

Content quotas for European film productions

Summary

Law	<ul style="list-style-type: none"> Sec. 77 Interstate Media Treaty ("MStV") Statute on European Productions ("Guidelines") 				Effective date:		<ul style="list-style-type: none"> Law: 7 November 2020 Guidelines: 1 July 2021 				
Applies to:	Social networks	Search engines	Game distribution platforms	VoD platforms	App stores	Video games	Movies and shows	Video-sharing platforms	Media compilation apps and services	Smart devices/connected devices	Messenger services
				Yes					Depends		
Content of the regulation — quick overview											
<ul style="list-style-type: none"> VoD platforms must have at least 30% of European works in their catalog. Exceptions apply to new or small-scale providers. 									Applies to abroad companies?	No	
									EU/EEA country of origin principle respected?	Yes	

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I. Who is caught by the regulation?

In-scope services:

- "online services similar to television broadcasts," which means VoD services
- media compilation apps and services, to the extent that they include VoD services and individual titles distributed by the provider of the media compilation app/service

Exemptions:

- Services with low revenues are exempted, that is, services with not more than EUR 2 million revenue per year (excluding value-added tax and other indirect taxes or fees).
- Services with a low number of viewers are exempted, which applies to services that have less than 1% of the total number of potential viewers in Germany in the respective market segment (TVOD, AVOD and SVOD, respectively) within one year. Guidelines exist on how viewing numbers need to be calculated for each market segment.
- Services where the implementation of Sec. 77 of the MStV is impracticable or unjustified due to the nature or subject matter of the television-like service are exempted. For instance, this could apply to VoD services that provide only special interest content from other countries (e.g., a VoD service for Japanese anime or movies from Asia in general). Based on available guidelines interpreting the law, an exemption may be granted by the regulator if one of the following three conditions applies:

Content quotas for European film productions (Sec. 77 Interstate Media Treaty - "MStV")

- the provider has not made the service available for use for more than one year
- the provider's market share is less than 3%
- the provider maintains a special-interest catalog for the on-demand viewing of film and television productions in which at least 75% of the total available programming time is devoted to a special topic in the areas of education, counseling or information for a limited audience

Companies outside of Germany:

- The requirement applies only to service providers established in Germany.
- EU/EEA country of origin principle:
 - The law respects the EU/EEA country of origin principle.
 - The **country of origin** principle under the Audiovisual Media Services Directive ("**AVMS Directive**") applies to service providers established in another EU/EEA member state.
 - Service providers that can rely on the EU/EEA country of origin principle are exempted, as they only have to comply with the regulations on content quotas as implemented in their EU/EEA country of origin. However, the requirements for an actual establishment have to be met (e.g., mere shell companies are not sufficient for this purpose).
 - Since the AVMS Directive implements a harmonized standard of a 30% share of European productions in Art. 13 (1), differences between the German law and the EU/EEA country of origin might be minimal.

II. Requirements

- VoD services should secure at least a **30% share** of European works in their catalogs. The requirement implements Art. 13 (1) of the AVMS Directive.
- European works are those as defined in Art. 1 of the AVMS Directive.
- The proportion of European works is calculated based on the total number of titles included in the catalog in each half year. If a provider has more than one catalog available, the proportion is calculated separately for each catalog.
- In addition, VoD services need to ensure the **prominence of the European works in their catalog**. The requirement also implements Art. 13 (1) of the AVMS Directive:
 - Prominence means promoting European works through facilitating access to such works. This will be evaluated based on the overall view of the measures taken.
 - Prominence may be ensured by various means, such as the following:
 - a special section for European works accessible from the main page of the service
 - the possibility to search for European works using the search tool available as part of the service
 - the use of European works in advertising campaigns of the service
 - a minimum of 30% of European works accessible from the category sections available on the main page of the service (e.g., in the highlights or family section)

III. Enactment

- The MStV came into force on 7 November 2020.
- The Guidelines, as agreed on by the state media authorities is scheduled to come into force on 1 July 2021.

IV. Sanctions and enforcement

- The competent state media authority has the right to request information from service providers, including, for instance, information on the revenue of the provider, the number of viewers and the catalog (e.g., a list of available works classified by production country).
- To enforce the provision, the competent state media authority may impose necessary measures such as objections, prohibitions or blocking orders on the service.

For further questions don't hesitate to contact our specialists:



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