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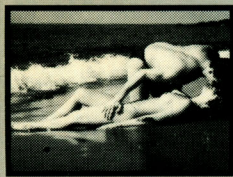
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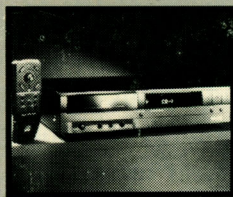
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EUROPEAN VIDEO REVIEW

JULY 1992 ISSUE 1

INDUSTRY TO FIGHT EC RENTAL BILL

LEGISLATION A THREAT TO BUSINESS *The home video industry is opposing proposed European copyright legislation, saying that it could adversely affect the very people it aims to protect.*

While the record industry is generally ecstatic about the European Commission's Proposal For A Council Directive on Rental Rights, Lending and Certain Rights Related to Copyright—particularly as it seeks a levy on the rental and lending of compact discs—the home video industry is aghast at what it sees as “insane” and “unacceptable” legislation.

WINNERS The winners, should the European governments give it approval by January 1, 1993, (for implementation on January 1, 1994) will clearly be authors and performing artists whose contracts do not include a percentage of net revenues from rental and who do not enjoy control over the rental of their works. This would also apply to the estates of dead ‘authors’.

The bill in its current form would also give scriptwriters, soundtrack musicians and directors the right to veto the rental of videos as well as a

slice of the pie once their work has rented. The losers, however, could exist in a vicious circle where rental shops cutting back on orders will affect video distributors' revenues, which will in turn adversely affect producers and ultimately those ‘authors’ the legislation seeks to redress.

OPPOSED The EC draft directive on copyright issues relating to rental and lending rights is being opposed by producers and video distributors on the grounds that:

- it is a catch-all piece of legislation lobbied for by the record industry which doesn't fully take into account the nature of the video business.
- it will clear video stores of back catalogue as well as impede the release of new titles.
- by giving non-waivable rights to royalties from video rental to ‘authors’ it could see producers becoming one of a string of

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NEW TECHNOLOGIES DRIVE PHILIPS' HOPES

Troubled Dutch electronics giant Philips' drive to establish new technologies DCC, HDTV and CD-I could be the saviour of the company and may also have far-reaching consequences for the video industry.

DETERMINED Philips' doggedly determined campaign to buy out ailing Belgian video rental chain Super Club—which has amassed debts of some \$176 m (ECU 157m)—has little to do with a sudden belief in the future prosperity of video. Nor, as was initially believed, is it an attempt to

secure outlets for widescreen/HDTV movies, a system which the Dutch group is pioneering in Europe with French company Thomson.

While Philips itself is remaining tight-lipped about its intentions until the buyout is complete (at press time there remained strong resistance to the proposed terms from minority Super Club shareholders) most analysts interpret it as a strategy to bring CD-I to the high street.

Super Club has some 500 video outlets in the

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TRACKING

NEWS

WELCOME TO THE FIRST ISSUE OF EUROPEAN VIDEO REVIEW, A QUARTERLY JOURNAL WHICH WILL provide, it is to be hoped, a unique service for all involved in the video sector throughout Europe.

European Video Review is aimed at the most dynamic, fast-growing—and fast-changing—part of the entire entertainment sector. Home video has transformed the way people enjoy feature films and many other forms of electronic diversion. It has also become a vital component in the financing of all types of movies. But at the same time, the video business, despite its huge importance, is in publishing and information terms, the least understood media sector.



Which is why European Video Review has been brought into being. Most of you will be familiar with the work of Espace Vidéo Européen—EVE—the Dublin- and Brussels-based initiative of the European Community's Media Programme which provides loans to stimulate the release of European films on video throughout the EC. It is EVE which has decided to launch EVR as a means of spreading and enlarging the information available to European video professionals.

But EVR is not intended as a mouthpiece for EVE. Some EVE initiatives are deemed to be of general interest to video professionals and find their place in this issue. But European Video Review will not express an EVE editorial line. Inasmuch as it will have opinions, it will be its own opinions, or those of its contributors.

The word "European" is important to EVR. As a publication, we believe that the United States is to be saluted, not condemned, for the vitality of its film business, the quality of its output, the energy and effectiveness of its marketing, and the wide appeal of its movies. But the strength of the American film business is a major challenge to Europe, which has its own rich culture of film-making, and which needs to find ways of standing its ground in the face of the huge success of the U.S.

To this end, in this issue you will find articles on major issues, key people, interesting companies, innovative strategies. You will find strong opinions and provocative ideas. And, above all, you will find variety, ranging from the German publisher who does video release deals with potato chip companies, to the French director with a passion for using video to defend "auteur's cinema."

We hope you enjoy European Video Review. And, above all, we want to hear from you. Let us know how you feel about EVR. Tells us what you think we should be covering. And help us help you in your activities in European video."

Bill Grantham

European Video Review, Issue 1, July 1992

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MEDIA

INDUSTRY FIGHTS EC

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'neighbouring rights' holders when in non-EC member countries those rights may not be recognized.

- prohibiting sell-through distribution contracts by territory could force distributors to buy pan-European rights as opposed to individual territories.
- it will be costly, chaotic and could 'kill the goose that lays the golden egg.'
- in its current form the bill will seek unwanted remuneration from video duplicators, retailers and distributors for every copy made of a work.

CONTENTION The International Video Federation's (IVF) main bone of contention is that even given revisions of the original draft, the bill still appears as a 'worker's charter' which does not consider the reality of home video distribution. The IVF wants a film's producer to be regarded as the sole author and for rental rights to be assigned to them unless there is a specific statement to the contrary.

"It's the fruits of people who don't have their feet on the ground," says British Videogram Association director general Norman Abbott. "It's a theoretical document written by erudite theoreticians and is not about what happens in real life."

Although the IVF has been relieved to see recent amendments which allow conferring of rental rights, and especially a clause which states that in some cases conferring will "presume to have been transferred to the producer" this is still subject to a Catch-22 clause in Article 3 which gives the unwaivable right of remuneration to the assorted new contractual rights holders who cannot assign their rights to an equitable part of revenue if the film is rented.

VETO "This now means that a film extra can sign away his right to veto or otherwise the rental of a film in which he appears, but if that film is subsequently rented, that extra cannot waive his right to an equitable remuneration from the rental of his work. It's extremely bad news," adds Abbott.

With the draft proposals already published, the

next stage is for the European Council of Ministers to make amendments, at a date which is not likely to occur under the Portuguese presidency but more likely after July 1st under the British presidency, prior to which the Paris-based International Federation of Film Producers Associations (FIAPF) and the IVF are lobbying to have video rental excised from the bill, or at least for the producer to be regarded as the work's sole author.

The US major video distributors are not lobbying directly; rather the FIAPF is speaking for producers worldwide and the IVF (of which the US majors are members) is lobbying ministers.

FIAPF managing director Andre Chaubeau is keeping a brave face about the success of the campaign when he says "I have to be optimistic because the text is so unacceptable. It is insane."

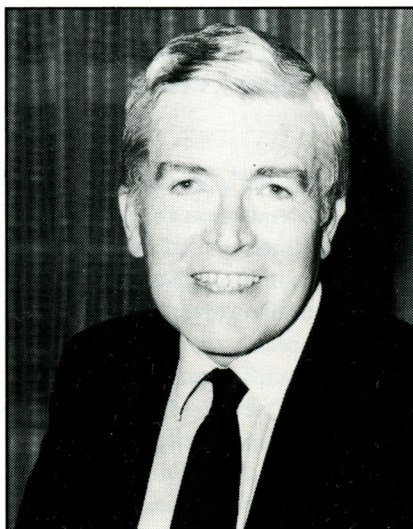
BVA director general Norman Abbott, who has held a series of meetings with Chaubeau to discuss co-ordinated response, says that potential problems hindering success of the response is that members of the European Parliament can only comment and not amend the draft, and that apart from hard campaigning from the music industry, the legislation follows lobbying carried out by the cinema industry with similar objectives in mind.

The main problems with the bill arise out of its all-inclusiveness. The rights of 'authors', be they screenwriters, songwriters or novelists, are all

addressed and there is no clear distinction between the audio industry and the audio-visual industry.

This is particularly problematic in the crossover field of music videos. In the International Federation of Phonogram and Videogram Producers' (IFPI) response to the commission's report there is a desire to seek remuneration for the rental of recorded works and music videos. Its response gives the indication that it seeks to lump video feature films in with recorded music when it's only primarily concerned with music videos.

For the video business per se, this lack of distinction is most worrying because it appears to be ignorant of the fundamental workings of video as an industry. Rental in the recorded music industry is parasitical whereas for video it's the backbone in all but a couple of European



Norman Abbott

territories—France for one. Statements like “rented video-cassettes are also used to make copies” (I.8) seem to skirt the issue and worse impose music industry qualms onto an industry that has relied sometimes exclusively on rental as its main source of income.

CONTRACTS The bill also disregards contracts made at the time of production, percentage returns which are calculated into the trade price of a rental cassette (some 10 times greater than cassettes destined for sell-through). To then argue that those ‘authors’ should receive additional sums is unnecessary, argues Abbott. “I don’t like it and neither will the retailers, many of whom could be put out of business.”

COMMENT Video rental is a high-transaction, low-margin business where the battle is currently on to increase depth of copy. A levy which would be calculated on number of units, or size of shelves would impede progress on that front, have an adverse effect on trade and ultimately the consumer—who will also be a beneficiary of the legislation according to the EC which says: “At the end of the day it will be to the benefit not only of the rights owners themselves but also of the consumers to whom thereby a broad cultural supply will be made available.”

With worldwide video rental currently producing greater gross revenues than cinema exhibition, it is a lucrative second bite of the cherry and also a financial safety net for quirky, marginal-appeal and poorly-made films.

Some 62% of all video rental releases in Germany, for example, have bypassed cinema exhibition, in Italy the figure is closer to 90%. Financial restrictions on this hugely important recoupment of ‘lost’ revenue could hit all ‘authors’ of a film if rental stores just opted for the sure-fire hits, one of the many scenarios if the bill is accepted in its current form.

The sums are not detailed in the bill, but the assumption is that it will be collected by a body like the Performing Rights Society (PRS) which will have powers to distribute the monies accordingly, ironically not necessarily in accordance to the proportions determined by rental

CURRENT EC RENTAL LEGISLATION

- *In SPAIN the author has an exclusive rental and lending right applicable to producers of phonograms and videograms. Since the Copyright Act 1987 came into force, no practice with respect to rental right has yet been established •*
- *In the UK the Copyright Act 1988 grants an exclusive rental right to copyright holders but not to authors such as music composers or film directors •*
- *In ITALY an exclusive rental right exists but only for authors whose works have been recorded on “phonograph records, cinematographic films, metal tapes or any analogous material or mechanical contrivance for reproducing sounds or voices” •*
- *In FRANCE an exclusive rental right for phonogram and videogram producers exists (Law no. 85 - 660, July 3 1985) but is not exercised in practice •*
- *In GERMANY authors have no exclusive right and cannot authorize or prohibit rental, although this is currently being considered •*

transactions, says Abbott. This could see US distributors effectively paying British talent for monies collected in the UK with little returning to the US—a situation similar to the levies imposed on US video distributors in Sweden to help finance Swedish film production (the levy is 5% of the rental cassette trade price and 20% of the sell-through trade price).

DEAD At street level the effect of the EC’s rental right levy would “kill the video rental industry stone dead,” argues UK video dealer Brian Short of Hollywood Video. “This sort of levy would crucify us. I can understand it with CD rental but video rental levies would mean me, say, cutting my 4000 titles by half and paying for the levy by reducing my orders on stock.

“If you cut back too much you haven’t got anything left of your business.” If Hollywood Video had to pay a hypothetical £10,000 (ECU 14,000) levy per annum across its two stores, that would translate to £50 m (ECU 70 m) across the nation’s dedicated rental

libraries, most of which distributors would feel through lost orders.

MARKET While the proposed harmonization of authors’ rights on renting and lending would theoretically aid the establishing of a single European market by removing inconsistencies which, in turn, aids piracy across borders and hinders an author’s legal rights, it would also necessarily mean a re-writing of most if not all member country’s legislation, a potential political minefield.

Proposals for the sale of video cassettes are of secondary concern but still an area for attention. By prohibiting territory-only rights sales the bill would impose the purchase of pan-European rights or language rights upon distributors who may be just supplying a domestic market. Although this would benefit the music industry the language barrier is seen as an effective measure against unwanted cross-border imports of video cassettes. It is another example, say video chiefs of how the bill has been engineered by, fashioned for and benefits the music industry. ■