

The Independents Voice

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Make VoD an opportunity for European Films

Are there lessons to be drawn from the experience in the music sector?

Seven years after the start of Napster the music industry is still struggling to find a business model. The turnover of the music industry has decreased by almost 50% in five years. Neither the download business nor other internet business has been able to compensate for lost sales at retail level. This is the lesson film people should really think about.

The legitimate market has been overthrown by the illegitimate market because for consumers it was easier to "steal" music than to "buy" it. In a way, the music industry let the market disappear in front of its eyes. However, the one company that created a digital music market was, at the end of the day, a technology company: Apple. The success of the i-pod in conjunction with i-tunes system has put Apple into a dominant position in the download music market causing the music industry in general to lose control over distribution and, to some extent, pricing.

In this new business context the management and licensing of rights to users who wish to access music recordings will in the future become the main revenue of music companies especially if the CD gradually disappears.

The licensing strategies of record companies in relation to interactive rights deserve consideration. The major music players such as Universal, EMI, Warner Music and Sony-BMG are in a position to strike individual deals with large users such as Apple, MTV or Google for the use of their recordings. But what is the situation of the independent record companies?

Individual independent record companies were in no position to negotiate fair licensing terms on an individual basis. Their phone calls to large international digital delivery operators would not even be returned. So they were forced to take their destiny into their own hands and consider negotiating with users on a collective basis.

They had to act this way as the users looking for music content would not waste too much time knocking at each door to identify the rightsholders and ask for a licence. By acting collectively in solidarity the independent music companies were able to leverage their negotiating position and to avoid being marginalised on the digital networks.

Collectively, independent record companies represent 20 to 25% of the market. They are as big as a major record company and therefore should be able to negotiate equivalent commercial terms and as a result avoid being excluded from the online market.

To this end independents belonging to the trade association IMPALA (www.impalosite.org) decided to create Merlin – a company who's aim is to manage internet rights for music independents.

Approach for the European Film Industry

The essential point in relation to VoD development is the issue of market access. How do we enable film companies, in particular European film companies that are essentially small and medium-sized, to access this emerging online market? Film people will have no choice but to move towards some kind of collective licensing model. Obviously this is very new for the film business because the film companies (in contrast with music) have always acted on an individual licensing basis. So far it is only in relation to the exploitation of cable retransmission rights through the Association of International Collective Management of Audiovisual Works (*Association de Gestion Internationale Collective des Œuvres Audiovisuelle – AGICOA*)¹ that film producers are acting on a collective basis.

Acting collectively should not be made compulsory. It should be left to the rightsholder to decide what is in his best interest. For a successful film individual licensing will probably make more sense than a collective deal.

Size Matters

In the end collective action will make sense for the majority of film companies if they want to access the VoD market and influence its development to the benefit of diversity and choice.

The main element is that in Europe companies are not vertically integrated, or if they are, the vertical integration relates merely to a single national territory but does not exist on an international basis. Therefore, in Europe companies need to pool their resources and catalogues in order to become valuable commercial partners with users (telcos, cableco, ISPs) seeking content. Users and platform owners are hungry for content. But how do they get European films? If it requires an army of lawyers to negotiate on a company-by-company and a territory-by-territory basis, they are not going to bother for long. A collective action enabling a one-stop-shop licensing approach is in the interest of the users.

Collective Initiatives in Europe

At the end the responsibility of European rightsholders is to make it easier to get a licence. And if they make it easier, they will get onto the platforms, because the platforms are going to look for content, a large variety of content. There are three national initiatives at European level, which represent interesting developments.

The first initiative is located in Denmark. Fifteen producers decided to join forces with a view to holding on to their video-on-demand rights and negotiating collectively with the telecom operator and the broadcaster in Denmark. They may choose among two approaches: the first is "let's keep our video on demand rights, let's not sell it to the distributor (or let's sell it for a shorter period)" and the second is "let's all together negotiate the best possible deal with the telcos".

1. <http://www.agicoa.org/>

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The second example is Universciné in France, which is a different business model. Whilst the Danes have so far only set up some kind of negotiation vehicle, Universciné gathers together 32 producers that are shareholders of a VoD platform. The platform has the function of a portal for independently produced films and can thus satisfy the demand for art films. Again, a collective approach is pursued with 32 producers getting together in order to exercise control over this activity.

The third initiative is probably the best example of a sustainable collective strategy. It was developed in Spain by the collecting society representing film producers and TV producers, called *Entidad de Gestión de Derechos de los Productores Audiovisuales* (EGEDA)². EGEDA received a mandate from the audiovisual producers in Spain to set up a VoD platform and serve consumers through a reliable and lawful system. The VoD platform was launched in April 2007 and is called Filmotech.com. In addition, EGEDA is mandated to negotiate licensing contracts with telecom companies, broadcasters or ISPs looking for films for their digital delivery services. Here we have once more a complete collective process approach, whereby EGEDA, which essentially collects money from private copying in Spain, has used private copying royalties to develop a service that could become the best vehicle to monetise digital delivery to the benefit of film production.

A European Approach?

This brief description of three national initiatives reflects the level of rights fragmentation existing in Europe. Therefore it would be interesting to work out a European approach to leverage a European cinema position in what has become essentially an international business and to enhance the circulation of European films across frontiers. In this respect, the European Commission should encourage the creation of a European network of national platforms or the pooling of catalogues to reinforce the negotiating position of rightsholders with international platforms which will in the medium term dominate the VoD market and squash less funded initiatives.

On a collective basis, like in music European filmmakers hold approximately a 20 to 25% market share in Europe. This means that in market share terms the European cinema is as big as Warner, Universal, or Disney. Such a market position should enable European rightsholders to negotiate good licensing terms with users and to participate in the development of a legitimate market, which is also the best way to fight illegal download.

European players may have a different interest in expanding the internet market because internet gives them a tool in relation to international distribution. This is "the long tail theory", which illustrates the advantage of internet over traditional distribution channels. This would mean the end of the "tyranny of the shelf space" which condemns European films in traditional distribution.

Conclusion

European filmmakers have a responsibility to create a legitimate market because without it the VoD market will be taken over by pirates. What has protected the film industry so far is simply the fact that it takes much more time to download a film than to download music, but this is going to disappear with the development of broadband access.

The filmmakers/producers have an interest in developing the market because of their interest in having as many competitors as possible in the market place. They want to avoid the situation whereby the digital market is controlled by one or two dominant players. Thus, the more they make content available on a non-exclusive basis, the more players the market will have and the more competitive it is going to be.

Ultimately the financial success of VoD depends on the ability of rightsholders to facilitate the acquisition of licences through one-stop-shops. Revenues will come from licensing contracts concluded with various national and international platforms.

But the most successful VoD platforms are likely to operate internationally and you want to make sure that European films are accessible via these platforms. YouTube, VIACOM, Google, Yahoo or Apple will drive the market. For Europeans the key is to access their platforms.

Finally, I would like to mention the role that the public authorities play in the development of the VoD market. Today, the European cinema industry depends heavily on State aid, but the latter is mainly directed towards traditional distribution, notably in cinema theatres. State aid does not allow European producers to take risks on the internet – bringing out a film on the internet without respecting traditional release windows for example, would be an obstacle to obtaining aid for distribution in many European countries – it's a pity. Our SMEs could be more courageous in trying out new business models than the Hollywood majors – support systems should not be holding them back.

² <http://www.egeda.es/>