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Limited bargaining power of audiovisual producers towards non-European streaming platforms

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The ability of producers to own and exploit rights is often constrained under different financing models.

The study on contractual practices in the EU, carried out on behalf of the European Commission, examined the contractual practices of producers in the audiovisual sector.

According to the findings, audiovisual producers face significant difficulties in their negotiations with global streamers and broadcasters, as their bargaining power is often limited. Producers, in smaller markets, find themselves in an even more precarious position.

The legal landscape offers little protection. While recent European Union directives aim to improve transparency and provide contract adjustment mechanisms, enforcement remains weak.

The study highlights a critical threat to European cultural diversity. With US-based streaming platforms increasingly controlling intellectual property, independent creators and smaller production companies face existential challenges. The research suggests that without significant intervention, Europe risks losing its rich cultural ecosystem to monopolistic corporate practices.

Researchers propose two primary solutions: extending consumer protection-style safeguards to creative professionals and establishing mandatory EU-level rules to protect creators' rights. These recommendations aim to rebalance negotiations and ensure fair compensation across creative industries.

The producers interviewed emphasised significant difficulties in establishing sustainable businesses when they do not own the rights for future exploitation, especially in cases where commissioners retain rights without fully financing productions. The findings based on the interviews with producers show that sometimes producers cannot own and exploit rights even when they are applicants and contribute public funding through mechanisms such as tax incentives or invest in the work's development. This practice is more common under the commissioning model, where public funding contributed by

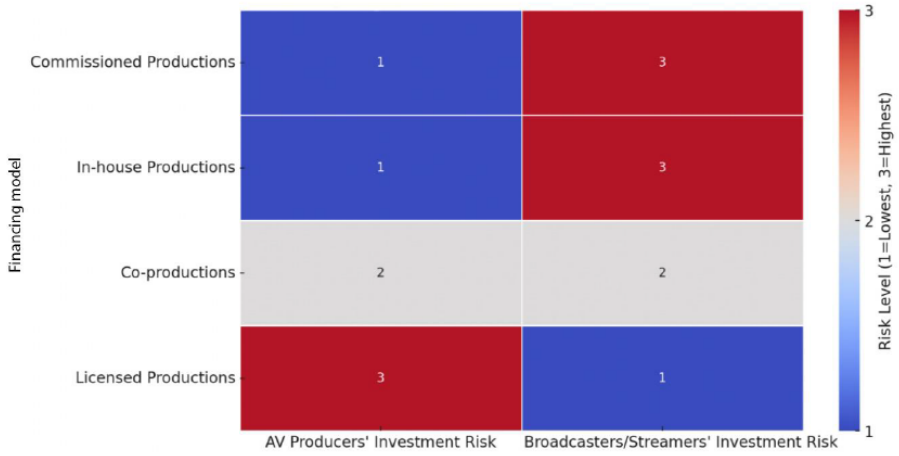
producers is sometimes included in the overall production budget.

The ability of producers to own and exploit rights is often constrained under different financing models. The interviews highlighted different challenges, including contractual issues related to the choice of law and jurisdiction, limited bargaining power to negotiate turnaround clauses, and restricted opportunities for future revenues from derivative and format rights. Long licensing periods were identified as a specific issue under co-production and licensing financing models. Furthermore, producers expressed concerns over the lack of transparency regarding data on the exploitation of audiovisual works by global streamers.

The producers interviewed indicated that the commissioning model, where the financiers keep all or most of the rights, is widely used by global streamers and private broadcasters in contractual arrangements for TV fiction. In contrast, the global streamers interviewed noted a shift away from the commissioning model towards models such as licensing and co-productions, with the aim of allowing for a sharing of risks and rights in the uncertain sector landscape, as these approaches require less upfront capital investment for streamers than other cases, such as commissioning works with a full transfer of rights.

Overall, the findings indicate that various financing models coexist, with no conclusive evidence pointing to the predominance of one model. The interviews with public service broadcasters (PSBs) revealed that they primarily rely on licensing and co-production models, sometimes shaped by regulatory requirements. Private broadcasters reported that they use a variety of financing models, but emphasised that a shrinking market poses significant challenges in securing co-financiers for audiovisual projects.

Figure 28: Financial investment risks under different financing models



Source: Authors, based on the desk research and interviews

The interviews highlighted that building a catalogue of rights is important for producers to establish future revenue streams and ensure the long-term sustainability of their businesses. Without rights ownership, audiovisual producers face significant limitations in investing in the creation of new works. Developing assets with long-term value is therefore crucial.

However, under the commissioning financing model where producers are unable to retain rights, their ability to grow and sustain their presence in the industry is severely impacted. The interviews with producers corroborated the findings of the European Media Industry Outlook Report (2023), highlighting a trend of including the transfer of all IP rights in contracts, especially with non-EU streamers.

This challenge is particularly prevalent for small, independent producers that are in highly vulnerable positions. The study also highlighted that the lack of protective mechanisms places producers in a weaker bargaining position, particularly when negotiating with powerful financiers that can influence contractual terms.

It is noteworthy that independent producers retain more rights when there are certain rules at national level in place that guarantee their improved bargaining position when negotiating with global streamers and broadcasters. The results indicate that audiovisual producers can secure more rights when public financing is involved, guaranteeing them certain rights based on funding criteria.

Additionally, in some EU markets, the opportunities for producers to raise capital are limited, particularly in small markets as they may not be able to get bank loans. This problem can be exacerbated because of the low number of commissioners, particularly in some smaller markets, as it can

lead to cashflow challenges for the producers.

Restrictive rights agreements with streamers and broadcasters, which limit the ability of producers to secure remuneration or sustain their companies, threaten the EU's audiovisual industries by potentially reducing independent productions and impacting diversity in content creation. In terms of impact, some interviewed producers and European broadcasters expressed concerns that the adoption of the commissioning model by US-owned global companies has shifted the ownership of the IP of European works away from European entities. According to the insights gleaned from the interviews, the inability of producers to own IP rights also affects the diversity of European audiovisual works, the availability and full exploitation of such works, as well as the diversity of the production companies.

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