

Surfing the Waves with a Growth Mindset: EFM Think Tank Report 2024

Introduction

For the fourth year in a row, EFM Industry Sessions hosted stakeholders and experts at focused, invitation-only Think Tanks. The Think Tanks intended to give a deeper dive into important trending topics facing the international audiovisual industry and provide a safe setting for hand-picked professionals to exchange and ideate. The 2024 edition included two events, the first giving focus to vertical integration in the European film landscape, and the second looking at developments and opportunities in generative AI in series and film.

In the spirit of an open discussion the Think Tanks applied “Chatham House Rule”, wherein participants agreed to speak transparently without being identified. Encouraging a growth mindset, the EFM Industry Sessions Think Tanks aim to provide a collaborative environment for identifying challenges and exchanging knowledge in order to generate better solution-oriented, future-facing approaches and strategies.

THINK TANK 1

Vertical Integration: Solutions for or a Threat to the Audiovisual Sector?

Co-hosted with the European Producers Club (EPC), this Think Tank explored how industry players can mitigate risks in an increasingly diversified landscape where vertical integration has become more and more of the new normal. This may be a good option for the commercial part of the business, but verticalization also brings many concerns.

Overview of the Current Landscape

Vertical integration encompasses various meanings depending on how the vertical axis is defined. It relates to integrating production activities with distribution, both nationally and internationally, the inclusion of independent production companies in large AV groups linked to broadcasters, and the integration of all steps of the value chain from development to production to delivery to audience. It also includes broadcasters merging into telecommunications groups, as seen in Canada, for instance. Vertical integration may be driven by market conditions, such as in countries with limited capacities where the exploitation outlets are controlled by a few players.

The US has a long history in regulating vertical integration. In particular with regard to regulatory issues in the context of film and TV, the US has taken a leading role. A reminder of this was shared with the Think Tank about the regulation imposed on US studios owning cinemas in the 1940s in order to avoid vertical monopoly, as well as the FIN/SYN rules in the 1970s which for the first time required the three national US broadcasters to allocate a certain amount of their prime-time to independent production. This made it more competitive for independent producers and ensured that certain rights and revenues remained with the producers. However, a policy of deregulation developed in the 1980s and many of the regulations began to reverse.

In the UK, instances of vertical integration include the establishment of Channel 4 in the early 1980s, the Communications Act of 2004, and the BBC independent production quota and Terms of Trade, which introduced regulations to protect independent producers from the dominant position of broadcasters, among others.

In Italy, concerns were raised recently when Rai Cinema announced the creation of a distribution arm for feature films, illustrating a public broadcaster's participation and investment in film distribution – using public resources – both nationally and internationally. This raises concerns for producers regarding their negotiation power with such entities.

Losing bargaining power is a critical issue when vertical integration results in market conditions adverse to less powerful players, such as independent producers. If a broadcaster oversees and commissions all content, independent producers become mere service providers, losing their independence and the ability to innovate and develop creative talent and create IP.

The essence of the challenges created by vertical integration can be seen when there is a concentration of control over distribution. The result is the concentration in the ownership of the IP in the hands of broadcasters and, more recently, VoD platforms. Local broadcasters aim to deliver content to their local audience, and do so by taking control over production and distribution. However, this results in the poor circulation of works outside the broadcasters' territory, and the under-exploitation of the IP in those works. This is also now the case in particular for platforms. Their main interest resides in local audiences and immediate exploitation on the platform, rather than wider distribution and longer term value.

Market power resides in owning the IP and in the resulting revenues from the distribution of the works. If production companies do not have these rights, they don't have market power, and will be absorbed into the concentration of the market phenomenon.

Is big beautiful?

The consolidation of the industry (particularly horizontal integration) is generally positive, but the goal should not solely be to create vertically integrated companies and a market dominated by a small number of outlets. What needs to be promoted is cultural and creative diversity, competition, and entrepreneurship. That's the role of regulation and public funding. While size can offer bargaining power to players currently lacking it, it also risks narrowing the market and thus the diversity of offerings. The industry needs small independent production companies and emerging talent. The objective should not be to regulate everything towards becoming large, but instead to promote a diverse environment. Regulators and public funding bodies need to debate where to draw the line, seeking a balance between developing a strong industry, promoting a balance in bargaining power, and promoting culture and creativity.

Is vertical integration favouring concentration?

Often, networks and streamers prefer working with production companies that are part of larger groups, knowing that they have the financial backing to address problems. This preference can limit opportunities for smaller, independent companies. It favours a concentration effect, which when associated with vertical integration is creating more difficult market conditions for independent players. Vertical integration challenges creativity and innovation, and public funding has a role here.

Access to Audience Data and Transparency is critical not only for production companies to understand the performance of their work with audiences, but also for policy reasons like promoting diversity, equality, and inclusion. The lack of data transparency puts producers at a disadvantage during negotiations, reinforcing their lack of bargaining power.

The Regulation of Algorithms is vital as part of this access to data. Laws should include algorithms when it comes to data transparency as they are essential in the promotion of the discovery of local content across different audience sectors. Canada's experience with regulating algorithms to support local productions highlights the challenge of ensuring local content gets fair representation in a market dominated by global platforms and US content. It has not been effective.

Conclusion: Market Failure & Law and Regulation

Concentration (including vertical integration and horizontal integration) in the market is not inherently negative. But over-concentration - particularly at the distribution end - can lead to significant market failures, including reduced bargaining power for producers and a concentration of audiences around only a few services. And in a digital world dominated by online platforms, the lack of access to data substantially diminishes creativity and competition, by again reducing the bargaining power of the independent production companies.

Addressing these issues requires a well-crafted legal framework, and one that is responsive to current market conditions. The current regulatory and legal framework needs to be urgently updated to promote diversity, competition, and in particular the ownership of IP in Europe.

THINK TANK 2

Generative AI in the Film & Series Industry

Co-hosted with SerienCamp, this Think Tank explored questions, concerns, and opportunities for the film and series industry in the rapidly evolving space of generative AI. Participants were divided in four breakout groups exploring various aspects of AI from the viewpoint of creativity and ethics, legality and protecting copyright, educational and professional training, and AI in the animation field. The major takeaways were the following:

BREAKOUT 1:

Creativity & AI: AI-powered Tools in Writing & Development Processes of Films & Series

While the integration of AI in processes like ideation, conceptualization, and writing offers benefits – improved efficiency, faster workflows, and increased creativity among them – it also raises ethical concerns, risks of bias, and fears over job displacement and loss of creative control. How can the industry balance the benefits of AI, such as efficiency and analytical insights, with the risks of bias, ethical issues, and loss of creative control?

Benefits & Challenges

- Generative AI tools can be used as a tool for feedback, research, and generating ideas and inspiration, but it requires a clear vision and specificity, and knowing what you do not want
- AI-generated content can lack accuracy and be generic and cliché, lacking the nuance of human creativity
- AI can be biased, discriminatory, and even racist, and these limitations need to be understood by users
- Copyright issues still raise major questions around protecting creative intellectual property

Suggestions

- Be clear why we use AI - for example for efficiency or economical reasons - to foster more transparency
- If a goal is to make better art, film and TV with AI, creativity must be ensured in the process using open and pure sources (and not only relying on American corporations to generate the tools, there must be a diversity of platforms)
- Take responsibility on the use of AI, write a manifesto for your team or organization on the different ways it should and should not be used
- Be clear and transparent about when and how AI has been used
- Creativity can come from doubts, failures, and not knowing what to do next – don't lose this in your process, and don't treat AI as a simple, easy solution

BREAKOUT 2:

Animation & AI – Pioneers of the Revolution in Generative AI?

The global animation industry is undergoing a significant transformation with the integration of generative AI, impacting everything from production efficiency to character design and motion capture. As AI tools increasingly influence workflows, production pipelines, and value chains, there is urgent need for discussion on their implications for the industry's creative and technical workforce. How can the animation industry navigate the integration of generative AI to enhance production efficiency and creative quality while mitigating job displacement? What guidelines and practices could mitigate the negative effects?

Benefits & Challenges

- There is real concern about human jobs in animation that will be lost to AI - some experts estimate an approximate 90% job loss in the next few years - but there is hope that AI will actually empower people to create more and foster more democratization
- An “adapt or die” mentality exists with regard to learning how to use AI and many traditional animators hold strong bias against generative AI, but AI can free creativity in the animation process and help streamline workflows and empower creative potential
- There's uncertainty about who will benefit more from AI - small or big companies - related to data ownership and equity, and the fact that smaller companies with less resources may not be able to compete with regard to innovation

Suggestions

- Train your own AI generative systems to avoid biases, for example to learn and incorporate indigenous perspectives
- Empower people to use AI, take the fear out of it and promote education and practical use of the tools available
- Create more open source systems so as not to concentrate power in the hands of a just few big corporations
- Focus on the human factor behind AI, looking at what it means for team collaboration and making all team members feel comfortable approaching AI

BREAKOUT 3:

Learning AI – Frameworks for Developing Training Programmes for the Use of AI in the Film & TV Industry

The integration of Generative AI into the movie and TV industry is prompting a significant shift, necessitating professionals to acquire new skill sets. This transformation stresses the need for identifying essential AI-centric skills and embedding AI-focused training within educational and professional development programmes. What are the current difficulties in identifying and integrating the necessary AI-centric skills and training into existing educational and professional development frameworks?

Benefits & Challenges

- Parallel to what happened in the digital age, today young students are growing up as AI natives but learning is important for the whole industry, not just the new generation
- Teaching AI can be an intergenerational dialogue, starting with teaching basic craft principles that come from learned experience
- Some students are afraid to lose their jobs before they even start studying AI and some professionals feel threatened, this “fear gap” must be bridged

Suggestions

- Stay agile: a changing world requires lifelong learning and keeping on the lookout for new opportunities
- Institutions need to integrate AI in every aspect, from applications to teaching to helping with tests, so AI should be integrated into the classic student curriculum
- Use AI to train in and learn AI, with experiential labs teaching concrete skills like basic technical filmmaking, ethics, legal issues, economics, artistry/creativity, and AI prompting
- Teachers can be bridges between the past and future
- Create more opportunities and events for learning, reflection, and discussion around AI

BREAKOUT 4:

Legal AI – Generative AI and Questions About Text and Data Mining and Copyright Protection:

The use of AI in film and television production brings to light considerable benefits but also challenging legal issues, particularly around copyright and the use of data and copyright protected content as inputs for generative AI and definition over who owns the results. Whether and to what extent copyright protected content can and should be used as training data for AI services raises complex legal issues around control, the ownership of the resulting content, as well as the resolution of disputes which potentially arises. How can authors, performers, producers and distributors of AV content respond to these challenges in the current climate? What do potential solutions look like and what do those parties need to consider?

Benefits & Challenges

- There are considerable benefits to be derived by generative AI in assisting in the development, production, distribution and marketing of screen content
- From a legal point of view, the situation in relation to generative AI should be approached from an “input” and an “output” perspective. The “input” issues relate to what training data is used and the “output” issues relate to the legal position in relation to the resulting works
- In relation to inputs, the copyright law approach has varied from country to country. The EU Copyright Directive 2019 created text and data mining (“TDM”) exceptions both for scientific works and for general purposes, but with rights holders being entitled to opt out of the latter exception. This was before the transformative implications of AI were fully realized. The UK has not introduced any exception and in the

USA, the controversial "fair use" exception (transformative use) is being deployed to argue in favour of and against copyright protected works being "inputted" into generative AI

- The ongoing struggle between balancing innovation and copyright protection continues. Particular challenges arise in the EU in relation to the "opt-out" from the general TDM exception. How do rights holders exercise this right, including in "machine readable" form?
- In relation to outputs, what is the copyright position of AI generated content? A distinction needs to be made between AI assisted works, where there is a human author/prompter and AI generated works where there appears to be no author. What is the status of "no author" works and the multiple recycling of AI generated works? Can they be freely copied by anyone? What is the future of copyright law in this context? If an AI generated work appears to copy an existing copyright work, is this a breach of copyright?

Suggestions

- Is there a way for rights holders to consent to text and data mining and be remunerated for the value of the works being used? (A promising example includes the recent New York Times case, where the Times is arguing against the fair use exception applying to the text and data mining of its content, while also exploring the possibilities of licensing access to its archives)
- Guidelines need to be developed in relation to the opt-out under the EU TDM exception, and how it can be effectively deployed
- There should be further and clearer transparency in differentiating human assisted AI content creation from generative AI content and the implications of large volumes of "no author" AI content be considered
- The film, TV and online AV content production sector should consider how other copyright protected industries protect and license their works, for example, the music industry and collective rights management arrangements, and also how to address AI issues in the context of guild and union collective bargaining arrangements

CONCLUSION

EFM hopes to inspire solution-based thinking around the complex, evolving topics discussed in the 2024 Think Tanks and to provide a safe space for sharing knowledge, asking questions, and hopefully arriving at answers.

EFM welcomes feedback on the ideas in this document; please contact the EFM Industry Sessions team at: efm-industrysessions@berlinale.de

Credits and Acknowledgements

EFM Think Tanks Team: Co-Curation: Manu Guddait, Coordination: Benjamin Marnitz

Report Author: Andrew Houchens

Global Moderators: AC Coppens, Alexandra Lebret

Table Hosts: Alexandra Lebret, Hannes Jakobsen, Pierre Puget, Gerhard Maier

Co-organising partners: European Producers Club, SerienCamp

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Imprint

EFM Director: Dennis Ruh

Berlin International Film Festival

EUROPEAN FILM MARKET

Potsdamer Platz 11

10785 Berlin

Germany

phone: +49 30 259 20 666

efm@berlinale.de