



SHOULD THE EUROPEAN AUDIOVISUAL CONTENT INDUSTRY BE TRANSPARENT OR TRANSLUCENT?

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There are two terms in the French language which used to be synonymous, but which have taken on different nuances over the years: in the 17th century, the dictionary of the *Académie française* stated that the word "**diaphane**" (English: translucent) was a synonym of the word "*transparent*" (English: transparent). Nowadays, "*diaphane*" means "**something that allows light to pass through without being transparent**". I would say, as far as this nuance is concerned, that the European audiovisual industry is translucent but not transparent: like the screen in an oriental puppet theatre, it is penetrated by identifiable silhouettes that move and create noise. But it is a long way from providing the transparency of a simple X-ray machine, let alone a scanner.

Nevertheless, over the past 20 years, **transparency** has become a key concept for international, European and national public organisations. Transparency is often referred to as an objective; it is sometimes regulated, but it is rarely implemented in a completely satisfactory way. This is especially true in the audiovisual sphere and in the broader sector that, rather sadly, is often referred to these days as the content industry.

The objective of transparency in the audiovisual sector is the *raison d'être* of the European Audiovisual Observatory; it is the central idea in Article 1 of its Statutes and, if anyone needed reminding, it is an objective shared by its 36 member states and the European Union, as well as the professional bodies representing various branches and professions within the sector that make up its Advisory Committee. On behalf of the Observatory, I would therefore like to thank the Portuguese Presidency and the European Commission for agreeing to our suggestion that transparency issues in the audiovisual industry should be discussed at this workshop, at a time when the increasing number of new audiovisual media services and the regulatory framework provided by the new Directive currently being adopted are taking shape, creating new challenges as well as new difficulties.

I have already had several opportunities, particularly at a similar conference organised by the Finnish Presidency in Helsinki last year, to express my fears and sound the alarm bell. Since then, various recent reports prepared by independent consultants on behalf of the European Commission have also identified gaps in transparency and the weakness of statistical mechanisms in the cultural, audiovisual and content sectors.

Today I would like to try to take things forward, since this workshop gives me the chance to question the panellists directly on the issue of transparency.

It seems to me that the key question for discussion is whether, at the current time, **transparency should be regulated more or less** than it is at the moment.

Are public authorities duty-bound and able to impose transparency or should they be encouraging bodies within the industry to practise transparency through self-regulation?

And secondly, what type of information might be commonly considered to be of general interest?

Of course, these are political questions which the Observatory should not be commenting on itself, but which, as public experts, we believe we should be asking.

Before going any further, it is clearly important to remember **why transparency is considered necessary**:

1. **In economic theory**, even dating as far back as Adam Smith, transparency is recognised as a necessary condition of a smoothly functioning market. More recently, leading economists such as Arrow and Stieglitz, and subsequently what has been called the economic theory of information, have identified the importance, in economic analysis, of information issues, particularly the asymmetry of information which creates unequal conditions for market players.
2. It is generally thought that, in a healthy economy, market transparency is an important incentive for the desire to invest, as well as for the pertinence of investments.

3. In the sector we are talking about, the audiovisual sector, media sector, cultural industry, content industry or creative industry – it does not matter what name we give it here – **the stakes are not just economic, but they also affect the quality of public life and of cultural diversity.** The ability of public policies to organise public life and promote cultural diversity depends to a large extent on the quality of available information concerning the cultural industries.
4. The economy of the information represented by audiovisual content or cultural content in general involves complex exploitation processes based on contracts that transfer rights or licences. The rightsholders, whether they are the creators themselves, the producers, editors or even broadcasters, are economically weaker than the more powerful distributors (whether film distributors, cinema operators, DVD distributors or channel providers: cable TV operators, satellite platform operators, IPTV services, etc.). If the distributors, who are able to gather information on their dealings with consumers, withhold information on technical distribution methods, the geographical characteristics of distribution and consumer demand, including the turnover of the end-user market, the asymmetry of information can quickly become such that rightsholders are not only deprived of part of their rights over the works or services they have entrusted to the distributors, but are also unable to forecast how the market might develop, which is useful for determining their future activities. The **correct functioning of the information chain between all players** is therefore, in principle, one of the conditions of the trust that is needed in order for solid partnerships to be built.
5. Economic transparency is also a guarantee of consumer confidence. It is interesting to note that one of the arguments frequently put forward by the young generation of Internet "Robin Hoods" - youngsters who illegally download protected works - is the unwarranted profit earned, rightly or wrongly, by the huge oligopolistic groups of the cultural industry, both producers and distributors alike. Of course, I am not defending their argument, which is often based on a naïve or simplified perception of the economy of the cultural industries, but, as an expert, I have a degree of sympathy with consumers who complain about the industry's lack of transparency. The provision of precise, reliable information should be one of the first stages in the increasingly necessary educational process if the industry wants to protect its legitimacy in the eyes of consumers in order to prevent the idea **that everything should be free** from becoming a new economic model.

Of course, I am aware of the arguments that may be raised against excessive demands for transparency, particularly the lack of reciprocity from competitors in other parts of the world.

The most valid argument against transparency is probably the fact that acquiring detailed market knowledge requires a company to make an investment, insofar as that knowledge has a cost. If it knows the market well, a company can think about drawing up a more innovative strategy, improve its position, obtain competitive advantages, set its prices more effectively, etc. Business law and the courts certainly recognise the right to confidentiality and I have no wish to suggest that this should be challenged.

One of the reasons behind **the harmonisation of accounting practices** being promoted by the European Commission is the desire to reduce the reporting obligations of small and medium-sized companies in order to cut their administrative costs.

Bearing in mind the objectives of transparency, recognition of the right to confidentiality and the minimisation of administrative costs, it is therefore necessary to identify what type of information is of general interest, what should be communicated under the seal of confidentiality (either as part of statistical surveys or under contracts between market players) and what can and should remain confidential.

The information that fits most easily into the general interest category is that known by statisticians as the **structural data of a sector**: turnover, value added and contribution to GDP, employment. Admittedly, from this point of view, the cultural industries are not far off the mark. Gaps in European statistics in this field have rightly been highlighted in two recent studies carried out on behalf of the European Commission. Some countries accepted WIPO's invitation to conduct a study on the economic value of copyright. However, I fear that, until EUROSTAT and national statistical bodies, in collaboration with experts in the sector, establish a genuine mechanism for the collection of business statistics in the cultural sector, reliable figures will remain elusive. As far as I understand, business statistics can only be gathered in some countries if legislation is adopted, authorising the activities of statistical bodies. If we want reliable statistics in this field, it seems risky to me to entrust this task to private consultants. The initiative here must be taken by the public authorities. The rule proposed by the European Commission in February 2006, requiring the audiovisual sector to be included in the fields of activity covered by structural business statistics (SBS), seems to be a step in the right direction.

In the absence of any structural data from EUROSTAT and national statistical bodies, we have been trying for several years at the European Audiovisual Observatory to produce statistics on the economic dimension (size and performance) of groups of companies, divided into broad categories: public broadcasting services, commercial broadcasters, thematic channels, teleshopping channels, distributors of multi-channel packages, etc. The figures are based on companies' financial statements, which are collected in an impressive balance sheet database. This work produces some interesting results, as you can see in our *Yearbook*, but the limitations are becoming increasingly evident:

- in some countries (especially Germany), very few companies publish their financial results;
- some groups – in accordance with Community legislation – merely publish consolidated accounts, while analysis of the sector is only possible by studying the accounts of the relevant subsidiary companies;
- data on the breakdown of turnover into separate activities is not usually available and it is not always possible, even with major players, to identify, for example, broadcasting turnover and income from the distribution of channels produced by other companies;
- similarly, the geographical breakdown of turnover is rarely available.

The emergence of new players in the sector, particularly telecommunications operators and Internet access providers, only serves to amplify the problem of transparency. Even if activity reports are easily available, which they more frequently are where this type of

company is concerned, the situation is not always clear: subscription income from IPTV or VoD services is often buried under the heading "fixed services", which is virtually useless for the analysis of an economic sector. Over time, Ms Reding's recent proposals aimed at forcing telecommunications groups to separate clearly their network and service provision activities could certainly help to improve transparency.

In contrast, the aforementioned plan to free small and medium-sized businesses from the obligation to publish their financial results, including turnover, would definitely be an obstacle to transparency.

However, transparency cannot be limited to macro-economic data, but should also apply to functional and operational data of market players in order that they can properly manage their investments, choose their partners, negotiate in full knowledge of the facts and be in a position to estimate the potential economic value of their works or services and the sums actually generated by the distribution of those works and services.

I would like to mention a few examples which seem symptomatic of the current problems linked to transparency:

- **household reception devices:** at a time when the transition to digital services is one of the major objectives of national and industry policies, I am astounded to note that, in many countries, there is no national public body coordinating data on the state of progress of digitisation of TV signal transmission via the different platforms (cable, satellite, terrestrial digital television, IPTV and, soon, broadcasting to mobile phones). I know it is not easy to monitor sales of terrestrial digital aerials or adaptors. But operators of digital distribution, cable, IPTV and satellite services could at least be expected to provide accurate country-specific data. An operator I asked last week for details on the geographical breakdown of its subscribers replied quoting the estimates of its appointed analysts, adding that, "they are not too far from the truth". We are not living in an information society, but in a society of approximation, or even manipulation.
- **the potential audience of audiovisual media services:** at a time when the number of distribution platforms is rising and the international distribution of TV channels is also on the increase, the publication of data on potential audiences – I am not even referring to the number of subscribers, but simply the number of households which can technically access a channel – should be considered of public interest. This information is important for rightsholders as well as for advertisers. The Observatory is currently setting up the MAVISE database on all television channels in the European Union, which should finally constitute a technical tool for the collection and communication of this data. All broadcasters and distributors still need to agree to take part in this project.
- I will not dwell on the frequently debated issues surrounding **access to audience rating figures**. Here also, the growing number of platforms and the development of the Internet pose considerable problems in the methodological definition, collection and preparation of data. Costs are rising

as the systems become more complex. The Italian example is interesting, since an operator appealed to the regulatory body, arguing that its rights had been infringed by the way in which the two traditional broadcasters organised the audience ratings system. It is even more interesting to note that the legislator is planning to introduce a provision recognising, for the sake of pluralism, the regulator's right to inspect the audience measurement system. Will this right be extended to include Internet audiences, still a relatively new concept, as well as even more complex techniques and methods?

- Finally, I would like to raise the question of **measuring the success of works distributed via digital media (DVD, video games) and through video-on-demand**. This is information that rightsholders would, quite legitimately, like to have in relation to their works, but which is also of interest to the different public agencies that support film and audiovisual production at national or European level. Last year, at the request of the EFAD, EFARN and the MEDIA Programme and with the support of the Advisory Committee, the Observatory tried to make progress in this area. As far as monitoring the success of works distributed on DVD is concerned, only one private source exists, but it is bound by confidentiality agreements with distributors, which are its main clients. It is therefore unlikely that any progress will be possible in this field, unless the distributors show greater commitment to transparency or the public authorities issue new regulations. Last February, commissioned by our colleagues at EFARN, we prepared a report for national agency directors, clearly stating that the problem should be considered political and not just technical. This form of absolute confidentiality, which already applies in the DVD and pay-per-view sectors, is also likely to apply to VoD. At the same time, cinema operators and distributors are usually forced to publish the individual results of films. Here, the level of transparency can be considered satisfactory since, in the LUMIERE database, we are able to account for 85% of cinema tickets sold in the European Union each year. Should the different distribution methods not be treated equally?

This brings me back to the fact that policy implementation simply has to be a political task and, since it is not my role, as a European public expert, to comment on political matters, I will simply hand over to the chairman of the panel and suggest that he put the following three questions to the panellists:

1. Should transparency be achieved through industry self-regulation or through public authority regulation?
2. What information do you consider to be of public interest, i.e. what would you like to know about your partners or what would you (or the companies that you represent) be prepared to disclose to the public?
3. Would you prefer the content industry to be transparent or translucent?