads/2019/03/Major-Studio-Release-Windows-EST-3_7_19.pdf.



DVD/TVOD for films with less than 100 000 admissions during the first four weeks of exhibition (see section 3.2.2).

The mixed reactions to the giant SVOD service Netflix clearly illustrate the disagreements within the different industry sectors; on the one hand, the company joined the MPAA in 2018 (nothing strange if one considers that they share some key goals with the majors, such as copyright or anti-piracy regulation); on the other hand, there have been hard-hearted reactions by prestigious filmmakers against the release policy of the company (direct-to-VOD) – for instance, following the success of Netflix’s production *Roma* at the Oscars, Steven Spielberg proposed a change to the Academy rules so as to require a full theatrical release to be eligible.¹⁸ In France, the Cannes Film Festival amended its rules in 2018 to require a commitment to a theatrical release in France in order to be eligible to compete at the festival,¹⁹ leaving films produced by the American SVOD service out of the festival since it refused to comply with this new rule.

1.2. The economic rationale for film exploitation windows

Films are released following a scheme of successive windows, based on the alleged willingness of consumers to pay for earlier access to the film. The scheme is meant to maximise the total revenues of a given film by releasing it first of all on the exploitation window which will generate the highest direct or indirect spendings by individual consumers. Indeed, cinema exploitation generates about EUR 7.10 per person²⁰; EUR 3.50 per person²¹ for the purchase of a DVD; EUR 1 per person for the rental of a DVD²²; probably in the range of EUR 0.10 per person for a large pay-TV channel²³, etc.

¹⁸ <https://www.latimes.com/entertainment/movies/la-et-mn-steven-spielberg-netflix-oscars-20190302-story.html>.

¹⁹ Article 3.7 of the Cannes Film Festival rules for feature films - in competition, out of competition, *Un Certain Regard*, <https://www.festival-cannes.com/en/participer/rules?id=2>.

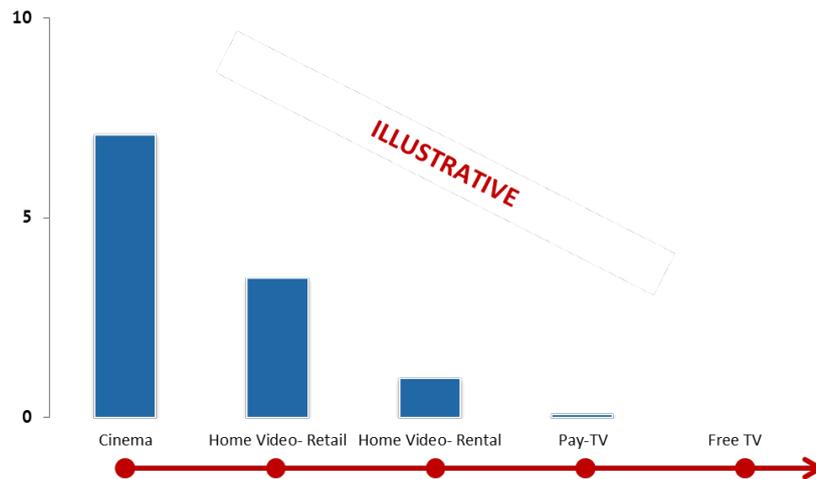
²⁰ Average ticket price in the European Union in 2018. Source: Focus – World Film Market Trends – 2019 Edition, European Audiovisual Observatory, May 2019.

²¹ Average DVD purchase price in the European Union in 2017. Based on the hypothesis of 3 persons per household. Source: Yearbook 2018/2019, European Audiovisual Observatory, November 2018.

²² Average DVD rental price in the European Union in 2017. Based on the hypothesis of 3 persons per household. Source: Yearbook 2018/2019, European Audiovisual Observatory, November 2018.

²³ OBS estimate for the average price per subscriber of a first-run, French-produced or co-produced film purchased by the French pay-TV channel Canal+. Based on the hypothesis of 3 persons per household. The price may be overstated due to the specific obligations that apply to Canal+. Source for data: La production cinématographique en 2018, CNC, March 2019.

Figure 2. Price per viewer according to the exploitation windows – in EUR (illustrative)



Source: European Audiovisual Observatory

Obviously, the novelty of films is not the only distinctive feature of the various exploitation windows: the collective big screen experience in theatres; the possibility of watching a film at any moment on DVD or on video-on-demand; the lack of advertising on pay-TV also differentiate the various exploitation modes. However, exclusive early access to a film seems necessary to trigger higher spending by the consumer.

In Europe, film revenues are widely anticipated in the form of pre-financing by the future exploitation windows, including the theatrical distributors' minimum guarantee or pre-sales to audiovisual media services (recent research by the Observatory²⁴ suggests that 85% of a European film budget is pre-financed, the rest being funded by the producer). Pre-financing can therefore be regarded as a proxy to the evaluation of the film's total revenues, and the windows as the counterpart to the investments (mandatory in some cases) of the various exploitation windows in the financing of films.

Finally, one should note that consumers may anticipate the release of the film on the next window and therefore retain consumption until this window is opened. The windowing scheme therefore contemplates not only the actual duration of each window, but also the timeframe for promotion within each window before it actually opens.

1.3. Discussing the economic rationale of windows

If windows are theoretically meant to maximise a film's revenues, several points can be discussed:

²⁴ Fiction film financing in Europe: A sample analysis of films released in 2016, European Audiovisual Observatory, Martin Kanzler, December 2018, <https://rm.coe.int/fiction-film-financing-in-europe-2018/1680902fd9>.



- The maximisation of the revenues generated by a film does not equal the maximisation of the revenues of each exploitation window. Each of the exploitation modes could claim, by enlarging its window, to increase its revenues. Windows are therefore, by nature, the result of a negotiation between players, and are influenced by the players' market power. The level of concentration varies at each level of the value chain and also between countries.
- The distribution of revenues generated by the end market to the rightsholders may differ between exploitation windows. A rightsholder may therefore tend to privilege the window which maximises its own net revenues rather than pursuing the maximisation of the total revenues of its film.
- The exploitation windows also have an indirect impact. It is generally considered that a film which is a success in cinema theatres will see its value increasing for the subsequent exploitations: transactional video-on-demand (TVOD) services will seek to benefit from the cinema release promotion effect by releasing the film as early as possible; television channels will set a higher value for a box-office blockbuster.

Other debates arise from the evolution of the exploitation of films. They include:

- Piracy: piracy has triggered many discussions regarding the sustainability of existing windows. Having films available as early as possible in different exploitation modes and at different prices would allegedly convert a fraction of the illegal users to paying consumers. This fraction is, however, difficult to estimate. It is also technically unclear whether the starting point of piracy is the release in cinema theatres or rather the availability of the film in the home entertainment market, and therefore the windows which have actually to be shortened is debatable.
- The bottleneck of film cinema exhibition: the possibility for films to really benefit from the theatrical window has also been debated. On the one hand, films seem to have achieved most of their potential after a limited period of time: in France, in 2016, films cumulated 79% of their final number of admissions after 4 weeks (v. 74% in 2010)²⁵. On the other hand, the admissions to films are highly concentrated (out of the 4 548 films on release in Europe in 2018, the top 100 accounted for 72% of total admissions)²⁶.
- One could advocate that for most films, the theatrical window is therefore too long; however, on the other hand, cinema exhibitors could argue that the films that will succeed in cinemas cannot be anticipated in advance, and that there is still a need for a window between the end of the 4 weeks and the following windows in order to avoid consumers deferring their willingness to see the film: it would indeed be a paradox if an untimely release on home video were to result in fewer “success stories” in cinemas and hence, fewer films benefitting from the cinema spotlight.
- More generally, players seem to agree on the need to introduce flexibility in the windows system, based on the level of success of films in cinemas.

²⁵ Source : CNC - <https://www.cnc.fr/professionnels/etudes-et-rapports/statistiques/statistiques-par-secteur>.

²⁶ Source – European Cinema – Market trends in Europe, European Audiovisual Observatory, Patrizia Simone, May 2019. Analysis of LUMIERE data.



1.4. The multiplication of windows

The windowing system has constantly evolved, driven in particular by the multiplication of exploitation outlets. From a basic cinema to a free television scheme, in the first phase, it had to successively integrate pay-television and then home entertainment (originally only physical²⁷). The inclusion of new distribution modes has generally resulted in the shortening of the pre-existing windows²⁸.

The array of exploitation modes has again increased: on the one hand, new television windows have appeared, such as the second pay-television window; on the other hand, video-on-demand recoups a large number of segments, for instance, transactional video-on-demand (rental and retail), subscription video-on-demand; advertising video-on-demand and catch-up television. Accommodating these windows, which, to a certain extent, compete with the existing ones, creates tension between the players and, more generally speaking, assessing the best combination of windows to maximise revenues becomes increasingly sophisticated.

The subscription video-on-demand (SVOD) window is of particular interest, as SVOD is the fastest growing segment of the audiovisual market. SVOD illustrates:

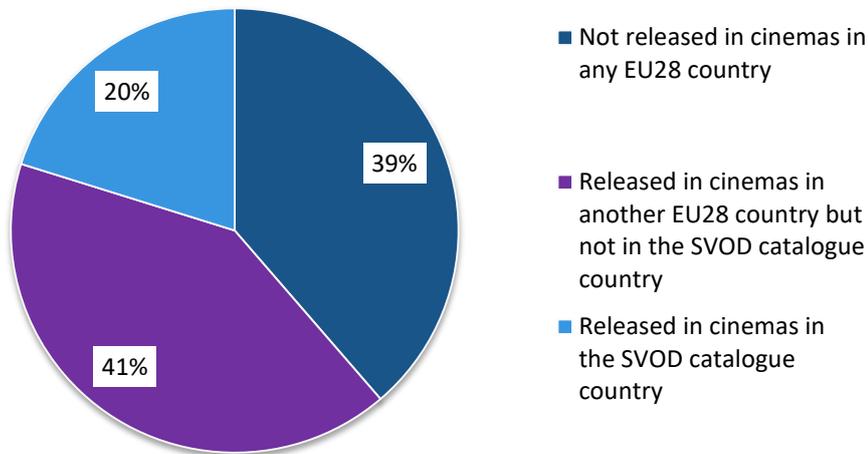
- on the one hand, that an exploitation mode once considered as supplemental could then become a competitor to an existing one, that is to say, pay-television;
- on the other hand, the very national nature of the windows, which, in the case of Europe, provides SVOD catalogues with many options to propose recent films without the need to comply with the national window regulation. Indeed, only a fraction of the recent films²⁹ on release on SVOD services have also been released in cinemas on the same territory: out of over 9 400 releases of EU28 audiovisual programmes labelled as “films” in SVOD catalogues, about 39% have not been released in cinemas in any EU28 country (this category includes made-for-TV movies and direct-to-video/SVOD films); 41% have been released in another EU28 country but not in the country of the SVOD catalogue (due, in particular, to SVOD services buying the pan-European rights of a film); and only 20% have been released both in cinemas and in SVOD in the same country. Windows therefore only impact a limited share of the SVOD catalogues.

²⁷ The rental or sale of a DVD or a Blu-ray disc.

²⁸ The introduction of new windows also impacted, in some cases, the supply of films. When, in the USA, pay-television became a significant player in the exploitation of films and obtained an earlier window than free television channels, these free-to-air television channels progressively decreased the number of films they broadcast and favoured the production of exclusive made-for-TV movies.

²⁹ [From cinema to VOD: a case study of recent films](#), European Audiovisual Observatory, Gilles Fontaine, March 2019.

Figure 3. Breakdown of SVOD recent “film” releases by statute of cinema release

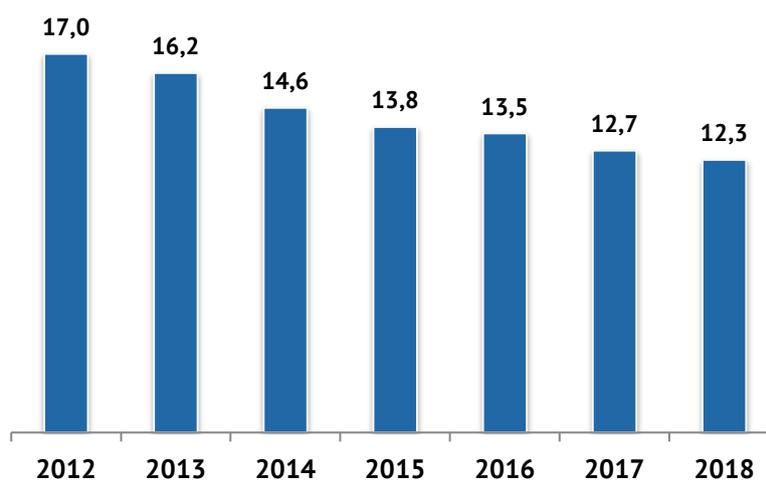


Source: European Audiovisual Observatory

Faced with this multiplication of windows, the exploitation sequencing scheme is adapting. Even if no comprehensive statistics are available regarding the evolution of the windows in Europe, one can note that:

- in the United States, the average window between the theatrical and the retail TVOD releases decreased by almost 5 months between 2012 and 2018;

Figure 4. Average delay between the theatrical and retail TVOD releases in the USA (in weeks)



Source: National Association of Theatre Owners



- in France, where the media chronology is regulated but based on an inter-professional agreement and therefore reflects the market realities to a certain extent, the windows have slowly decreased over time.

1.5. How does regulation impact windows? A limited sample analysis of TVOD

The Observatory analysed the theatrical to transactional video-on-demand window of a sample of 1 794 films released between 2014 and 2018 in 5 European countries³⁰. The sample represents only 15% of all films on first release but 40% of total admissions. In other words, the results of the analysis are only valid for the most successful films in cinemas. The main findings are the following:

- On average, the theatrical – TVOD window is about 4.5 months; retail TVOD benefits from a shorter window than rental, but only by one week.
- 82% of the most successful films are available on TVOD less than 5 months after the cinema release.
- Results are relatively similar between markets: there is a difference of only 3 weeks between the shortest and the longest window. Still, the two sample countries with the highest box-office growth rate³¹ (the United Kingdom and the Netherlands) have the shortest theatrical – TVOD windows; and Germany, where the window is the longest, combines a struggling cinema market with a comparatively resilient home video market.
- When regulated, windows may or may not be aligned with market practices in other countries: in France, the duration of the regulated TVOD window³² is similar to non-regulated countries. Hence, the regulation does not distort windows, but is the counterpart to the investment obligations imposed on the different exploitation modes.
- However, in Germany, films benefitting from public support need to comply with a 6-month window between the theatrical and the home video window³³. On average, the window is therefore longer than in other territories.

³⁰ Comparison of the release dates in VOD (source: AQOA) and cinemas (source: LUMIERE) of a sample of films promoted by TVOD services in Belgium, Germany, France, the United Kingdom and the Netherlands.

³¹ Average growth rate 2013-2017.

³² 4 months with exceptions.

³³ With exceptions.

Figure 5. Average theatrical to TVOD delay (weeks)

Retail TVOD: Windows by territory (in weeks)



Rental TVOD: Windows by territory (in weeks)



Source: European Audiovisual Observatory





2. European framework

2.1. Audiovisual Media Services Directive

In order to understand the development of the current rules contained in the AVMSD one needs to look at the Council of Europe's work in this particular area.³⁴ In its Recommendation No. R(87)7,³⁵ the Committee of Ministers of the Council of Europe considered that, as the rapid development and growth of new technologies was generating a variety of types of film distribution, a need had arisen to harmonise these in order to make films as widely available as possible. Accordingly, it recommended, among other things, that the governments of member states:

[...]

3. Encourage the conclusion of agreements aimed at taking into account the diversification of types of film distribution and ensure, within the limits of their authority, that priority in film distribution is given to cinemas, which alone are capable of exhibiting films to the best advantage, and respect the following general hierarchy of distribution channels:

- cinema,
- videogram,
- television;

4. Where local conditions permit, encourage the conclusion of agreements designed to ensure that broadcasting stations do not schedule cinema films on days and at times when cinemas are most likely to attract large audiences

[...]

Two years later, the European Convention on Transfrontier Television (ECTT)³⁶ was adopted. This ground-breaking legal instrument provided for a rule concerning release windows in its Article 10, paragraph 4:

No cinematographic work shall [...] be transmitted in [broadcasting] services, unless otherwise agreed between its rightsholders and the broadcaster, until two years have elapsed since the work was first shown in cinemas; in the case of cinematographic works co-produced by the broadcaster, this period shall be one year.

³⁴ A more in-depth description of the evolution of the rules at European Union and Council of Europe level is available at Kuhr M., *Media Windows In Flux- Challenges for Audiovisual Media Chronology*, IRIS plus 2008-4, <https://rm.coe.int/16807833f4>.

³⁵ Recommendation No. R (87) 7 of the Committee of Ministers to member states on film distribution in Europe adopted on 20 March 1987, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804dbf22>.

³⁶ European Convention on Transfrontier Television, 5 May 1989, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/132>.



This rule found its mirror in a corresponding provision of the original Television without Frontiers Directive (TwFD) of 1989.³⁷ Article 7 imposed on member states the obligation to ensure that

television broadcasters under their jurisdiction do not broadcast any cinematographic work, unless otherwise agreed between its rightsholders and the broadcaster, until two years have elapsed since the work was first shown in cinemas in one of the Member States of the Community; in the case of cinematographic works co-produced by the broadcaster, this period shall be one year.

This somewhat stringent rule survived until the revision of the TwFD in 1997, which “liberalised” the system of release windows in the European Union. The new Article 7 simply obliged member states to

ensure that broadcasters under their jurisdiction do not broadcast cinematographic works outside periods agreed with the rightsholders”.

This amendment was duly incorporated into the revision of the ECTT in 1998.³⁸ Also, the successive modifications of the TwFD³⁹ and its transformation into the Audiovisual Media Services Directive⁴⁰ did not have an impact on this rule. As such, the current rule in Article 8 of the recently modified AVMSD simply provides that

Member States shall ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rightsholders.

Recitals 76 and 77 of the AVMSD do not provide further information on this matter:

³⁷ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31989L0552>.

³⁸ Protocol amending the European Convention on Transfrontier Television, 01 October 1998, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/171>.

³⁹ 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31997L0036>.

Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 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 (Text with EEA relevance), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32007L0065>.

⁴⁰ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (Text with EEA relevance), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32010L0013>.

Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.



(76) *It is important to ensure that cinematographic works are transmitted within periods agreed between rightsholders and media service providers.*

(77) *The question of specific time scales for each type of showing of cinematographic works is primarily a matter to be settled by means of agreements between the interested parties or professionals concerned.*

2.2. Competition law

Any system of release windows is based on exclusive copyrights. Whereas this fact in itself does not go against the EU internal market rules or the EU competition rules, its application in a concrete case may create effects prohibited under the said EU rules.⁴¹ This was already explained by the Court of Justice of the European Union (CJEU)⁴² in the *Coditel* case:⁴³

Although copyright in a film and the right deriving from it, namely that of exhibiting the film, are not as such subject to the prohibitions contained in Article 85, the exercise of those rights may, nonetheless, come within the said prohibitions where there are economic or legal circumstances the effect of which is to restrict film distribution to an appreciable degree or to distort competition on the cinematographic market, regard being had to the specific characteristics of that market.

Both the CJEU and the European Commission have stated that systems of release windows may restrain the freedom to provide goods and services and distort competition in the audiovisual sector.⁴⁴ Such systems can nevertheless be acceptable under EU law given their ultimate aim of promoting film production.

The CJEU dealt with the applicability of EU competition law to national rules concerning release windows in its *Cinéthèque* judgment⁴⁵ of 1985. This case dealt with the compatibility of French rules concerning the exploitation in the form of video cassettes and video discs of films distributed simultaneously in cinemas with the EEC Treaty provisions on free movement of goods, freedom to provide services, and ultimately, on freedom of expression.

The plaintiffs and the interveners had emphasised that legislation of the type applied in France at the time had the effect of restricting intra-community trade since its

⁴¹ See iMinds (SMIT), *Analysis of the legal rules for exploitation windows and commercial practices in EU member states and of the importance of exploitation windows for new business practices, study carried out for the European Commission*, page 16,

<https://ec.europa.eu/futurium/en/system/files/ged/analysisofthelawrulesforexploitationwindows.pdf>.

⁴² All mention of the CJEU in this publication will be made using its current name.

⁴³ Judgment of the Court of 6 October 1982. *Coditel SA, Compagnie générale pour la diffusion de la télévision, and others v Ciné-Vog Films SA and others*,

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61981CJ0262>. See also Judgment of the Court (Grand Chamber) of 4 October 2011, *Joined Cases C-403/08 and C-429/08, Football Association Premier League Ltd and others vs QC Leisure, and Murphy vs Media Protection Services Ltd*, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=110361&doclang=EN>.

⁴⁴ Kuhr M., *op.cit.*, IRIS plus 2008-4, provides a useful overview of the competition law issues.

⁴⁵ For a more *in extenso* description of this case, see Chapter 5.1.1. of this publication.



application prevented certain products from being made available for sale in the national territory even though they could circulate freely in the territories of other member states.

The CJEU observed that such a system, if it applies without distinction to both video cassettes manufactured in the national territory and to imported video cassettes, did not have as effect to favour national production but rather to encourage cinematographic production as such. The application of such a system could, however, create barriers to intra-community trade in video cassettes because of the disparities between national systems and between the different national conditions for the release of cinematographic works in cinemas. An exception under Article 36 of the EEC Treaty could apply unless the obstacle trade did not exceed that which is necessary in order to ensure the attainment of the objective in view and unless that objective is justified with regard to Community law. In the case at hand, the French system was justified because it aimed at encouraging the creation of cinematographic works, irrespective of their origin, by giving priority, for a limited initial period, to the distribution of such works through the cinema.

Later in 1995, the European Commission confirmed this principle in the *Nederlandse Federatie voor Cinematografie* case.⁴⁶ According to the Commission, the industry agreement in question did restrict competition and would also have an effect on intra-Community trade, but pursuant to Article 85(§3) EEC (currently Article 101(3) TFEU), an exemption could apply to the agreement, since it achieved the same result as other regulatory solutions in force in other member states, and the TwFD contained similar rules in its Article 7. Moreover, the agreement helped maximise cinema revenues, which ultimately contributed to stimulating film production.

⁴⁶ For a more *in extenso* description of this case, see Chapter 5.1.2. of this publication.



3. National overview on release windows

3.1. A diversity of approaches to organise release windows in the European Union

A diversity of frameworks to organise release windows can be identified in the European Union, ranging from legislative and regulatory approaches to free-market-contractual and sectorial-industry-agreement approaches. As mentioned in Chapter 2 of this publication, Article 8 of the AVMS Directive only provides for a general obligation for member states to “ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rightsholders” and refers in its recitals to agreements within the industry. It is therefore up to the member states to further elaborate a release windows framework, and the forms and modalities of such a framework may vary greatly between member states, depending on the national and cultural characteristics of each member state (for example, the historical development of the audiovisual sector, the technological infrastructure, local audience consumption patterns, the investment obligations of stakeholders in the audiovisual value chain, etc.).

Various national audiovisual or film legislations have implemented a minimum requirement as in the AVMS Directive by referring to contractual or industry agreements to organise release windows. Some countries have put in place a more elaborate release windows framework, either through specific legislative provisions or regulation, in particular through national/regional film support schemes (which, in some countries, are also enshrined in legislation), or through a mix of legislative and regulatory provisions.

In general, only a few countries within the European Union have opted for specific legislative provisions aimed at fixing the windows' structure that go further than a mere reference to contractual agreements (Bulgaria and France). Among these countries, there is also a contrast between intensive regulation approaches, such as in France, and a more general framework, such as in Bulgaria. Some countries that had implemented a legislative approach have abandoned it in recent years in favour of sectorial agreements (for instance, Spain and Portugal), based on different economic or political grounds, such as, for example, the will to fight against massive piracy, or in order to adapt to new viewing habits (VOD) or to compensate for the loss in revenues from DVD. Some countries have done just the opposite by deciding to write into law release windows that were already implemented in practice (for example, Italy).

The organisation of release windows can also be regulated or partially regulated through film support rules. Different approaches exist here too; in some member states, film support is granted on the condition that the release windows are respected, without further specification as to the length and modalities of the windows, while in others, more elaborated rules exist which, in some cases, may even be enshrined in legislation (for example in Austria or Germany).



Finally, many countries at EU level have chosen to leave it up to the industry to organise release windows through sectorial agreements or on a case-by-case contractual basis (for example, Belgium, Denmark, Spain, the United Kingdom, etc.).

Chapter 3 will examine in more detail the legislative-regulatory approach, including laws, sectorial agreements reinforced through legislation and specific rules regarding film support related to release windows, in a selection of countries in the European Union.

3.2. Specific legislative provisions on release windows

3.2.1. BG - Bulgaria

According to Article 45 of the Film Industry Act,⁴⁷ release windows shall be observed for the distribution of films on different carriers and services. On 15 November 2018, the Bulgarian Parliament adopted new amendments to the Film Industry Act in order to bring the existing state film aid scheme into line with the European Commission's Communication on State Aid for Films and Other Audiovisual Works (2013/C 332/01). Article 45 on the distribution of films remained unchanged, and provides as follows concerning release windows:

- **video, DVD, Internet and pay TV:** 3 months following the theatrical premiere, except when otherwise agreed in the distribution contract. In practice, holdback periods run between 4 and 6 months;⁴⁸
- **free TV:** 6 months.

3.2.2. FR -France

Holdback periods for the distribution of cinematographic films via the public broadcaster ORTF after their release in theatres were initially fixed by practice in France, this timescale being set at five years. As long as the audiovisual media remained public and until the arrival of video cassettes, the legislator did not feel the need to fix windows. It was, in fact, from the very first exploitation of films on video supports that, on 2 April 1980, for the first time, ministerial decrees introduced a holdback period for video editing and television broadcasting. A law of 29 July 1982 on audiovisual communication definitively confirmed this principle and its implementing decree of 4 January 1983 set mandatory holdback periods. Several amendments to these provisions have followed technological progress and

⁴⁷ Закон за филмовата индустрия (Film Industry Act) promulgated in State Gazette No. 105/2.12.2003, last amended in State Gazette No. 98/27.11.2018, <https://www.lex.bg/laws/ldoc/2135474936>. To our knowledge, there is no up-to-date English version at the moment of publication, for the latest English version available see: <https://www.nfc.bg/legal-acts> (as amended in State Gazette No. 74/15.09.2009).

⁴⁸ See Table in the annex.



the diversification of media (encrypted channel, cable television, video on demand, etc.). Later, under the aegis of the European Union, media chronology became the subject of inter-professional agreements before being incorporated into law by decree.

Today, the French Cinema code⁴⁹ - as lastly modified by decrees in 2009, 2016 and 2017 - provides under Title III for the general framework applicable to the release windows of cinematographic works: (1) in the form of videogrammes (Article L231-1); (2) on on-demand audiovisual media services (Article L232-1); (3) on television services (Article L233-1); general provisions (Article L234-1 and L234-2). Concerning the exploitation of cinematographic works on on-demand audiovisual media services and television services, the Cinema code refers to professional agreements, which may cover one or more categories of services and may be made mandatory for all interested parties. The code further details that professional agreements may be made mandatory by the state, provided that they have been signed by professional organisations representing the film sector. These agreements may be binding for a maximum period of three years.

Based on this legislative framework, the professional agreement organising the release windows of cinematographic works from their theatrical release to their free public access was reformed and modernised in December 2018, renewing the previous agreement that was more than ten years old, and which had been signed before SVOD platforms appeared in the audiovisual landscape. The professional agreement was endorsed by Ministerial Order on 25 January 2019 and published in the Official Journal on 10 February 2019; it entered into force and became mandatory across the whole industry for three years from that date.⁵⁰

According to French rules, release windows provide as follows:

- **DVD, Blu-ray, TVOD:** 4 months after theatrical release, or 3 months, upon derogation granted by the Centre national du cinema et de l'image animée (French national film fund, CNC), for films with less than 100 000 admissions in the first four weeks following their theatrical release.
- **Pay-TV film channels (and certain SVOD upon specific conditions):**
 - *First release window:* 8 months after theatrical release, or 6 months upon derogation for films with less than 100 000 admissions in the first four weeks following their theatrical release. In order to benefit from this window, pay-TV film channels have to meet certain conditions (relating to investment, broadcasting quotas for French and European works, etc.), otherwise, windows are set at 18 months after theatrical release (or 16 months upon derogation).
 - *Second release window:* 17 months after theatrical release, or 15 months upon derogation for films with less than 100 000 admissions in the first four weeks

⁴⁹ Title III of the Code du cinema et de l'image animée (Cinema code), consolidated version of 15 April 2019, <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000020908868>.

⁵⁰ Arrêté du 25 janvier 2019 portant extension de l'accord pour le réaménagement de la chronologie des médias du 6 septembre 2018 ensemble son avenant du 21 décembre 2018, Version consolidée, https://www.legifrance.gouv.fr/affichTexte.do?sessionId=41564E9F4949FFBA842A5EF0C2CF45B4.tplqfr34s_1?cidTexte=JORFTEXT000038109708.



following their theatrical release if the service concerned has concluded an agreement with professional film organisations.⁵¹ In all other cases, the period will be extended to 24 months (22 months if derogations are granted).

This second release window shall also apply to SVOD services that have concluded an agreement with professional film organisations and have taken a number of commitments relating to investment, broadcasting quotas for French and European works, etc.

■ **Free-TV and non-film pay-TV channels:**

- 22 months if they invest 3.2% of their turnover in the co-production of European films (20 months upon derogation), or
- 30 months after theatrical release (28 months upon derogation).

■ **SVOD (without an agreement with professional film organisations):**

- 30 months after theatrical release (or 28 months for films with less than 100 000 admissions) if the service concerned agrees to support the French and European film industries by meeting production⁵² and share in catalogue quotas⁵³, by paying the so-called “video tax” to the CNC, and by signing an agreement with the CSA.⁵⁴
- 17 months after theatrical release (or 15 months for films with less than 100 000 admissions) in the case of fiction films of French original expression with a budget of less than EUR 1.5 million, where the exploitation rights of the work concerned have been the subject of a proposal to acquire from all publishers of services subject to a window of less than 22 months or more, which has not given rise, until the end of the window of exclusive exploitation in cinemas, to any purchase or pre-purchase under that window, whereas such rights were contractually available.
- 36 months after theatrical release, or 34 months upon derogation for films with less than 100 000 admissions.

⁵¹ The agreement with the professional film organisations shall detail a series of commitments, in particular: a commitment to disseminate or make available European cinematographic works and works in French; a financial commitment from the service on the basis of a guaranteed minimum per subscriber; this commitment may also include, where applicable, a guaranteed investment amount in absolute value; an investment diversity clause; a commitment to editorialise the offer of cinematographic works on the service; or a commitment to pre-finance European and French original works (relating to investment, broadcasting quotas for French and European works, etc.).

⁵² 21% of turnover for European works and 17% for works in original French language, including 25% of this contribution to be invested in rights acquisition or in co-production for those services with a yearly net turnover of over EUR 50 million.

⁵³ 60% of European works and 40% of works of French original expression.

⁵⁴ Blocman, A., New media chronology agreement finally signed, IRIS 2019 2:1/12, <http://merlin.obs.coe.int/iris/2019/2/article12.en.html>.



- **Free VOD** (for example, YouTube): 44 months after theatrical release (or 42 months upon derogation).

Compliance with the regulatory framework on release windows is a prerequisite for being eligible for public funding in France.

Recently, a report carried out by Mr. Dominique Boutonnat for the French Government on the private financing of the production and distribution of cinematographic and audiovisual works⁵⁵ made some recommendations concerning the need to update release windows in France in the light of the evolution of consumption patterns, in parallel with a review of broadcasters' investment obligations.

The report suggests that in the long term, the objective would be for release windows to be negotiated contractually by the producer and the distributor, film by film, while keeping a few safeguards in law. It recommends that the law continue to set the exclusivity period for theatrical exploitation, and proposes some developments concerning the implementation of this objective in practice, through contractual negotiation, and in particular:

- Television channels should be more interested in cinema by becoming more "customers", which would mean, in particular, reviewing the holdback periods for the broadcasting of films on television, which are becoming outdated due to new consumption patterns (VOD).
- A new definition of broadcasters' financing obligations towards cinematographic and audiovisual production, which may have an impact on both the broadcasters' interest in production and the interest of private investors in adding value to the various release windows. It is essential, according to the report, to reflect on the advantages for producers and broadcasters alike, including VOD platforms, of moving from an obligation currently based mainly on pre-purchases (which, in some cases, includes producer shares) to an obligation based more on a rights' purchase approach.
- The report also recommends that the distributor, in agreement with the producer, should be able to evaluate the best release strategy on the various windows once the film is finished, without necessarily going through cinema theatres. Indeed, the work's rightsholders should, according to the report, be able to optimize each release window to the real potential of each film by deciding whether or not to refer to a theatrical release, by leaving the possibility of "sliding" windows or by reselling windows that have not been pre-purchased.
- Finally, permanently updating release windows should, according to the report, give more importance to the "second life" of films, and to the enhancement of the catalogues that constitute the assets of companies, an asset that is still insufficiently exploited today. Enhancing the value of the heritage assets represented by catalogues of works would enable their long-term exploitation to

⁵⁵ Boutonnat, D., Rapport sur le financement privé de la production et de la distribution cinématographiques et audiovisuelles, December 2018, <http://www.culture.gouv.fr/Espace-documentation/Rapports/Rapport-sur-le-financement-prive-de-la-production-et-de-la-distribution-cinematographiques-et-audiovisuelles>.



generate income that could be reinvested upstream in the development phase of and financing plan for subsequent works.

The report recommends that these changes be organised gradually, with a strategy to be defined and implemented in stages over a period of three to five years, along with inter-professional negotiation on the subject.

Table 1. Overview of main release windows in France

DVD	TVOD	Film pay TV (+ certain SVOD)	Free TV (+ non-film pay TV)	SVOD
4 months (3 months*)	7 months (3 months*)	<p>1st window:</p> <p><i>With conditions:</i> (investment, quotas): 8 months (6 months*).</p> <p><i>Without conditions:</i> 18 months (16 months*).</p> <p>2nd window:</p> <p><i>With a professional agreement:</i> (also applicable to SVOD with an agreement)</p> <p>17 months (15 months*)</p> <p><i>Without a professional agreement:</i></p> <p>24 months (22 months*)</p>	<p><i>With investment:</i></p> <p>22 months (if 3.2% turnover investment in the production of European works) (20 months*)</p> <p><i>Without investment:</i></p> <p>30 months (28 months*)</p>	<p>1st window:</p> <p><i>With conditions:</i> (quotas, video tax, agreement CSA)</p> <p>30 months (28 months*)</p> <p>2nd window:</p> <p><i>With conditions:</i> (quotas, video tax, agreement CSA)</p> <p>17 months (15 months*) for fiction films of French original expression of less than EUR 1.5 million, IF no pre-acquisition by the previous window</p> <p>3rd window:</p> <p>36 months (34 months*)</p>

*Derogation available, upon declaration by rightsholders to the CNC, for films with less than 100 000 admissions in the first four weeks after theatrical release.

3.3. Rules regarding film support related to release windows

Some countries have specific rules regarding film support related to release windows. In these countries, films that receive public support are compelled to respect the release windows, whereas those that have not received such support do not.



3.3.1. AT - Austria

Article 11a of the Law on Film Funding (Filmförderungsgesetz – FifoeG)⁵⁶ sets out that certain release windows (“blocking periods”) have to be respected. These periods are set down in the Austrian Film Institute’s Funding Guidelines (*Förderungsrichtlinien*, hereinafter referred to as the ÖFI guidelines),⁵⁷ which entered into force on 1 January 2019.

The ÖFI guidelines provide that, in order to ensure the protection of the individual exploitation stages of a film, whoever receives funding is not permitted to exploit or allow others to exploit the funded film through picture carriers in Austria or in German-language versions (including synchronised or subtitled versions) abroad, in television transmissions, or in any other manner prior to the expiry of the following holdback periods following the regular first theatrical exploitation in Austria (“regular first run”):

- **Picture carrier exploitation (DVD, Blu-ray...):** 6 months / 4 months upon reasoned request to the Film Institute / 3 months in exceptional cases upon decision of the Supervisory Board of the Film Institute based on a detailed and specially developed exploitation concept by the producer.
- **VOD, near-VOD, and pay-per-view:** 6 months / 4 months upon reasoned request to the Film Institute / 3 months in exceptional cases upon decision of the Supervisory Board of the Film Institute. In order to gain experience concerning innovative multimedia-based exploitation concepts, the Supervisory Board may still further reduce this period in very exceptional cases and in line with the project if this is necessary for the best possible exploitation of the film and if it does not endanger the cinema exploitation.
- **Pay TV:** 12 months / 8 months upon reasoned request to the Film Institute / 6 months in exceptional cases upon decision of the Supervisory Board of the Film Institute.
- **Free TV:** 18 months / 12 months upon reasoned request to the Film Institute / 6 months in exceptional cases upon decision of the Supervisory Board of the Film Institute / 4 months in exceptional cases for films which have been produced with the participation of a television provider, and in the event of a particularly high financial participation from the television provider.

Holdback periods may no longer be reduced if the exploitation of the film had already started prior to the decision on the reduction of the holdback period in the exploitation

⁵⁶ Bundesgesetz vom 25. November 1980 über die Förderung des österreichischen Films (Filmförderungsgesetz), <https://www.jusline.at/gesetz/fifoeg/gesamt>.

⁵⁷ Förderungsrichtlinien (Filminstitut’s Funding Guidelines), 1 January 2019, www.filminstitut.at/de/view/files/download/forceDownload/?tool=12&feld=download&sprach_connect=765, for an English version, see: www.filminstitut.at/en/view/files/download/forceDownload/?tool=12&feld=download&sprach_connect=152.



stage applied for. Furthermore, if the holdback periods are violated, the funding pledge shall be revoked. Funds already disbursed shall be reclaimed.⁵⁸

3.3.2. DE - Germany

Section 4 of the German Film Law on film funding (*Filmförderungsgesetz* – FFG)⁵⁹ sets out that films supported by the German Federal Film Board (FFA) or by the German Federal Film Funds (DFFF) have to respect certain release windows (“blocking periods”). Article 53 of the FFG establishes the general rule concerning the different release windows that the film has to respect after its first theatrical release, whereas Article 54 provides for certain cases where a window reduction is possible, following application by the producer, provided it is not contrary to the interests of the film industry.

According to these rules, release windows are as follows in Germany:

- **Picture carrier exploitation (DVD, Blu-ray..), TVOD, pay-per-view:** 6 months after the regular premiere / may be reduced to 5 or 4 months in exceptional cases.
- **Pay-TV and SVOD services:** 12 months / may be reduced to 9 or 6 months in exceptional cases.
- **Free-TV and free VOD services:** 18 months / may be reduced to 12 or 6 months in exceptional cases.

As a general rule, individual projects whose economic success requires a different sequence of exploitation may benefit from the reduction or waiving of holdback periods. At the request of the producer, the regular holdback periods for films co-produced with a television broadcaster may be shortened to six months after acceptance by the television broadcaster co-producer. An application to shorten the holdback period may only be made before the start of regular cinema exploitation. The holdback periods may no longer be shortened if the exploitation of the film at the requested exploitation stage had already begun before the decision to shorten the holdback period was taken.

⁵⁸ In individual cases, and following a reasoned request by the applicant, the Supervisory Board may refrain partially or entirely from reclaiming funding if this seems justified when taking into account the protective purpose of the holdback periods with a view to the manner and time of exploitation and the precautions taken to ensure compliance with the holdback periods.

⁵⁹ Articles 53 „Regelmäßige Sperrfristen“ and 54 „Ordentliche Verkürzung der Sperrfristen“, Gesetz über Maßnahmen zur Förderung des deutschen Films (*Filmförderungsgesetz* – FFG) in der Fassung der Bekanntmachung vom 23. Dezember 2016 (BGBl. I S. 3413), (in Kraft getreten am 1. January 2017), (Film Support Act, as published on 23 December 2016 (BGBl. I S. 3413), (entry into force on 1 January 2017)), www.ffa.de/download.php?f=a8aa7d2a4a9f9c74f714bc64b7d7e218&target=0.



3.3.3. IE - Ireland

According to the Screen Ireland Production Funding Guidelines 2019,⁶⁰ Screen Ireland requires, as part of its funding conditions, that there be “*viable theatrical windows for all projects especially those involving broadcaster support*”. In the case of feature films, as a general rule, Screen Ireland requires the following, without giving any further specifications:

- All platforms: 24 months from the date of the first theatrical screening (18 months for documentaries).

Any other more detailed windows are agreed in contracts between the parties concerned. In practice release windows are the same as in the United Kingdom.⁶¹

3.3.4. IT - Italy

Italy first set theatrical windows by law in 2018, through Ministerial Decree No. 531 of 29 November 2018,⁶² adopted pursuant to Law No. 220/2016 on cinema and audiovisual works.⁶³ Compliance with the regulatory framework on release windows is a prerequisite for being eligible for public funding (including tax credits) in Italy. In addition, in case of violations of the provisions on release windows, the productions might not be admitted to the tax credit or other fiscal or financial benefits for cinematographic productions.⁶⁴

Article 1 of the decree requires a holdback period of 105 days after the first theatrical release of an Italian cinematographic work (defined as a work with a duration superior to 52 minutes) before exploitation on any other - linear or non-linear - platform. Some exceptions based on the number of admissions and the type of content are provided in the decree, with a view to allowing small (Italian) productions to circulate faster and more easily on other platforms while possibly reducing the risk of piracy.

In practice, the decree only established by law what had been a well-established practice until then, a practice which was called into question in September 2018, following the controversy over the day-and-date release of an Italian film produced by Netflix, “*Sulla mia pelle*” (On My Skin), which was simultaneously released in theatres and on the streaming platform.

More specifically, according to Italian rules, release windows provide as follows:

⁶⁰ www.screenireland.ie/images/uploads/general/Production_Funding_Guidelines_2019_1.pdf.

⁶¹ See Table in the annexe.

⁶² Decreto ministeriale n. 531, 29 novembre 2018 (Ministerial decree No. 531 of 29 November 2018), https://www.beniculturali.it/mibac/multimedia/MiBAC/documents/1544799193923_registrato_d.m._29_novembre_2018_rep._531.pdf.

⁶³ Legge 14 novembre 2016, n. 220, “Disciplina del cinema e dell’audiovisivo” (Law of 14 Novembre 2016 on cinema and audiovisual Works), <http://www.cinema.beniculturali.it/Notizie/4206/66/legge-14-novembre-2016-n-220-recante-%E2%80%9Ddisciplina-del-cinema-e-dell-audiovisivo%E2%80%9D/>.

⁶⁴ See also Pellicano, F., “New rules on theatrical windows for Italian movies”, IRIS Newsletter 2019-1/27, <http://merlin.obs.coe.int/iris/2019/1/article27.en.html>.



- **All platforms:** holdback period of 105 days after the first theatrical release.
 - 60 days if the work is released in less than 80 theatres and obtains less than 50 000 theatrical admissions after the first 21 days of programming; the reduction is then only allowed if, during the programming period, there is no launching and promotion activity on the subsequent availability of the work through audiovisual media services providers.
 - 10 days if the work is scheduled for only 3 (or less) working days, with the exception of Friday, Saturday and Sunday.

The 105-days holdback period also applies in practice to films, which have not received public funding, with a few exceptions. For example, blockbuster titles are often released on physical carriers (DVD, Blu-ray) after 16 weeks from their theatrical release, and some producers have moved the release period on TVOD and EST to 14 weeks. The pay-TV window is usually from 6 months after the theatrical release for these films, as well as for distribution on SVOD.⁶⁵ As for free-TV, the release window is usually of 12 months after pay-TV.

3.3.5. NL - The Netherlands

There is no specific provision in Dutch law on release windows. However, Article 11 of the Distribution Sub-Regulations of the Netherlands Film Fund (NFF)⁶⁶ requires, for the granting of distribution support, a holdback period of at least 6 months for documentaries and 18 months for feature films and long animated films between the theatrical and non-theatrical release on the one hand, and television distribution on the open network on the other. However, in practice, exemptions are given regularly, as common release windows tend to be shorter, as follows:⁶⁷

- **DVD, Blu-ray, EST/DTO:** 4 months after theatrical release.
- **TVOD:** 6 months after theatrical release.
- **Pay-per-view:** 4 to 6 months after theatrical release.
- **SVOD:** 6 months
- **Pay TV:** 12 months.
- **Free TV:** 24 months

⁶⁵ Between day-and-date of on-demand and day-and-date of Pay-TV depending on contractual arrangements between SVOD providers and producers/film distributors.

⁶⁶ Distribution Sub-Regulations of 2018, <https://wetten.overheid.nl/BWBR0041999/2019-03-19>.

⁶⁷ See in the annexe for details on holdback periods in practice.

It is also worth mentioning several experiments with shorter windows and day-and-date release (for example, picl.nl).⁶⁸

3.3.6. SE - Sweden

According to a study commissioned by the European Commission and published in July 2014,⁶⁹ Sweden removed release requirements from film state aid rules in 2013, making it possible to support films that can be shown on platforms other than cinemas (the objective nevertheless remaining for a film to be released in cinemas).⁷⁰

However, the Swedish Film Institute (Svenska Filminstitutet – SFI) still sets requirements related to the visibility and performance of the supported work. A distribution plan for Sweden, scheduled and confirmed with a Letter of Intent (LOI), is required for all production funding schemes. In the case of the reference funding scheme Audience Related Support (Publikrelaterat Stöd, PRS), a contract for theatrical distribution should be submitted with the application. In addition, for the Moving Sweden scheme⁷¹ (devoted to low-budget films), Swedish Television (SVT) will show the feature film four months after its premiere at a festival and/or in the cinema. After that, the release schedule in other windows in Sweden should be as follows:⁷²

- **Swedish Television (SVT):** 4 months after the premiere of the film at a festival and/or in the cinema;
- **TVOD:** 1 month after release on SVT (that is, 5 months);
- **SVOD and Pay TV:** 8 months after release on SVT (that is, 12 months).

⁶⁸ <https://picl.nl/over-picl/>.

⁶⁹ Ranaivoson, H., De Vinck, S., Van Rompuy, B., “Analysis of the legal rules for exploitation windows and commercial practices in EU Member States and of the importance of exploitation windows for new business practices, A study prepared for the European Commission DG Communications Networks, Content & Technology by iMinds (SMIT), July 2014, <https://ec.europa.eu/digital-single-market/en/news/analysis-legal-rules-exploitation-windows-and-commercial-practices-eu-member-states>.

⁷⁰ The film fund commissioners will decide which films might not need a theatrical release. Applicants need to present an audience plan. See also Annexe – Information Sheets for every Member State’s release window system, iMinds (SMIT) study for the European Commission, op. cit.

⁷¹ <https://www.filminstitutet.se/sv/sok-stod/filminstitutets-stod/produktionsstod/nya-moving-sweden-produktionsstod>.

⁷² “Mapping of films and audiovisual public funding criteria in the EU”, European Audiovisual Observatory, Strasbourg, 2019, <https://rm.coe.int/mapping-of-film-and-audiovisual-public-funding-criteria-in-the-eu/1680947b6c>. See also details on holdback periods in practice in the annexe.



4. National self-regulatory approaches

As previously mentioned, the general obligation of Article 8 of the AVMS Directive concerning exploitation periods has been implemented as such in the national laws of some member states, which refer to agreements at industry level or to case-by-case contractual practice to organise release windows. This chapter will present the situation in a selection of countries in the European Union.⁷³

4.1. Industry agreements

4.1.1. BE - Belgium

Based on Article 42 of the Decree of the French Community of Belgium on audiovisual media services,⁷⁴ which specifies that "RTBF (public service broadcaster) and television service publishers may not broadcast a cinematographic work beyond the deadlines agreed with the rightsholders", the Concertation Committee of the Cinema and Audiovisual Centre adopted a Recommendation on 23 March 2012 concerning the exploitation of audiovisual works in the Federation Wallonia-Brussels (CFWB).⁷⁵

The Recommendation, which applies to fiction and has no enforcement mechanisms, provides for the following release windows:⁷⁶

- **TVOD** (1st window): 8 months, following the end of theatrical exploitation, or at the same time as DVD or Blu-ray sales in case of DVD or Blu-ray exploitation.⁷⁷
- **Pay TV** (2nd window) 12 months after theatrical release. This period may be reduced to 10 months if the work is co-produced by a broadcaster.

⁷³ It has proved difficult to determine for each EU country the extent to which representatives of interested parties (producers, distributors, operators) engage in structured negotiations on release windows since the boundaries between explicit and implicit sectoral agreements are not always easy to draw. However, for most of the countries, this information has been complemented by information provided by Europa Distribution, FIAD, IVF and UNIC, through a survey carried out by their members in August 2019 (See table in the annexe).

⁷⁴ Arrêté du Gouvernement de la Communauté française portant coordination du décret sur les services de médias audiovisuels, 26 March 2009, https://www.gallilex.cfwb.be/document/pdf/34341_018.pdf.

⁷⁵ Recommandation du Comité de concertation du Centre du cinéma et de l'audiovisuel du 23/03/2012 relative à l'exploitation des oeuvres audiovisuelles de la Fédération Wallonie-Bruxelles (Recommendation of the Concertation committee of the cinema and audiovisual center of 23 March 2012 on the exploitation of audiovisual works of the Wallonia-Brussels Federation). https://audiovisuel.cfwb.be/fileadmin/sites/sgam/uploads/Ressources/Textes_juridiques/Media/Recommandati_on_chronologie_medias_final_23.03.12.pdf.

⁷⁶ No information is available concerning the Flemish community of Belgium.

⁷⁷ Usually 3 to 4 months, depending on individual title (see table in the annexe).



- **Free TV** (“basic linear services”⁷⁸) (3rd window): this consists in the reopening of the first two windows and is of an undetermined duration. Co-producing broadcasters may start exploiting the work 15 days earlier.
- **SVOD and free VOD services** (4th window): 12 months after the 3rd window. SVOD services may, by derogation, be able to start exploiting at the same time as the 3rd window.

At national level – according to a survey of chronology trends in EU member states, carried out by Europa Distribution, FIAD, IVF and UNIC in August 2019⁷⁹ – as there are no rules in Belgium, it is the contract that applies. Often, the contract imposes a holdback period on the French community of Belgium (most probably based on the Recommendation of the Concerted Committee), while this is not the case for the Flemish community. In practice, release windows are as follows:

- **DVD, Blu-ray, EST/DTO:** 3-4 months after theatrical release, depending on individual title;
- **TVOD, pay-per-view:** 3-4 months after theatrical release, depending on individual title;
- **pay TV:** 7 to 12 months after theatrical release;
- **free TV:** 19 to 30 months after theatrical release;
- **SVOD:** 7 to 36 months after theatrical release.

4.1.2. DK - Denmark

An agreement dating from May 2011 between the Danish Cinema Association and the Association of Danish Film Distributors states that if a Danish feature film has been released in cinemas, a holdback period of four months from the cinema release/premiere applies before it can be distributed on DVD or VOD, and of 12 months before it can be shown on Danish television.⁸⁰

According to Nordisk Films, the following typical release windows usually apply in practice for feature films released in cinemas:⁸¹

- **DVD, Blu-ray:** 4 months after theatrical release;
- **pay TV:** 12 months after theatrical release;

⁷⁸ According to the definition provided in the Recommendation, a “basic linear service” is a linear service provided free of charge or as part of the sale of a subscription to a basic offer of television services.

⁷⁹ See in the annexe.

⁸⁰ iMinds (SMIT) study for the European Commission, Annex – Information Sheets for every Member State’s release window system, op. cit.

⁸¹ Analyse af filmbranchens nye forretnings-modeller 2017 (Analysis of the movie industry’s new business models 2017), Danish Film Institute, page 46, https://www.dfi.dk/files/docs/2018-02/Analyse_af_filmbranchens%20nye_forretningsmodeller%20%281%29.pdf. See also details in practice in the annexe.



- **free TV:** 24 months after theatrical release.

A report by the Danish Film Institute (Det Danske Filminstitut) from February 2018 on “Media and film policy issues for the period 2019 to 2022”⁸² discusses the need for more flexibility and a shortening of the holdback periods with a view to matching market reality, and particularly the changes in audiences’ habits due to digital conversion and the rise of streaming services. The report notes that, in practice, 93% of cinema tickets are sold within only six weeks, while smaller films often stay in cinemas for only two to four weeks. In this context, the four-month holdback period is considered too long for some films which are no longer available in cinemas and not yet available on a digital platform. Although it highlights the fact that cinema is a crucial window for all films, including smaller ones, the report recommends a more flexible and optimised utilisation of windows for films targeting smaller audiences, in particular through the strengthening of a transaction-based window.

Finally, the report proposes that collaboration be established with the industry in order to establish a more flexible window structure, in cooperation with the industry, which would be characterised by four types of cinema distribution and a transition to digital distribution:

- General cinema distribution: for films with a large audience potential, there should still be traditional cinema distribution with a four-month holdback period.
- Fast track: for films with less than 10 000 admissions in cinemas, there would be a holdback period of six to eight weeks.
- Event visioning: for very narrow films with a very limited cinema potential (10 to 30 single views), there would be no requirement for real cinema distribution, and they could be available within 10 days on TVOD and then SVOD services.
- Emergency Track. Films that do not satisfy the expectations of the theatres should be made more quickly available on digital platforms. If a Danish film sells very few tickets right after the premiere, the film should be able to move to the Fast Track model with a hold-back of 6-8 weeks.

4.1.3. ES - Spain

Until a few years ago, Spanish law⁸³ provided for a three-month holdback period from the first theatrical release before the film could be released on DVD. The holdback period applied to films that had obtained public funding, with the exception of those that had earned less than EUR 60 000 at the box office during their first month of theatrical release.

⁸² Det Danske Filminstitut Medie- & Filmpolitisk oplæg 2019-2022 (The Danish Film Institute Media and Film policy issue 2019-2022), February 2018, p. 27, https://www.dfi.dk/files/docs/2018-03/Medie_og_filmpolitisk_oplaeg_2019_2022_DFI.pdf.

⁸³ Article 22(2)b of Real Decreto 2062/2008, de 12 de diciembre, por el que se desarrolla la Ley 55/2007, de 28 de diciembre, del Cine, <https://www.boe.es/buscar/pdf/2009/BOE-A-2009-503-consolidado.pdf>; see also Enrich, E., Decree on the Cinema Law, IRIS Newsletter 2009-3/13, European Audiovisual Observatory, Strasbourg, <http://merlin.obs.coe.int/iris/2009/3/article13.en.html>.



Although this holdback period was only applicable by law to films that had received public support, in practice, almost all films complied with this provision under a gentlemen's agreement between exhibitors. However, as piracy increased in Spain and became an economic and political problem for the country, pressure on release windows intensified, as they were seen as offering an additional benefit to the illegal supply of content, available earlier. In this context, the Spanish Government decided to abolish them through Royal Decree 1084/2015 of 4 December, amending Law 55/2007 of 28 December on Cinema.⁸⁴

Today, holdback periods no longer exist by law and anyone could, in theory, release a film via different media at the same time. However, only very exceptional films have faced this challenge,⁸⁵ as there is in fact an interprofessional agreement between distributors and cinema exhibitors that sets a 16-week or 112-day period of exclusivity in cinemas, which may vary slightly for small distribution companies.⁸⁶

Thus, according to the current practice in Spain, release windows are as follows:⁸⁷

- **DVD, Blu-ray, EST/DTO, TVOD, pay-per-view:** 4 months (112 days) after theatrical release;
- **pay TV:** 7 to 8 months after theatrical release;
- **free TV:** 12 months after the initial date of exploitation on pay TV;
- **SVOD:** 7 to 8 months after theatrical release (in case this is a licence substituting the traditional pay TV licence) or after the first pay-TV window and/or free-TV window (depending on the negotiations between the distributor and the licensee).

The 112-day holdback period is currently being questioned by some VOD services, who consider that more flexible holdback periods would benefit films by using the media exposure obtained through their theatrical release for their exploitation on online services such as Movistar, Filmin, iTunes, Rakuten TV, Netflix and HBO, among others, and could also have an impact on piracy.⁸⁸

⁸⁴ Real Decreto 1084/2015, de 4 de diciembre, por el que se desarrolla la Ley 55/2007, de 28 de diciembre, del Cine, https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-13207.

⁸⁵ For example, the film "Carmina or revienta" (2012) by Paco León, the distribution of which skipped the – by then legal – release windows system, premiering simultaneously in theatres, on DVDs and on the Internet.

⁸⁶ "Los 112 días que dividen al cine español", El País, 17 June 2018, https://elpais.com/cultura/2018/06/17/actualidad/1529222591_093786.html; <https://www.screendaily.com/features/are-much-shorter-theatrical-windows-around-the-corner/5112398.article>.

⁸⁷ See details in practice in the annexe.

⁸⁸ See in the annexe. See also Screendaily "Are much shorter theatrical windows around the corner?", 2 January 2017, <https://www.screendaily.com/features/are-much-shorter-theatrical-windows-around-the-corner/5112398.article>.



4.2. Free contracts: the example of the United Kingdom

Under the Film Export scheme of the British Film Institute (BFI), films are only required to be intended for theatrical release. But apart from this, there are no specific requirements regarding theatrical release, performance and visibility on VOD or any release window to be respected.⁸⁹ Although there seems to be a traditional 16-week theatrical window policy, in practice, individual negotiations are key in the United Kingdom.

According to a survey of chronology trends in EU member states, carried out by Europa Distribution, FIAD, IVF and UNIC in August 2019, the practice is as follows:

- **DVD, Blu-ray:** 4 months after theatrical release (for limited releases, occasionally 1 to 2 months).
- **EST/DTO:** generally, day and date release or 2 weeks prior to physical release (3 weeks in a few cases). Occasionally 2 months from theatrical release or 1 to 2 weeks earlier than that in some cases.
- **TVOD:** generally, day and date release with physical release. Occasionally, 2 months from theatrical release (and sometimes PVOD (“Premium Video On Demand”) day-and-date with theatrical release).
- **Pay-per-view:** day-and-date with physical release; 4 months generally; occasionally 2 months from theatrical release.
- **Pay TV, SVOD:** Varies from 4 to 6 months from theatrical release. Regarding SVOD, in some instances from 7 months on, depending on individual contractual arrangements on a title-by-title basis.
- **Free TV:** starts after the pay-TV first window has ended. If there is no pay-TV, 12 months from theatrical release is usual. In any case, no later than 27 months from theatrical release.

The trend in the United Kingdom is also towards shorter windows. This is especially so for the United Kingdom’s indie cinema circuit, which has been working with shorter windows and simultaneous releases for years, as they look to boost revenues for indie titles that struggle to get significant play in cinemas. In particular, this has been done for films that are unlikely to stay in cinemas for longer than a few weeks and thus are reliant on money made from ancillary revenue streams.⁹⁰

⁸⁹ See “Mapping of film and audiovisual public funding criteria in the EU”, European Audiovisual Observatory, p. 328, op. cit.

⁹⁰ See ScreenDaily, “UK’s Picturehouse Cinemas introduces strict theatrical windows policy (update)”, 6 March 2019, <https://www.screendaily.com/news/uks-picturehouse-cinemas-introduces-strict-theatrical-windows-policy-update/5137404.article>.



5. Case law

5.1. European Union

5.1.1. CJEU

In its *Cinéthèque* case⁹¹ of 11 May 1985, the Court of Justice of the European Union (at the time, the European Court of Justice) had to decide on the interpretation of Articles 30, 34, 36 and 59 of the EEC Treaty with a view to enabling the Tribunal de Grande Instance of Paris to determine their compatibility with the provisions of French legislation concerning the exploitation in the form of video cassettes and video discs of films distributed simultaneously in cinemas.

Article 89 of Act No. 82-652 of 29 July 1982 on Audiovisual Communication⁹² provided that no cinematographic work shown in cinemas may simultaneously be exploited in the form of recordings intended for sale or hire for the private use of the public, in particular in the form of video cassettes or video discs, before the expiration of a period of between six and 18 months, to be determined by decree. It also provided that the period was to run from the granting of the performance certificate and that it could be waived on conditions to be determined by decree. The interval provided for was fixed at one year by Decree No. 83-4 of 4 January 1983.⁹³ The chronological order for the showing of films was thus as follows: first in cinemas, then on video cassettes and video discs and finally on television. Despite this, the minister for culture had the power to waive the period of one year acting upon the opinion of a committee composed of eight members, including two members representing video cassette and video disc producers. A dispensation could be granted in the light of the results of the commercial exploitation of the cinematographic work in cinemas.

The Tribunal de Grande Instance of Paris referred to the CJEU for a preliminary ruling in the two cases in order to determine whether the abovementioned provisions of French law were compatible with the provisions of Articles 30 and 34 of the EEC Treaty on the free movement of goods, with Article 59 of the EEC Treaty on freedom to provide services and

⁹¹ Judgment of the Court of 11 July 1985 - *Cinéthèque SA and others v Fédération nationale des cinémas français*. Joined cases 60 and 61/84, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61984CJ0060&from=FR>.

⁹² Loi n° 82-652 du 29 juillet 1982 sur la communication audiovisuelle. A consolidated version up to 03 May 1985 is available (in French) at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068759&dateTexte=19850503>.

⁹³ Décret n° 83-4 du 4 janvier 1983 portant application des dispositions de l'article 89 de la loi n° 82-652 du 29 juillet 1982 sur la communication audiovisuelle, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000858045&categorieLien=id>.



with Article 36 of the EEC Treaty laying down derogations from Articles 30 and 34 of the EEC Treaty.

The dispute between the parties centred on the effect of the national legislation in question on the imports of video cassettes and on the marketing of imported video cassettes in the national territory. The French Government stated that the prohibition laid down by French law did not extend to exports of video cassettes since the specific purpose of the law was not frustrated if video cassettes of films shown in cinemas in France were exported to other member states.

The plaintiffs and the interveners emphasised that legislation of the type applied in France had the effect of restricting intra-community trade since its application prevented certain products from being made available for sale in the national territory even though they could circulate freely in the territories of other member states.

The defendant in the main proceedings contended that the legislation in question applied to imported and national products alike, that it was adopted in the absence of community legislation in a field falling within the exclusive competence of the member states, and that it was justified by the mandatory requirements of general interest, namely the protection of the cinema as a means of cultural expression, which was necessary in view of the rapid development of other modes of film distribution. The French Government adopted a similar point of view, observing that the legislation in question formed part of a body of rules intended to establish a chronological order between the different methods of exploiting a cinematographic work in order to ensure priority for its exploitation in cinemas. Such an arrangement was necessary in order to ensure the continued creation of cinematographic works since their exploitation in cinemas produced the bulk of their revenue (80%) and income from other forms of exploitation was at the time very small. The French Government added that a system of self-regulation would not have been able to meet the growing power of the video industry or the risk of the development of such an imbalance in contractual relations that the contract could no longer have a regulatory effect.

The Commission stated that the national legislation in question undeniably had the effect of hindering the imports of video recordings lawfully produced and marketed in another member state and in free circulation there, and the possibility of obtaining exemption on the basis of the aforementioned decree of 4 January 1983 was not capable of affecting that fact. However, cultural aims could justify certain restrictions on the free movement of goods, provided that those restrictions applied to national and imported products without distinction, that they were appropriate to the cultural aim which was being pursued and that they constituted the means of achieving them which least affected intra-community trade.

The CJEU observed that such a system, if it applied without distinction to both video cassettes manufactured in the national territory and to imported video cassettes, did not have the purpose of regulating trade patterns; its effect was not to favour national production over the production of other member states, but to encourage cinematographic production as such. Nevertheless, the application of such a system could create barriers to intra-community trade in video cassettes because of the disparities between the systems operated in the different member states and between the conditions for the release of



cinematographic works in the cinemas of those states. In those circumstances, a prohibition of exploitation laid down by such a system is not compatible with the principle of the free movement of goods provided for in the treaty unless any obstacle to intra-community trade thereby created does not exceed that which is necessary in order to ensure the attainment of the objective in view and unless that objective is justified with regard to Community law. In the case at hand, the French system was justified because it aimed at encouraging the creation of cinematographic works, irrespective of their origin, by giving priority, for a limited initial period, to the distribution of such works through the cinema.

The CJEU concluded that Article 30 of the EEC Treaty did not apply to national legislation which regulated the distribution of cinematographic works by imposing an interval between one mode of distributing such works and another by prohibiting their simultaneous exploitation in cinemas and in video cassette form for a limited period, provided that the prohibition applied to domestically produced and imported cassettes alike and that any barriers to intra-community trade to which its implementation may give rise do not exceed what is necessary for ensuring that the exploitation in cinemas of cinematographic works of all origins retains priority over other means of distribution. Concerning the issue of whether the French system was in breach of the principle of freedom of expression as recognised by Article 10 of the European Convention on Human Rights (ECHR) for the protection of human rights and fundamental freedoms and was therefore incompatible with Community law, the CJEU admitted that it was its duty to ensure observance of fundamental rights in the field of Community law, but it had no power to examine the compatibility with the ECHR of national legislation which concerns, as in this case, an area which falls within the jurisdiction of the national legislator.

5.1.2. Decisions of the European Commission

In the *Nederlandse Federatie voor Cinematografie* case,⁹⁴ an industry agreement of 1992, signed by almost all Dutch cinema producers, distributors and operators, prohibited the simultaneous exhibition of films in cinemas and videos within certain time limits ("Windows"). Under the terms of the agreement, each film was first to be provided to commercial cinemas and then, after six months, to be available for distribution in the form of videos and in art cinemas. At the end of 12 to 21 months, the film was to become available for pay-TV distribution. After 24 months, the film would be available for distribution on free television. The contract also provided for possible derogations on a case-by-case basis. Art films were subject to a fairly similar regime (with the exception of a clause imposing minimum prices).

According to the parties, this agreement did not restrict competition. It simply delayed competition between different exploitation modes. The result was therefore the

⁹⁴ Decision of the European Commission, *Nederlandse Federatie voor Cinematografie*, Case 34.927, closed by comfort letter of 30 August 1995. The decision is not available online but it is described (in French) in the European Commission's contribution to OCDE's paper on Competition Policy and film distribution, OCDE/GD(96)60, 1996, [https://one.oecd.org/document/OCDE/GD\(96\)60/en/pdf](https://one.oecd.org/document/OCDE/GD(96)60/en/pdf), see pages 62-63.



sequencing - not the elimination - of competition over time. Moreover, according to the parties, the agreement had no impact on intra-Community trade.

The Commission did not agree with this conclusion and considered that the agreement did restrict competition since the distributors refrained from competing on the different exploitation windows simultaneously. The agreement would also have an effect on intra-Community trade because the majority of films distributed were of foreign origin in the country in question. Finally, the fixing of minimum prices for art films clearly constituted a restriction of competition. Despite these restrictions on competition, the Commission considered that, pursuant to Article 85(3) EC Treaty (currently Article 101(3) TFEU), an exemption could apply to the agreement. The reasons for this exemption were threefold. Firstly, it ultimately achieved the same result as the regulatory solution in force in other member states applicable to the issue of media chronology. Moreover, the Television without Frontiers Directive contained similar rules. In addition, the CJEU had already endorsed the principle of a media chronology in the *Cinémathèque* case mentioned above. Secondly, the NFC agreement made it possible to maximise cinema revenues, thus freeing up funding for the film industry, and ultimately stimulating film production. Finally, the agreement made it possible to maintain a privileged link between the cinema (guaranteed to benefit from the first release of the films) and the viewer.



6. State of play

As highlighted in Chapter 3, legislation and industry agreements in several countries are currently being reviewed in order to match current shifts in the market and to allow more flexibility and freedom for contractual agreement.⁹⁵ Meanwhile, some stakeholders maintain the same position as in the earlier years that saw the emergence of VOD services, that is, by insisting on preserving certain windows, and in particular the theatrical window. Moreover, under the current shift in the traditional business model, changes in practice remain subject to the influence of the different groups within the film sector, who, by extension, have different concerns and interests.⁹⁶

In 2011, the European Commission published a Green Paper on the online distribution of audiovisual works in the European Union, on the ongoing and upcoming challenges facing the digital single market.⁹⁷ Looking at the market evolution, it appears that the overall opinions formulated almost ten years ago by stakeholders from the film industry still stand today. And yet, it can be argued that the situation in 2019 is radically different from what it was in 2011.

6.1. The theatrical window, fundamental or obsolete?

As developed in Chapter 1, the economic rationale behind exploitation windows explains the calls to preserve the theatrical window as the first window for the film industry, a position that is shared by most stakeholders, in particular distributors, producers and, of course, by cinema owners.

The International Union of Cinemas (UNIC) views theatrical exhibition as the “key pillar” of the film industry as it sets the “benchmark for all subsequent methods of distribution”.⁹⁸ In addition to a wide range of benefits for other commercial activities, cinema attendance generates higher revenues than other exploitation methods, generating economic growth, preserving and even creating new working opportunities, and contributing to supporting artistic and cultural creation through levies that are paid to national film funds, according to the UNIC’s position paper.

⁹⁵ Even in France (where a new regulation was adopted less than a year ago) as suggested in Dominique Boutonnat’s Report, see Chapter 3.

⁹⁶ Koljonen J., Nostradamus Report: Relevance in a New Reality, Göteborg Film Festival, 2019, <https://goteborgfilmfestival.se/wp-content/uploads/2019/02/Nostradamus19-digi-2.pdf>.

⁹⁷ European Commission, Green Paper on the online distribution of audiovisual works in the European Union: opportunities and challenges towards a digital single market, <https://publications.europa.eu/en/publication-detail/-/publication/7ec0fa4a-3983-4b25-881e-4add98b3057c/language-en>.

⁹⁸ UNIC’s Annual report 2018, p. 15, https://www.unic-cinemas.org/fileadmin/user_upload/wordpress-uploads/2017/06/UNIC_AR2018_online.pdf.



The same view is shared by the International Federation of Film Distributors' Associations (FIAD). The current business model based on exclusive release windows is essential to ensuring the efficient distribution of films and increasing their chances of commercial success in other exploitation channels.⁹⁹ Thus, the theatrical window and, by extension, potential success in cinemas, has “important spill-over effects on the following windows”. Therefore, any changes affecting media chronology are feared to have negative consequences for cinematographic distribution and for the industry as a whole.

As far as the Federation of European Film Directors (FERA) is concerned,¹⁰⁰ exploitation windows allow producers to finance their works through pre-sales by selling exploitation rights within the various distribution channels. Additionally, FERA also links a work's success in subsequent distribution windows to its initial theatrical release.

It is hardly surprising that Netflix does not share this position. Speaking at the UBS Global Media and Communication Conference in New York (via the website Deadline.com), Netflix's Chief Content Officer Ted Sarandos considered that release windows “[have] disconnected people from movies in a way” and doubted that “it's very consumer-friendly that consumers who don't happen to live near a theater are waiting six months, eight months to see a movie.”¹⁰¹

Mr Cuarón, the director of Netflix's film “Roma”, has a similar take on the matter. According to the Mexican film director, “How many theaters do you think a Mexican film in black and white, in Spanish that is a drama without stars – how big of release do you think it will be in a theatrical release?” He also believes that streaming coupled with a limited theatrical model can “elevate cinema, and more importantly can create a diversity in cinema.”¹⁰²

This view is also shared by the European Consumer Organisation (BEUC), who, as far back as 2013, believed that “the traditional hierarchy with cinema as the first window” no longer reflects the market reality, especially “with the emergence of new distribution channels”, namely SVOD.¹⁰³ Thus, it considers chronological release windows to be highly detrimental to small, low-budget works with limited access to theatres and to means of promotion. According to BEUC, allowing works to become available shortly after premiering in theatres is a more promising commercial model.

⁹⁹ FIAD's position on Release windows, <https://www.fiad.eu/positions>.

¹⁰⁰ New market, new deal. Proposals for shared online growth (a Response to the EU Green Paper on Online Distribution of Audiovisual Works), 2009, p. 16, question 11, <http://www.filmdirectors.eu/wp-content/uploads/2011/11/FERA-Green-Paper-Reply-FINAL-18.11.pdf>.

¹⁰¹ Indiewire.com, “Ted Sarandos: Theatrical Windows are ‘Disconnecting People from Movies,’ Not Netflix”, <https://www.indiewire.com/2018/12/ted-sarandos-netflix-theatrical-windows-disconnecting-people-from-movies-1202025231/>

¹⁰² Deadline.com, “Alfonso Cuarón Champions Netflix Limited Theatrical-Streaming Model As ‘Roma’ Wins Two Golden Globes”, <https://deadline.com/2019/01/alfonso-cuaron-champions-netflix-streaming-limited-theatrical-model-as-roma-wins-two-golden-globes-1202529703/>.

¹⁰³ Green paper: Preparing for a fully converged audiovisual world, 2013, p. 6, question 5, <https://www.beuc.eu/publications/2013-00586-01-e.pdf>.



6.1.1. Fight or adapt?

In reaction to the evolution of the distribution landscape, some theatrical exhibitors have taken action in order to preserve theatrical exploitation. In Spain, for example, some film theatres refused to release Netflix's *Roma* due to its short theatrical-exclusive window.¹⁰⁴ Despite the fact that theatrical windows are not regulated in Spain, theatrical exclusivity remains of "vital importance for the whole industry" and in particular for exhibitors. In the United Kingdom, Picturehouse, one of the largest independent cinema chains in the country, issued a statement about its theatrical windows policy,¹⁰⁵ whereby it reiterated its intention to restrain from showing films that do not respect its holdback policy of a 16-week gap between theatrical and home entertainment release, stating that "if a film is made to be shown in cinemas then it should respect a theatrical window".

But film theatres may not be the ones most impacted by the rise of SVOD. The year 2017 marked the lowest growth rate for pay-TV in the European Union since 2012.¹⁰⁶ On the other hand, the pay-services market remains driven by SVOD subscriptions which accounted for 24% of all pay-services subscriptions, despite a less significant contribution to growth in terms of revenues due to the gap between subscription costs – pay-TV fees remain higher. However, if pay-TV revenues did become negatively impacted by the ongoing trend of SVOD taking over parts of the pay-TV market share, the lucrative licensing fees charged by producers and studios from pay-TV would potentially be imperilled, meaning less revenue for producers.¹⁰⁷

6.1.2. Film festivals as battlegrounds?

The mixed reaction to Netflix's *Roma* Academy Award distinction, the Cannes Film Festival's new rules, as well as the efforts to limit the participation of non-theatrically released works in the major film festivals might suggest that a cold war, waged against SVOD platforms, is in the making. Nonetheless, such a war does not seem to be driven by the festivals themselves but is rather a result of the pressure exerted by exhibitors defending the traditional release model.

If reports from across the Atlantic about a push for a three-month theatrical window as a condition to be eligible to compete for the Oscars proves to be true, this could open the discussion in major European film festivals, including at Cannes, where restrictive

¹⁰⁴ Green J., Why the Spanish Film Industry Is Embracing Netflix, The Hollywood Reporter, 3 April 2019, <https://www.hollywoodreporter.com/news/why-spanish-film-industry-is-embracing-netflix-1198145>.

¹⁰⁵ Grater T. UK's Picturehouse Cinemas introduces strict theatrical windows policy (update), Screendaily, 6 March 2019, <https://www.screendaily.com/news/uks-picturehouse-cinemas-introduces-strict-theatrical-windows-policy-update/5137404.article>.

¹⁰⁶ European Audiovisual Observatory, Yearbook Key Trends 2018/2019, p. 48, <http://yearbook.obs.coe.int/s/document/key-trends>.

¹⁰⁷ Lang B., Op. Cit.



measures were adopted.¹⁰⁸ However, in the case of *Roma*, Netflix was quick to react as it took the lead and allowed the movie to be screened in hundreds of independent theatres for months at international level. However, Netflix films remained welcome to screen and compete at some major European film festivals such as Venice and Berlin, earning the organisers a wave of criticism.¹⁰⁹ Nevertheless, raising tension about Netflix's participation in festivals might just have broken the ice for a potential common understanding between Europe's biggest festivals, one way or another.

6.1.3. SVOD's audience-based strategy

According to European Audiovisual Observatory figures, in 2018, the number of theatrical admissions in the EU-28 decreased by 2.9% from the previous year.¹¹⁰ At the same time, the SVOD market consolidated its position as it grew by 45.7% year over year.¹¹¹ Many parallels were drawn between one market's success and the other one's slight decline, as alarmed voices claimed that multiplexes would go through a difficult time in the years to come, while predicting a shiny future for home entertainment, and for SVOD in particular.

The success of SVOD services like Netflix and HBO could be explained by their ability to offer access to diversified catalogues while providing a tailor-made consumer experience, and all of that at an affordable cost. On the other hand, ticket prices in the European Union averaged around EUR 7.10 in 2018, which is slightly below the cost of a monthly subscription to any of the top SVOD services.¹¹² Middle-class households and young people, who are mainly students with limited financial resources but who, ironically, are among the most regular consumers of cultural goods, are more likely to turn to SVOD for this obvious economical reason – not to mention the personalised experience and access to a large selection of works from diverse cultural and linguistic backgrounds, and the positive impact on the circulation of culture across borders. Last but not least, the accessibility argument based on the accessibility and portability of SVOD services, which can be carried and used at any time and from different devices, makes SVOD the equivalent of an audiovisual works “home delivery” for rural dwellers.

¹⁰⁸ Gleiberman O., Steven Spielberg vs. Netflix: A Preview of the War for Cinema's Future (Column), Variety, 10 March 2019, <https://variety.com/2019/film/columns/steven-spielberg-vs-netflix-a-preview-of-the-war-for-cinemas-future-1203159522/>.

¹⁰⁹ Roxborough S. and Richford R., Cannes' Netflix Problem Gets Bigger After Oscar Wins for 'Roma', The Hollywood Reporter, 1 March 2019, <https://www.hollywoodreporter.com/news/what-roma-oscar-wins-mean-cannes-netflix-problem-1191665>.

¹¹⁰ Kanzler M. and Simone P., European Audiovisual Observatory, Focus 2019 World Film Market Trends.

¹¹¹ Yearbook Key Trends 2018/2019, Op. Cit., p. 50.

¹¹² Focus 2019 World Film Market Trends, Op. Cit., p. 14.



6.2. Exploitation windows and the promotion of audiovisual works

As highlighted in a 2019 research requested by the European Parliament's CULT committee, "[t]he influence of TVOD and SVOD services on film distribution, and thus on film financing in Europe is growing rapidly". In light of the latest revision of the Audiovisual Media Services Directive (AVMSD), which envisages a new investment obligation to be imposed on VOD service providers, aimed at promoting European works, VOD windows will now matter more than ever.¹¹³

Exploitation windows policies can be put in place in order to promote national and European film industries. As mentioned earlier, the new French media chronology regulations include rules that are tailored to drive and promote creation and investment in French and European works by allowing earlier exploitation windows for services that commit to supporting the French and European film industries (see Chapter 3). Such a condition was set in a Report by the French Senate's Committee on Culture in 2017 as part of a state strategy to promote national and European works.¹¹⁴

6.3. Take-aways from the EAO Presidency Conference

Under the Italian Presidency of the Observatory, a conference devoted to "Cinema windows across Europe" was held in Rome on 17 June 2019. Following up on the introductory presentations from the Observatory,¹¹⁵ a panel discussion¹¹⁶ was held to debate on two fundamental questions:

- a) What are the objectives of release windows?
- b) Why is the regulation of windows necessary or useful?

With regard to the first topic, on the objectives of release windows, the opening assumption was based on the fact that the windows sequence follows the order of the highest revenue generated over the least amount of time, or the principle of "second-best alternative", from cinema theatres (in domestic or international release) to their subsequent releases on DVD

¹¹³ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.

¹¹⁴ Blocman A., Media chronology: Senate's Committee on Culture makes proposals, IRIS 2017-8, <http://merlin.obs.coe.int/iris/2017/8/article17.en.html>.

¹¹⁵ The introductory presentations of Cappello M. "Regulating release windows in Europe" and Fontaine G. "The economic context for windows in Europe" are available at <https://www.obs.coe.int/en/web/observatoire/-/conference-cinema-windows-across-europe>.

¹¹⁶ Panelists at the Conference were: James Butler (Department for Digital, Culture, Media and Sport, UK), Iole Maria Giannattasio (DG Cinema – MiBAC, Italy), Jérémie Kessler (Centre national du cinéma et de l'image animée (CNC), France), Inge Welbergen (Ministry of Education, Culture and Science (MINOWC), Netherlands), Bruno Zambardino (Istituto Luce Cinecittà c/o DG Cinema – MiBAC, Italy).



(rental/sales), VOD in its various forms (subscription based, transaction based, or advertising driven), Pay-per-View, pay-TV on linear services until free-to-air television. Each version is normally provided exclusively for a limited time period and the purpose is to allow every version to maximise the revenues derived by the rightsholders. Release windows are therefore part of the audiovisual sector's business model and one of the cornerstones of film financing, as they allow producers to generate turnover from the pre-sales of exclusive exploitation rights across the different windows.

With this in mind, the panel discussion dug into many questions, such as:

- Does the traditional exploitation model, where the theatrical window comes first, still make sense today, and is it still fundamental to benefit from a theatrical release in order to succeed as a film?
- In today's context, where VOD and streaming platforms are gaining more audience and some already established studios are turning towards online distribution, is digital distribution the future of film production?
- What approach should be adopted towards difficult and low-budget works in terms of release windows?
- Since the user might prefer to be able to watch the film at the time and place (that is, platform) of his/her choice, to what extent should release windows be flexible?

As for the second topic, concerning the need or usefulness of windows, the discussion started from the premise that in most European countries, release windows are based on industry agreements, and tailor-made commercial agreements are often put in place in order to enable films to maximise their exploitation. Despite all of that, windows are sometimes brought into question, mainly for hampering competition and for not being in line with the market reality that digital distribution is gaining more popularity. The perspective of the user also happens to add further issues to the discussion, especially considering the different media preferences of users of different age groups.

The panel discussion explored the following aspects:

- Considering that out of 28 EU countries, only a few have chosen to regulate release windows, while the vast majority prefers to leave it all to industry agreements, the extent to which state regulation affects the current film distribution structure.
- As some public funding institutions require funded projects to comply with certain rules regarding release windows, whether there is a need to regulate release windows from a public funding institution's point of view.
- Since some users might feel tempted to illegally download a film if s/he cannot go or does not feel like going to the cinema or waiting until it is available on an online platform, how windows could be balanced with piracy.
- Whether or not there is room for a minimum level of harmonisation at EU level regarding release windows.

The audience contributed with interesting insights on issues such as access and inclusion: if a film is only available from SVOD platforms, wouldn't this be a potential exclusion factor? Could public service providers ensure a balancing role in this context?



The European Audiovisual Observatory obviously does not have an answer to these questions, but it is almost certain that they will continue to generate lively debate between those who support release windows and those who do not, in a rapidly evolving audiovisual context marked by the rise of on-demand audiovisual platforms and the new consumption habits of viewers.





7. Annexe – Survey of chronology trends in EU member states (August 2019)¹¹⁷

¹¹⁷ This table was realised by Europa Distribution, the International Federation of Film Distributors' Associations (FIAD), the International Video Federation (IVF), and the International Union of Cinemas (UNIC), based on a survey realised to their members in August 2019, on request of the European Audiovisual Observatory.

Country	Theatrical Release ¹¹⁸	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD))	Online Distribution Transactional (EST/TVOD) ¹¹⁹	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
<i>Austria</i>	DAY 1	6 <i>(Possibility to shorten it to 5 months and in exceptional cases to 4 months)</i>	6 <i>(same as physical)</i>	6 <i>(Possibility to shorten it to 5 months and in exceptional cases to 4 months)</i>	12 <i>(Possibility to shorten it to 9 and in exceptional cases to 6 months)</i>		18 <i>(Possibility to shorten it to 12 and in exceptional cases to 6 months. If the broadcaster contributed financially very significantly to the production of the film in exceptional cases the window can be shortened to 4 months.)</i>	These release windows are set down in the guidelines on film funding. If the film received film subsidy they have to be respected. The law on Film Funding also points to these guidelines and sets down as a general rule that the film funding guidelines have to set a minimum 6 months window for uses other than cinema after the first theatrical release. A window reduction is possible following application by the producer. (But this possibility is limited).

¹¹⁸ All subsequent time periods are calculated in months (unless otherwise specified) from the date of theatrical release in the particular territory.

¹¹⁹ TVOD: On-demand content transmission for limited viewing period via DRM technology / No permanent access for the consumer / Content received via live streaming or as self-erasing download.

EST (Electronic Sell-Thru): On-demand transmission of an AV work in an encoded file for download via DRM technology / Consumer is authorized to have permanent access to the work (unlimited playback).



Country	Theatrical Release ¹¹⁸	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD))	Online Distribution Transactional (EST/TVOD) ¹¹⁹	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
<i>Belgium</i>	DAY 1	3-4 Depending on individual title	3-4 with HD EST 2 weeks earlier; TVOD = 3-4 (typically on 9 months license) Depending on individual title	4	7-12 (typically on 12 months license)	7-36	19-30	Second Pay window = 20-24 (typically 6 months license) In general BEL follows Dutch release trends, while for French movies and/or French speaking part of BEL French rules will apply. Trends can vary from distributor to distributor and/or from movie to movie. In the absence of regulation, individual contracts provide for holdbacks as a function of the title concerned.
<i>Bulgaria</i>	DAY 1	4-6	4-6					
<i>Cyprus</i>	DAY 1	4	2-3	-	12		24	VOD window is contracting and some producers have indicated day-and-date VOD with DVD/BD in near future.
<i>Czech Republic</i>	DAY 1	3-6	(same as physical)	3-6	9-12		12-18	



Country	Theatrical Release ¹¹⁸	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD))	Online Distribution Transactional (EST/TVOD) ¹¹⁹	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
Denmark	DAY 1	3-4	<i>(TVOD normally same as physical)</i> Most distributors distinguish between EST and TVOD. On bigger titles, early release on EST (up to 10 days prior to physical release and 3 weeks ahead of TVOD) is sometimes seen.	This format does not exist in the Nordic countries with regards to film – only with regards to sports	10-12	12-36	24	
Estonia	DAY 1	3-4	3-4					
Finland	DAY 1	4	Same		12-24		24	



Country	Theatrical Release ¹¹⁸	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD))	Online Distribution Transactional (EST/TVOD) ¹¹⁹	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
<i>France</i>		4	4	4	Cinema Pay TV	36	Free-to-air TV and standard pay-TV	Since September 2018:
<i>Legislation</i>		(or 3 if less than 100 000 admissions in 4 weeks and derogation asked by distributor in 5th week of exploitation)	(or 3 if less than 100 000 admissions in 4 weeks)		8 but with the possibility of a 6 months period window only for films with less than 100 000 admissions: for 1st Pay TV window	but with the possibility of a 34 months period window only for films with less than 100 000 admissions	22 but with the possibility of a 20 months period window only for films with less than 100 000 admissions	4 months for all films until release on video & VOD. A derogation (no longer than 4 weeks) can only be obtained when the film achieved less than 100 000 admissions during the four first weeks of its theatrical release, which may concern almost 65 % of the movies released each year. Note: the derogation given if the film has done less than 100000 admissions in its 1st 4 weeks has consequences for all the windows when validated : 2 months earlier for PAY TV, FREE TV, SVOD, FVOD/AVOD Public funding can be denied if release window is not respected.
<i>Germany</i>	Day 1	6	6	9	12		18	These minimum periods are laid down by legislation which is applicable to productions (film exceeding 79 min and 59 min for children films)
<i>Legislation</i>		(Possibility to shorten it to 5	(Possibility to shorten it to 5	(Possibility to shorten it to 5	(Possibility to shorten it to 9,		[Possibility to shorten it to 12	



Country	Theatrical Release ¹¹⁸	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD))	Online Distribution Transactional (EST/TVOD) ¹¹⁹	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
		or in exceptional cases to 4 months)	or in exceptional cases to 4 months)	or in exceptional cases 4 months)	and in exceptional cases to 6 months.)		and in exceptional cases to 6 months, in particular if the broadcaster has been involved in the production.)	which have received state subsidy. A window reduction is possible following application by the producer. (But this possibility is limited – see the information in brackets)
<i>Greece</i>	DAY 1	2-4	2-3	-	12		24	VOD window is contracting and some producers have indicated day-and-date VOD with DVD/BD in near future.
<i>Hungary</i>	DAY 1	4-6		-	12		24	The trend is towards shorter windows, especially around seasonal markets (Christmas, Easter)
<i>Ireland</i>	DAY 1	SEE UK						
<i>Italy</i>	DAY 1	105 days (blockbuster titles often 16 weeks)	105 days (some producers have moved to 14 weeks)	105 days	Generally from 6 months after theatrical release	Same as PayTV (6 months) Between day-and-date of on-	12 months after PayTV	A new ministerial decree (soft law) establishes for Italian films which have received public funding a theatrical window of 105 days, reduced to 60 days if the film does not exceed 50.000



Country	Theatrical Release ¹¹⁸	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD))	Online Distribution Transactional (EST/TVOD) ¹¹⁹	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
						demand and day-and-date of Pay TV depending on contractual arrangements between SVOD providers and producers/film distributors.		admissions in theatres, further reduced to 10 days if the film was shown in theatres for only three days and not during the weekend.
<i>Latvia</i>	DAY 1	3-4	-	-	-		3	DVD - films which have received funding from the National Film Centre of Latvia= 18
<i>Lithuania</i>	DAY 1	2.5-6	6	9	12		24	This applies to large productions, independent productions are more variable. No law regulating windows
<i>Luxembourg</i>	DAY 1	DEPENDING ON RELEASES IN NEIGHBORING COUNTRIES						
<i>Malta</i>	DAY 1							



Country	Theatrical Release ¹¹⁸	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD))	Online Distribution Transactional (EST/TVOD) ¹¹⁹	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
<i>Netherlands</i>	DAY 1	3-5	3-5 with HD EST 2 weeks earlier; TVOD = 3-4 (typically on 9 months license)	4-6	8-12 (typically on 12 months license)	20-22	20-22	Windows generally agreed between the parties on a case-by-case basis. Shorter windows may be agreed for economical or strategic purposes, e.g. SVOD after 6 months. Second Pay window = 20-24 (typically 6 months license)
<i>Norway</i>	DAY 1	3-4 months	3-4 months		10-12 months	12-24 months	14-24 months	
<i>Poland</i>	DAY 1	4	3-6	N/A	9-12	24	18-24	
<i>Portugal</i>	DAY 1	3	3	4	6	12	12	As distributors hold "all rights" there are no mandatory windows (limited, obviously, by the contractual holdbacks). The data uploaded is an "average" (there can be significant variations from title to title). Windows can be reduced upon negotiation between right



Country	Theatrical Release ¹¹⁸	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD))	Online Distribution Transactional (EST/TVOD) ¹¹⁹	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
								holders and TV/DVD distributors or in case the TV broadcasters co-producer of the film.
<i>Romania</i>	DAY 1	6-8 but could be 4 in certain independent films cases	6-9 On-Demand exploitation is usually via internet streaming and it is held back between 45-90 days from local DVD release date	12 but contracting to 8-9 months from cinema release	12 but contracting to 8-9 months from cinema release	strongly contracting from 12-24 to 6-8 months from cinema release	12-24 from local theatrical release date and 24-36 months from local theatrical release for international productions 12-24 months (depending if PTV+PPV is exclusively used - usually HBO - for 12 months)	Romania is a difficult territory in terms of exploiting PTV+PPV and DVD+BR rights. Whenever there is modest potential for these forms of exploitation (such as independent art-house titles), SVOD and free TV step in earlier – taking into account international release patterns. The main theatrical chain, Cinema City, has 4 months exclusivity window before any other rights usage.
<i>Slovakia</i>	DAY 1	3-4	2-3	-	12		24	VoD window is contracting and some producers have indicated day-and-date VOD with physical in near future.



Country	Theatrical Release ¹¹⁸	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD))	Online Distribution Transactional (EST/TVOD) ¹¹⁹	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
<i>Slovenia</i>	DAY 1	3-4	(Same as physical)	12	12		18-24	
<i>Spain</i>	DAY 1	4	<p><u>EST</u>: 4 months</p> <p>2-3 weeks prior to DVD/BD release + occasionally day and date with DVD/BD release.</p> <p><u>TVOD</u>: Day and date with EST</p>	Day and date with VOD	7-10	<p>Sometimes decided on an individual basis; some companies choose 12-24 months;</p> <p>7-8 months after the theatrical release date (in case this is a License substituting traditional Pay TV license) or after the first Pay TV window and/or Free TV window (depending of the</p>	12 after the Pay TV initial date	<p>Release windows are agreed on a title-by title basis.</p> <p>Different time periods apply to films that have received public funding</p>



Country	Theatrical Release ¹¹⁸	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD))	Online Distribution Transactional (EST/TVOD) ¹¹⁹	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
						negotiations between Distributor and Licensee)		
<i>Sweden</i>	DAY 1	122 days (4 months)	(same as physical)	N/A	12		24	
<i>Switzerland</i>	DAY 1	4	4					DVD/BR, VOD, TV: day and date with France/Italy/Germany
<i>U.K.</i>	DAY 1	4 (For limited releases occasionally 1-2 months)	<u>EST: generally</u> day and date release with physical or 2- weeks prior to physical release (3 weeks in a few cases) <u>occasionally</u> 2 months from theatrical or 1-2 weeks earlier	day-and-date with physical generally 4 months, occasionally 2 months from theatrical	Varies from 4-6 months from theatrical	25 In some instances from 7 months on depending on individual contractual arrangements on a title-by-title basis	Starts after Pay TV first window has ended. If there is no Pay TV, 12 months from theatrical is usual. In any case, no later than 27 months from theatrical.	Windows are agreed in contracts between the parties.



Country	Theatrical Release ¹¹⁸	Window 1		Window 2	Window 3	Window 4	Window 5	Comments
		Physical Distribution (DVD / Blu-ray (BD))	Online Distribution Transactional (EST/TVOD) ¹¹⁹	Pay-per-View	Pay TV	Online Distribution Subscription (SVOD)	Free TV	
			<p>than that in some cases.</p> <p><u>TVOD: generally</u> day-and-date with physical</p> <p><u>occasionally</u> 2 months from theatrical (and sometimes PVOD day-and-date with theatrical)</p>					

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