

Tuesday 11 September 2012

Online distribution of audiovisual works in the EU

P7_TA(2012)0324

European Parliament resolution of 11 September 2012 on the online distribution of audiovisual works in the European Union (2011/2313(INI))

(2013/C 353 E/08)

The European Parliament,

- having regard to Article 167 of the Treaty on the Functioning of the European Union,
- having regard to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) on 20 October 2005,
- having regard to Article 21 of the Charter of Fundamental Rights of the European Union, in accordance with which the cultural and creative sectors make a significant contribution in the fight against every form of discrimination, including racism and xenophobia,
- having regard to 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) ⁽¹⁾,
- having regard to Article 8 of the Charter of Fundamental Rights of the European Union, whereby the protection of personal data must be guaranteed,
- having regard to Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007) ⁽²⁾,
- having regard to the Recommendation of the European Parliament and of the Council of 16 November 2005 on film heritage and the competitiveness of related industrial activities ⁽³⁾,
- having regard to the Commission Recommendation of 24 August 2006 on the digitisation and online accessibility of cultural material and digital preservation ⁽⁴⁾,
- having regard to the Commission communication of 3 March 2010 entitled 'Europe 2020: A strategy for smart, sustainable and inclusive growth' (COM(2010)2020),
- having regard to the Commission communication of 26 August 2010 entitled 'A Digital Agenda for Europe' (COM(2010)0245),
- having regard to its resolution of 12 May 2011 on unlocking the potential of cultural and creative industries ⁽⁵⁾,

⁽¹⁾ OJ L 95, 15.4.2010, p. 1.

⁽²⁾ OJ L 327, 24.11.2006, p. 12.

⁽³⁾ OJ L 323, 9.12.2005, p. 57.

⁽⁴⁾ OJ L 236, 31.8.2006, p. 28.

⁽⁵⁾ Texts adopted, P7_TA(2011)0240.

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- having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Culture and Education and the opinions of the Committee on Industry, Research and Energy and the Committee on Legal Affairs (A7-0262/2012),
- A. whereas the digital age, by nature, offers great opportunities for creating and disseminating works, but also presents enormous challenges;
- B. whereas market progress has in many ways created the necessary growth and cultural content, in line with the objectives of the single market;
- C. whereas there is more consumer content available today than ever before;
- D. whereas it is essential to make the European audiovisual sector more competitive by supporting online services while also promoting European civilisation, linguistic and cultural diversity and media pluralism;
- E. whereas copyright is a vital legal instrument which grants rights-holders certain exclusive rights and protects those rights, allowing the cultural and creative industries to grow and prosper financially while also helping to safeguard jobs;
- F. whereas changes to the legal framework aimed at facilitating the acquisition of rights would encourage the free movement of works in the EU and help to strengthen the European audiovisual industry;
- G. D. whereas European broadcasters play a crucial role in the promotion of the European creative industry and protection of cultural diversity, and whereas broadcasters provide funding for over 80 % of original European audiovisual content;
- H. whereas cinema exhibition continues to account for a large proportion of film revenue and has a considerable impact on the success of films on video-on-demand platforms;
- I. whereas Article 13(1) of the Audiovisual Media Services Directive provides the basis for introducing funding and promotion commitments for on-demand audiovisual media services, as they too play a crucial role in the promotion and protection of cultural diversity;
- J. whereas European broadcasters operating in a digital, convergent, multimedia multi-platform environment need flexible, future-oriented rights clearance systems that make effective copyright clearance possible even in a one-stop shop. whereas flexible rights clearance systems of this kind have been in place in the Nordic countries for decades;
- K. whereas it is essential to ensure the development of a diverse range of attractive, legal online content and further to facilitate and ensure the easy distribution of such content by keeping obstacles to licensing, including cross-border licensing, at an absolute minimum; also stresses the importance of making content easier to use for consumers, particularly as regards payment;
- L. whereas consumers are demanding access to an ever-wider choice of online films, regardless of the platform's geographical location;

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- M. whereas audiovisual works are already being distributed across borders in Europe in accordance with pan-European licences acquired on a voluntary basis, and whereas their further development may be one of the avenues to explore, provided that the corresponding economic demand exists; whereas due recognition must be given to the fact that companies also have to take into account the various linguistic and cultural preferences of European consumers, which reflect the diverse choices of EU citizens in the consumption of audiovisual works in the internal market;
- N. whereas the online distribution of audiovisual products is an excellent opportunity to enhance knowledge of European languages, and whereas this objective can be achieved through original versions and the possibility of having audiovisual products translated into a great variety of languages;
- O. whereas it is essential to ensure legal certainty for both rights-holders and consumers with regard to the application of authors' and neighbouring rights in the European digital area, through greater coordination of legal rules between Member States;
- P. whereas strengthening the legal framework for the audiovisual sector in Europe contributes to further protection of freedom of expression and thought, reinforcing the democratic values and principles of the EU;
- Q. whereas specific action needs to be taken to preserve the European cinematographic and audiovisual heritage, in particular by encouraging the digitisation of content and making it easier for citizens and users to access Europe's film and audiovisual heritage;
- R. whereas the introduction of a system for identifying and labelling works would help to protect rights-holders and restrict unauthorised use;
- S. whereas it is absolutely essential to preserve net neutrality in information and communication networks and guarantee the technology-neutral design of media platforms and players with a view to ensuring the availability of audiovisual services, and to promote freedom of expression and media pluralism in the European Union and take account of technological convergence;
- T. whereas there can be neither sustainable creation nor cultural diversity in the absence of either authors' rights that protect and reward creators, or legally watertight access to the cultural heritage for users; whereas new business models should incorporate effective licensing systems, continued investment in the digitisation of creative content, and easy access for consumers;
- U. whereas a large number of violations of authors' rights or related intellectual property rights stem from the potential audience's understandable need for new audiovisual content under simple and fairly priced conditions, and whereas this demand has not yet been sufficiently fulfilled;
- V. whereas adjustments to the realities of the digital age, particularly those intended to prevent relocations resulting from a desire to find the legislation offering the least possible protection, need to be encouraged;
- W. whereas fairness demands that all contracts should provide for fair remuneration for authors for all forms of exploitation of their works, including online exploitation;
- X. whereas it is urgent that the Commission propose a directive on collective rights management and collecting societies in order to increase confidence in collecting societies by introducing measures aimed at enhancing efficiency, significantly improving transparency and promoting good governance and efficient dispute resolution;

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- Y. whereas collective rights management is an essential tool for broadcasters, given the high number of rights they need to clear daily, and should therefore provide for efficient licensing schemes for the online use of *on-demand* audiovisual content;
- Z. whereas the arrangements for taxing cultural goods and services should be adapted to the digital age;
- AA. whereas the principle of media chronology allows an overall balance in the audiovisual sector, ensuring efficient pre-financing of audiovisual works;
- AB. whereas the principle of media chronology is encountering increasing competition owing to the growing availability of digital works and the possibilities of instant dissemination afforded by our advanced information society;
- AC. whereas the Union needs to take a coherent approach to technological issues by promoting the interoperability of systems used in the digital age;
- AD. whereas the legislative and fiscal framework should be favourable to enterprises that promote online distribution of audiovisual products with an economic value;
- AE. whereas access to the media for people with disabilities is of major importance and should be facilitated, with programmes being adapted to people with disabilities;
- AF. whereas there is a crucial need to step up research and development in order to develop techniques for the automated management of services for people with disabilities, in particular through hybrid broadcasting;

1. Acknowledges the fragmentation of the online market, which is characterised by, for example, technological barriers, the complexity of licensing procedures, differences in methods of payment, the lack of interoperability for crucial elements such as eSignature, and variations in the rates of certain taxes applicable to goods and services, including VAT; believes, therefore, that there is currently a need for a transparent, flexible and harmonised approach at European level in order to advance towards the digital single market; emphasises that any proposed measure should seek to reduce the administrative burdens and transaction costs associated with the licensing of content;

Legal content, accessibility and collective rights management

2. Stresses the need to make legal content more attractive in terms of both quantity and quality, and more up-to-date, and to improve the online availability of audiovisual works, including both subtitled works and works in all the official languages of the EU;
3. Underlines the importance of offering content with subtitles in as many languages as possible, especially via video on-demand services;
4. Stresses that there is a growing need to promote the emergence of an attractive, legal online supply of audiovisual content and to encourage innovation, and that it is therefore essential for new methods of distribution to be flexible in order to allow the emergence of new business models and to make digital goods accessible to all EU citizens, regardless of their Member State of residence, with due regard for the principle of net neutrality;

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5. Stresses that digital services, such as video streaming, should be made available to all EU citizens irrespective of the Member State in which they are located; calls on the Commission to request that European digital companies remove geographical controls (e.g. IP address blocking) across the Union and allow the purchase of digital services from outside the consumer's Member State of origin; asks the Commission to draft an analysis of the application of the Cable and Satellite Directive⁽¹⁾ to digital distribution;

6. Considers that greater attention should be given to improving the security of online distribution platforms, including online payments;

7. Stresses the necessity of developing alternative and innovative micropayment systems, such as payment by text message or applications for legal platforms providing online services, so as to facilitate their use by consumers;

8. Stresses that problems associated with online payment systems, such as the lack of interoperability and the high costs of micropayment for consumers, should be tackled with a view to developing simple, innovative and cost-effective solutions of benefit to both consumers and digital platforms;

9. Calls for the development of new solutions in the area of user-friendly payment systems, such as micropayments, and of systems facilitating direct payments to creators, thereby benefiting both consumers and authors;

10. Stresses that online use can represent a real opportunity for better dissemination and distribution of European works, particularly audiovisual works, in conditions whereby the legal supply of such works can develop in an environment of healthy competition which effectively tackles the illegal supply of protected works;

11. Promotes the development of a rich and diverse legal supply of audiovisual content, in particular through more flexible release windows; stresses that rights-holders should be able to decide freely when they wish to launch their products on different platforms;

12. Emphasises the need to ensure that the current system of release windows is not used as a means of blocking online exploitation to the detriment of small producers and distributors;

13. Welcomes the Commission's decision to implement the preparatory action adopted by Parliament for testing new modes of distribution based on complementarity between platforms as regards the flexibility of release windows;

14. Calls for support for strategies enabling European audiovisual SMEs to manage digital rights more effectively and thereby reach a wider audience;

15. Calls on all Member States, as a matter of urgency, to implement Article 13 of the Audiovisual Media Services Directive in a prescriptive manner and to introduce funding and promotion commitments for on-demand audiovisual media services, and on the Commission to provide Parliament with a detailed report on the current status of implementation as per Article 13(3) without delay;

⁽¹⁾ Directive 93/83/EEC, OJ L 248, 6.10.1993, p. 15.

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16. Recalls that, for the creation of a single internal digital market in Europe, it is essential to establish pan-European regulations on the collective management of authors' rights and related intellectual property rights so as to put a stop to the continuing various amendments to legislation in the Member States that make cross-border rights management increasingly difficult;
17. Supports the creation of a legal framework designed to facilitate digitisation and the cross-border dissemination of orphan works on the digital single market, this being one of the key actions identified in the Digital Agenda for Europe, which is part of the Europe 2020 strategy;
18. Observes that the development of cross-border services is entirely possible, provided that business platforms are prepared to acquire, by contractual means, the rights to exploit one or more territories, since it must be remembered that territorial systems are natural markets in the audiovisual sector;
19. Stresses the need to create legal certainty as to which legal system applies for the clearance of rights in the event of cross-border distribution, by proposing that the applicable law should be that of the country where an enterprise carries out its main business and generates its main revenue;
20. Reaffirms the objective of intensified and efficient cross-border online distribution of audiovisual works between Member States;
21. Suggests adopting a comprehensive approach at EU level which should involve greater cooperation between rights-holders, online distribution platforms and internet service providers, so as to facilitate user-friendly and competitive access to audiovisual content;
22. Emphasises the need to ensure flexibility and interoperability in the distribution of audiovisual works by digital platforms, with a view to expanding the legal online supply of audiovisual works in response to market demand, and to foster cross-border access to content originating from other Member States while ensuring respect for copyright;
23. Welcomes the new Creative Europe programme proposed by the Commission, which emphasises that online distribution is also having a massive, positive impact on the distribution of audiovisual works, especially in terms of reaching new audiences in Europe and beyond and enhancing social cohesion;
24. Stresses the importance of net neutrality in order to guarantee equal access to high-speed networks, which is crucial to the quality of legitimate online audiovisual services;
25. Emphasises that the digital divide between Member States or regions of the EU represents a serious barrier to the development of the digital single market; calls, therefore, for the expansion of broadband internet access throughout the EU with a view to stimulating access to online services and new technologies;
26. Recalls that, for the purpose of commercial exploitation, rights are transferred to the audiovisual producer, who relies on the centralisation of exclusive rights granted under copyright law to organise the financing, production and distribution of audiovisual works;
27. Recalls that commercial exploitation of the exclusive rights of 'communication to the public' and 'making available to the public' is aimed at generating financial resources, in the event of commercial success, in order to finance the future production and distribution of projects, thus promoting the availability of a diversified and ongoing supply of new films;

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28. Calls on the Commission to present a legislative initiative for the collective management of copyright, aimed at ensuring better accountability, transparency and governance on the part of collective rights management societies, along with efficient dispute resolution mechanisms, and at clarifying and simplifying licensing systems in the music sector; stresses, in this regard, the need to operate a clear distinction between licensing practices for different types of content, notably between audiovisual/cinematographic and musical works; recalls that the licensing of audiovisual works is conducted on the basis of individual contractual agreements together with, in some cases, the collective management of remuneration claims;

29. Stresses that the Commission report on the application of Directive 2001/29/EC⁽¹⁾ identified differences in the implementation in Member States of the provisions of Articles 5, 6 and 8, leading to differing interpretations and decisions by the courts of the Member States; points out that these have become part of the specific body of case law relating to the audiovisual sector;

30. Requests the Commission to continue its rigorous monitoring of the application of Directive 2001/29/EC and its periodic reporting of findings to Parliament and the Council;

31. Invites the Commission to revise Directive 2001/29/EC, after consulting all the relevant stakeholders, in such a way that the provisions of Articles 5, 6 and 8 are worded more precisely, with a view to ensuring the harmonisation at Union level of the legal framework for copyright protection in the information society;

32. Supports the establishment of consistent European rules on the good governance and transparency of collecting societies and on efficient dispute resolution mechanisms;

33. Stresses that simplified clearance and aggregation, especially of musical rights in audiovisual works for online distribution, would promote the internal market, and urges the Commission to take this into consideration as appropriate in the legal act on collective rights management that has been announced;

34. Points out that the continuing convergence of the media, not only in terms of authors' rights, but also in terms of entertainment law, requires new problem-solving approaches; urges the European Commission to check to what extent various regulations for linear and non-linear services in Directive 2010/13/EU on audiovisual media services are still up-to-date, taking the latest technological developments into consideration;

35. Believes that restrictions on advertising for linear children's ranges, on news and information programmes, are reasonable despite the increasingly obsolete distinction between linear and non-linear selections; suggests, however, that consideration be given to new forms of cross-programme and cross-platform clearing systems, with the aid of which interest could be awoken in high-quality content, which would also increase the linear programme quality and the online variety without burdening the revenue of private broadcasters;

36. Stresses that the option of territorial production and distribution schemes should continue to apply to the digital environment, since this form of organisation of the audiovisual market appears to serve as the basis for financing European audiovisual and cinematographic works;

37. Calls on the Commission to present an analysis of whether the principle of mutual recognition could be applied to digital goods in the same manner as to physical goods;

⁽¹⁾ OJ L 167, 22.6.2001, p. 10.

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Identification

38. Takes the view that new technologies could be used to facilitate the clearing of rights; welcomes, in this connection, the International Standard Audiovisual Number (ISAN) initiative, which makes it easier to identify audiovisual works and their rights-holders; calls on the Commission to consider implementing measures facilitating wider use of the ISAN system;

Unauthorised use

39. Calls on the Commission to afford internet users legal certainty when they are using streamed services and to consider, in particular, ways to prevent the use of payment systems and the funding of such services through advertising on pay platforms offering unauthorised downloading and streaming services;

40. Calls on the Member States to promote respect for authors' and neighbouring rights and to combat the provision and distribution of unauthorised content, including via streaming;

41. Draws attention to the upsurge in social networking platforms offering internet users the chance to provide financial support for the production of a film or documentary, which makes them feel like an integral part of its making, but stresses, nonetheless, that in the short term this type of funding is unlikely to replace traditional sources of funding;

42. Recognises that, where legal alternatives do exist, online copyright infringement remains an issue and therefore the legal online availability of copyrighted cultural material needs to be supplemented with smarter online enforcement of copyright while fully respecting fundamental rights, notably freedom of information and of speech, protection of personal data and the right to privacy, along with the 'mere conduit' principle;

43. Calls on the Commission to promote legal certainty with a revision of Directive 2004/48/EC, designed for the analogue market, in order to introduce necessary modifications to that market in order to develop effective solutions for the digital market;

Remuneration

44. Recalls the necessity of ensuring the proper remuneration of rights-holders for online distribution of audiovisual content; notes that, although this right has been recognised at European level since 2001, there still is a lack of proper remuneration for works made available online;

45. Considers that this remuneration should aim to facilitate artistic creation, to increase European competitiveness and to take into account the characteristics of the sector, the interests of the different stakeholders and the need for significantly simplified licensing procedures; calls on the Commission to stimulate bottom-up solutions in cooperation with all stakeholders in order further to develop specific EU legislation;

46. Maintains that it is essential to guarantee authors and performers remuneration that is fair and proportional to all forms of exploitation of their works, especially online exploitation, and therefore calls upon the Member States to ban buyout contracts, which contradict this principle;

47. Calls on the Commission urgently to present a study considering disparities in the different remuneration mechanisms for authors and performers which are in use at the national level, in order to draw up a list of best practices;

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48. Calls for the bargaining position of authors and performers vis-à-vis producers to be rebalanced by providing authors and performers with an unwaivable right to remuneration for all forms of exploitation of their works, including ongoing remuneration where they have transferred their exclusive "making available" right to a producer;

49. Calls for measures to be taken to guarantee fair remuneration for rights-holders when distributing, retransmitting or rebroadcasting audiovisual works;

50. Maintains that the best means of guaranteeing decent remuneration for rights-holders is by offering a choice, as preferred, among collective bargaining agreements (including agreed standard contracts), extended collective licences and collective management organisations;

Licensing

51. Points out that the European copyright *acquis communautaire* does not *per se* preclude voluntary multi-territorial or pan-European licensing mechanisms, but that cultural and language differences between Member States, along with variations in national rules, including those unrelated to intellectual property, necessitate a flexible and complementary approach at European level in order to advance towards the digital single market;

52. Points out that multi-territorial or pan-European licensing mechanisms should remain voluntary and that linguistic and cultural differences between Member States, along with variations in national rules unrelated to copyright law, carry their own specific challenges; believes, therefore, that a flexible approach regarding pan-European licensing must be adopted, while protecting rights-holders and progressing towards the digital single market;

53. Takes the view that, if sustainable multi-territorial licensing can be encouraged and promoted in the digital single market for audiovisual works, this should facilitate market-driven initiatives; stresses that digital technologies provide new and innovative ways to customise and enrich the supply of such works for each market and to meet consumer demand, including for tailored cross-border services; calls for better exploitation of digital technologies, which should constitute a springboard for both differentiation and multiplication of the legitimate supply of audiovisual works;

54. Believes that there is a need for up-to-date information on licensing conditions, licence-holders and repertoires and for comprehensive studies at European level in order to facilitate transparency, identify where problems arise and find clear, efficient and appropriate mechanisms for solving them;

55. Points out that the administration of audiovisual rights for the commercial exploitation of works in the digital age could be made easier if Member States were to promote effective and transparent licensing, including voluntary extended collective licensing, where such procedures are currently lacking;

56. Observes that it would be useful for culture workers and Member States to negotiate the implementation of measures enabling public records to benefit fully from digital technology for works that form part of the heritage, especially as regards access to remote digital works on a non-commercial scale;

57. Welcomes the Commission's consultation triggered by the publication of the Green Paper and its acknowledgment of the specificities of the audiovisual sector with regard to licensing mechanisms, which are of major importance for the continued development of the sector in terms of promoting both cultural diversity and a strong European audiovisual industry in the digital single market;

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Interoperability

58. Calls on the Member States to ensure that collective rights management is based on effective, functional and interoperable systems;

VAT

59. Stresses the importance of initiating a debate on the issue of the divergent VAT rates applied in Member States and calls on the Commission and the Member States to coordinate their action in this area;

60. Stresses that consideration should be given to applying a reduced rate of VAT to the digital distribution of cultural goods and services in order to eliminate the discrepancies between online and offline services;

61. Stresses the need to apply the same VAT rate to cultural audiovisual works sold online and offline; takes the view that the application of reduced VAT rates for online cultural content sold by a provider established in the EU to a consumer resident in the EU would boost the attractiveness of digital platforms; recalls, in this connection, its resolutions of 17 November 2011 on the modernisation of VAT legislation in order to boost the digital single market ⁽¹⁾ and of 13 October 2011 on the future of VAT ⁽²⁾;

62. Calls on the Commission to implement a legal framework for non-EU online audiovisual services where these are aimed directly or indirectly at the EU public, so that they are subject to the same requirements as EU services;

Protection and promotion of audiovisual works

63. Draws attention to the conditions under which the task of restoring and conserving audiovisual works and making them available for cultural and educational purposes is carried out in the digital age, and stresses that special consideration should be given to this issue;

64. Encourages the Member States to implement the Audiovisual Media Services Directive and recommends that they monitor how European works, particularly films and documentaries, are actually presented and promoted through the different audiovisual media services accessible to the public, and stresses the need for closer cooperation between regulatory authorities and film funding organisations;

65. Calls on the Commission to find mechanisms for encouraging access to archived audiovisual material held by Europe's film heritage institutions; notes that, for reasons often linked to diminishing consumer appeal and limited shelf life, a substantial share of European audiovisual material is unavailable commercially;

66. Calls on the Member States and the Commission to promote solutions aimed at supporting the digitisation, preservation and educational availability of these works, including across borders;

67. Notes the importance of the 'Europeana' online library and believes that greater attention should be given by the Member States and cultural institutions to ensuring its accessibility and visibility;

⁽¹⁾ P7_TA(2011)0513.

⁽²⁾ P7_TA(2011)0436.

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68. Considers that the digitisation and preservation of cultural resources, along with enhanced access to such resources, offer great economic and social opportunities and represent an essential condition for the future development of Europe's cultural and creative capacities and for its industrial presence in this field; supports, therefore, the Commission's Recommendation of 27 October 2011 on the digitisation and online accessibility of cultural works and digital preservation ⁽¹⁾, along with the proposal to create an up-to-date package of measures to that end;

Education

69. Stresses the importance of promoting digital skills and media literacy for all EU citizens, including elderly people and those with disabilities, such as the hard of hearing, and of reducing the digital gap in society, as these aspects play an essential role for societal participation and democratic citizenship; recalls the important role played by public service media in this regard as part of their public-service missions;

70. Reaffirms the crucial importance of integrating new technologies into national educational programmes, and the particular importance of educating all EU citizens, of all ages, in media and digital literacy in order to develop and benefit from their skills in these areas;

71. Highlights the need for European and national education campaigns to raise awareness of the importance of intellectual property rights and of the available legal channels through which audiovisual works are distributed online; points out that consumers should be properly informed about any issues relating to intellectual property rights that may arise when using file-sharing services in the context of cloud-computing services;

72. Draws attention to the need to communicate more strongly to the public the importance of copyright protection and the related need for fair remuneration;

73. Emphasises the need to take into account the granting of a special status to institutions with an educational purpose as regards online access to audiovisual works;

MEDIA 2014-2020

74. Points out that the MEDIA programme has established itself as an independent brand and that it is crucial to pursue an ambitious MEDIA programme for 2014–2020 which is in the same spirit as the current programme;

75. Stresses that it is vital for MEDIA to continue to exist as a specific programme focusing solely on the audiovisual sector;

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76. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

⁽¹⁾ OJ L 283, 29.10.2011, p. 39.