

Film
i Väst



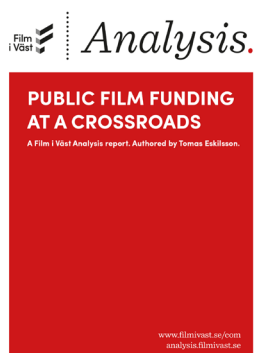
Analysis.

PUBLIC FILM FUNDING AT A CROSSROADS

Appendix: Spain and Portugal

**Authored by Patricia Gabeiras, Belén Álvarez and
Paula Raez (Estudio Jurídico Gabeiras&Asociados),
with the collaboration of Susana de la Sierra and
Elisa Gutiérrez.**

www.filmivast.se/com
analysis.filmivast.se



ABOUT PUBLIC FILM FUNDING AT A CROSSROADS

Public Film Funding at A Crossroads was launched in Brussels in March 2022. It can be downloaded at www.analysis.filmivast.se. Here you also find the ten territorial reports, executive summaries, with strong links to the main topics in *Public Film Funding at A Crossroads*. There you also find **Michael Gubbin's** report *Streaming Giants and Public Film Funding*. In May, during the Cannes Film Festival, Wendy Mitchell's study *Creative Overload*, will be published at the same web site.

Appendixes:

- Eastern Europe (Assistant Professor **Petar Mitric**)
- Flanders/Netherlands (Producer Ilse Schooneknaep)
- French speaking Europe (Senior consultant **Philippe Reynaert** in collaboration with Xanadu) - also in French
- German speaking Europe (Senior consultant **Manfred Schmidt**)
- Greece/Cyprus (Associate Professor **Lydia Papadimitriou**)
- Ireland (Dr **Mark Rainey** et al in collaboration with the WRAP Fund)
- Italy (Senior consultant **Rickard Olsson**)
- Spain/Portugal (**Belén Álvarez** et al in collaboration with Gabeiras& Asociados)
- The Nordics (**Tomas Eskilsson, Katarina Krave, Bengt Toll**)
- UK (MD **Leon Forde** et al in collaboration with OSPI)

SPAIN AND PORTUGAL

I.- INTRODUCTION

More than 40 professionals from different segments of the audiovisual sector, among others, producers, distributors, movie theatres or screening parties, film festivals, right holders, broadcasters, streaming services, and VOD players, associations representing the sector, public administrations, financing entities, consultants, have given us their opinions on the current situation of the audiovisual and cinematographic sector in Spain and in Portugal and on its foreseeable evolution. Through a series of more than 40 hours of online interviews, the different experts have conveyed their considerations related to different areas of the sector.

How do you see the film ecosystem and its corresponding segment in the next five years?; What are the arguments that justify that cinema is a public matter in Spain and Portugal?; How do new consumption habits affect the audiovisual sector, especially now, with the boom of streaming platforms?; What will happen with public funding for movies?; How is the audiovisual sector legitimized in our territory? These are some of the questions whose answers have helped us to write this report on the different opinions of the audiovisual sector by segment.

In generic terms, we can affirm that a majority of actors from the different audiovisual segments consider:

- That the cinema scenario for 2025 is difficult to predict, although most of them understand that cinema will and should continue to exist, because it is a very important sector in our culture.
- Most of the interviewed firmly believe that cinema should be made a matter of state and that it should not be so vulnerable to changes in its financial support, depending on the political party that governs.
- The importance that the new General Audiovisual Communica-



Patricia Gabeiras Partner at Gabeiras & Asociados. Doctor in Law, and specializing in Culture Law and Intellectual Property Rights Law in the areas of art, music and audiovisual.



Belén Álvarez Head of Department of Culture at Gabeiras & Asociados. Graduated in Law and in European Union Law and specializing in Culture Law and Intellectual Property Rights Law in the areas of art, music and audiovisual.



Patricia Gabeiras Partner at Gabeiras & Asociados. Doctor in Law, Paula Raez Graduated in Law and Political Sciences in the University Carlos III in Madrid and Master in Law in UNED University. Has developed his career path in the field of Culture and Creative Industries, and Intellectual Property Rights Law in the areas of art, music and audiovisual.

Susana de la Sierra Associate Professor of Administrative Law at the University of Castilla-La Mancha (Toledo, Spain) and Head of the Chair UCLM/Gabeiras "Digital society, culture and fundamental rights". Former Head of the Spanish Film Institute (ICAA, 2012-2014), she has widely published and lectured on law&culture, film law and the media.

Elisa Gutiérrez Doctor in Law, degree in Audiovisual Communication and specializing in Intellectual, Industrial Property, New Technologies and Audiovisual Law. She is currently a professor at the Complutense University of Madrid.

tion Law (which will replace the one currently in force to incorporate Directive 2018/1808, of November 14, 2018) addresses the needs and requirements of the sector, so it can build a powerful audiovisual ecosystem with international projection.

- The coexistence between streaming platforms and movie theaters. Possibly the cinemas will remain, the number of theaters will decrease, or some of the smaller ones will be absorbed by large exhibitors. The role of movie theaters will be destined either to the premiere of large events or to the exhibition of a more independent and auteur cinema.

- Within the traditional actors that are part of the audiovisual value chain, distributors are the ones who will find it most difficult to stay in the sector, due to the fact that as a consequence of digitization and the advancement of new technologies, their work looks more blurred than other segments of the value chain.

- There is concern about the loss of the intellectual property rights of producers in Spain and Portugal due to the entry of the large streaming platforms that keep the production rights.

- The need to consolidate remuneration rights in favor of authors and artists in the audiovisual sector is presented as a necessity.

- There is a need to reinforce audiovisual education on different levels. Not only is necessary to educate the creators regarding the commercial viability of their projects, but also the public to increase their interest in audiovisual contents, so that new audiences can be reached.

- Regarding public financing of the sector, it should be maintained and increased to favor a more consolidated and powerful audiovisual ecosystem in Spain and in Portugal, so it can be acknowledged on a European and international level.

- It is also necessary to make the audiovisual sector a more attractive environment for private financiers. It is important to convince investors and promote a patronage law that encourages and stimulates private investment.

- Regarding new technologies, there is consensus regarding the importance of the different actors that make up the value chain of the audiovisual sector adapting to new technologies.

- The Portuguese interviewees underline the difference between Portugal and Spain, as well as between Portugal and the European Union. In this regard, they highlight that Portugal has less funding in comparison to other European countries. Likewise, as opposed to other countries such as Spain, Portugal has not a tradition of consuming Portuguese culture. Also, it has to be noted that Portugal does not have the most spoken language in the world, and this limits the worldwide scope of its contents. In contrast, as Spanish is one of the

most spoken languages worldwide, Spanish contents have a greater scope.

II.- EXECUTIVE SUMMARY

A) PRODUCERS

Commonly, they believe that it is clear that the audiovisual sector is undergoing a change, which makes it difficult to predict the near-future scenario. Although, all of them consider that the cinemas and movie theatres will continue to exist. By 2025, the representatives of the production sector agree that there will be a coexistence between the cinema in theaters and the platforms, as well as between their operating windows, which will coexist at the same time. Anyway, most of the interviewed consider that the role of theaters will continue to be important in the audiovisual sector, although it will need help to guarantee its survival after the great crisis that they have had to go through due to Covid-19. It is said that its main function will be reserved for holding large film events (i.e., premieres of super productions) and the exhibition of auteur and independent films.

The platforms will be destined to a more massive consumption model. It is expected that audiovisual content is double by 2025. Some professionals believe that it is possible that in the next years, there may be a merger between some platforms, and even, that they will start to offer free content with advertising.

With the arrival of the platforms to the market, producers have found new clients, which were previously limited to TV broadcasters. Sometimes it is difficult for producers to find technical and artistic staff for filming. This way of producing content imposed by the platforms is even affecting the product, which is becoming shorter and shorter (for example, mini-series). Spanish producers believe that special attention must be paid to the loss of intellectual property, who tend to remain in the hands of large US platforms and production companies. Through the transposition of Directive 2019/790, of April 17th, on copyright and related rights in the Digital Single Market, it should be ensured that the producer participates in the success of its product.

In matters of legislation, there is a need in the sector to review the Film Law (which has already been announced), as well as to pay special attention to the new features incorporated in the new General Law on Audiovisual Communication (through the transposition of Directive 2018 / 1808, of November 14, 2018). It is necessary to update and review the concepts "European audiovisual work", "independent audiovisual work" or "cinematographic work". Likewise, the Draft of

the General Law on Audiovisual Communication, which is currently being processed, establishes that TV broadcasters must reserve at least 51% of the annual broadcast time of their programming for European audiovisual works. It also establishes that on-demand televisions or platforms will reserve at least 30% of the catalog for European works. In addition to the foregoing, this Draft provides that public televisions will allocate 6% of their computable income to finance European audiovisual work. It also establishes that private televisions, linear or on-demand, will allocate annually 5% of their income to finance European audiovisual work, to the purchase of exploitation rights of European audiovisual work already completed, and/or to the contribution to the Protection Fund of the cinematography. Some producer considers that the platforms, whose complete content of audiovisual works is greater than that of any television, should assume a greater percentage of both their catalog and their income.

Likewise, they consider that it is necessary to safeguard and guarantee a state plan for the audiovisual sector through serious and stable public policies, which do not depend on the political party that governs at all times.

For the Portuguese interviewees, Spain, as opposed to Portugal, has a tradition of consuming Spanish culture, it has its own industry and its own public. Spain can recover its investment in film, but this is an exception in Portugal. For her, although Portugal can grow a little in this matter, it is never going to be like Spain.

On the other hand, for the interviewed, public financing of the sector is key to contribute to the creation of a powerful audiovisual ecosystem. National films with intellectual property in Spain must continue to be the main source of funding through the public subsidy system. No production company can finance a film without the help of the public administration or public funding.

On the other hand, it would also be interesting to strengthen the system of tax incentives and encourage private investment in productions, especially in the smallest ones, which are the ones that find it most difficult to find investors. Tax incentive should be made much more efficient and effective, not in terms of quantity, but in terms of quality. In this sense, some experts have proposed the creation of a private-public fund so that independent and novice producers can benefit from it and find more facilities to carry out their production.

In addition, it is pointed out that the distribution of both European and Spanish films should also be properly funded, because digitization and new technologies endanger the role of the distributors.

The sector hopes that the HUB of Digital Spain 2025 will meet expectations and reach out to the business and creative network.

Finally, the audiovisual sector must incorporate new technologies in the different phases of its chain. For them, the creation of incentives and subsidies to help producers to incorporate more developed models is essential.

B) DISTRIBUTORS

Some Spanish distributors, as well as associations and federations of Spanish distributors, consider that it is difficult to know what the cinematographic ecosystem will be in 2025. These four years are decisive, the industry has to achieve a balance between theaters and streaming. Despite the importance that streaming is gaining, they believe that attendance at movie theaters will continue because it is a different experience, going to the movies is a social activity that goes through a collective and unique experience. Anyway, a robust system of subsidies and incentives for theaters is essential.

They argue that it is important for distributors to adapt to the paradigm shift brought about by the rise of streaming, by opening up to all means of exploitation and content (not just theaters and cinemas). One of the most worrying issues within the distribution sector is the anomaly that occurs in Spain in which the most commercial Spanish films are distributed by the Major (Disney, Universal, Warner, ...). Public Administrations should encourage the granting of aid to productions that will be distributed with independent distributors.

Concerning public financing, it is essential to maintain the line of subsidies for production and management, but the role of theaters and distributors must be valued since they are just as important for the existence of the audiovisual sector. The subsidy system must be accompanied by more fiscal measures that reinforce the Spanish audiovisual industry. The management, policies, and resources allocated to cinema and audiovisuals should not fluctuate depending on the government, the movie sector must be a matter of state, and it should be recognized as such. Likewise, it is pointed to the convenience of not subsidizing productions in which the producer loses intellectual property. The importance for the audiovisual industry of the Audiovisual Hub is mentioned, as a mechanism to attract production. The areas that cinema should prioritize to promote and finance are the need to support new authors and the presence of women in the industry, so it can achieve the 50-50 in all areas and especially in independent movies. The series does not need extra support, because they count on the big streamers.

Related to the evolution of the digital era, the state and territorial public administration should encourage the incorporation of new

technologies into the audiovisual sector, which will facilitate the creation of quality content that is accessible to the entire public and people with disabilities.

C) MOVIE THEATRES AND SCREENING PARTIES

The representatives of some highly relevant film exhibitors in our country consider that it is expected that by 2025 their sector will recover. Not all theaters have been or will be able to get ahead, which will mean either absorption of small theatres by large exhibitors, or their disappearance, which will mean a decrease in the number of movie theatres in Spain. About the competition that streaming platforms can pose for theaters, they consider that are different business models and that platforms do not replace the experience of going to the movies. In any case, for the survival of the current value chain, some representative considers that the exploitation windows must continue to exist, although with greater flexibility, that is, depending on each film, the exhibition is established for specific periods.

The companies of the exhibition sector have to bet on its digitization.

Regarding the public financing system, there are diverse opinions, some firmly believe that the network of public subsidies destined for audiovisuals should focus mainly on those agents that play a leading role and are the origin of the cinema value chain: production, exhibition distribution. In this sense, they consider that the money that is invested in cinema by the Public Administration reverts in favor of the state (job creation, taxes, social security, etc.). Others think that public financing should be destined to projects that are solvent and viable.

D) BROADCASTER

It is difficult to know how the sector will evolve in the coming years. The role of public audiovisual communication providers is very relevant in audiovisual production, derived, among other issues, from the legislation that applies to them, which obliges them to allocate a percentage of their income to finance and support European works (6% in the case of public televisions and 5% in the case of private televisions). The sector believes that it is necessary to work to: maintain, strengthen and advance the relationship with cinema users for commercial and cultural reasons; continue taking risks in the purchase of rights of independent works that strengthen the audiovisual cultural industry; and support projects that not only seek commercial success but also value proposals that support culture, languages, identities or diversity.

Private televisions have created their own production companies,

and public television operators are going to be forced to increase their investment in film production. Documentaries (feature films) and serial animation must also be financed.

Finally, broadcast television operators have to make use of technologies to improve their offer and provide better quality to users.

E) VOD AND STREAMING PLATFORMS

One of the main national streaming platforms considers that, without a doubt, and regardless of how, cinema will continue to be a cultural and entertainment reference in the coming years. What is possible is that by 2025 the value chain will experiment with a transformation, since the same actor may bring together different phases of the chain that was previously divided into more actors (e.g., the distributor may become a sales agent). Also, the number of movie theatres may be reduced, either due to the disappearance of some small ones or because large exhibitors absorb small ones. It is important to boost and protect independent and alternative content so that it can coexist with the productions of the large platforms.

Regarding financing, it is essential to maintain subsidy channels, national, regional, and local, that guarantee a resilient and solid audiovisual ecosystem. It is also essential to bet and encourage the entry of private capital to movies, through a patronage law that encourages investment in culture and cultural industries. Likewise, it is necessary to advocate making movies a matter of state, and that it does not suffer the consequences of changes in governments and policies.

Finally, this sector explains its absolute disagreement with the obligation to small and independent platforms to finance European works, established by the new General Law on Audiovisual Communication (which is in the Draft phase) which will be forced to allocate the same percentage of their incomes (5 %) than televisions.

F) OTHERS

To provide a complete and transversal vision of the audiovisual sector, we interviewed other actors that are part of the sector's value chain, and that will enrich the conclusions drawn.

Film Festivals

These agents have become great filters, in a time when content is presented to us is massive and access to international cinema is practically unlimited. Also, it is worth highlighting the increasingly important role of mediators in festivals, who have managed to attract new audiences.

Regarding public finance, the public administrations must bet on

supporting the cinematographic ecosystem in Spain through a solid system of subsidies, which encourages and facilitates the balance between the artistic and the industrial. It is also necessary to make the audiovisual sector a more attractive environment for investment, convince investors and promote a patronage law that encourages and stimulates private investment.

Film commissions and filming offices

It is important that the new regulation on audiovisual communication and cinema, which is in a state of review, takes into account all the news and advances that the sector has experienced to guarantee a prosperous and solid audiovisual sector by the year 2025. In this sense, it seems that progress is being made to achieve this (for example, establishing the obligation of platforms to finance European work through 5% of their income). The EU's recovery plan refers to the world of culture and audiovisuals, which shows that both Spain and Europe consider audiovisual culture as an important element. It is important to recognize the creation of an audiovisual Hub in Madrid, which aims to increase economic competitiveness, and attract foreign investment.

They expressed their concern about the trend towards the loss of intellectual property rights by independent Spanish production companies in favor of the platforms that hire them.

Likewise, the animation sector would need a subsidy system that stimulates an infrastructure that guarantees the development and production of projects. It is also necessary to reinforce funding for documentaries and support the production of series and feature films, opening up to genres that are more attractive to young people.

The financial support of the state will have to develop a new model of financial co-responsibility between the state and the producers or final recipients of the financial resources so that a return model is established based on the audiovisual works being profitable. The collaboration of public-private entities in financial matters is an area to be explored, due to its little experience so far, although the ICO has been crucial.

Right holders entities

Televisions are losing prominence and relevance, in favor of VOD or streaming platforms. This may lead to changes in the market, which will make that TV channels limit their own film and series productions in favor of non-fiction content.

With regard to the most relevant issues within the intellectual property sector and right holders entities, it is necessary to highlight the worrying situation that the large US platforms and majors are genera-

ting in Spain. They are imposing the models and work schemes of the Anglo-Saxon self-owned system, known as work for hire, and which consist of contracts for the assignment of all kinds of rights to the works, stripping authors, screenwriters, etc. of their creation rights of works, as well as the development of prequels, sequels and derivatives, generating abusive situations. For this reason, it is important that public administrations intervene by regulating this type of abusive relationships, since it ends up damaging not only creators, authors, screenwriters, among others, but also local and national independent filmmakers and productions. It is necessary to consolidate remuneration rights internationally in favor of authors and artists, insofar very few collective management entities are collecting these rights in a European and international level. In this context, with the diversification of content in the OTT services, such as videogames and podcasts, the possibility of new remuneration rights opens up.

From the preliminary draft of the General Audiovisual Communication Law, it is important to mention the extension of the financing obligations to the streaming platforms, although the gender perspective, cultural diversity, and the reinforcement of intellectual property are lacking.

The interviewers consider that it is necessary a state pact to guarantee a protection of cinema and its financing. It is considered that all audiovisual work in general should be financed, not just cinema.

On of the interviewed warns about some risk that the audiovisual HUB implemented in Madrid may have. Its role as institution to attract filming in Spain is very important but, those who come to film in Spain, may have to opt for Spanish talent, as most of the big international producers come with all their equipment, without developing national talent. In this sense, it is believed it should be promoted European talent and try to give more incentives to foreign companies for filming in Spain that use the Spanish and European human talent and not only the location.

Funding agents

The large multinational streaming platforms and majors are monopolising the market, leaving very little space for independent and European productions. Production is on the rise globally, although there is a decrease in cinematographic fiction and independent production and a rise in high-budget television fiction and streamers' production. The independent producers must be protected and funded because they reflect the reality of society. It is criticized that the majority of subsidies in the main value chain (producer-distributor-exhibitor) go to the producer (approx. 90%). The public funding strategy needs to be

rethought in favour of a more extensive model of promotion and funding of the whole chain. They highlight how in Europa Media they are phasing out individual grants and giving them out and promoting the network system. E.g., "Europa Cinemas". This is a single cascading aid that is converted into aid to thousands of beneficiaries, this model of aid to networks optimises resources, maximises benefits and provides greater visibility that will be reflected in the industrial fabric.

For some of the actors public funding will increase in the short term and at least will be maintained in the long term, as audiovisual production will augment. Other actors in the sector have a pessimistic view and think that public funding will tend to decrease in the future, giving way to funding provided by major corporations. For one of the interviewed, there is going to be an evolution from public financing to tax incentives or tax breaks.

The interviewers consider that there is a lack of a European streaming platform.

Public authorities

Representatives of the Ministry of Economy and Digital Transition are aware of the crucial moment the audiovisual sector is going through, as it has become a strategic sector and they guarantee that it is a priority for the government. In fact, they have integrated it into the Digital Spain strategy, within the Plan España Puede.

Within the framework of public policy, the Spanish government has proposed a plan to promote the audiovisual sector, adapting the financial instruments of the public sector to adapt them to the business model of the companies in the sector.

The coordination of the different ministerial departments in their actions in the audiovisual sector, three groups were set up. One of these groups is aimed at supporting the reactivation of audiovisual productions paralysed by Covid-19, especially those coming from other countries. Tax incentives group to readapt the tax system to the new functioning of the sector. Training group aimed at obtaining a diagnosis of the qualifications and skills of professionals and whether this is adapted to the demands of the industry.

Film funding and incentives for audiovisual projects must be maintained, they are of vital importance and the focus should be on helping new creators, projects that preserve cultural diversity, projects that encounter greater funding difficulties or women directors.

With regard to new technologies and the sector's digitisation processes, it is encouraging that the European reconstruction fund places a lot of emphasis on digitisation. The sector has to evolve and incorporate these instruments into its process and this is already being done,

and to this end, public administrations will be an essential actor.

Concerning Portugal, it has to be taken into account that the country does not have the most spoken language in the world, and this limits the scope of its contents. For this to change, it is necessary to strengthen film and audiovisual education in Portugal, so that modern contents can be produced in Portugal, and no matter the possible languages barriers, these contents result attractive worldwide. Likewise, it is said that the country has less funding in comparison to other European countries. In this scenario, it is debated the need to create regional or local funds that allows the diversification of the funding sources.

Audiovisual competition regulators

It is important that the regulation that is being built takes into account all agents and entities, and that it avoids mistakes like those made so far, as it is necessary to prevent the emergence of new agents, who can occupy large market shares, from being exempt from obligations that other very similar agents have.

Third sector. Feminist associations.

Progress is expected on equality. It is concerned that the Audiovisual Hub is turning Spain into a film set, but that it does not serve to promote and reinforce the audiovisual cultural framework of our territory. There are already examples of other countries that have become major filming centres without leaving any kind of mark beyond the hiring of certain technicians, and Spain cannot aspire to that.

Audiovisual consultancy

Specialists from the industry believes that we are in a transitional phase that not necessarily will be completed by 2025. It is obvious that we will be more advanced than we are now, but not entirely, as the technological advances that are expected will not be at their phase of maturity. An example of this is 5G, which has not yet arrived, but when it does, it will mean a huge change in the industry in the sense that we will be able to download a film in 1 minute on our mobile devices.

There is a need to reinforce audiovisual education, e.g., through schools. This is a way to reach new public, especially young audiences. It is also a necessity to invest in the education of professionals, so they understand the business. They need to know their rights as creators, which are the operating windows that exists, which is the commercial viability of their projects.

It is felt that funding needs to be reconsidered as well as be improved and refined much more. The change of business model cannot be

separated from public funding and therefore, it is not only a question of whether the volume of funding increases or decreases, but it is also a question of defining what is invested in, and for this, is necessary to see where the needs are. Public funding of part of the cinema ticket is proposed, so that the public is interested in going to the cinema. Sector highlights the importance of Spanish Public Television ("TVE") as an audiovisual actor and the need of it to recover its own production to be a competitor. In this way, the financial cycle would be closed as part of the resources obtained would be redirected to the film sector. This would be a way of returning to independent production. Another point made by the sector is that public support can be materialised in different ways and does not have to be only the traditional system of aid such as subsidies, but that there are other forms of intervention or support (education, publicity, dissemination, etc.). In other words, support must go far beyond pure funding and subsidy reinforcement.

Associations

As to public funding and independent productions, it is hoped that the system of public subsidies and tax incentives, as the ultimate and maximum guarantor of filmmaking, will continue to be there. We cannot forget that Europe competes in situation of inequality with the United States, which is the maximum power in matters of cultural investment. In the value chain there are great disparities in the context of negotiations, and it is difficult that a fair negotiation between a large platform and a small producer takes place. The only way to solve this problem is through legislation that clearly establishes the rules of the game.

Madrid, October 13th, 2021