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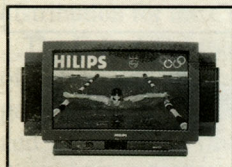
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# EUROPEAN VIDEO REVIEW

OCTOBER 1992 ISSUE 2

## SINGLE MARKET BOOSTS PARALLEL IMPORTS

**BREAKING DOWN BARRIERS** *The video industry is divided over parallel importing, which will become a legitimate practice with the arrival of the Single Market at the end of this year.*

The EC's new rental and lending rights directive and the arrival of the Single Market next year are together set to boost the controversial video parallel importing sector.

The directive on Rental Rights, Lending and Certain Rights Related to Copyright, passed by the Council of Ministers in June, will forbid sell-through distribution contracts limited by geographical territory—and thereby permit cassettes to be imported from other countries “in parallel” with their local releases.

Wim Verstappen, a board member of the Dutch audiovisual copyright association (VEVAM), said that with the passing of the directive, “parallel imports are going to be a fact of life. It will no longer be possible to restrict imports to a nation. Once a deal is legal, it's legal throughout the EC.”

And non-tariff barriers to parallel

imports—used in Germany and the UK, among other countries—are also likely to fall foul of the EC's policy of liberalizing markets.

**SELL-THROUGH** While the home video industry is divided on the directive, two groups likely to benefit from the new rules are those distributors and wholesalers already involved in parallel importing of sell-through video.

Some industry veterans insist that parallel importers offer much-needed services, as long as the time and price structure for video sell-through across Europe remains out-of-synch. But others—notably Warner Home Video—have fought the practice tooth and nail.

Distributors point to a number of factors which stimulate parallel imports:

- Price. A UK import may sell in Holland for Fl 16 (ECU 7), while the locally-released version

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## EC CLOSE TO AGREEMENT ON RENTAL RIGHTS

The European Commission's Proposal For a Council Directive on Rental Rights, Lending and Certain Rights to Copyright looks set to be passed in its current form by the end of the year following its approval by the EC Council of Ministers. The legislation, which comes into force from 1997, seeks to give “authors”—directors, screenwriters performers and other talent—a series of rights.

Under the directive, they will be able to: refuse the release of their work on video; refuse

to allow the video to be distributed; forbid rental of those works on video; insist on “equitable remuneration” for video rental. While some industry lobbies—notably the British—will continue to press for changes to the directive, it is now felt that the conclusive shape of the directive has been established.

Amendments made since the first draft, have been welcomed by the European video sector. In the industry's eyes, the most important are that:

**Continued on page 9**

**WHEN EVE LAUNCHED EUROPEAN VIDEO REVIEW** in July of this year, a key reason for its being brought into being was the belief that the video sector lacked vital information to help it conduct its business.

Which is one reason why, from this issue, EVR introduces a new statistical section which will keep readers up to date with the main trends across Europe—and, in particular, the tricky transition from rental to sell-through which each market is managing in its own way and at its own pace.

The statistics, which can be found between pages 12-13, demonstrate just how difficult getting accurate information can be. EVE's Brussels-based Mediabase, established to gather the widest and best possible data on the video business, has had to contend with wide variations in

numbers from different sources, ranging from official industry calculations, to well-informed trade publications. We have attempted to present in this issue a kind of "poll of polls" which endeavours to make sense of the differences between the different sources.

At the same time, EVR is extending its coverage beyond the 12 member-countries of the EC to provide statistical information on certain EFTA members which also have well-developed video markets. It is to be hoped that as data emerges, we will be able both to update our statistics regularly, and provide figures on other countries, most notably those of eastern Europe.

This issue of EVR is being sent to you earlier than usual, to ensure that you receive it before the two-day conference in Dublin October 1-2, organized jointly by Espace Vidéo Européen and the Media Business School. Some of the editorial topics touched on in this edition are designed to reflect certain themes of the conference—most notably questions of marketing and promotion of video in Europe.

The conference demonstrates the need for more dialogue in Europe on key questions facing the video sector. Cross-border issues such as the new EC rental rights directive and the situation with regard to parallel imports following the creation of the single market—both subjects dealt with in this issue—need to be aired on a community-wide basis, and not stuck in the mire of national interests.

Finally, thanks are due to some of you for your kind words—and some constructive criticism—about the first issue of EVR. Please keep sending in your comments, and use this publication to air your feelings about the state of video in Europe. If we get your input, we will run a letters page as soon as possible.

**Bill Grantham**



**European Video Review, Issue 2, October 1992**

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**MEDIA**

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purchase, it has also picked up recently-concluded deals taking it into the central and east European markets.

**SUBSIDIARIES** In February, with an initial investment of £500,000 (ECU 700,000), Guild set up film and video subsidiaries in Poland, Hungary and Czechoslovakia with the intention of becoming one of the leading film and video distributors in the region. Guild Entertainment Central Europe (GECE) was formed following the acquisition by Guild of the assets of International Film Exchange (IFEX), a New York-based corporation formed by Gerald Rappoport in 1971 to create film links between the US and territories in central Europe via three IFEX-created ventures: FATA in Poland, Interama in Czechoslovakia and Panorama in Hungary. In July, Guild announced a package of major

acquisitions to feed through them.

The largest of the acquisitions is 160 titles licensed from Fox Video for Poland and Czechoslovakia, and 100 titles for Hungary which will be released over a two year period. The Fox titles include the Star Wars trilogy, Home Alone, Die Hard and Commando. Guild also acquired theatrical and video rights to a number of high-profile independent productions including *The Lover*, *The Player*, *Twin Peaks—Fire Walk With Me* and the Ridley Scott-directed *1492*.

The acquisition announcement was completed by various packages for the individual territories—for Poland 75 titles from Vision, Overseas Film Group and DB Media; for Czechoslovakia 75 titles from Carolco including *Terminator II* and *Basic Instinct* plus packages from Cinetel, Atlantic Releasing and Hearst; for

Hungary packages from Vision, August Entertainment and ITC.

**COMMERCIAL** This structure has the potential to benefit Chargeurs' highly-commercial film output flowing from Allied, Savoy and Renn. Thomas Hedman, managing director of Guild Entertainment said "The package of titles which we have licensed from FoxVideo for Poland, Czechoslovakia and Hungary will ensure that our subsidiaries are among the most important video distributors in each of the three territories. The addition of selected acquisitions from independent producers will add to our future success."

Hedman says that once GECE is fully-operational it aims to set up similar operations in Rumania, Bulgaria, the Baltic States, Yugoslavia and possibly the Ukraine. ■

## RENTAL RIGHTS

### Continued from page 1

contracts with artists will allow the rights to refuse release and distribution to be waived by the authors; if a contract makes no mention of these rights, it will be assumed that the author has given permission for release, distribution and rental.

But what is still worrying some industry sources is the unwaivable right of remuneration to an equitable part of the film's revenue if it is rented on video. "Virtually all of our anxieties have been overcome," said Norman Abbott of the British video trade association BVA. "Rights can be overcome voluntarily or by contract—which makes it much more palatable. The only one thing which still sticks is the right to equitable remuneration which is an inalienable right and [which] we continue to object to."

**COURT ACTION** The signs are that this remuneration will have to be sought through court action by authors if they feel that their original contracts aren't sufficient. In the US, the singer Peggy Lee successfully proved in court that she was due revenue from cassette rental and sales of *The Lady And The Tramp*—where she



*The Lady And The Tramp*: Disney had to pay video royalties to singer Peggy Lee

performed on the soundtrack. The court rejected the defence of the film's producer, the Walt Disney Company, that Peggy Lee's original contract bought out the rights for such future technologies as video.

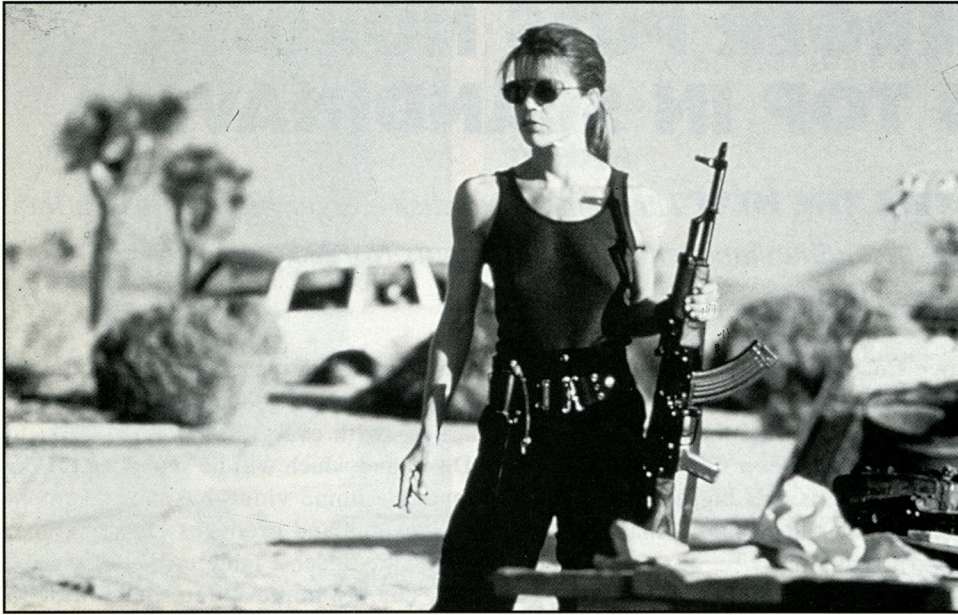
European industry insiders are already arguing that in the majority of cases, monies paid up front in original contracts will be viewed as "equitable remuneration" for video rental. It will then be up to the performer to argue that the payment is not sufficient to take video revenues into account.

Although the right to remuneration established under the directive cannot be waived, distributors are considering contracts which would state that video

rental payments have been fairly covered by the payment to the artist. The unwaivable right would then presumably only apply to stars in blockbuster videos, unexpected 'sleeper' hits, or to those who did not assign their rights to European rentals in their original contracts—a notable possibility in US-based contracts which might, through oversight, fail to include a clause waiving rental rights in Europe.

**SMALL PRINT** The legislation leaves the small print of how the new system should work—details such as the level of payments, how they should be collected and from whom—to be filled in by each EC member government, leading to fears in some industry quarters that the process of establishing "equitable remuneration" territory by territory could lead to extensive legal and court activity.

However, the directive's 1997 implementation date will follow what some video experts believe will be a significant restructuring in the European rental sector in the face of competition from cable- and satellite-delivered pay-television and pay-per-view. Some believe that a decline in rental will make some of the directive's provisions academic by the time they are in force. ■



*Terminator II has been a strong seller this summer in Spain, but overall business has been slowed by the Barcelona Olympics Games*

## PARALLEL IMPORTS

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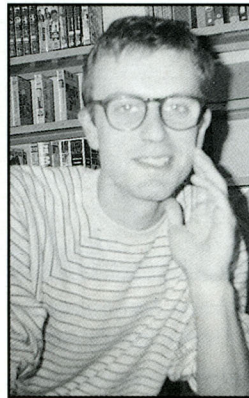
might cost Fl 33.72 (ECU 14.7) dealer price.

- Release patterns. Parallel importers will bring in a sought-after film from one country ahead of its release in their home market. "Customers want a video when it's coming out, not one year down the road when the Dutch version might be published," says Darren Carter, formerly of Boudisque, a Dutch wholesaler which buys 60% of its product from the UK and sells it to Dutch, Belgian and German outlets.

- Choice. The range of videos on offer varies from market to market. According to Carter, the Dutch video catalogue is one tenth the size of the UK catalogue. Boudisque brings in more general product, but also imports quality art films and documentaries which do not interest the majors.

- Language. A sector of the market in all countries wants films on cassette in their original language. And Dutch purists buy parallel imports because they are free of messy sub-titles.

**REALITY** Warner Home Video is among the many companies that are beginning to confront the reality that the new directive and the single market will bring. The giant entertainment group went before an EC court three years ago when Warner product was parallel-imported into Denmark. The court temporarily sided with Warner, but warned the company that from January 1993, when Europe's borders disappear, parallel importers will be considered free-market entrepreneurs.



*Darren Carter*

**HURTING** Says Warner Holland's marketing director Ernest Beder: "It is hurting our business when the UK version is already in the shop for two months and we are just starting our publicity for the film." Beder tries to synchronize windows as much as possible, but says Dutch release patterns make this hard.

Some countries have used non-tariff

cautioned: "The unexplored territory with rackjobbing is encouraging, but we cannot put all our eggs in one basket with sell-through. That limits us to a handful of big titles a year. Effort must still go into campaigns to encourage retailers with special rental offers, and to keep a high profile, quality image with their customers."

Retail home video stores have suffered in the last three years from pirate operators eating into an estimated 50% of the market.

But a concerted crackdown on piracy over the past two years, which resulted in the shutdown of some 6,000 stores, leaving some 4,500 legitimate operators now, reduced losses through piracy loss to some \$26 m (ECU 19m)—between 15% and 20% of the total market. ■

measures, such as censorship provisions, to curb parallel imports. While genuine content controls may still be permissible within the EC (see story on video censorship on page 10), bureaucratic measures which block the free-flow of trade will not. (Germany's customs censorship laws have sometimes been used to obstruct parallel imports, and Britain's non-tariff barrier stops it via its stringent British Board of Film Certification process of checking content before release theatrically or on video.)

"The Commission doesn't want borders," says VEVAM's Verstappen. "You can try to disguise a barrier cleverly by calling it a non-tariff, but once they find out that its a real barrier, they will stop it."

Although the directive will challenge price and time structures in the EC, companies will still be able to purchase language rights. Verstappen compares the situation to the US, where once you have the rights in one state, you have them in all 50 states. But this does not include all language rights: if you want them, you have to acquire the rights to the Spanish version or the Italian version separately. ■