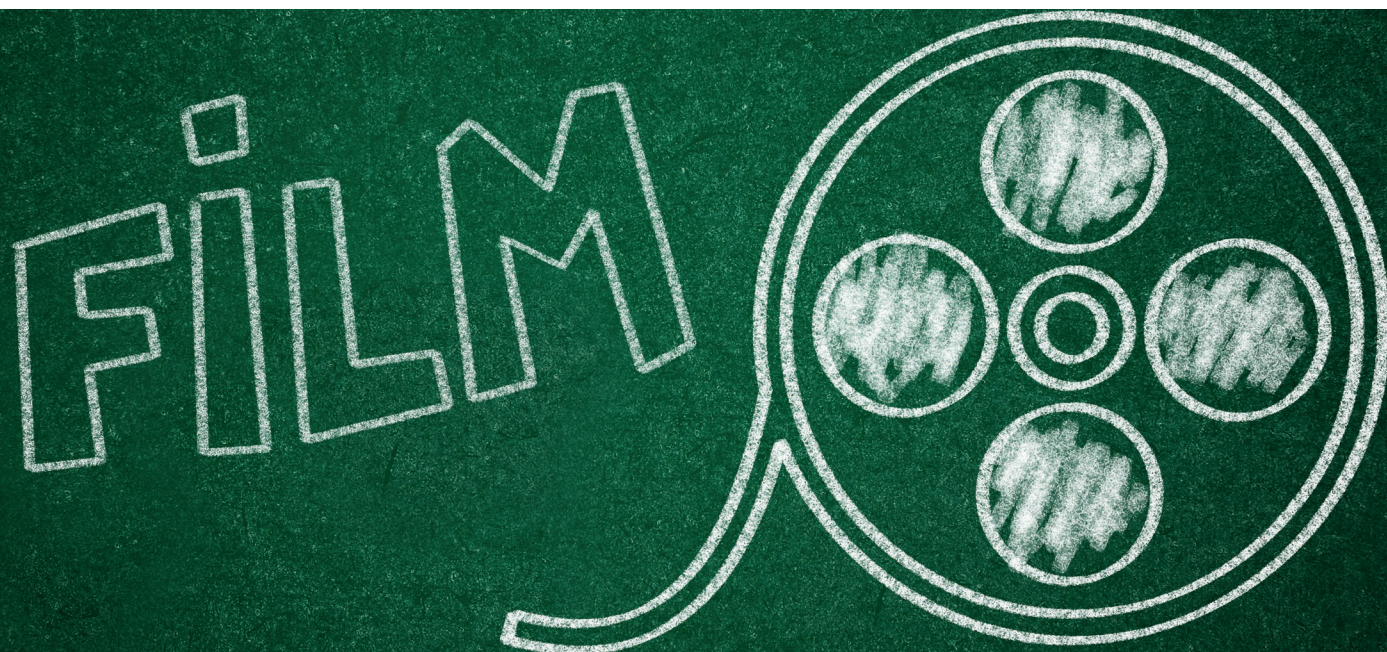




European  
Commission

# Showing films and other audiovisual content in European Schools

## Obstacles and best practices



### Final Report

A study prepared for the European Commission  
DG Communications Networks, Content & Technology by:

**UAB**  
Universitat Autònoma  
de Barcelona

**THINK TANK...**  
ON EUROPEAN FILM AND FILM POLICY

**CUMEDIAE**



Digital Agenda  
for Europe

This study was carried out for the European Commission by:



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# Index

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|                                                                                                                      |              |
|----------------------------------------------------------------------------------------------------------------------|--------------|
| <b>EXECUTIVE SUMMARY</b>                                                                                             | <b>P. 07</b> |
| ABSTRACT                                                                                                             | P. 07        |
| CHAPTER 1: Use of films and other audiovisual content in european schools                                            | P. 08        |
| CHAPTER 2: The perspective of the film industry, public film institutions and other stakeholders                     | P. 08        |
| No film without film industry                                                                                        | P. 08        |
| Multiple licensing models                                                                                            | P. 08        |
| Facilitating access out of schools                                                                                   | P. 08        |
| CHAPTER 3: The legal framework                                                                                       | P. 09        |
| The copyright directive and international treaties                                                                   | P. 09        |
| Teaching limitation to copyright                                                                                     | P. 09        |
| CHAPTER 4: Obstacles                                                                                                 | P. 10        |
| Different kinds of obstacles                                                                                         | P. 10        |
| Curricular and pedagogical restrictions                                                                              | P. 10        |
| Practical restrictions in schools                                                                                    | P. 10        |
| Economic and legal conditions                                                                                        | P. 10        |
| Lack of communication and understanding between schools and rights-holders                                           | P. 10        |
| CHAPTER 5: Recommendations                                                                                           | P. 11        |
| Public film literacy policy                                                                                          | P. 11        |
| Promotion of film literacy                                                                                           | P. 11        |
| Lifelong training for teachers                                                                                       | P. 11        |
| Online educational platforms                                                                                         | P. 11        |
| Preferable infrastructure for creative classrooms                                                                    | P. 11        |
| <b>RÉSUMÉ EXÉCUTIF</b>                                                                                               | <b>P. 12</b> |
| RÉSUMÉ                                                                                                               | P. 12        |
| CHAPITRE 1: L'utilisation de films et autre contenu audiovisuel dans les ecoles europeennes                          | P. 12        |
| CHAPITRE 2: La perspective de l'industrie du film, des institutions cinematographiques et d'autres parties prenantes | P. 13        |
| Pas de films sans industrie du film                                                                                  | P. 13        |
| De multiples modeles de licences                                                                                     | P. 13        |
| Faciliter l'accès en dehors des ecoles                                                                               | P. 14        |
| CHAPITRE 3 : Le cadre juridique                                                                                      | P. 14        |
| La directive sur le droit d'auteur et les traites internationaux                                                     | P. 14        |

|                                                                                 |              |
|---------------------------------------------------------------------------------|--------------|
| L'enseignement limite aux droits d'auteur                                       | P. 14        |
| <b>CHAPITRE 4 : Obstacles</b>                                                   | P. 15        |
| Différents types d'obstacles                                                    | P. 15        |
| Restrictions pédagogiques et des programmes scolaires                           | P. 15        |
| Des restrictions pratiques dans les écoles                                      | P. 15        |
| Les conditions économiques et juridiques                                        | P. 15        |
| Absence de communication et compréhension entre les écoles et les ayants droits | P. 16        |
| <b>CHAPITRE 5 : Recommandations</b>                                             | P. 16        |
| Recommandations                                                                 | P. 16        |
| Politique publique d'éducation au cinéma                                        | P. 16        |
| La promotion de l'éducation au cinéma                                           | P. 16        |
| La formation continue des enseignants                                           | P. 16        |
| Les plateformes éducatives en ligne                                             | P. 16        |
| De meilleures infrastructures pour des salles de classes créatives              | P. 16        |
| <b>0. INTRODUCTION</b>                                                          | <b>P. 17</b> |
| <b>1. USE OF FILMS AND OTHER AUDIOVISUAL CONTENT IN EUROPEAN SCHOOLS</b>        | <b>P. 19</b> |
| <b>1.1. Introduction</b>                                                        | P. 19        |
| <b>1.2. How Are Films and Audiovisual Content Used in Schools?</b>              | P. 20        |
| 1.2.1. Which Content?                                                           | P. 21        |
| 1.2.2. Instrumental Character of Films and Audiovisual Content                  | P. 22        |
| 1.2.3. Origins?                                                                 | P. 23        |
| <b>1.3. Organizational and Structural Constraints</b>                           | P. 24        |
| 1.3.1. Organization of Time                                                     | P. 24        |
| 1.3.2. Organization of Space: Limits in the Classroom                           | P. 24        |
| 1.3.3. Technological Infrastructure                                             | P. 25        |
| 1.3.4. Audio-visual material availability                                       | P. 28        |
| 1.3.5. Cost                                                                     | P. 29        |
| <b>1.4. Pedagogical Approach</b>                                                | P. 32        |
| 1.4.1. Teaching Film Literacy                                                   | P. 32        |
| 1.4.2. Activities Related to Cinema in Schools                                  | P. 34        |
| 1.4.3. Film Literacy in the Curriculum                                          | P. 35        |
| 1.4.4. Promoting Film Literacy                                                  | P. 36        |
| 1.4.5. Teacher Training                                                         | P. 38        |
| <b>1.5. Conclusions</b>                                                         | P. 40        |

|                                                                                                                                           |              |
|-------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| <b>2. THE PERSPECTIVE OF THE FILM INDUSTRY, PUBLIC FILM INSTITUTIONS AND OTHER STAKEHOLDERS</b>                                           | <b>P. 41</b> |
| 2.1. Introduction                                                                                                                         | P. 41        |
| 2.2. Film and Other Audiovisual Content Supply and Licensing                                                                              | P. 43        |
| 2.3. Film and Audiovisual Content Within School Grounds                                                                                   | P. 46        |
| 2.4. Film and Audiovisual Content Outside School Grounds: The Role of Facilitators and Promoters                                          | P. 48        |
| 2.5. The Role of Film Heritage Institutions                                                                                               | P. 48        |
| 2.5.1. Film Festivals For Children and Youths                                                                                             | P. 48        |
| 2.5.2. Student Film Festivals                                                                                                             | P. 49        |
| 2.5.3. Theatrical Screenings                                                                                                              | P. 49        |
| 2.5.4. The Wider Role of Public Film Agencies and Private/Public Organisations                                                            | P. 50        |
| 2.5.5. Good practices for promoting and facilitating film literacy                                                                        | P. 51        |
| 2.6. The Implementation of Film Literacy Constraints and Possibilities with Regards to the Film Industry                                  | P. 51        |
| 2.6.1. Cost of Access to Films and Other Audiovisual Content                                                                              | P. 51        |
| 2.6.2. Cost of Content Provided by Public Film Organisations                                                                              | P. 52        |
| 2.6.3. License Agreements and Costs                                                                                                       | P. 52        |
| 2.6.4. Concluding remarks                                                                                                                 | P. 54        |
| <b>3. THE LEGAL FRAMEWORK. EUROPEAN COPYRIGHT LAWS: EXCEPTIONS AND LIMITATIONS TO COPYRIGHT CONCERNING FILMS FOR EDUCATIONAL PURPOSES</b> | <b>P. 55</b> |
| 3.1. Introduction                                                                                                                         | P. 55        |
| 3.2. Copyright: The Framework                                                                                                             | P. 57        |
| 3.2.1. Copyright Film Protection                                                                                                          | P. 57        |
| 3.2.2. The European Copyright Directive                                                                                                   | P. 57        |
| 3.2.3. Copyright Limitations                                                                                                              | P. 57        |
| 3.3. Exclusive Rights and Film Literacy at School                                                                                         | P. 58        |
| 3.4. Limitations in the European Copyright Directive                                                                                      | P. 59        |
| 3.4.1. The illustrative use of audiovisual works for teaching purposes                                                                    | P. 59        |
| 3.4.2. Overview of licensing schemes                                                                                                      | P. 63        |
| 3.5. Teaching exceptions under national Laws                                                                                              | P. 64        |
| 3.5.1. Introduction                                                                                                                       | P. 64        |
| 3.5.2. Comparative overview                                                                                                               | P. 65        |
| 3.5.3. Dvds and recorded broadcasts                                                                                                       | P. 66        |
| 3.5.4. Online access to films                                                                                                             | P. 68        |
| 3.6. Summation                                                                                                                            | P. 73        |
| <b>4. OBSTACLES</b>                                                                                                                       | <b>P. 75</b> |
| 4.1. Introduction                                                                                                                         | P. 75        |
| 4.2. Different Kinds of Obstacles                                                                                                         | P. 75        |

|                                                                                        |              |
|----------------------------------------------------------------------------------------|--------------|
| <b>4.3. Curricular and Pedagogical Restrictions</b>                                    | <b>P. 76</b> |
| 4.3.1. Lack of Official Recognition of Film Literacy in the Curriculum                 | P. 76        |
| 4.3.2. Lack of Teachers' Autonomy                                                      | P. 76        |
| 4.3.3. Curricular Inflexibility                                                        | P. 76        |
| 4.3.4. Cultural Barriers Related to Audiovisual Language                               | P. 77        |
| 4.3.5. Lack of Teacher Training in Film and Audiovisual Literacy                       | P. 77        |
| 4.3.6. Lack of Supporting Networks for Teachers                                        | P. 77        |
| <b>4.4. Practical Restrictions in Schools</b>                                          | <b>P. 78</b> |
| 4.4.1. Time Constraints                                                                | P. 78        |
| 4.4.2. Infrastructure Constraints                                                      | P. 78        |
| 4.4.3. Lack of Information about Available Resources                                   | P. 78        |
| <b>4.5. Economic and Legal Constraints</b>                                             | <b>P. 78</b> |
| 4.5.1. Lack of Cooperation Between Industry and Schools                                | P. 79        |
| 4.5.2. Licensing Costs (and how it is perceived by teachers)                           | P. 79        |
| 4.5.3. Information about the Lack of a Clear and General Licensing Regime              | P. 79        |
| <b>4.6. Lack of Communication and Understanding Between Schools and Rights-Holders</b> | <b>P. 80</b> |
| <b>5. CONCLUSIONS AND RECOMMENDATIONS</b>                                              | <b>P. 81</b> |
| <b>5.1. Conclusions</b>                                                                | <b>P. 81</b> |
| <b>5.2. Recommendations</b>                                                            | <b>P. 82</b> |
| 5.2.1. Public Film Literacy Policy                                                     | P. 82        |
| 5.2.2. Promoting Film Literacy and Media Literacy in the Context of Multiple Literacy  | P. 82        |
| 5.2.3. Time Flexibility and Autonomy for Teachers                                      | P. 82        |
| 5.2.4. Lifelong Teacher Training                                                       | P. 82        |
| 5.2.5. Supporting Teachers                                                             | P. 82        |
| 5.2.6. Online Educational Platforms                                                    | P. 83        |
| 5.2.7. Preferable Infrastructure for Creative Classrooms                               | P. 83        |
| 5.2.8. Promoting Cooperation Between Public Service Broadcasting and Schools           | P. 83        |
| 5.2.9. Use of School Libraries for Developing Media Activities                         | P. 83        |
| 5.2.10. Uses of Online Content in Education                                            | P. 83        |
| 5.2.11. Educational Approach according to Copyright Rules                              | P. 84        |
| 5.2.12. Improving Information on Educational Licenses Availability                     | P. 84        |
| 5.2.13. Film Heritage/ Industry Organizations/ Film Festivals and Schools              | P. 84        |
| 5.2.14. European Media Literacy Observatory                                            | P. 84        |
| 5.2.15. Public Funding and Film Literacy in Schools                                    | P. 84        |

# Executive Summary

## ABSTRACT

The aim of this study is to provide the European Commission with reliable data and analyses on the educational use of audiovisual content in schools, pointing out obstacles and good practices from three different aspects: the educational, the legal, and the relationship with the film industry.

The study is divided in five main chapters.

The school chapter looks into the use of films and audiovisual content in European schools as determined by their curricula – use of film in general and film literacy education; access to relevant films and other audiovisual content and its costs; teaching methodologies and teacher training; physical conditions for film-showing.

The industry chapter focuses on how films can be made available for schools and what obstacles may exist. Examples of applied copyright law show how some countries have solved the access problem. This section includes examples of initiatives and activities carried out by a diverse sample of public film institutions and public-private stakeholders.

The legal chapter analyses how the copyright framework is implemented in the countries covered in the report. This chapter specifically looks into the terms of access to film and other audiovisual content for its use in schools.

The last two chapters summarize obstacles and barriers to effective film literacy teaching, followed by policy recommendations.

## CHAPTER 1

### Use of films and other audiovisual content in European Schools

This part of the study presents a detailed analysis on the use of films and other audiovisual content in schools. The analysis is primarily based on 6,701 replies from teachers and schools resulting from a comprehensive questionnaire.

The analysis of the questionnaire has been combined with desk and qualitative research, together with previous academic findings regarding the educational use of audiovisual content. We can summarize some of the findings as follows: film literacy is not generally considered to be an autonomous subject in European schools; it is most likely to be integrated into other subjects.

Film literacy is taught in a way to complement various compulsory subjects, and it is only considered to be a self-contained curricular subject in a few countries. Across Europe most teachers (62%) have indicated that the teaching of film literacy is an “uncommon and sporadic practice”, and only 5% states that it is a “widespread and common practice”. These remarkable percentages may easily be interpreted as strong obstacles to implementing film literacy in schools. However, 60% of teachers recommend that film literacy becomes a compulsory subject.

The lack of a solid public policy on film literacy is perceived as an important barrier by over 80% of teachers.

Many teachers believe that the cost of access to films represents an obstacle for film literacy. 75% of teachers consider that the lack of film literacy competences is a “very relevant” or “quite important” barrier.

Collaboration with external bodies is considered to be one of the key factors to a successful implementation of large-scale film literacy initiatives in schools. However, it appears that this collaboration is not as common as it could be.

There is a clear lack of networking and structured exchange of information and experience on film literacy among teachers: only one in ten teachers acknowledge the existence of any such network, local or international. And most teachers have said they are not aware of any ‘good practices’.

According to most teachers equipment is not the real obstacle to film literacy. In fact, school managers deem the level of technological

infrastructure in their schools satisfactory. Only 17% of schools say they are poorly or very poorly equipped.

Most film and audiovisual content available in schools is in DVD format. Specific online platforms for schools are still rare. Free-access web platforms such as Vimeo, YouTube, etc. are often mentioned as common source for audiovisual content other than cinema.

## CHAPTER 2

### The perspective of the Film Industry, Public Film Institutions and other stakeholders

#### No film without Film Industry

There is no film literacy without film and audio-visual content to be shown. The very existence of such content is the result of the professional work, and the economic and entrepreneurial effort of what can be collectively defined as the 'Film Industry'. Schools and teachers cannot independently assume the task of facilitating student access without the stable complicity of those who compose such industry, together with the different organisations, public and private which work to promote and support cinema.

The use of films in schools is commonly defined as 'non-theatrical' by distributors. This definition tends to reflect the specific nature of this kind of distribution, and it is related to the cost of material for educational purposes. Conditions for commercial film sale have been firmly established, and they follow certain rather standardised practices, but there is not a similar order for handling 'non-commercial' or 'non-theatrical' sales.

The study confirms the main industry players' active participation in facilitating relevant film access for schools. We can observe a strong awareness of the importance of film literacy, as well as an acknowledgement of the upcoming role film literacy must play to generate interest in European films among young audiences.

#### Multiple licensing models

According to our survey of stakeholders and experts, no two countries follow the same licensing guidelines to gain access to audiovisual material for schools. Major distributors may establish their own licensing structures, but as Europe is dominated by small production and distribution companies that are unable to set up proper licensing agreements, the role of right-holder associations and collecting agencies has become increasingly important within the process of creating a more unified European licensing system. Many producers and distributors have therefore delegated complex legal agreements to national and European umbrella organisations

so that films, DVDs and online content can be used for educational purposes in schools.

The main stakeholders with international experiences and wide perspectives, such as the IVF ("International Video Fédération") and the FIAPF ("International Federation of Film Producers' Associations") state that the current European legal framework, the European Copyright Directive (EUCD), covers the limitations and exceptions to the ordinary copyright film and audiovisual regime within the context of education. The EUCD gives Member States enough flexibility to implement exceptions in the case of illustration for teaching purposes, and to encourage licensing solutions negotiated with rights holders. According to both organisations, educational institutions requiring a broader use of copyright protected materials, which are not covered by national exceptions can explore licensing alternatives with the relevant rights holders.

Online platforms which are specifically set up for school use are perceived by many industry players as a highly recommended method, as it can combine a pre-selected catalogue intended for school usage with the matching licensing scheme which supports the usage. Although such cases exist, it cannot yet be considered a generalised scheme in Europe.

#### Facilitating access out of Schools

Film experts and professionals, as well as teachers, underline the importance of screenings out of schools, as this will be the only way for many students to experience and learn about film.

'School in Cinema' programmes offer theatrical screenings for students in commercial cinemas; film clubs organise screening programmes in and out of school, which are supported by public film bodies and distributors; film festivals may include a specific educational dimension and complement their main activities; "itinerant festivals" secure access to movies that would not be available otherwise; and finally film archives and cinémathèques also play an important role, though mainly for schools in proximity of their location. Such a diversity of options requires structured collaboration between schools and external parties: film distributors, theatres, and indeed, dedicated institutions of public or private nature.

## CHAPTER 3

### The legal framework

#### The copyright directive and international treaties

The legal tool under which European schools are allowed use audio-visual content and films is – as far as the remit of this report project is concerned – the “Directive on Certain Aspects of Copyright and Related Rights in the Information Society” (Directive 2001/29/EC), hereinafter referred to as “EUCD”. The EUCD has already been implemented in the copyright laws of all Member States. The Directive establishes a harmonized formulation as regards three economic rights protected by copyright: the reproduction right, the communication to the public right and the distribution right. In a specific provision, it grants legal protection to technological protection measures applied to works and other subject matter, against both acts of individual circumvention and commercial dealings in circumvention devices. Essentially, the rights established by the Directive are mandatory under international copyright convention law and follow similar (though not identical) provisions under international multilateral legal instruments. The EUCD foresees that Member States may introduce or maintain a range of limitations or exceptions to the exclusive rights. Limitations to the reproduction right, and limitations to the rights of reproduction and communication to the public right are generally not mandatory: they may or may not be established by Member States. Moreover, the EUCD provisions as regards limitations and exceptions are understood as a “maximum”: that is, Member States cannot introduce more exceptions or more extensive exceptions or limitations. At the same time, any limitations to the rights the Directive recognizes must sit the so called “three step test”: limitations must be (a) for certain special cases, (b) where there is no conflict with a normal exploitation and (c) as far as they do not unreasonably prejudice the legitimate interests of the right holder.

#### Teaching limitation to copyright

The EUCD includes an exception which allows the use of works for the purpose of illustration for teaching, which covers, under certain conditions, the use of films in schools. This teaching limitation may, therefore, cover certain uses of audio-visual works and films in schools. Our study analyses this complex legal framework in depth, and the specific way it has been implemented in the different countries (EU Member States and Norway) covered in the analysis. Non EU States such as Switzerland are not bound by the EUCD, but applicable international treaties lead to very similar results.

As far as screening of films in schools is concerned, there are differences between Member States on the one hand related to the rights affected by such use, and on the other to the acts allowed under the teaching exception. A screening in a classroom is generally considered to be a public performance (in which case copyright is affected), but another interpretation draws a parallel with private screenings to which no restrictions under copyright law apply.

A small number of Member States maintains limitations for teaching purposes, which are so restrictive that in fact they cannot cover any of the film screening activities analysed in our report. Teaching exceptions in these countries generally only allow certain acts of copying. Accordingly, every use of a film requires authorisation and a license must be obtained. A second group permits the screening of films in the classroom, and therefore in those countries the exception also applies to the right of public performance. A third group has added further uses under the teaching exception, following the implementation of the EUCD. In this case the exception also applies to the right of communication to the public and particularly includes, online use via an intranet.

The report examines and comments on the different existing models, each of them showing potential sub-sections depending on the country: a) free screening of films in a classroom b) statutory licensing requiring payment of compensation or remuneration, and c) framework agreements based on voluntary collective licenses and managed by collecting societies. In addition, direct licensing contracts between schools and platform operators, based on technological protection measures, are generally available and in those cases the teaching exception is hardly relevant.

## CHAPTER 4

### Obstacles

#### Different kinds of obstacles

Obstacles which prevent film literacy from being implemented in schools comprise general educational policies, pedagogical and cultural aspects, and the economic, legal, technological and practical conditions under which schools operate.

#### Curricular and pedagogical restrictions

Film literacy is generally not recognised as being equivalent to spoken and written language. Film literacy is therefore not usually recognised in national curricula across Europe.

As a consequence film literacy only has a minor feature in teaching syllabi.

In addition, teachers lack autonomy, which makes it difficult for them to decide how to introduce film literacy in their lessons. Adequate teacher training is not prioritised, as it should be; access to relevant films and other audiovisual material depends on the demands of individual schools, which also applies to appropriate infrastructure for teaching film literacy.

With no mandatory requirement for teaching film literacy, film literacy as a self-contained subject is still poorly developed. Film and other audiovisual material is widely used to support other key subjects, but is rarely the main source of independent study. A cultural barrier can be observed between traditional literacy and film/media literacy – teachers are not familiar with a pedagogical approach to the use of audiovisual material due to lack of training, and may refrain from a confrontation with film and computer informed students.

#### Practical restrictions in schools

Appropriate infrastructure for film screenings are an obstacle in many countries. Screening rooms which emulate the cinema experience are scarce. A lack of high-speed internet connections prevents the use of diverse and valuable content of films and programmes which are often available online for free. Links to dedicated platforms are likewise prevented without broadband access.

The conditions of the traditional classroom are not ideal for displaying images and sound; investment in improving these conditions will, for many schools, be a major problem.

#### Economic and legal conditions

The availability of film and other audiovisual resources is an important constraint for teaching film literacy. 63% of teachers report the use of 'own material'. This indicates that the schools lack a regular agreement for film provision. Teachers consider the purchasing cost of films an obstacle and are often not aware of license agreements that their schools may have included.

Schools, teachers and right owners are not the right partners with whom to negotiate license agreements.

Framework agreements which cover the use of films for all schools in a country or a constituency are best established between the public school authorities and right owner organisations (collective management organisations). Wider access to relevant material will remain an obstacle until the responsibility is removed from schools and teachers and passed on to the relevant central bodies.

#### Lack of communication and understanding between schools and rights-holders

There is an important distance and communication problem, between schools and rights holders. Teachers generally do not pay attention to copyright or licensing issues behind their screenings at school; they are not usually familiar with licensing agreements available to them or that are present even in their schools. At the same time, the film industry does not have the educational use of films among its priorities.

## CHAPTER 5

### Recommendations

Recommendations for improving film literacy in schools are based on overcoming identified obstacles to obtain an effective implementation of film literacy, and the FilmEd study in general.

#### Public film literacy policy

The EC should encourage Member States to acknowledge Film Literacy as a compulsory subject in school curricula, either as a self-contained subject or a clearly defined subset to media literacy skills. This would include producing resources to establish pedagogical parameters, and an appropriate physical and technological environment.

#### Film literacy promotion

The EC and Member States should actively spread awareness among teachers and schools on the impact of audiovisual media on children and young people, and on the importance of acquiring critical and creative competences through effective and competent film and media literacy teaching. The EC should boost campaigns for teachers and parents addressing the need for a cultural shift as regards the impact of image-based content on young people, who require complex, meaningful and qualified studies.

#### Lifelong training for teachers

The EC should recommend that all Member States implement media and film education programmes in teachers' colleges and universities at Masters level.

In addition, the EC should also recommend the promotion of permanent courses for teachers in order to make teachers confident, competent and skilled users of media, information and communication technologies.

#### Online educational platforms

The EC should recommend that access to relevant films and other audiovisual material is regulated by framework agreements between central school authorities and appropriate organisations who represent right holders, and thus remove obstacles encountered in many schools.

The EC should promote European educational VOD/SVOD platforms push their availability to schools. Such platforms should aim at increasing the volume of films and other audio-visual content for teaching purposes; give access to non-national European films; and contribute to European cultural diversity and world cinema awareness.

The EC should consider acquiring screening licenses for a selection of

European films to be made available for all schools on one or several online platforms. A catalogue of 50-100 films would generously contribute to the spreading of European culture – and as an added value there would be an increased interest in viewing new European films. All films should be contemporary and available in their original languages, with the option of subtitles in national languages. Film literacy experts from each country could select exemplary films, bearing in mind each of their young target audiences.

#### Preferable infrastructure for creative classrooms

The EC should recommend the establishment of 'Creative Classrooms', whose facilities are suitable for the exhibition, creation, discussion and study of any type of media or online resource. In this context, it is important to promote the use of specific spaces for film screening (auditoriums or wall-projections in blacked-out rooms with proper sound will increase concentration and learning quality). The EC should encourage Member States to secure proper access to high-speed internet, allowing internet connection in classrooms and in common facilities.

# Résumé Exécutif

## RÉSUMÉ

L'objectif de cette étude est de remettre à la Commission Européenne (CE) des données et analyses fiables concernant l'utilisation pédagogique de contenus audiovisuels dans les écoles, tout en identifiant les contraintes majeures et les « bonnes pratiques ». Cette étude se base sur une approche qui combine à la fois la perspective éducative, juridique et la relation existante avec l'industrie du film.

L'étude est divisée en 5 chapitres principaux.

Le chapitre dédié aux écoles analyse l'utilisation de films et d'autres contenus audiovisuels dans les écoles européennes, telle que déterminée par le programme scolaire – l'utilisation de films en général et l'éducation par l'intermédiaire du cinéma; l'accès à des films et à d'autres contenus audiovisuels pertinents, leurs coûts, les méthodes d'enseignement et la formation des enseignants, ainsi que les conditions techniques et matérielles pour la projection de films.

Le chapitre dédié à l'industrie du film met l'accent sur la manière dont les films peuvent être mis à disposition dans les écoles et sur les éventuels obstacles. Des exemples d'application de la législation sur le droit d'auteur montrent comment certains pays ont pu résoudre les problèmes liés à l'accès et à la diffusion de films. Ce chapitre inclut plusieurs exemples d'initiatives et activités menées par un échantillon de diverses institutions cinématographiques publiques ainsi que par des parties prenantes publiques et privées.

Le chapitre juridique analyse comment le cadre juridique en matière de droits d'auteur a été mis en œuvre dans les pays couverts par cette étude. Cette partie se concentre tout particulièrement sur les conditions d'accès et d'utilisation des films et d'autres contenus audiovisuels dans les écoles.

Les deux derniers chapitres résument les barrières qui empêchent un enseignement effectif de la culture cinématographique, suivi de recommandations pour améliorer les politiques en la matière.

## CHAPITRE 1

### L'utilisation de films et autres contenus audiovisuels dans les Écoles Européennes

Cette partie de l'étude présente une analyse détaillée des différentes données liées à l'utilisation de films et autres contenus audiovisuels dans les écoles. L'analyse est basée principalement sur les réponses à un questionnaire détaillé adressé à plus de 6,700 enseignants et écoles diverses.

L'analyse des questionnaires a été complétée par des travaux de recherche et d'évaluation qualitative ainsi que par des études académiques préalables concernant l'utilisation pédagogique de contenus audiovisuels. Les principales conclusions se résument comme suit : l'éducation au cinéma ne constitue généralement pas une matière séparée et distincte. On la retrouve généralement intégrée à d'autres matières.

L'éducation au cinéma est enseignée pour compléter et illustrer d'autres matières d'enseignement obligatoires et seule une minorité de pays considère que celle-ci devrait être présentée dans le programme scolaire comme une matière à part entière. En Europe, une majorité d'enseignants (62%) considère que l'éducation au cinéma constitue une « pratique rare et ponctuelle ». Seuls 5% d'entre eux considèrent ce type de pratique répandue et bien établie. Ces chiffres peuvent révéler l'existence d'un certain nombre d'obstacles à la mise en œuvre de l'éducation au cinéma dans les écoles. Néanmoins, 60% des enseignants recommandent que l'éducation au cinéma devienne une matière obligatoire.

L'absence d'une politique publique ferme et solide en la matière est considérée comme une barrière importante par la grande majorité des enseignants (plus de 80% d'entre eux).

Beaucoup d'enseignants considèrent que le coût lié à l'accès aux films représente un problème majeur pour l'éducation au cinéma. De même, 75% des enseignants considèrent que leur manque de formation dans ce domaine demeure une barrière « assez pertinente » ou « très pertinente ».

Collaborer avec les organismes externes est considéré comme un facteur clé pour assurer le succès des initiatives d'éducation au cinéma à grande portée dans les écoles. Néanmoins, il semblerait que ces collaborations ne soient pas aussi fréquentes que l'on pourrait le croire.

L'échange structuré d'expérience et d'information sur l'éducation au

cinéma ainsi que le networking restent pratiquement inexistantes entre enseignants: seul 1 sur 10 reconnaît appartenir à ce type de réseau, que ce soit au niveau local ou international. De même, la grande majorité d'entre eux précise ne pas être au courant des « bonnes pratiques » en la matière.

En ce qui concerne les équipements, la plupart des enseignants considère qu'ils ne constituent pas un réel obstacle pour l'éducation au cinéma. D'ailleurs, les directeurs d'écoles considèrent leurs infrastructures technologiques comme satisfaisantes. Seules 17% des écoles considèrent être mal ou très mal équipées.

La grande majorité des films ou des contenus audiovisuels dans les écoles est disponible sous forme de DVD. Les plateformes spécifiques en ligne sur internet pour les écoles sont encore rares. Les plateformes web de libre-accès comme Vimeo, YouTube, etc. sont par contre souvent mentionnées comme source courante pour accéder à des contenus audiovisuels autres que des films.

## CHAPITRE 2

### Le rôle de l'industrie du film, des institutions cinématographiques et des autres parties prenantes dans l'éducation au cinéma

#### Pas de films sans industrie du film

Il n'y a pas d'éducation au cinéma sans la diffusion de films et d'autres contenus audiovisuels. L'existence même de ce contenu est le résultat d'un travail professionnel, d'un effort économique et d'entrepreneuriat de tous les acteurs qu'englobe « l'Industrie du cinéma ». Les écoles et les enseignants ne peuvent pas par eux-même prendre en charge la tâche de faciliter l'accès des étudiants aux films. Ceci n'est possible que grâce à une coopération stable entre les différents acteurs de l'industrie audiovisuelle et du cinéma, y compris les différentes organisations publiques et privées qui travaillent à leur promotion et soutien.

L'utilisation de films dans les écoles est en général définie par les distributeurs comme « non commerciale » ou « hors salle de cinéma ». Cette définition montre en quelque sorte la nature spécifique de ce type de distribution et est également liée au coût de l'accès au matériel à finalité éducative. Bien que les conditions de vente commerciale des films aient été fermement reprises dans des contrats et des pratiques très standardisées, un tel cadre n'existe pas à l'heure actuelle pour les ventes « non commerciales » ou « hors salle ».

L'étude confirme que les principaux acteurs de l'industrie sont disposés à faciliter l'accès à des films par les écoles. L'industrie reconnaît l'importance de l'éducation au cinéma, et tout particulièrement en ce qui concerne le rôle qu'elle peut jouer pour renforcer l'intérêt pour le film européen auprès des jeunes audiences.

#### De multiples modèles de licences

Selon l'enquête réalisée auprès des parties prenantes et des experts, il n'y a pas deux pays qui suivent les mêmes modèles de licences pour l'accès au matériel audiovisuel pouvant être diffusé et utilisé dans les écoles. Les grands distributeurs peuvent établir leurs propres structures de licence. Cependant, l'Europe étant dominée par des petites entreprises de production et de distribution n'ayant pas les moyens de mettre en place des accords de licence appropriés, le rôle des associations d'ayants-droit et des sociétés de gestion collective est devenu de plus en plus important pour développer un système de licences plus unifié au niveau européen. De nombreux producteurs et distributeurs ont donc délégué l'obtention d'accords juridiques complexes à des organisations nationales ou européennes, ceci dans le but de rendre accessibles les films –en DVD et en contenu web- à des fins éducatives dans les écoles.

Les parties prenantes les plus importantes, ayant une perspective et expérience internationale telles que la IVF («Fédération Internationale du Vidéo») et la FIAPF («Fédération Internationale des Associations de Producteurs de Films»), reconnaissent que le cadre juridique européen actuel - Directive sur l'harmonisation de certains aspects du droit d'auteur et des droits voisins dans la société de l'information (EUCD) - inclut des exceptions et limitations au régime ordinaire des droits d'auteur sur les films et l'audiovisuel pour les utilisations dans le contexte particulier de l'enseignement. L'EUCD donne aux Etats Membres la flexibilité suffisante pour mettre en œuvre l'exception pour utilisation à des fins d'illustration dans le cadre de l'enseignement et encourager des accords de licences négociés avec les titulaires de droits. Selon ces deux organisations, les établissements scolaires exigeant une utilisation plus large d'œuvres protégées par les droits d'auteur, non couverte par les exceptions nationales, peuvent explorer avec les ayants-droit des solutions basées sur des licences.

Les plateformes en ligne, mises en place de manière spécifique pour l'utilisation scolaire, sont très bien perçues par de nombreux acteurs de l'industrie car elles peuvent combiner un catalogue présélectionné destiné à un usage pédagogique avec un schéma de licences approprié permettant cette utilisation. Bien que plusieurs de ces cas soient décrits dans cette étude, ils ne peuvent pas encore être considérés comme un schéma général en Europe.

### Faciliter l'accès en dehors des écoles

Les experts et professionnels du cinéma, tout comme les enseignants, soulignent l'importance de la projection de films en dehors des écoles puisque il s'agit pour de nombreux élèves de la seule façon d'apprendre à découvrir le cinéma.

Les programmes « Ecoles au cinéma » offrent des projections réservées aux étudiants dans des salles de cinéma ; les « ciné-clubs » organisent des programmes de projection à l'intérieur et en dehors des écoles, sur la base du soutien des organismes cinématographiques et des distributeurs publics; les festivals cinématographiques peuvent inclure une dimension éducative spécifique complétant leurs activités principales ; les « festivals itinérants » permettent l'accès à des films qui ne seraient pas disponibles autrement ; et les archives cinématographiques et les cinémathèques jouent aussi un rôle très important, particulièrement pour les écoles se trouvant à proximité de celles-ci. Une telle diversité d'options nécessite une collaboration structurée entre les écoles et les parties externes : distributeurs de films, cinémas, ainsi que des institutions dédiées, publiques ou privées.

## CHAPITRE 3

### Le cadre juridique

#### La directive sur les droits d'auteur et les traités internationaux

L'instrument juridique qui permet aux écoles européennes d'utiliser des films et des contenus audiovisuels –dans le cadre de l'objet de cette étude–, est la Directive 2001/29/CE du Parlement européen et du Conseil du 22 mai 2001 concernant l'harmonisation de certains aspects du droit d'auteur et des droits voisins dans la société de l'information, ci-après dénommée « EUCD ». L'EUCD a déjà été transposée dans les législations reprenant les droits d'auteur de tous les Etats Membres de l'Union Européenne. La Directive harmonise trois droits économiques protégés par les droits d'auteur : le droit de reproduction, le droit de communication au public et le droit de distribution au public. Dans une disposition spécifique, la Directive accorde une protection juridique contre le contournement des mesures techniques appliquées aux œuvres et autres objets protégés. Essentiellement, les droits établis par la Directive sont obligatoires en vertu du Droit international conventionnel applicable aux droits d'auteur, et sont définis de manière similaire (bien que pas identique) dans les instruments juridiques internationaux et multilatéraux.

La Directive EUCD prévoit que les Etats Membres puissent introduire ou maintenir certaines limitations ou exceptions aux droits exclusifs. Dans ce cas, le caractère facultatif demeure un élément essentiel: les limitations aux droits de reproduction et de communication au public ne sont généralement pas obligatoires: elles peuvent être établies par les Etats Membres ou non. En outre, les dispositions de la Directive EUCD sont considérées comme étant un « seuil maximum »: un Etat membre ne peut pas décider d'introduire davantage d'exceptions ou des exceptions plus importantes. La Directive soumet toute exception ou limitation aux droits au « test en trois étapes »: les limitations doivent être a) pour des cas spéciaux, b) qui ne portent pas atteinte à l'exploitation normale de l'œuvre ou autre objet protégé et c) qui ne causent pas un préjudice injustifié aux intérêts légitimes des titulaires de droit.

#### L'exception pour utilisation à des fins d'illustration dans le cadre de l'enseignement

La Directive EUCD inclut une exception permettant l'utilisation d'œuvres à des finalités d'illustration dans le cadre de l'enseignement, ce qui couvre, sous certaines conditions, l'utilisation des films dans les écoles. Cette limitation liée à l'enseignement peut, par conséquent, couvrir certaines utilisations d'œuvres cinématographiques et audiovisuelles dans les écoles. Cette étude analyse en profondeur ce contexte juridique complexe, et tout particulièrement la mise en œuvre dans les différents pays couverts par notre analyse (les Etats Membres et la Norvège). Les Etats non européens comme la Suisse ne sont pas soumis à la directive EUCD, mais les traités internationaux applicables conduisent à des résultats très similaires.

En ce qui concerne la projection de films dans les écoles, il existe des différences entre les Etats membres liées d'une part aux droits affectés par ce type d'usage, et d'autre part aux usages autorisés dans le cadre de l'exception pédagogique. Les projections en salle de classe sont généralement considérées comme des projections publiques (et dans ce cas le droit d'auteur est affecté). Néanmoins, elles peuvent être aussi considérées différemment et équivalentes aux projections privées, pour lesquelles aucune restriction aux droits d'auteur n'est applicable.

Un nombre limité d'Etats Membres ont établi dans leurs législations des limitations à des fins d'enseignement tellement restrictives qu'en réalité elles ne peuvent couvrir aucune des activités de projections cinématographiques analysées dans cette étude. En général, dans ces pays les exceptions à des fins d'enseignement permettent seulement certains actes de reproduction. En conséquence, toute utilisation de films nécessite une autorisation, et il est donc

nécessaire d'obtenir une licence. Un deuxième groupe d'Etats membres permet la projection de films en classe, c'est-à-dire, dans ces pays l'exception s'applique aussi au droit d'exécution publique. Un troisième groupe d'Etats inclut d'autres utilisations sous leur respective exception d'enseignement, sur base de la mise œuvre de la Directive EUCD. Dans ce cas, l'exception couvre également le droit de communication au public et inclut, en particulier, des usages en ligne via un intranet.

L'étude examine et commente les différents modèles existants, chacun d'entre eux reprenant certaines subdivisions en fonction du pays : a) la projection libre de films en salle de classe, b) des licences définies par la loi qui exigent le paiement d'une compensation ou d'une rémunération, et c) des accords-cadres basés sur des licences volontaires collectives (gérés par des sociétés de gestion collective). En outre, des contrats directs de licence entre les écoles et les opérateurs de plateformes, basés sur des mesures techniques de protection, sont généralement disponibles. Dans ces cas, l'exception à des fins d'enseignement n'est guère pertinente.

## CHAPITRE 4

### Contraintes

#### Différents types de contraintes

Les contraintes pour une mise en œuvre efficace de l'éducation au cinéma dans les écoles se réfèrent aux politiques générales en matière d'éducation, aux aspects pédagogiques et culturels, ainsi qu'aux conditions économiques, juridiques, technologiques et pratiques de fonctionnement des écoles.

#### Restrictions pédagogiques et liées aux programmes scolaires

En règle générale, l'éducation au cinéma n'est pas reconnue de la même manière que l'éducation par le langage oral ou écrit. Par conséquent, l'éducation au cinéma n'est souvent pas reprise dans les programmes scolaires nationaux en Europe. Elle ne représente qu'une technique d'enseignement minoritaire dans les programmes définis dans les écoles.

D'autre part, les enseignants manquent généralement d'autonomie, ce qui rend difficile l'adoption de ces techniques d'enseignement dans leurs cours. Une formation adéquate des enseignants n'est pour l'instant pas à l'ordre du jour; l'accès aux films et à d'autres contenus audiovisuels dépend des écoles, qui dépendent à leur tour d'une infrastructure appropriée pour enseigner l'éducation au cinéma.

Si l'éducation au cinéma n'est pas imposée comme matière d'enseignement, il sera difficile que cette méthode d'éducation évolue. Les films tout comme d'autres matériels audiovisuels sont très utilisés en appui à d'autres matières clés, mais il est rare qu'ils constituent une matière d'étude à part entière. Il existe une barrière culturelle entre l'éducation traditionnelle et l'éducation au cinéma et à l'image. Manquant de formation, les enseignants ne sont pas familiarisés avec une approche pédagogique visant l'utilisation de matériel audiovisuel. Ils peuvent ainsi rejeter ces techniques d'enseignement et éviter d'être confrontés avec des étudiants plus familiarisés avec les films et les ordinateurs.

#### Les restrictions pratiques dans les écoles

L'infrastructure appropriée pour la projection de films reste un obstacle majeur dans de nombreux pays. Les salles de projections pouvant reprendre l'expérience des salles de cinéma sont rares. L'absence de connexion Internet à haute vitesse empêche la diffusion et l'utilisation d'un contenu diversifié et riche en matière de films et de programmes, souvent disponibles gratuitement. Sans haut débit, les liens vers des plateformes spécialisées sont également inaccessibles.

La salle de classe traditionnelle n'offre pas les meilleures conditions pour pouvoir se concentrer sur les images et le son. L'investissement pour améliorer ces conditions d'enseignement représente pour beaucoup d'écoles un problème majeur.

#### Conditions économiques et juridiques

L'accès aux films et à d'autres ressources audiovisuelles est un obstacle important pour l'éducation au cinéma. 63% des enseignants évoquent l'utilisation de « matériel personnel ». Ceci démontre que les écoles ne disposent pas d'un accord cadre pour pouvoir accéder à une filmothèque dédiée à l'enseignement. Les enseignants considèrent le coût d'achat du contenu audiovisuel comme une contrainte majeure. Souvent, ils ne sont pas au courant des accords de licence que leurs écoles pourraient avoir négocié.

Les écoles, les enseignants et les titulaires de droit ne sont pas les bons partenaires pour négocier des accords de licence.

Des accords-cadres, qui officialisent la mise à disposition de films pour toutes les écoles d'un pays spécifique ou d'une région, doivent impliquer les autorités scolaires publiques et les organisations d'ayants droits (sociétés de gestion collective). Pouvoir accéder de manière plus élargie à des contenus cinématographiques plus pertinents restera toujours un obstacle important tant que la responsabilité ne sera pas déplacée des écoles et des enseignants vers les organismes centraux appropriés.

### **Absence de communication et de compréhension entre les écoles et les ayants droits**

Il existe un problème important de compréhension et de communication entre les écoles et les ayants droits. Les enseignants ne prêtent généralement pas attention aux enjeux du droit d'auteur ou aux questions de licences qu'impliquent les projections en classe. Ils ne connaissent généralement pas les accords de licence disponibles ni ceux qui ont été conclus par leurs écoles. De même, l'utilisation pédagogique des films dans les écoles n'est pas une priorité pour l'industrie du film.

## **CHAPITRE 5**

### **Recommandations**

#### **Recommandations**

Les recommandations pour améliorer l'éducation au cinéma dans les écoles sont basées sur les contraintes déjà identifiées pour pouvoir mettre en œuvre de manière efficace l'éducation au cinéma et l'étude FilmEd en général.

#### **Politique publique d'éducation au cinéma**

La CE devrait encourager les Etats Membres à reconnaître l'éducation au cinéma comme matière obligatoire dans le programme scolaire, en tant que matière à part entière ou en tant qu'un sous-ensemble clairement défini de compétences liées à l'éducation à l'image. Il s'agit aussi de faciliter l'accès à des ressources permettant d'établir des paramètres pédagogiques et un environnement physique et technologique approprié.

#### **La promotion de l'éducation au cinéma**

La CE et les Etats Membres devraient promouvoir activement la sensibilisation des enseignants et des écoles à l'impact des médias audiovisuels sur les enfants et la jeunesse, ainsi que sur l'importance d'acquérir des compétences critiques et créatives à travers un enseignement effectif et compétent de l'éducation au cinéma et à l'image. La CE pourrait promouvoir des campagnes pour les enseignants et les parents sur le besoin d'un changement culturel concernant l'impact des images sur les jeunes enfants, qui requiert des études sérieuses et approfondies.

#### **La formation continue des enseignants**

La CE devrait recommander à tous les Etats Membres de mettre en œuvre des programmes sur l'éducation au cinéma et à l'image dans les centres de formation pour enseignants et les universités au niveau master.

En outre, la CE devrait aussi recommander la promotion de formations permanentes pour les enseignants de façon à ce qu'ils prennent confiance et deviennent des utilisateurs compétents des technologies des médias, de l'information et de la communication.

#### **Les plateformes éducatives en ligne**

La CE devrait promouvoir le fait que l'accès à des films et à d'autres contenus audiovisuels pertinents soit régulé par des accords-cadres entre les autorités scolaires centrales et les organisations d'ayants droits, ce qui permettrait d'éliminer une contrainte majeure rencontrée dans beaucoup d'écoles.

La CE devrait promouvoir la création de plateformes européennes éducatives de Vidéo à la demande qui seraient accessibles pour les écoles. Ces plateformes devraient avoir comme objectif d'augmenter le volume de films et d'autres contenus audiovisuels à finalité éducative; de donner accès à des films européens non-nationaux et de contribuer à la diversité culturelle européenne ainsi qu'à la sensibilisation au cinéma mondial.

La CE devrait considérer la possibilité d'acquérir des licences de projection pour une sélection de films européens pouvant être mis à disposition des écoles sur une ou plusieurs plateformes en ligne. Un catalogue de 50-100 films constituerait une riche contribution au partage de la culture européenne – et permettrait d'avoir comme valeur ajoutée un intérêt croissant à visionner de nouveaux films européens. Tous les films devraient être contemporains et disponibles dans leur langue originale, avec l'option de sous-titres dans des langues nationales. Les experts en éducation cinématographique de chaque pays pourraient sélectionner des exemples de films pouvant être utilisés avec un public jeune.

#### **De meilleures infrastructures pour des salles de classes créatives**

La CE devrait recommander la mise en place de « Salles de classes créatives », qui auraient des installations appropriées pour l'exposition, la création, la discussion et l'étude de toute sorte de médias et de ressources en ligne. Dans ce contexte, il est important de promouvoir l'utilisation d'espaces spécifiques pour la projection de films (des auditoriums ou des projections au mur en salles obscures avec un son approprié augmenterait la concentration et la qualité de l'apprentissage). La CE devrait encourager les Etats Membres à assurer un bon accès à l'internet à haut-débit, et permettre ainsi une meilleure connexion en salles de classe et dans les parties communes.

# 0. Introduction

When the Creative Europe programme was established in 2014, the European Commission introduced the first support scheme for film literacy initiatives. The purpose of this is to provide better awareness and knowledge about European films, especially among young European audiences.

The availability of film and other audiovisual content is often seen as one of the major challenges for film education in Europe. Film accessibility, and the availability of screening rights for schools are essential preconditions to shape film literate children and youth.

In this context, the Commission expressed the need to study the current situation related to the use of audiovisual content in schools in Europe: to detect obstacles and good practices for their use, to identify licensing models for educational purposes and, finally, to recommend ways to develop film literacy in Europe, according to the cultural and linguistic specifications of each country.

With this aim in mind, the FilmEd project defined several research areas as the following: sources of audio-visual content used in schools, technologies used for viewing films and audio-visual content (their type, duration, genre, context), the school curriculum, location, collaboration with the audio-visual industry and licensing arrangements.

To answer these questions different methodological tools were used: statistical surveys and qualitative research (interviews, literature reviews, events participation, and seminar organization). In order to obtain a complete analysis, these methodologies were combined.

As a result, the FilmEd project designed three surveys: the first was a teachers' survey in 28 European Union countries<sup>[1]</sup> plus 4 countries of the European Free Trade Association (Iceland, Liechtenstein, Norway and

Switzerland). At first this statistical process helped develop a European wide result<sup>[2]</sup>, and also a country by country outcome. The size of the European sample had 6,701 valid answers.

The second and third surveys were used in a complementary way to obtain indicators that would make room for a decent set of trends. The stakeholders' survey comprised 106 cases.<sup>[3]</sup> To enrich this data, the consortium interviewed 69 distributions, sales and production companies during the "European Film Market" in Berlin (February 2014). The second survey was taken by experts in the field of media and film literacy: 149 cases distributed in 29 of the 32 countries analysed in the study were taken into account.

Moreover, the legal framework applicable to the use of films in schools was analysed, as it is intended to portray the implications of copyright law in EU member states, the EEA and Switzerland. The legal chapter has been drafted by combining the usual academic methodology and information exchanges among copyright experts from authors' professional network.

The legal study essentially includes three parts:

1. An analysis of the EU Copyright Directive (EUCD), as a whole and in relation to applicable international conventions, in the context of the object of this study
2. A comparative legal analysis of the directive's implementation in Member States and of relevant case laws. For that purpose, two tools have been used: academic library research<sup>[4]</sup>, and direct access

<sup>2</sup> Using country weight variables (see the Methodological Appendix for further information).

<sup>3</sup> 41 cases of public institutions (film agencies, film archives); non-profit organizations and public-private companies; 13 cases of European and national umbrella associations and organizations; and 52 cases of private companies

<sup>4</sup> It must be noted that there is very limited bibliography about the teaching limitation to copyright as such, and very limited national or European case laws. We base part of our conclusions and statements on the use of analogy, always with required care. Besides this, most of the general bibliography is rather theoretical and has little connection with the practical (not to mention technological) realities this study requires to put together the analysis. To introduce that element and make our analysis as effective and close to reality as possible, we have

<sup>1</sup> Europe 28 includes: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, France, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom.

to and exchanges with copyright experts, who have contributed with unofficial translations of legal texts, some of them still in the making.

3. A combined approach to the existing licensing schemes in Europe, which are applicable to the field of study. This information is generally more accessible via desk research, both in libraries and online. It has been enriched by contributions from other consortium experts, and in some cases from research related to the case studies.

Furthermore, the research team detected and compiled a set of 364 film literacy practice cases via documental research and consultation.<sup>[5]</sup> A set of 94 good practices were selected to follow a scheme for analysis: description of their film-related activities, educational levels, film education objectives, assessment of their work, development of teaching materials and other resources, and their collaboration with other stakeholders. Their complete analysis can be found in the appendix of Country Reports.

Finally, in order to enrich the qualitative data and the field work of the study, the FilmEd team organized the workshop “FilmEd Learning Experiences 2014” on 12-13 June (Spain). The consortium also participated at different key events: “Kids Regio Forum 2014” (Germany), “First European Media Literacy Forum” (France), 64th Berlinale Film Festival (Germany), “Media and Learning Conference 2013” (Belgium) and other meetings organized by the “Gabinete de Comunicación y Educación” a Research Group of the Autonomous University of Barcelona (UAB). At these various events a total of 58 interviews were recorded by the UAB team<sup>[6]</sup>.

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carefully studied the consortium’s school survey results, and we have repeatedly exchanged views with the consortium’s film industry experts

5 At which the following dimensions have been considered: country, institution or entity, festival, official program or action plan (national, regional, local), program promoted by film industry or film professionals, European project, production experience or experience in organization of workshops, teaching experience, film-clubs, national networks, international networks, classroom activities, activities in movie theatres and other ad hoc dimensions.

6 A detailed description of the research methodology can be found in Annex 2.



# 1. Use of films and other audiovisual content in European Schools

## 1.1. Introduction

A large variety of audio-visual content is currently being used by teachers in European schools for various purposes.

Examples include the use of early cinema in the classroom for history studies, documentaries to illustrate scientific subjects and video excerpts to show the complexity of audio-visual language. This research, aimed at studying film literacy, explores the main uses of films and audio-visual content in European schools.

This report adopts a comprehensive perspective from which the pedagogical purposes of screenings are analysed. The study includes all kinds of audio-visual content used for educational purposes. The research also takes into consideration any pedagogical processes supported by or complemented with audio-visual content.

From the outset it will be useful to make a distinction between two broad uses of audio-visual content in schools:

1. Audio-visual content as a tool to teach and illustrate subjects other than media and film literacy (for example, when the teacher illustrates a geographical subject with a documentary).

2. Audio-visual content as an object of self-study in the context of film literacy (for example, when a film is analysed for its historical, aesthetic, cultural and/or narrative values).

In the first scenario, audio-visual content is used as a tool. In this case the aim to improve media competences or encourage the student's cultural understanding with respect to media is in the background of the educational purpose; it would be a secondary result, but it is not the main objectives of the pedagogical strategy.

However, in the second scenario, when the film itself becomes an object of study, the pedagogical process focuses on developing specific media competences. Film literacy then becomes the main objective. This second scenario is consistent with the EC's definition of film literacy. According to the EC, film education must be understood as "the level of understanding of a film, the ability to be conscious and curious in the choice of films; the competence to critically watch a film and to analyse its content, cinematography and technical aspects."<sup>7</sup> In addition, analysing films is an integral part of learning about cultural heritage.

On the one hand, our study bears the use of audio-visual content in mind and, on the other hand,

<sup>7</sup> EC, Call for Tender (2011: 3). No EAC/14/2011: «Invitation to tender for a study on film literacy in Europe»

considers the practice of film literacy in schools<sup>[8]</sup>. In this context, the first step is to understand how European schools use (or do not use) films and audiovisual content, and in which technical conditions.

Secondly, we must describe how European teachers and students deal with the educational use of audiovisual content. Then, we will explore how teachers equip students with competences related to media literacy (skills such as critical thinking, semiotic and cognitive capacities) and finally explore how (and whether or not) teachers teach students to appreciate the cultural value of films in a European context (namely, film literacy).

We have employed a variety of methodologies combining a statistical approach from different surveys with qualitative methodologies (including interviews with stakeholders from the film industry, organizations and professionals) and analysed trends of current strategies in the field of film literacy. We have also used documentation combining primary and secondary sources.

In addition, we have asked teachers and stakeholders about film literacy. We have analysed their answers and contrasted their points of view categorizing, as well as studying, not only where the different actors stand, but also the context (situation, norms and constraints) in which they work in order to acquire a complete view of the current state of the subject. Finally, we have also independently considered the results of different field studies.

With these objectives in mind, and with all of these sources, we can offer an overview of the educational use of audio-visual content in European Schools based on the evidence presented<sup>[9]</sup>. This will be the result of combining multiple factors including

<sup>8</sup> These issues must be understood within the EC policy framework for the promotion of media and film literacy and the creation of young and new audiences for cinema, and specifically for the preservation of European cinema heritage.

<sup>9</sup> Respondents to the survey were limited in some countries (Iceland, Liechtenstein, Luxembourg, Switzerland and the United Kingdom), which were included in the comparative charts. However, we were able to include them in the complete European sample. In order to do that, a "weight variable" was introduced taking into account the total number of teachers in Europe and the number of teachers in every country. All the European results presented in this study are calculated by using this weight variable, which can be checked in the methodology (Annex 2).

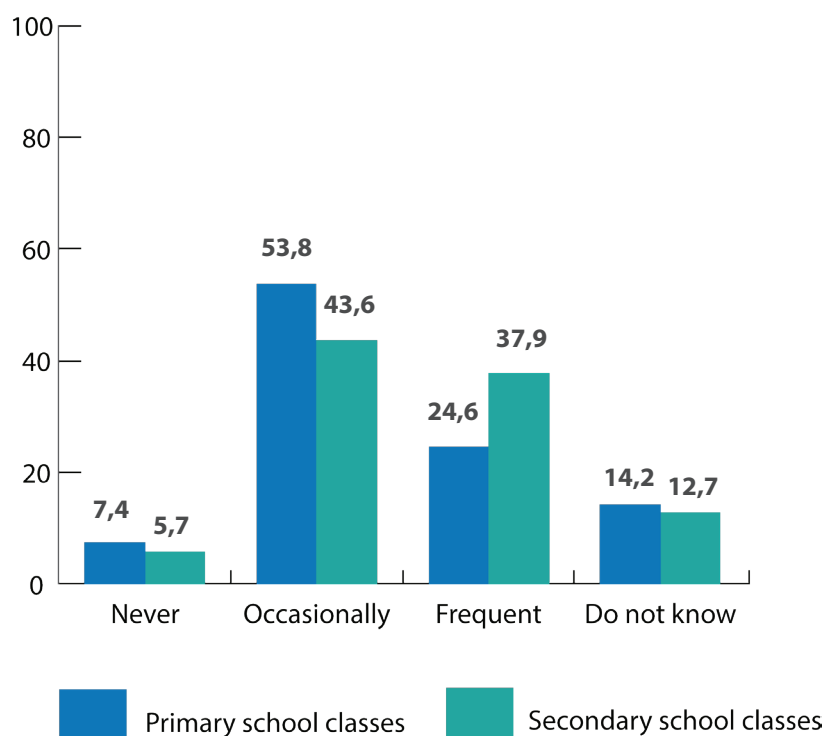
individual and collective behaviour, technical infrastructure, curriculum-related decisions, organizational constraints, educational and cultural policies, economic and social contexts as well as personal decisions taken by individual teachers.

## 1.2. How are films and audiovisual content used in Schools?

The main question raised in this chapter is the following: How do European teachers use audio-visual content?

When analysing the global results of the survey sent to European teachers, it is possible to generalise that it is not very common for European schools to use audio-visual content and that, if so, it is achieved on a non-systematic basis. One can also say that

### To what extent is the use of film and other audiovisual content common in your school?



stakeholders are aware of the fact that audio-visual content is rarely used in schools and that it is not frequently employed in the overall context of their pedagogical activities.

The survey below shows that half of the teachers stated that they only occasionally use audio-visual content (44% for secondary school teachers and 54% for primary school teachers). Approximately one-third of teachers express that they frequently use audio-visual content (38% for secondary school and 25% for primary school teachers).

This data also shows that there is a significant percentage of teachers (7% for primary and 6% for secondary education) who do not use any kind of audio-visual content in their teaching. This reality in schools directly clashes with both the teachers and the students' real-life situations, who are constantly in contact with moving images on a daily basis. Therefore, we can say that European schools do not effectively respond to the challenge posed by audio-visual language which currently dominates daily life.

#### 1.2.1. Which content?

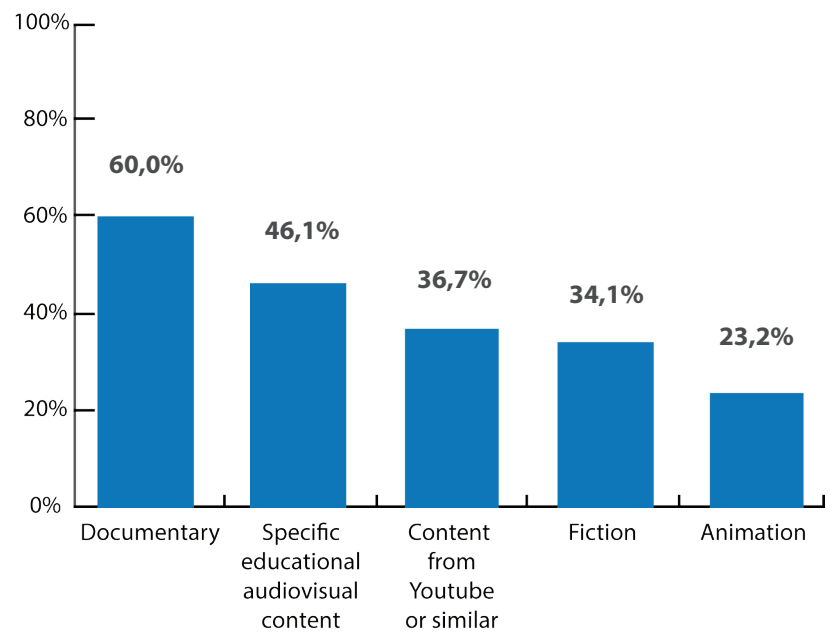
European schools use a wide variety of audio-visual content but most of them tend to use specific educational content such as documentary and/or education-related genres (60% of teachers mention documentaries; 40% specific educational content).

On the other hand, short clips from YouTube or similar services are used in the classroom more than films, which, as shown in the first table, are being used less frequently.

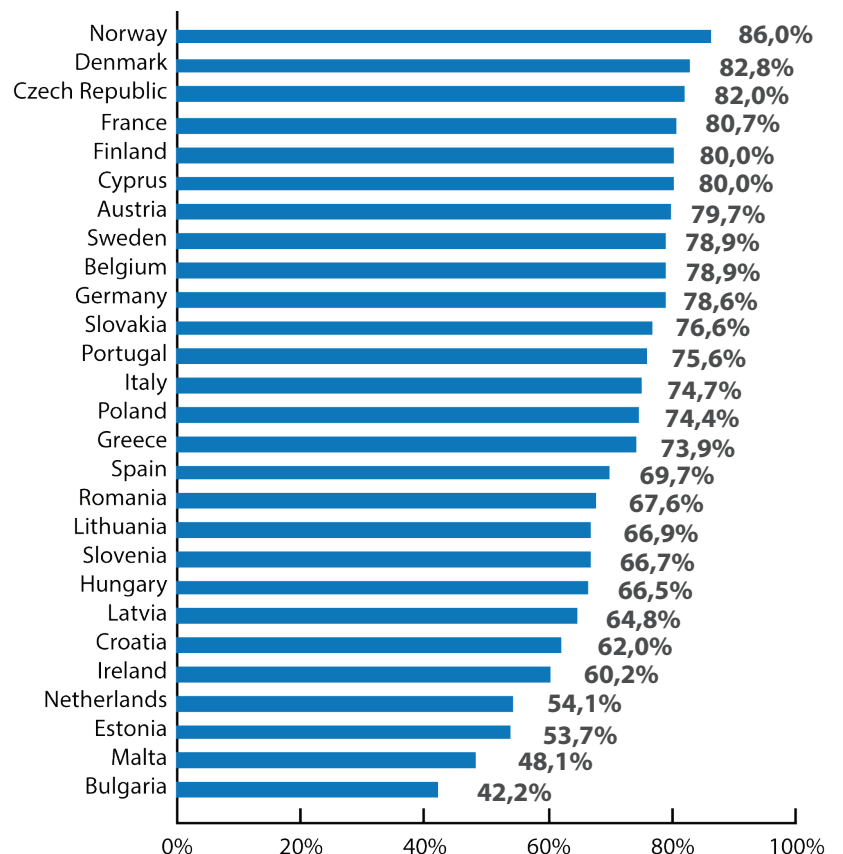
However, in relation to the use of documentaries, some differences can be observed across Europe; there are countries in which their use is clearly more widespread. The use of documentary audio-visual content seems to be more common in about half of the studied countries, and a lot more limited in one-fifth of the sample.

This data reveals that teachers primarily use audio-visual content which accomplishes the referential function of language (to illustrate a class, for instance); that is to say the narrative forms in which moving images show realities in a simple way by referring or informing (the most evident function of

The most used genre in chools



Documentary



the language which can be given by easily verifiable statements, such as scientific data). Other functions of discourse (aesthetic and poetic, for example, which include the use of metaphors, complex stylistic forms and other codes) take a back seat; this probably suggests that teachers are more interested in the use of audio-visual content to illustrate other subjects rather than study film for itself (i.e. film literacy).

### 1.2.2. Instrumental character of films and audiovisual content

The fact that documentaries and specific educational content should prevail over film and fictional works seems to indicate that most teachers use audio-visual content as a pedagogical object to enrich or fuel their classes; a tool to help with the illustration of other topics in different subjects (as a means of reaching an end, as opposed to being an end in itself).

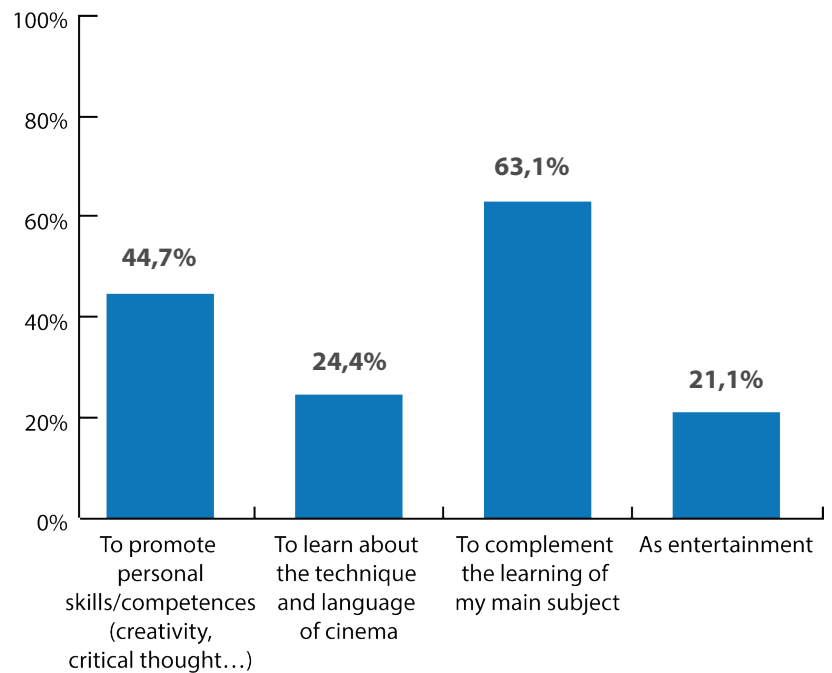
According to the responses provided by European teachers, the aims related to the use of films and other audio-visual content in their teaching are ranked as follows:

1. 63% of respondents think it is useful to complement the learning of the main subject.
2. 45% of them say it is useful for promoting personal skills and competences such as creativity and critical thinking.
3. 24% of responses agree that it is important for the process of learning cinema techniques and language.
4. 21% think it is good for entertainment.

This table shows that most teachers use audio-visual content as a tool to illustrate certain subjects or to enhance general skills. Therefore, it can be stated that audio-visual content rarely constitutes an object of study in itself in European classrooms.

The high incidence of the use of films as a tool to complement forms of teaching seems to be related to the fact that teachers lack film and media educational training, which does not allow teachers to effectively use audio-visual work aimed at different processes (see “Teacher Training” section). It could also be due to the fact that Film Literacy is not included as a compulsory subject in the different national curricula.

### Aims of using films/audiovisual content in teaching



These may be the reasons why teachers consider audio-visual content merely as a means to an end and not an end in itself.

The education experts which were consulted during this research<sup>[10]</sup> suggest that the belief in the unstated and even assumed transparency of audio-visual language results from the longstanding attachment to the spoken and written word in terms of education and culture. Despite the immense language-related changes that society has experienced in recent years, the cultural paradigm based on print media still prevails. In the context of pedagogical practice the predominance of oral and written language hinders the teaching of film literacy.

The non-implementation of film literacy in the classroom is considered by many experts as a barrier and at the same time a challenge for the use of audio-visual content in education. Promoting critical competences and personal skills by using audio-visual content is, according to these experts, a very

<sup>10</sup> European Media Literacy Forum (Paris, May 2014), Filmed Seminar (Barcelona, June, 2014) among others.

relevant objective in a world where multimedia content is ubiquitous. These types of competences have been working their way into formal education at a European level<sup>[11]</sup> and can be observed in the different recommendations issued by the European Commission encouraging the inclusion of media literacy in the national curricula of Member States<sup>[12]</sup>.

### 1.2.3. Origins?

As regards the origin of film and audio-visual content shown in European schools, the most frequently used films are national productions.

1. 47% of teachers say they mainly use national films and audio-visual content in their classes.
2. 31% of respondents use European productions from countries other than their own.
3. Content produced in the United States is mainly used by 21% of the teachers consulted.
4. Very few productions from other continents are used in European schools (not even 1%).

The question aimed at establishing the extent to which national and European cinema is taken into account when thinking of cultural heritage shows that:

1. 54% of teachers think that these types of productions are important but not a priority.
2. 19% of respondents stressed that national and European films constitute a key factor that is taken very much into account.
3. 28% of teachers think these types of productions are not taken into account at all.

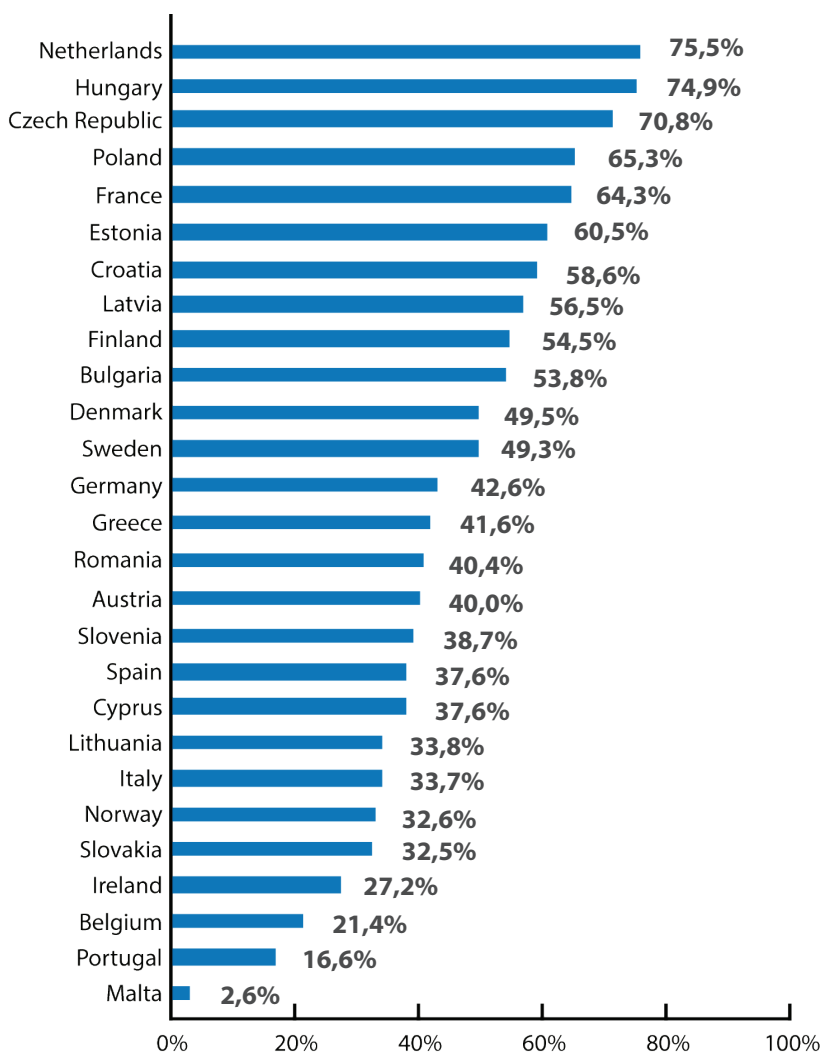
In relation to national film productions there are some marked differences among European countries.

There are five countries in which the use of national productions is widespread. Teachers in about a quarter of the analysed countries say they use national films in half the screenings they program.

There are five other countries in which the use of national productions is very limited.

The difference in the use of national productions could be due to a lack of interest or to the size of their national industries; unfortunately, these assertions are difficult to prove since they exceed the scope of this research. What can be said is that the percentage of teachers who use national and European audio-visual works is limited in these countries.

### Teaching based on national films



<sup>11</sup> Almost all European countries have introduced these competencies in their curricula.

<sup>12</sup> E.g. Commission Recommendation 2009/625/EC of 20 August 2009 on media literacy in the digital environment for a more competitive audiovisual and content industry and an inclusive knowledge society.

One aspect of showing national and European films and audio-visual content is related to cultural elements, namely enhancing production and consumption of cultural goods, but also to the dissemination of each country's heritage (culture, history). Once again, the fact that teachers consider films as complementary objects for their key subjects helps to understand the reasons why they have such a perception, which are also linked to the lack of proper training in the field of film education.

### 1.3. Organizational and structural constraints

According to both qualitative and quantitative data of our research, the lack of practical use of audio-visual content in European schools seems to be partially due to organizational constraints and rules which govern many European schools, which impose important and practical restrictions on the use of audio-visual content in the classroom. There are many obstacles which depend on how schools are set up and what routines they follow.

The most significant restrictions are logistical and organizational, related to use of space and time while other restrictions are curricular. Challenges also include technical classroom limitations and technological infrastructure and resources.

Using fragments of films or short audio-visual content is relatively easy, if technological conditions allow it. The screening of complete, full-length feature films in their original formats is however not an easy task in schools, as teachers are obliged to insert audio-visual content into the time and space constraints of their classes<sup>[13]</sup>. At the same time they are obliged to accomplish curriculum objectives and criteria for which audio-visual content is generally difficult to find (see section "Teaching of Film Literacy").

Classroom time is limited (generally less than an hour in secondary schools) and including films within this time-frame is not easy. Space is also a difficulty. Classroom spaces are not physically flexible as

they were originally designed for oral and written communication and not for screening of audio-visual content. Technological infrastructure is often not up to scratch to include the use of audio-visual content in classrooms. Furthermore, the school curriculum simply does not dedicate enough attention to specific audio-visual content.

#### 1.3.1. Organization of time

Due to the difficulty of changing the traditional class process and structure, teachers rarely have the chance to show an entire film during class time. Therefore, they generally tend to screen just a fragment or clip from the selected work:

1. Two-thirds of teachers mainly use shorter versions of films (24%) and material like clips or extracts (33%).
2. One-third of teachers screen the entire film (32%).

This process of audio-visual content reduction and fragmentation reinforces the instrumental character of films, adding/creating difficulties in order to consider the filmmaking product as a whole unit of meaning.

#### 1.3.2. Organization of space: limits in the classroom

When teachers use audio-visual content they rarely have the possibility to change their classroom space to improve the experience of watching films; nor can they go regularly to movie theatres or to other special rooms in the school to see films. They are obliged to use audio-visual content in the classroom and this space is not usually very well equipped.

When we ask teachers where students normally watch films/audio-visual content the results are quite clear:

1. 55% per cent of the respondents say pupils watch films being screened in the classroom.
2. Video monitors or television screens in the same classroom represent the second most used form of audio-visual content (35%).
3. On laptops or desktop PCs provided by the schools (29%).

<sup>13</sup> These issues were largely discussed during the debates and workshops organised in the different open activities (events) developed within the FilmEd Study (Berlin, Barcelona and Paris).

Classrooms prevail in any case. However:

4. In 23% of cases films are usually shown in a special projection room at school.
5. Finally, only 18% of teachers believe that students usually watch films at a cinema

The least frequent option is for films to be watched on students' own computers or tablets (10%), although given the swift advancement of technologies this percentage may increase over the next years through Bring Your Own Device (BYOD) policies in education. But until now that is only a tendency.

The assertion that students do not attend pedagogical screenings at cinemas is revealing. However, there are some discrepancies between countries or regions that can be analysed at European level. This is probably due to cultural differences, as some countries have longer traditions with respect to the preservation of their film heritage and viewing of national film productions.

As shown by the next table, France, Poland, Slovenia and the Czech Republic are the countries which frequently take their students to see films at cinemas. By contrast, Latvia, Portugal, Spain, the Netherlands, Hungary (and others) seem to be less interested in using cinema trips as a curricular activity.

These tendencies, however, need to be analysed carefully. Going to the cinema could be replaced by in-school screenings, or other similar activities (55% of responding teachers state that in-class screenings are frequent). There is no study on the educational impact of the different conditions in which a film is viewed...

As the chapter on Industry and Other Stakeholders will indicate, we must highlight that some cinematheques and other institutions regularly organize screenings for schools. As described in the section on Promotion, this would be a case of good practices in Slovenia, Germany, Belgium, Lithuania and Portugal, among others.

### 1.3.3. Technological infrastructure

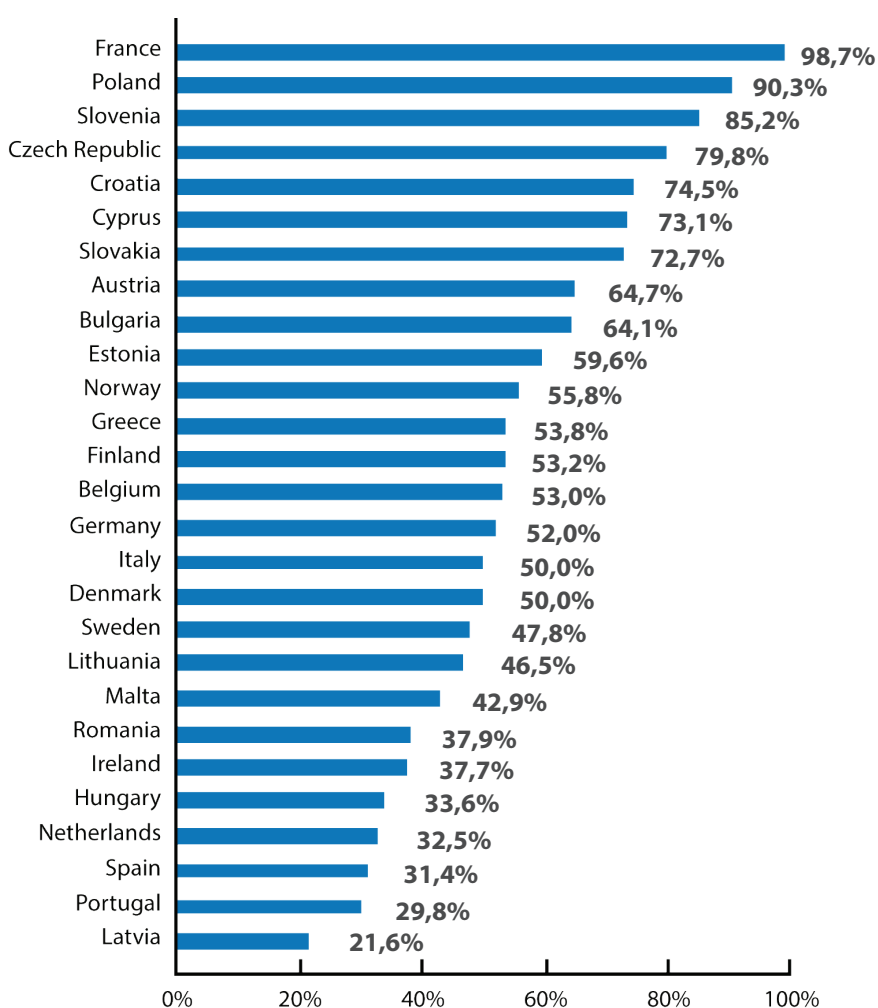
If, as we have seen, space and time represent important constraints in relation to the use of audio-visual language, technological infrastructure in European schools represents another potentially important limitation.

Although progress has been made over recent years,

technical limitations in European schools are still significant in some countries<sup>[14]</sup>. According to our research, however, schools generally appear to be equipped with hardware and internet access.

1. Newer systems for watching digitized audio-visual content and films are available in schools according to the surveyed teachers (75% with projectors and 73% with DVD players). Computers to watch films are used in 64% of schools, with 67% equipped with internet access and televisions being present in 62% of schools.

### Going to movie theatres



14 See Schoolnet studies about technologies in Schools.

2. According to 35% of responding teachers, VHS players (VCRs) are still available in schools. More recent technologies such as Blu-Ray players are less common in schools (7% say their schools have this technology). In 9% of schools there are also other types of equipment.

One must note that this issue refers to availability of equipment in schools. Replies from those who were surveyed combine equipment for reading/accessing content, and equipment to show it. A video projector can, in theory, project a DVD/VHS player or be connected to a computer and show streamed content. Surprisingly, VHS players are still mentioned regularly, although this is an audio-visual format which has almost disappeared from private use and from commercial production and distribution. Laptops or desktop PCs are available in 64% of cases.

Teachers have shown a positive attitude with regards to media availability, even though reality varies from school to school.

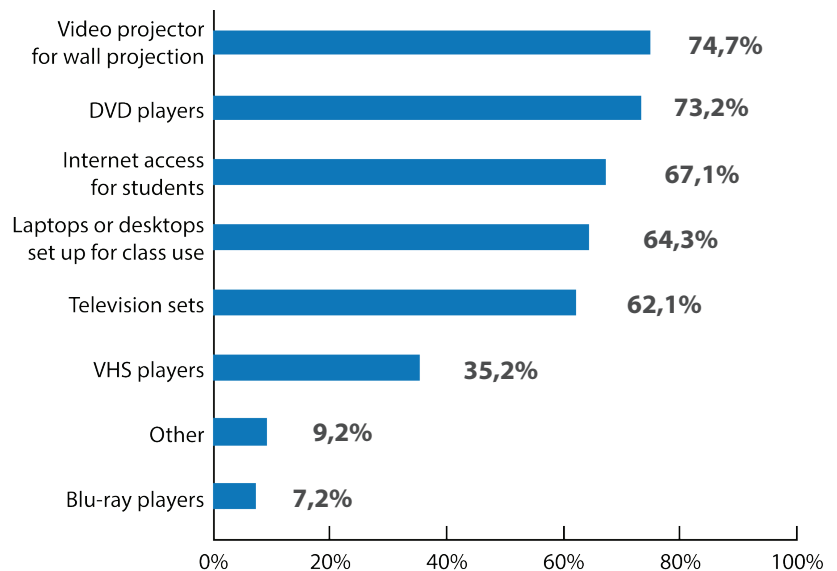
83% of European surveyed teachers have a positive opinion of school equipment:

1. A large segment of surveyed teachers think that their schools are “well equipped” and about 55% of the responses coincide with this tendency.
2. The second highest ranking is “very well equipped” representing 21%, followed by “badly” with 14%.
3. There are also teachers who consider this type of infrastructure to be “very bad” (3% of respondents), but a greater percentage deems them “excellent” (7%).

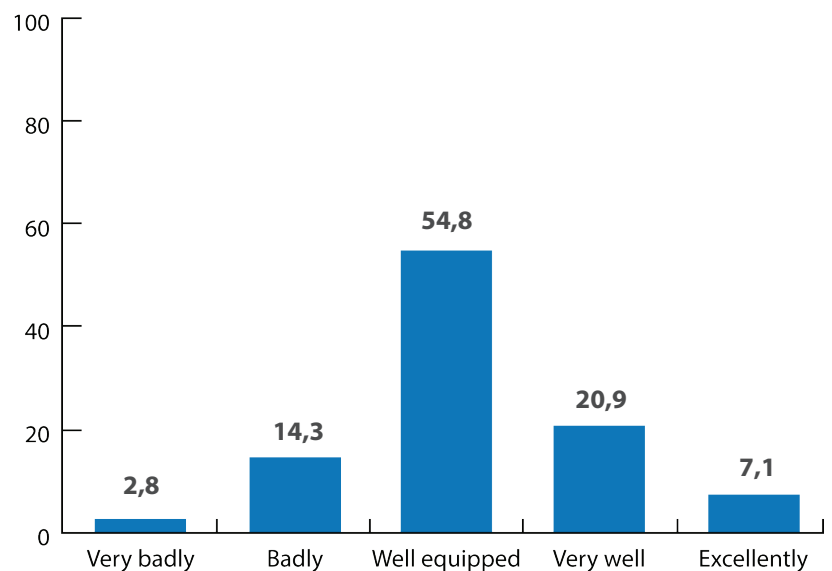
In other words, according to the vast majority of teachers, their schools seem to be well equipped. An average score of 3.15, when taking the data on a numerical scale from 1 to 5, allows us to state so. The score represents the teachers’ opinion on school equipment on a scale from 1 (very badly equipped) to 5 (excellently equipped).

When observed at a European level, there are some differences between the analysed countries. As one may observe looking at other figures, there is an upper group of five countries with a highly telling score in relation to equipment (with an overall score

#### Available technological infrastructure in European Schools



#### How well equipped is your school to watch films?

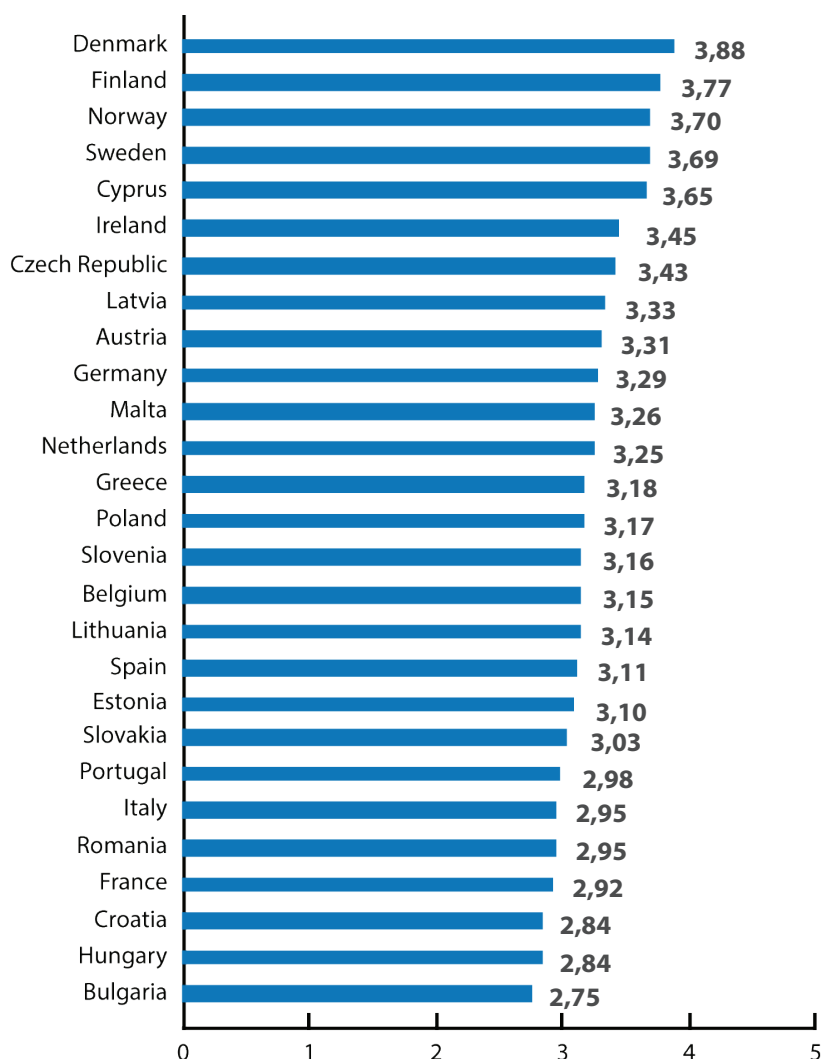


of more than 3.6). Almost two-thirds of the analysed countries are near to 3.2, and there is a group of seven countries (almost a quarter of the sample) where the general perception of teachers towards their schools' equipment is under 3 (badly equipped).

This shows that there are countries with better equipment, such as Denmark, Finland, Norway and Sweden, which may be due to the importance Scandinavian schools give to ICT infrastructure. Portugal, Italy, Romania, France, Croatia, Hungary and Bulgaria are in the range of the "badly equipped." Here however, one must acknowledge that a full, Europe-wide statistical evaluation of audio-visual technology within schools would have required a much deeper study, going beyond our possibilities. The situation certainly differs from country to country, with an obvious relationship between a country's economic development and its public finance provision for schools. These are not the only considerations: distinctions between private or semi-private schools can be made –schools which account for a large part of the system in some countries- and public schools, in both rural and urban areas. Regarding school Internet access, we must underline that in terms of the Internet being a viable tool for film literacy, schools must have high-speed, broadband Internet access if they are to be effective. Only schools with such infrastructure can seriously consider the use of online content platforms offering video streaming capabilities.

It is interesting to observe, however, that equipment is not considered by many teachers to be a real obstacle to film literacy. In fact, there appears to be a general degree of satisfaction from teachers responding to our survey regarding the actual level of technological equipment in their schools. But the level of satisfaction is also directly related to expectations, to what the respondent considers to be possible to achieve. Perhaps the positive responses to school equipment should be analysed. This satisfaction is probably linked to the current use of audio-visual content which, as seen, has been rated low; teachers may feel that their schools are well equipped because the use they make of it is still limited (and this limited use, as said, seems to be due to a lack of teacher training in the field; it is also because of the non-inclusion of film literacy as a compulsory subject to be included in the national

#### How well equipped is your school to watch films?



curricula; and finally, due to the instrumental use of audio-visual content). With regards to this, given the requirements of audio-visual content in their pedagogical practices, equipment is, at least, seen as satisfactory.

Matters would probably be different considering that the use of online audio-visual content will presumably increase in future; the degree of satisfaction with the infrastructure will then probably become lower. This increasing non-satisfaction has been evidenced

by motivated teachers. Our complementary field analysis<sup>[15]</sup> shows that teachers in favour of more audio-visual content use demand better technology and infrastructure in their schools. This can also be observed when making a critical reading of teachers' opinions on equipment: a given European mean score of 3.15 (well equipped) is positive, but it also reveals that there is a long way to go in order to achieve better levels of equipment ("very well" or "excellently" equipped). No European countries, according to survey results, has achieved a general score over 4, which means no countries in Europe are "very well" or "excellently".

### 1.3.4. Audio-visual material availability

The lack of audio-visual material is an important constraint for the use of audio-visual content in European schools.

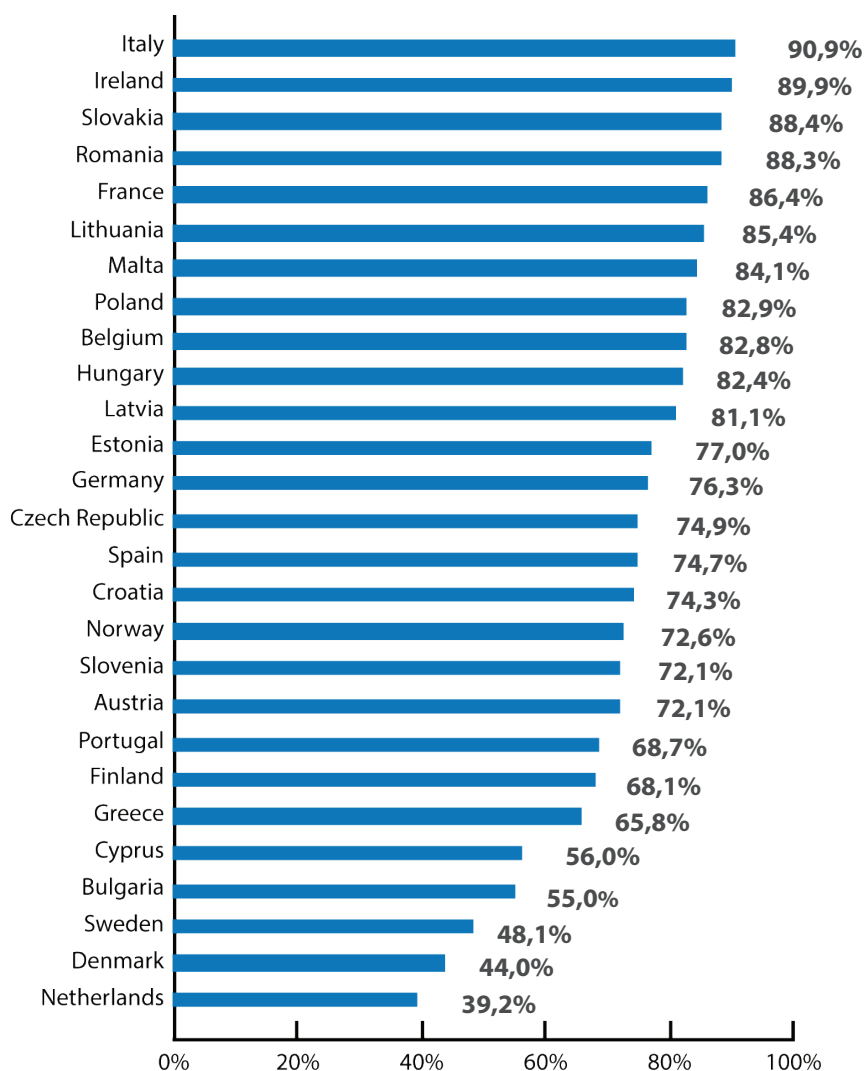
Schools and school libraries are not generally well prepared to host audio-visual activities. They offer very few films or audio-visual products and most teachers are obliged to use their own material (63%). This use of teacher-generated resources will be further discussed in the chapter on Industry.

The fact that teachers often use their own audio-visual content in their classes indicates that they do not have access to more readily available resources. This undoubtedly contributes to the low use of audio-visual content in schools.

If comparisons were to be drawn, it seems that some EU member states show marked differences in the use of teacher-generated resources. There is certainly a gap between southern and northern European countries and the statistical evidence below suggests economic differences in schools varying from country to country, as some have more resources than others. There may also be a cultural divide with respect to licensing models, the existence of which is unknown to some schools.

The lack of audio-visual resources is confirmed by the small number of films available in schools. 41% of European schools declare access to between 11-50 films while 26% have access to more than 50 films.

### Teachers' own resources



<sup>15</sup> Some data was collected during the "FilmEd Experiences Forum" held at la Filmoteca de Catalunya, as well as from individual interviews to experts in the field of Film Education (see annexes on Methodology and Country Profiles).

Almost one-third of European schools have access to less than 10 films. The following table shows the percentage of teachers in each country who think they have access to less than ten films at their schools:

It is difficult to explain such a varied range of percentages. The difference in film availability in school libraries could be related to a real lack of material or to the use of other kinds of resources (e.g. online content or VOD platforms).

These answers/percentages must be taken into account, especially when teachers say they most commonly use their own materials (63%) and content from online platforms such as YouTube and Vimeo (50%), while a mere 42% of them admitted that they used material retrieved from their schools' video libraries. The common use of VOD platforms is only for 8% of European teachers and the availability of online platforms for schools offering audio-visual content is not generalised (only one-fifth of the surveyed teachers use these types of platforms for films).

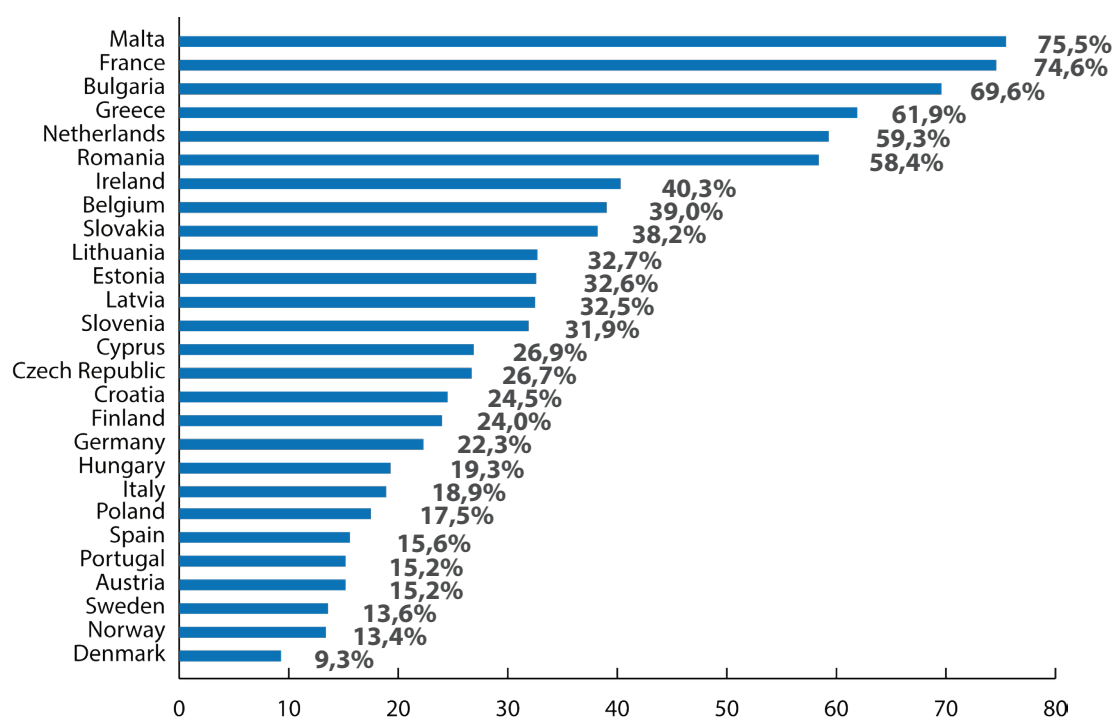
### 1.3.5. Cost

The given data leads us to ask the following questions: is film literacy expensive in terms of equipment? Is equipment a financial obstacle which may make film literacy implementation difficult in schools? Is the cost of the films and the cost of screening rights the most important obstacle?

This cannot be considered a simple matter. As stated before, any answer must bear in mind the general state of equipment in each and every school, the investment required and the price of license agreements within each country.

First of all we must consider the equipment. There are three dimensions to the issue of equipment. 1) The technical infrastructure needed to screen in classrooms. 2) The infrastructure to access audio-visual sources online. 3) The tools to edit and produce audio-visual content.

#### 0 to 10 films available in schools



Basic equipment for screening does not really represent an important obstacle. The acquisition of projectors, large television screens etc. cannot be considered an obstacle as their cost drops day by day.

The second set of equipment –infrastructure to access audiovisual sources online- is more crucial and not easy to acquire but it is affordable. It goes without saying that securing high-speed Internet access for every school in every country cannot be achieved for free. But if we assume that in future school access to all educational content is based on the use of online platforms<sup>[16]</sup>, we can believe that an important incentive to increase investment in this area does indeed exist.

The need of film literacy is not exclusively related to watching, discussing and learning about films and other audio-visual content. Film literacy includes the ability to actually create audio-visual content; turning narrative into images, recording and editing. These activities require equipment and knowhow.

We have asked teachers about the facilities in their schools in relation to this type of equipment and the overall results indicate that there is limited availability of technical means for students. (see table)

The good news is that technological trends develop within a world where access to such equipment becomes much cheaper, easier and at a greater speed. Smartphones have cameras of high quality which undergo exponential improvements; several models can even record in High Definition. Editing is possible through very simple programs and apps available for free or at a very low cost.

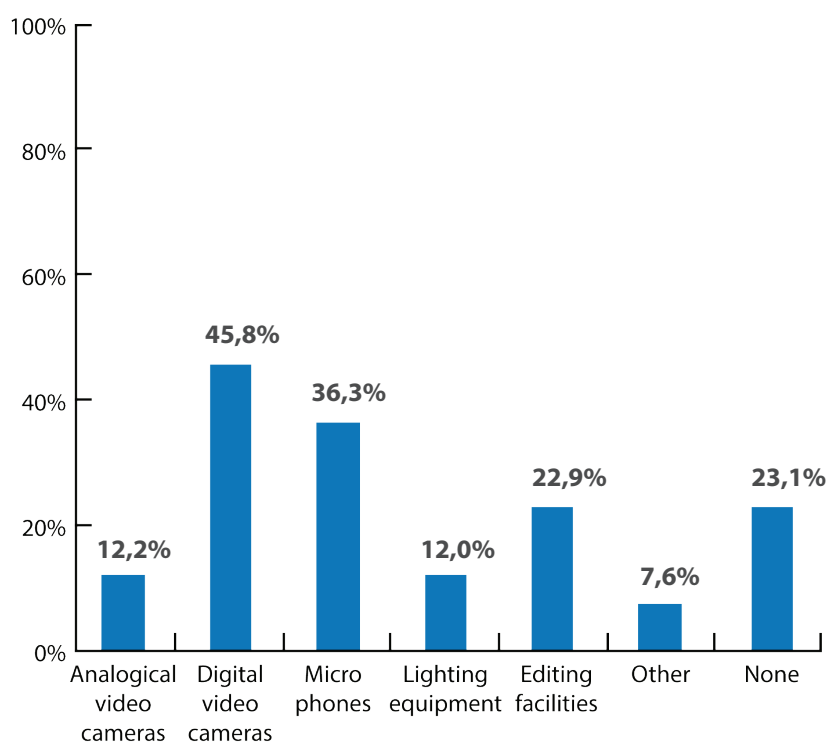
Equipment is not, and will not be, an obstacle to showing students how to interact with images and how to manage and use them. The difficulties lie elsewhere: who is to manage this new equipment for students and with what training, as well as within what curricular and structured framework. Such obstacles to film literacy are described in the chapter on obstacles.

From our point of view real costs for schools, of course, lie within legitimate access to content:

licenses to be paid to copyright-holders, if necessary, in particular for screenings of full-length, feature films. This is indeed an essential issue and as such it is examined in other sections of this report, both in the context of copyright laws and from the industry perspective. This is also the opinion of teachers when asked to evaluate the types of barriers related to the implementation of film literacy in schools. 46% feel and consider the cost of acquiring films or screening rights as the most important challenge and for 35% the answer is quite relevant.

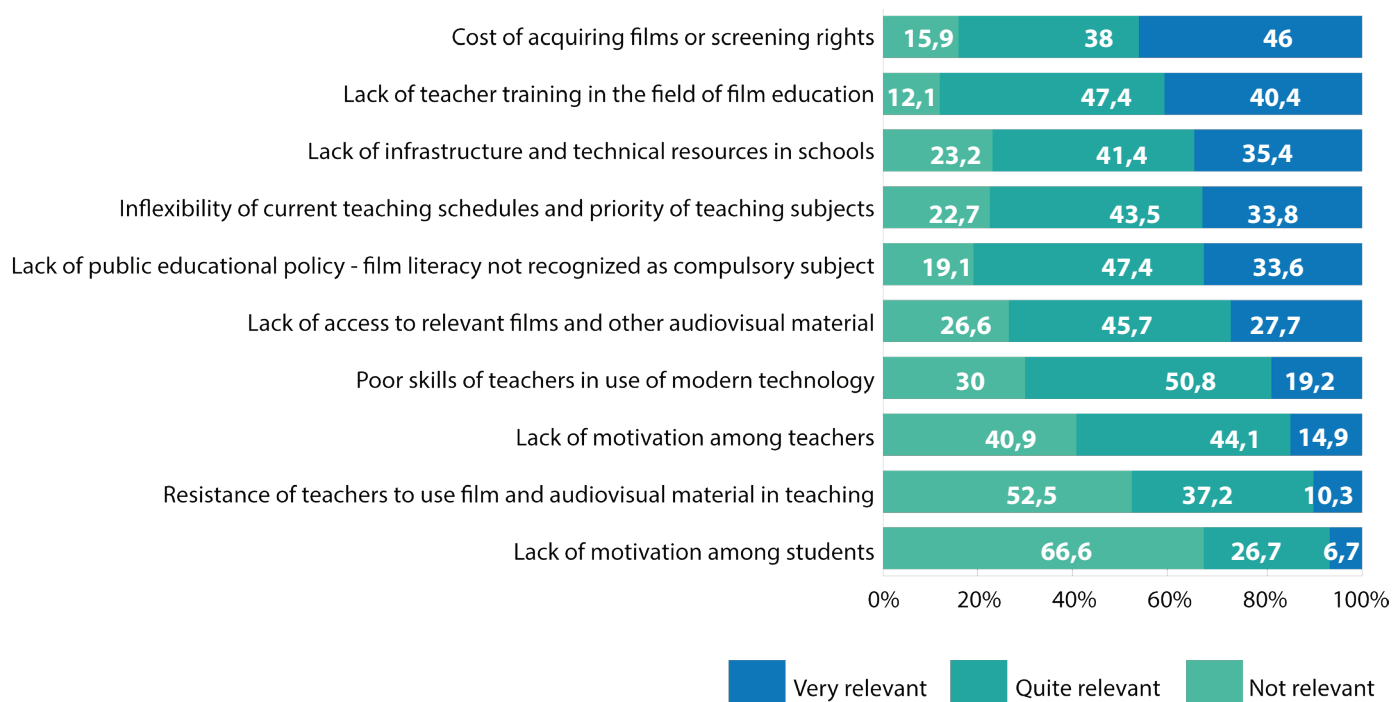
We can conclude that difficulties related to film licensing, as well as its costs, are perceived by schools as the most important barriers to film literacy, which go far beyond technological needs.

#### Availability of equipment for production and editing of films



<sup>16</sup> This is what the enormous development of digital books and educational platforms in recent years seems to suggest.

**Degree of relevance of the types of barriers related to the proper implementation of film literacy in schools**



## 1.4. Pedagogical approach

### 1.4.1. Teaching Film Literacy

The use of audio-visual content can help promote the understanding of audio-visual language as well as enhance media literacy. However, film literacy necessarily includes the idea of considering films to be cultural objects which can be evaluated and appreciated. The lack of education in film literacy is directly related to an approach to audio-visual content, which merely acquires the role of a pedagogical tool.

Audio-visual content is not known to be an object of study itself as explained in the introduction. Screenings and in-class projections are mostly seen as a complementary activity aimed at supporting the main subjects taught in the classroom. This kind of use can potentially create suitable conditions for film literacy studies but it is not enough. In order to promote film literacy schools must do more.

The use of film clips or extracts in order to complement individual teaching has become the most popular practice as regards the use of audio-visual content in European schools. Teachers display this type of content, which they bring from home (63% of teachers use their own resources) or directly stream from online platforms (YouTube, Vimeo), as a complement to the main topic they teach rather than as an object or case study itself.

The different values that films acquire from an academic/pedagogical approach seem to remain unexploited. Curricular restrictions, as has been stated, also contribute to the worsening of this situation. Teachers will not change their teaching habits and techniques if schools do not give instruction autonomy or include the teaching of film literacy as a compulsory subject in their curricula.

The survey reveals that film literacy teaching is an uncommon practice among European schools. More than half of the surveyed teachers think film literacy is an “uncommon or sporadic practice” in their schools (62%). 32% of teachers think that teaching film literacy is a “relatively common” practice and just 5% of respondents think it is a “widespread and common practice.” There are countries, however, where the use of film is more widespread, like Denmark, France, Poland and Sweden, where the figure for teachers

who answered that the teaching of film literacy is an uncommon practice is less than 50%. In any case, in most of the studied countries, film literacy continues to be what is a frequently neglected area of study.

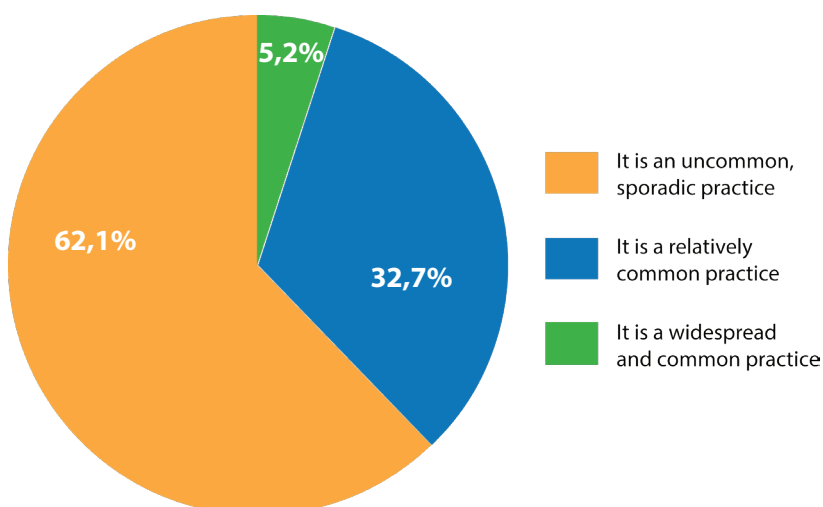
Nearly two-thirds of European schools (around 64%) do not include film literacy in their curricula, or as an extra-curricular subject (according to 80% of the teachers surveyed)<sup>(17)</sup>. In general terms, European schools have not opened their curricula to film literacy. This constitutes an evident constraint to a more generalised use of audio-visual content.

With the notable exception of France, where just 16% of teachers think their schools neglect film literacy as a compulsory curricular inclusion, in almost half of the countries listed in the table (page 33), an average of 90% of teachers thinks film literacy is not included in their schools’ curricula. In little less than one-third of the countries, around 50% of teachers think this way. Three countries stand in the middle with an average of 74% of their teachers saying film literacy is not included.

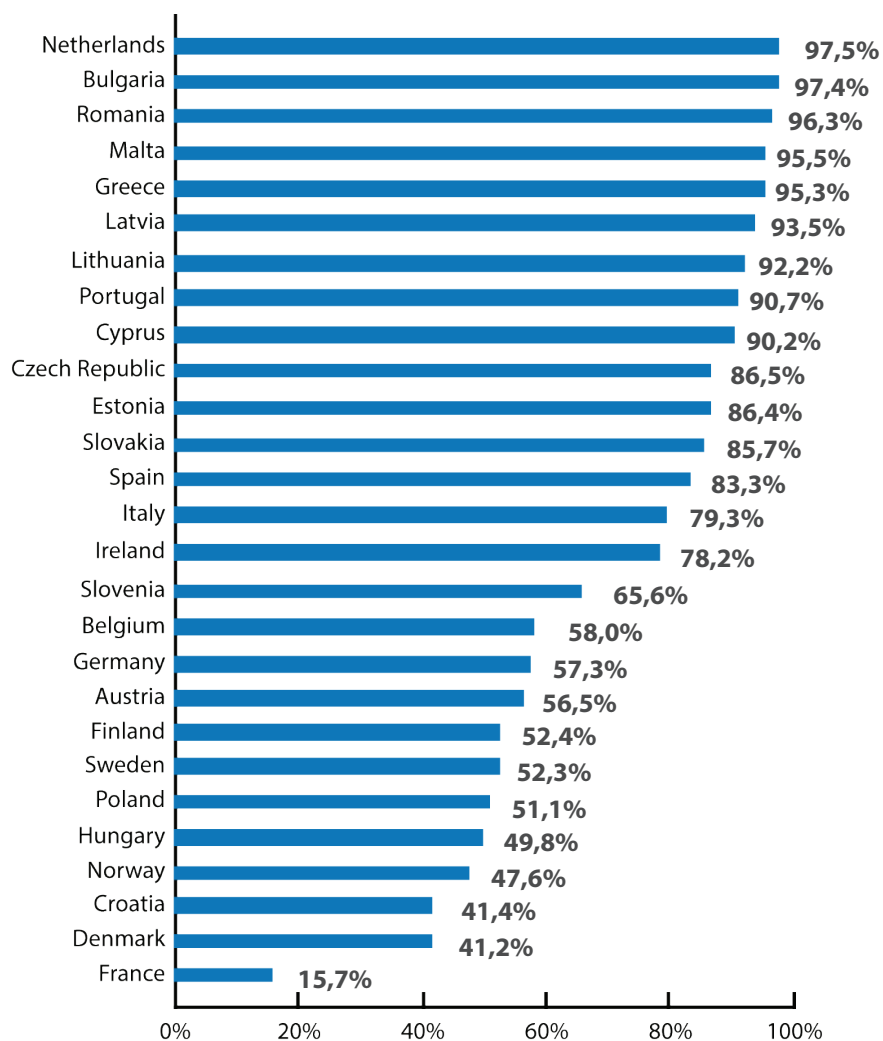
As explained in the next subsection, these tendencies can also be observed when examining the most common, formal (curricular) activities related to cinema in schools.

<sup>17</sup> These findings are similar to those of EC’s EMEDUS Study on Media Literacy in Europe.

#### How common is the teaching of Film Literacy?



### Film literacy is not included in the compulsory curriculum in schools



### 1.4.2. Activities related to cinema in schools

Among the main activities related to cinema in European schools, the most common is organizing trips to movie theatres (40% of teachers consider this to be the case). On the other hand, film clubs and debates on movies are less common. Only 25% of European teachers think that film clubs and debates on movies are common activities in their schools.

However, there are some countries in which film literacy, or at least film analysis, is present. Countries like Germany, Italy (with more than 50% of responses stating so), Latvia, Spain and Portugal (with nearly 40%) organize film clubs and debates on films in their schools.

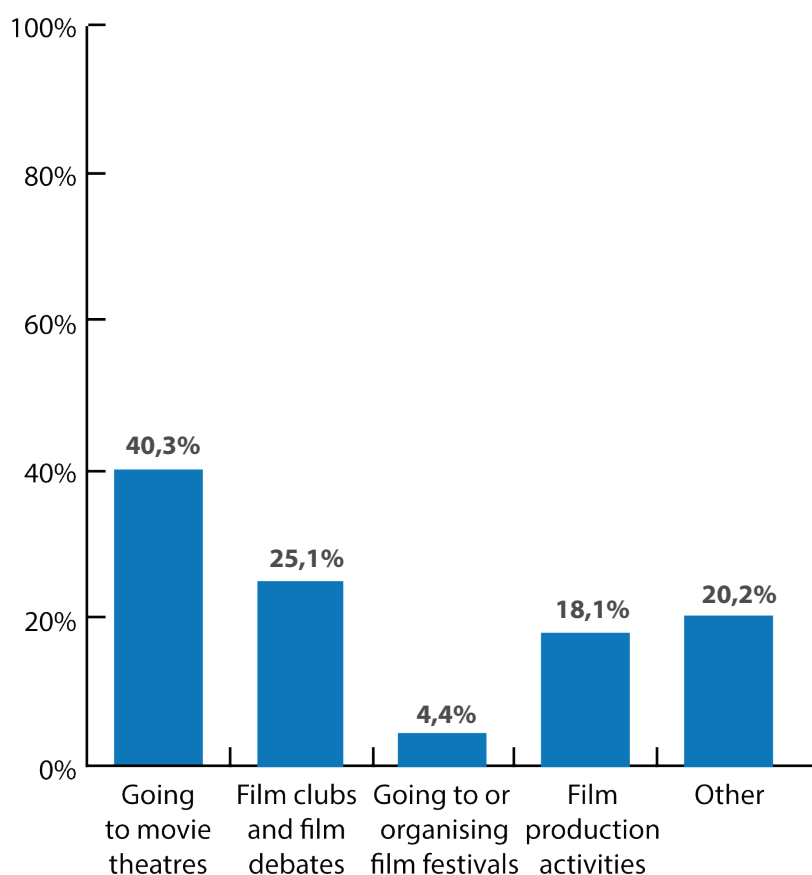
Film clubs (or in-class debates), are spaces in which different approaches to film education are developed. Aesthetic appreciation, the study of still and moving images, historical and critical approaches to movies are the kind of content that these activities aim at developing. All these reasons explain the importance of having spaces to screen full-length movies.

The limited number of activities related to the understanding and study of films is also visible in terms of school participation in film festivals. Only 4% of teachers think their schools participate in or organize film festivals.

This low participation rate may be due to the practical and curricular restrictions and teacher's lack of interest in producing audio-visual content, but it is also clear that European schools cannot handle the production of films. Most schools do not have sufficient equipment for the production and editing of audio-visual content. Despite the fact that 55% of teachers say their schools have digital video cameras that can be used by students (and taking into account that a lot of students have access to cameras and cell phones with high quality recording specifications), editing facilities and equipment are present in merely 23% of schools.

These factors help us understand why film production activities are common for only 18% of the surveyed teachers.

Most common educational and/or formal (curricular) activities related to cinema in schools



### 1.4.3. Film literacy in the curriculum

In terms of the curricular presence of film literacy within European schools, only 36% of teachers agreed that film education is included in the compulsory curriculum of their schools. Teachers also stated that film literacy is offered as an extra-curricular subject in only 20% of schools.

This last statement may be the result from schools who focus on the general use of media and ICT (digital literacy), as opposed to cultivating media (media literacy) and/or film (film literacy) separately.

Teachers also stated that film education in the curriculum is more common in secondary schools: 45% of secondary school teachers think their schools are developing it as a subject, as opposed to only 34% of primary school teachers.

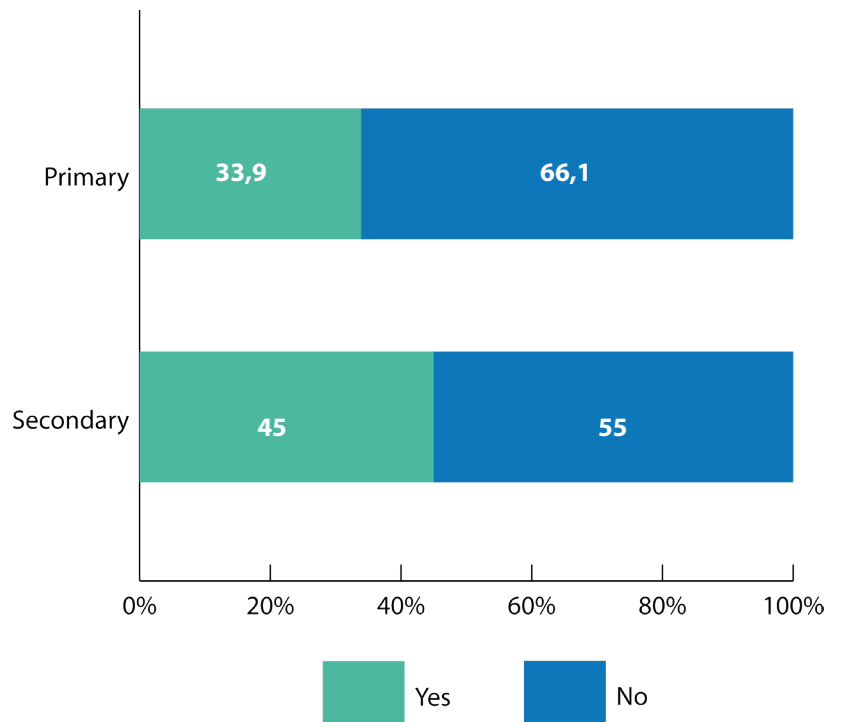
Ultimately, film literacy appears to be a cross-curricular topic according to 69% of responses, a self-contained subject in 14% and both a separate subject and a cross-curricular topic in 17%.

The relatively high appreciation shown for film literacy cross-curricular inclusion might be related to the inclusion of media literacy across subjects, which, as a consequence, has led to the inclusion of elements related to both film and audio-visual education.

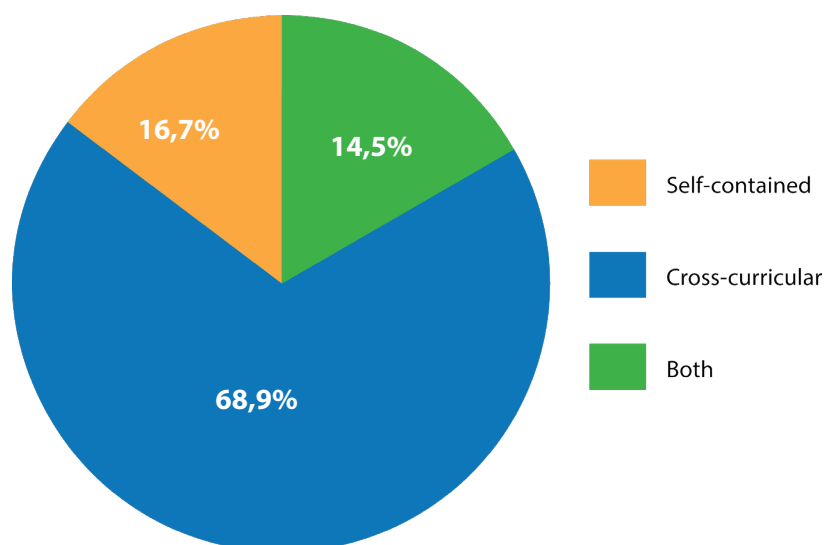
However, these percentages must be read carefully. The results of this study, as has been described in this section, allow us to identify that the teaching and learning of film literacy have not been developed in European schools following the same pattern (due to the non-recognition of film literacy as a compulsory subject to be included in the curricula). Therefore, these answers could be mixing up the individual use of film with the actual study of film and audio-visual content.

Films per se are not seen as an object of study with their own academic weight. All elements surrounding the given definition of film literacy are understood to be a set of tools and skills that allow pupils to assess, appreciate and use films for learning and argumentation purposes; these are not properly developed in national curricula, with some exceptions.

#### At which school levels is Film Literacy taught?



#### Is Film Literacy taught as a self-contained subject or included in the content of other subjects (i.e. cross-curricular)?



In addition, some teachers use audio-visual content or films simply to illustrate examples or complement the teaching of other subjects. But this alone does not lead to enhancing cultural values and critical skills that the teaching of film literacy should achieve.

Regarding the subjects within which European teachers think film literacy should be included, the most common answer is Language and Literature, followed by History, Arts, Foreign Languages, Civic Studies, Social Science, Technology and Mathematics.

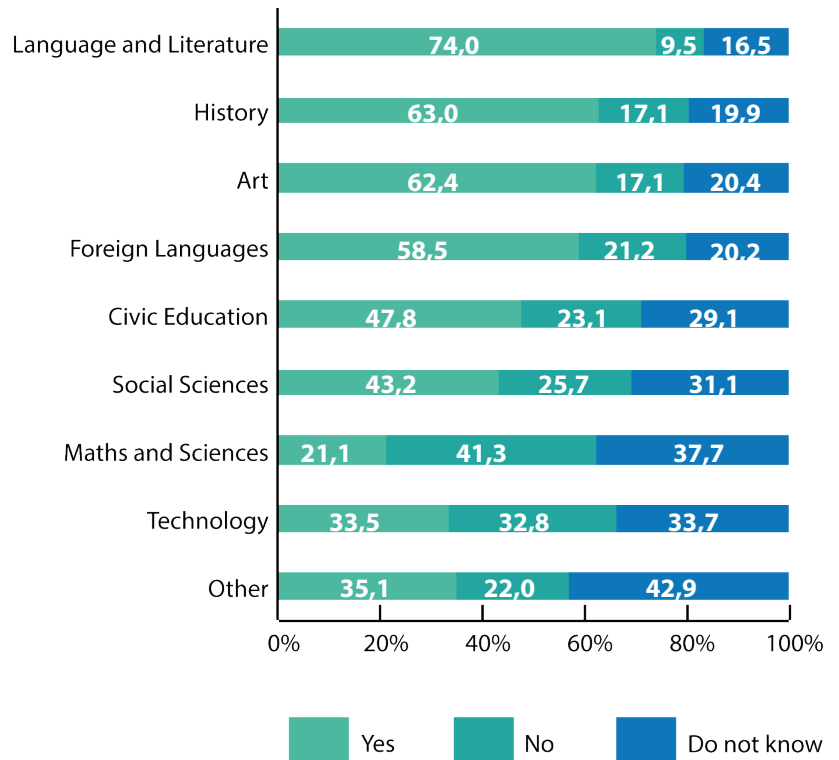
The results of the survey show that for 63% of participating teachers, the main objective regarding the use of film in class is to complement the learning of the main subject being taught (see 1.2.2.). This basic use of films is a generalisation because it is apparent that other important factors of film literacy are being developed. Generating competences and skills such as critical thinking and creativity is seen as the second most important aim to be achieved with the use of audio-visuals in schools (44%). This is rather a large segment of teachers who are, at least, interested in exploring audio-visual content for purposes other than the sole experience of illustrating a topic. As for the learning of techniques and cinema language, 24% also consider this to be one of the key objectives. Finally, for 21%, the use of film in education aims to provide a form of entertainment for children.

#### 1.4.4. Promoting film literacy

In view of the above it is not surprising that 48% of teachers believe that in-school strategies for the development of film literacy depend on specific initiatives on behalf of individual teachers. The promotion and organization of activities aiming at this purpose are not common and only 31% of respondents thinks their schools are involved in these types of initiatives. Again, school curricula can be understood as a constraint for the development of film literacy itself.

Only 25% of the surveyed teachers consider that film literacy activities belong to their school curricula. The lack of national policies guiding the inclusion of film literacy into national curricula is evident. This last statement is reinforced by the fact that just

In which subjects is film literacy included?



11% of teachers consider these kinds of strategies as something to be developed by regional or local authorities. As mentioned later in this section, the lack of educational policy is considered to be the most relevant barrier to the implementation of film literacy in schools.

External bodies offering expertise and access to films are also seen as minor agents as regards promotion strategies of film literacy within schools. However, when asked who these collaborators are and to what extent they collaborate, the participating teachers offered some relevant data. 15% identified cinemas as frequent collaborators in terms of providing film education in schools while 55% thought they occasionally collaborate and 30% believed it never happens.

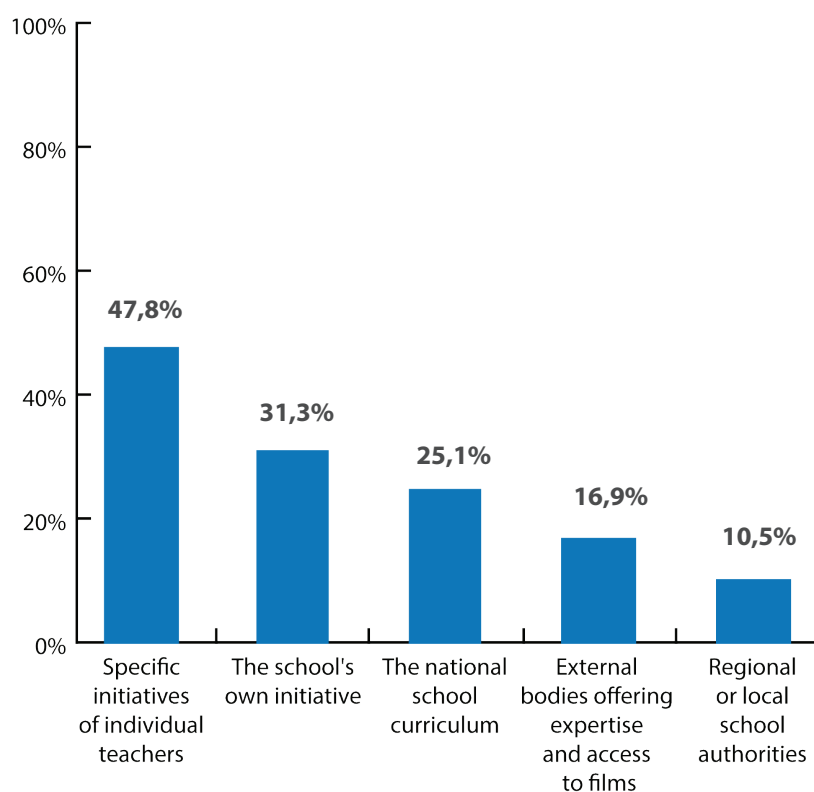
These replies are in sharp contrast to the proven function of external players ("facilitators") in the development and implementation of film literacy, as indicated in the following section of this report. It may be understood, however that although the role of these organizations (cinematheques, film institutes, trade associations and film clubs) is essential in the current development of film literacy, it is widely perceived by teachers as insufficient.

Answers concerning other actors to become potentially involved showcased very similar results. According to 60% of teachers cinematheques/film archives never contribute. This trend is confirmed if we examine the cases of film clubs and film directors in which respectively 67% and 72% of teachers, think they never collaborate.

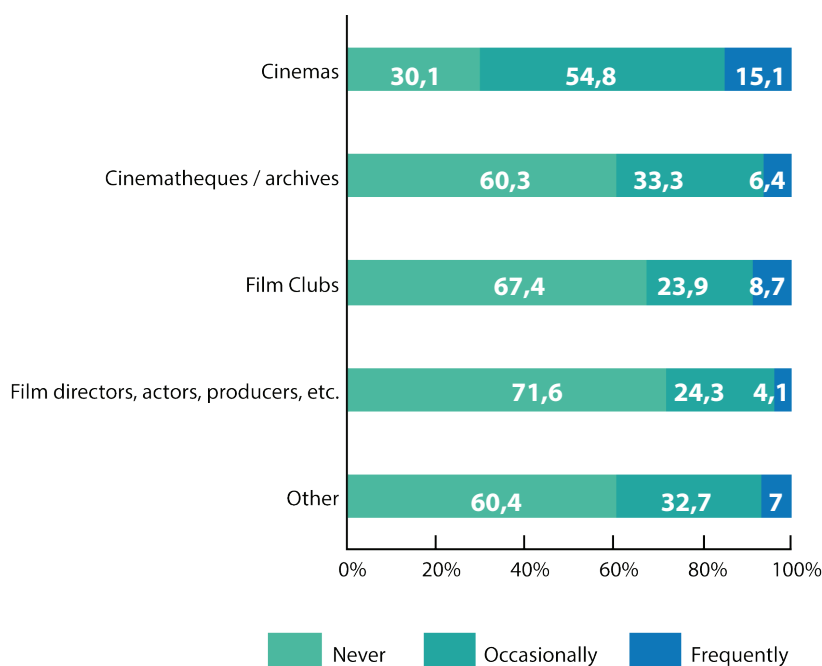
As shown, third party collaboration is sporadic and uncommon. Teachers and stake-holders accept that in order to activate film education and the use of audio-visual content in European schools, collaboration needs to be taken to a higher level among actors. Both parties (schools and film-related organisations) are responsible for bolstering the participation leading to a better use and understanding of audio-visual content.

In spite of the low third party participation, collaborating organizations do indeed offer access to films as their main contribution to schools. For almost one-third of the surveyed teachers, access to films is

#### The strategy for the promotion and organization of film literacy in schools depends fundamentally on:



#### Collaboration with external parties with respect to provision of film education:



the main aid they receive from these third parties. Educational material stands as the second most common resource these agents give, with nearly 28% of teachers agreeing to its use.

This means that the main contribution is material delivery rather than mere provision of experience or other types of support aimed at creating conditions to spread film education.

Teacher training and methods of instruction were weighted as common resources/services given by these organizations by just 15% and 13% of respondents. Professional experience and professional screenings are considered to be the least common services offered by collaborating third parties.

The lack of collaboration is also evident in the number of licensing agreements with schools. Just 21% of teachers think their schools have legal agreements regarding this issue. However, this problem is not only linked to the fact that these processes are burdensome; there is also a relatively high number of teachers who are completely unaware if their schools have such agreements (nearly 37%). Strategies concerning the promotion of film studies within schools are not effective. Teachers who are unaware of permits they have access to, and thus the legal use of audio-visual content, reflects the lack of information and ineffective diffusion of these agreements over schools.

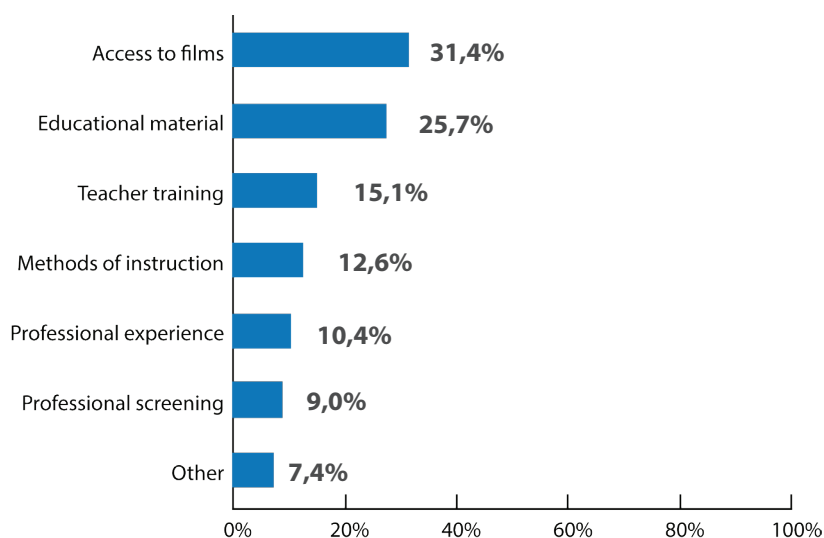
#### 1.4.5. Teacher training

In terms of proper film literacy and education teacher training, surveys do not allow us to identify clear trends: 51% of teachers believe that no special courses in film education are currently being offered at teacher-training colleges or universities, while 49% believe there are (16% say they are offered in colleges and 33% say they are offered at universities).

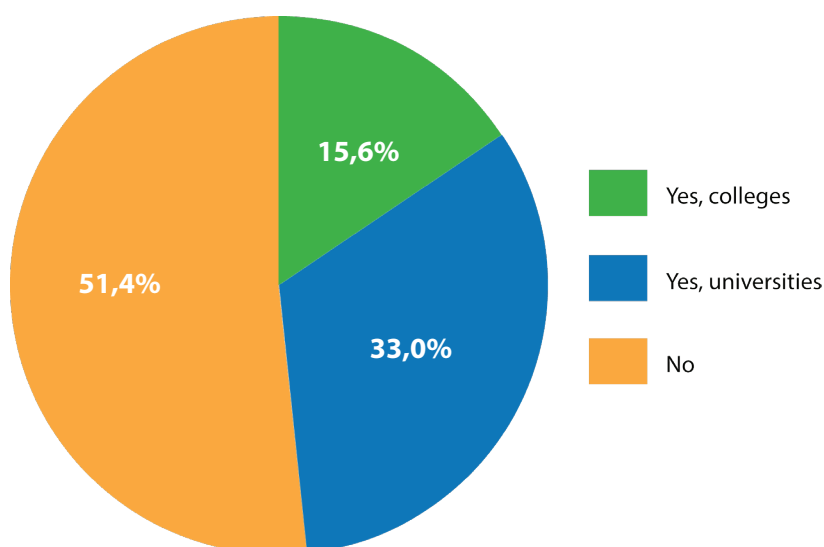
However, the lack of teacher training is visible in other answers: when asked if they would recommend turning film education into a compulsory subject for teachers (within teacher training programs) in order to teach film literacy, 60% responded affirmatively.

With regards to the training for those who teach film studies, 82% of teachers responded that they are self-

#### What do these institutions/organizations/individuals offer?



#### Are special courses in film education offered by teachers' colleges or universities?



taught, 7% claim to have professional experience in cinema and 12% derive their film knowledge from college or university training. As mentioned above, these answers showcase a true lack of teacher training programs. According to our research, it would be difficult to develop film literacy if its teaching merely relies on individual efforts. This evidence is also reinforced by the teachers' general perceptions on the lack of public policy related to film literacy (another being the lack of compulsory curricular inclusion of film literacy).

The initiatives put into practice by schools in order to help facilitate film education were also identified. Just 11% of teachers think their schools draw attention to teacher training in the field of film literacy. The most significant initiative for teachers is the purchase of film and audio-visual materials for educational purposes (35%).

Values related to other initiatives taken by schools can be observed in the following table.

It is clear that there is a lack of teacher training for film education, not only within schools but wherever teachers receive their training. Teacher training activities are not being offered by third parties involved in film education and screenings; alternatively teachers are not aware of such offers (which could be linked to a lack of communication among schools, teachers, organisations and relevant stakeholders).

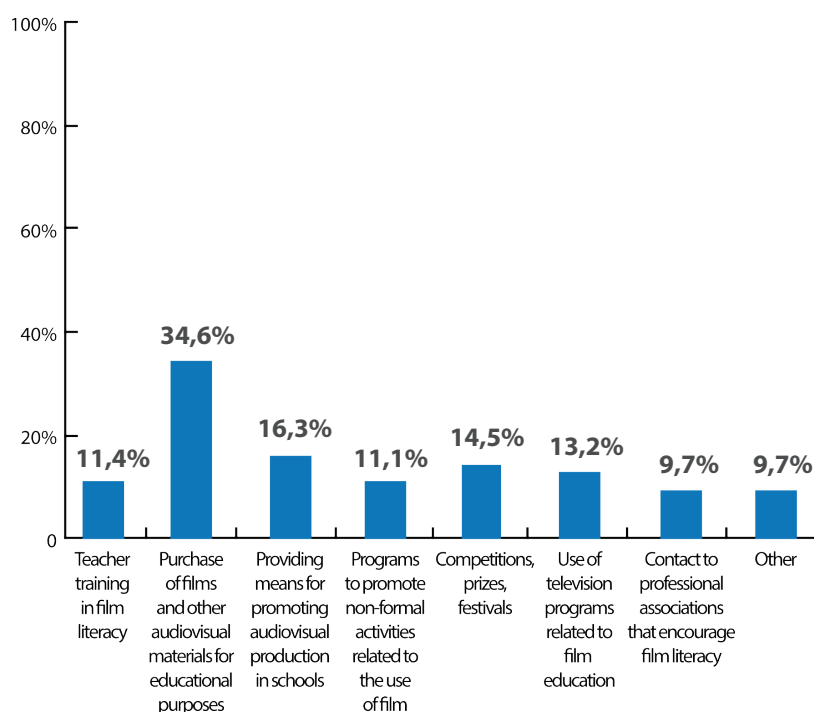
The perceived insufficiency in teachers' film education skills could lead to little interest in actions such as encouraging the production of audio-visual content (identified by 16% of the surveyed teachers as an initiative taken by their schools). If teachers have no practical skills or knowledge on how to properly exploit production equipment and software they probably would not ask for more school resources.

Children exposed to ICT generally know how to use them; unfortunately, if teachers are not well trained it will be impossible to guarantee an appropriate use and quality products.

There is a similar problem with the promotion of festivals, prizes and competitions, which, according to 15% of teachers, they are initiatives that have

also been encouraged in their schools. Educators are asking for the skill to understand films in order to create audio-visual material with their pupils and thus become more interested (as they sustain) in expanding film literacy related to activities both inside (screenings, debate, production) and outside schools (film festivals).

#### Initiatives taken by schools to help facilitate film education



## 1.5. Conclusions

### Use of audio-visual content and films

The use of audio-visual content and films in European Schools is often limited.

European teachers most frequently use short audio-visual extracts or clips and their main aim when using films or other audio-visual content is to complement their teaching to illustrate a topic rather than to study a film in itself. Using whole films is quite rare in schools.

Equipment is not seen as a real problem in terms of implementing film literacy and screening of in European schools; given the sporadic use of audio-visual content, teachers do, on average, think that European schools are well-equipped to screen films and general audio-visual content. However, there are notable differences between countries in terms of their infrastructure and no single countries considered to be “very well” or “excellently” equipped. There is also a lack of tools to produce or create audio-visual content. The survey indicates the need to improve this matter.

The cost is also seen by teachers as a very relevant constraint. Teachers believe that the processes of obtaining licenses are burdensome and they do not really know if their schools have such agreements in place. This cost perception could be linked to a lack of communication between teachers and schools and/or between schools and rights-holders. Whatever the reasons may be it is a fact that audiovisual resources in schools are limited: over two-thirds of the teachers who replied to the survey think their schools have less than 50 films in their libraries. This is reinforced by the fact that they mostly use their own audio-visual resources in class (DVDs, etc).

### Film literacy implementation

Film literacy in European school curricula is not widespread. There are no specific policies guiding its inclusion in compulsory education.

Teachers are aware of the fact that film literacy is not officially included in their school curricula but, at the same time, they believe that it is indirectly employed in a few subjects. Nevertheless film literacy is mainly seen (when included), as an interdisciplinary, cross-curricular topic.

There is a lack of teacher training in film literacy. Most of them who teach film literacy are self-taught and nearly two-thirds of the respondent teachers say it would be important to receive such training to teach it accordingly. With regards to this, actions if schools do encourage film literacy, the steps they take are mostly based on acquiring educational material in visual formats rather than providing training to teachers. Organisations and third parties involved in film-literacy-related activities usually offer more possibilities for film screening than actual ways to provide experience or training in this field.

Extra-curricular activities for film literacy are also limited. Different activities proposed by NGOs, other organisations and even national governments exist, but participation is not consistent at European and national levels (film festivals, prizes and competitions are available but participation depends on the will of individual teachers to co-ordinate such projects).



## 2. The perspective of the film industry, public film institutions and other stakeholders

### 2.1. Introduction

Films and other audio-visual content are available from right holders: producers and distributors. Access to this for film literacy teaching is not always easily achieved and is not a task that schools and teachers are prepared to organise independently. Access requires a clear and stable complicity from those who form what is generally known as the 'Film Industry'; and from the different organisations, public and private, that work within that sphere. In other words no film literacy without showing any film content.

If we consider right-holders' perspective, film content shown in schools is not produced – exceptions aside – for educational purposes, but as an investment. Likewise cinemas were not built to facilitate scholarly activities, and such events are neither their main activity nor source of income.

Most film distributors are companies which need to recover what they have invested in the market and then go on to generate profit. National film agencies have also not been created for educational purposes, but to promote and support national film industries. While film archives may have education as one of their original motivations, this is not the only element which defines their main role and justifies their existence.

These assertions, obvious as they may seem, are essential in understanding the content of this study: film literacy education and facilitation are not the film industry's main concern, and that of its stakeholders. Film literacy is just one of many social issues which compete with each other, and deserve consideration from the film industry and those surrounding it.

Our study has approached industry stakeholders, with various results in terms of attention and commitment. With few exceptions it is clearly demonstrated that film literacy is not the highest priority among those who finance, produce, distribute, market and exhibit film, or those who are responsible for its preservation.

Interviews were held with 80 distribution and production companies, represented at the European Film Market at the Berlin International Film Festival, The Berlinale, in February 2014. Questionnaires were subsequently sent to a selected number of companies. The 49 replies received came from those predominantly working with distribution and sales of films both theatrically, on DVD and online.

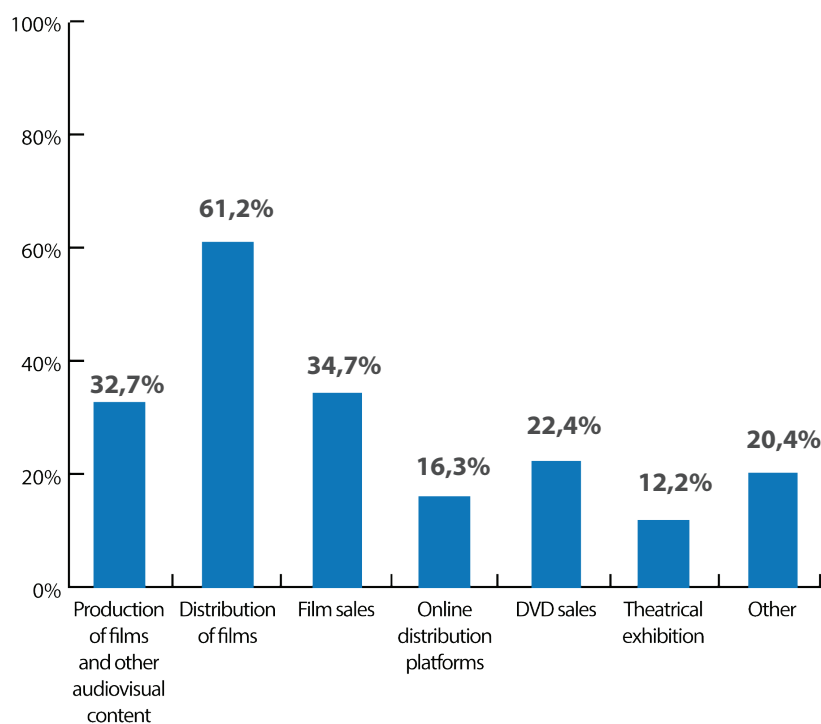
The next figure shows how the companies which replied were engaged in various business activities specifically related to production, distribution and film sales.

A parallel questionnaire was sent to National Film Agencies and Film Archives as well. The replies have been analysed in qualitative terms (as opposed to a statistical perspective), and combined with the interviews and consultations held with the film industry experts behind this report. (please see 2.5.4. The Wider Role of Public Film agencies and Private Public Organisations)

In terms of film literacy we need to make certain distinctions in order to conduct our analysis and come to representative conclusions. Firstly, we will look into the issue of 'supply agents' focusing on the conditions practiced by right-holders and licensors for the acquisition of 'non-theatrical' screening rights. The role of European and national right-holder associations and collecting agencies<sup>[18]</sup> as facilitators is to be considered here.

Secondly we shall see how public film agencies and institutes, continue to play an important role in promoting film literacy (usually at a national level), and facilitating school access to films, educational materials and screening options. A more detailed approach to their programmes and supporting schemes is presented in Annex 1 Country Reports and Case Studies. However, the role of such public bodies must still be mentioned here. Alongside the Film Agencies we must display publicly funded Film Heritage Institutions as they are in many cases, influential activity centres for schools.

Your company's main activity is



<sup>18</sup> Collecting agencies or societies are organizations which effectively handle the outsourced function of right management. Right owners transfer collecting society rights to: 1) sell non-exclusive licenses; 2) collect royalties 3) distribute collected royalties 4) enter into reciprocal arrangements with other collecting societies 5) enforce their rights. Collecting agencies also negotiate license fees for public performance and reproduction and act as lobbying interests groups.

## 2.2. Film and other audiovisual content supply and licensing

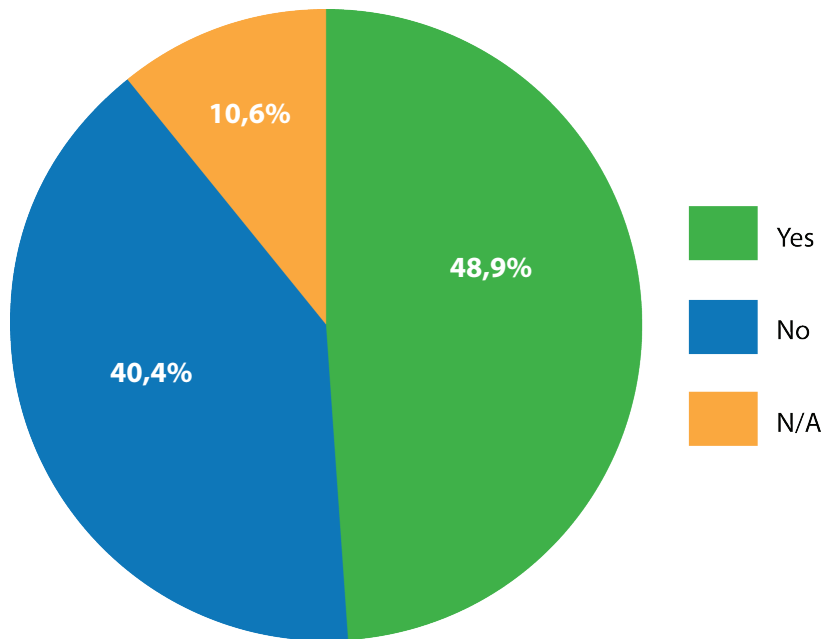
Films and other audio-visual content which can be shown at schools are legitimately available from what we here define the “supply side”, essentially consisting of producers, distributors and sales agents. Broadcasters must also be included in this side of the equation and whilst cinema owners can have a role to play, it is highly dependant on the aforementioned distributors.

These parties are usually private, commercial organisations, perhaps with the exception of public broadcasters. When stakeholders receive subsidies or tax benefits they may have to comply with conditions related to public policy, or social concerns which can allow benefits together with the supported productions (ie. making access available for educational purposes for free). However, generally speaking, legitimate film supply outside the ordinary film circuit is a private matter, one which affects products and services created by private enterprises and their investments. Its use therefore is directly related to the issue of licensing, and to the legal or contractual framework behind it.

The use of films in schools is commonly defined as ‘non-theatrical’ and often considered ‘non-commercial’. This definition tends to reflect the specific nature of this distribution channel, and is related to the cost of gaining access to material for educational purposes. The ‘non-commercial’ label also indicates that these sales are generally not a business priority. Conditions for commercial sales of film have been firmly established over the past century, and follow certain rather standardised practices, but there is no similar order for handling ‘non-commercial’ or ‘non-theatrical’ sales.

According to our survey of stakeholders, no two countries follow the same licensing guidelines for access to audio-visual material for school use. Major distributors may establish their own licensing structures, but as Europe is dominated by small production and distribution companies which are unable to set up effective licensing agreements, the role of right-holder associations and the collecting agencies has become increasingly important in the

Does your company have any experience in selling screening rights for educational purposes (i.e. film literacy learning/film education in schools)?



process of a more unified European licensing system.

That said, offer does not exist without demand; there can be no supply of film, and no subsequent agreements concerning the use of film in schools, if there is no demand from schools and teachers. The reality according to our findings - based on information from over 80 interviews with large industry stakeholders and the replies to the questionnaire - is that educational requests for screening rights or for a broader license agreement are rare; only half of the companies approached indicate that they have experience in selling such screening rights (see figure above).

Companies with experience in selling screening licenses were asked about the actual buyers.

The first table shows that individual schools were the most frequent buyers, followed by Film Heritage Institutes and public libraries, while only four companies report experience in selling licenses to educational authorities. We acknowledge that the figures may not be reliable enough to allow us to draw proper conclusions. These figures however certainly suggest that schools are often left to develop individual solutions for film access if educational authorities have not concluded a general framework agreement.

While the table (first figure) may lead us to conclude that schools in general are frequent buyers, the data from schools disclose that only 22% of schools acquire films based on a license agreement. 78% either do not have an agreement or are not aware of having one. (second figure)

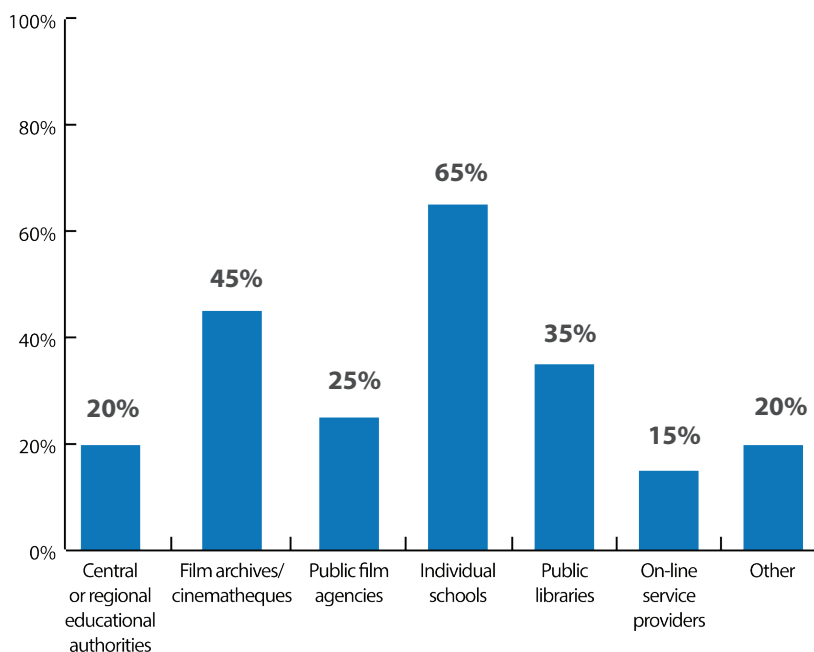
The lack of screening license agreements differs significantly among European countries. The table below identifies countries where less than 20% of schools have acquired screening licenses. The table also shows a high percentage of unawareness of license agreement existence. (Table below)

Schools may negotiate individual license agreements. However framework agreements which cover the use of films for all schools in a country or a constituency, are negotiated between the relevant public authorities and the collecting societies, and consequently produced.

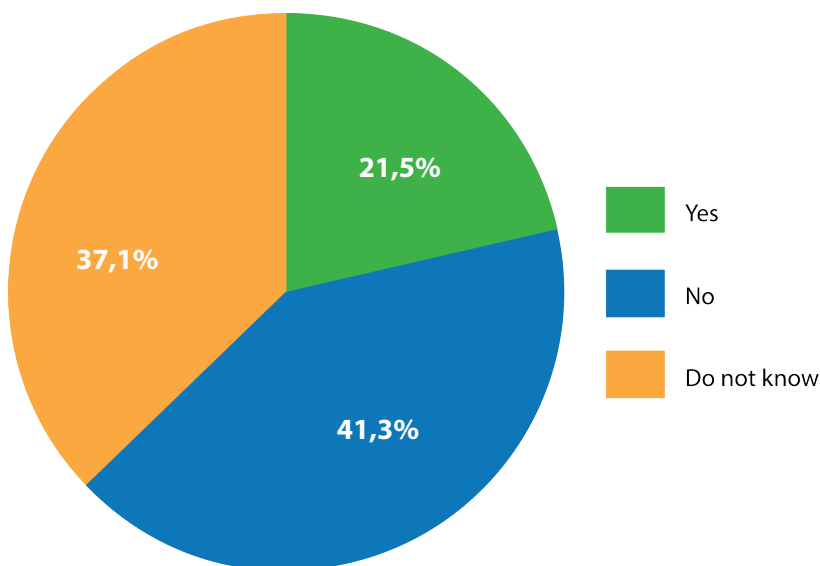
Many producers and distributors refrain from negotiating license agreements but work within national and European umbrella organisations which represent producers and film distributors, DVD and online content. They also provide support for the educational use of film materials, in particular the study of film in schools. These umbrella organisations cannot negotiate on behalf of their members but they do provide for the exchange of national experiences and practices; moreover one of their key tasks is to assist them in establishing effective and workable solutions which allow framework agreements and those pertaining to standards.

Both the IVF ("International Video Federation") and FIAPF ("International Federation of Film Producers' Associations") recognise that the use of film and

#### Buyers of screening rights/licenses



#### Schools with license agreements for the use of films as reported by teachers



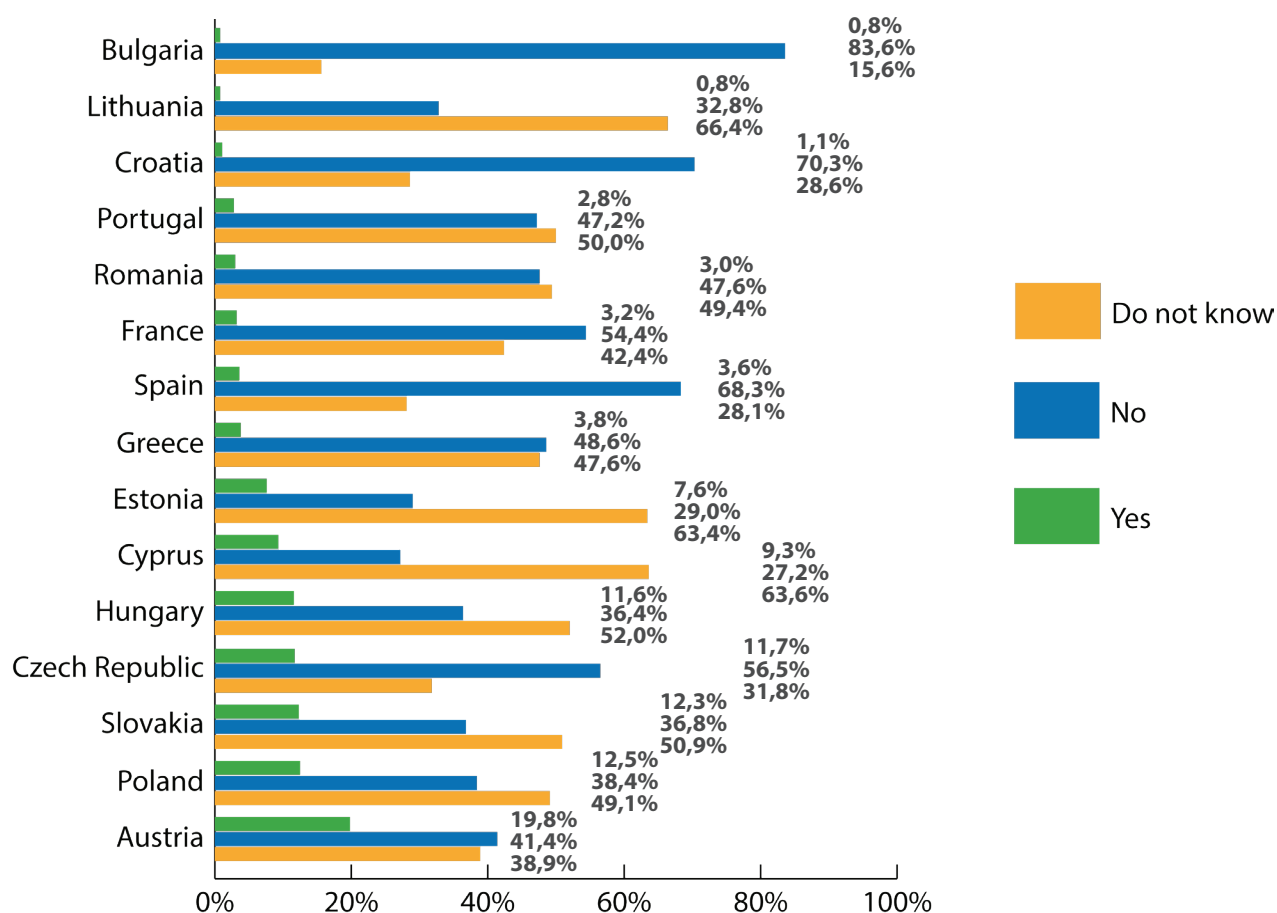
audiovisual works in the context of teaching and education is dealt with in Articles 5 and 6 of the EU Copyright Directive. Said articles allow the member states' flexibility to implement exceptions for illustration for teaching purposes as well as encouraging licensing solutions negotiated with right-holders. According to both organisations, institutions that require broader use of copyright materials beyond national exceptions can explore licensing alternatives with the relevant right-holders.

When schools report that obtaining licenses is too burdensome and costly it underlines the need for collective agreements between right-holder organisations and the relevant authorities. As a

matter of fact, successful outcomes of framework agreements will typically have been negotiated between a right-holder organisation and/or collecting agency and a public authority.

If we carefully examine the companies which sell screening rights to schools, it is interesting to note that they often show a higher degree of engagement with film literacy, going beyond simple film exploitation. In many cases, those companies either produce educational materials or collaborate in one way or another with schools by providing practical or theoretical teaching programmes. This observation is supported by evidence from interviews with industry stakeholders, as well as by the research behind the

**Countries where less than 20% of schools according to teachers' replies have license agreements**



large amount of case studies presented in this report. The following two figures demonstrate the levels of engagement such companies have in supporting schools.

The industry engagement with schools shows a strong recognition of the importance of film literacy both in general and in the interest of the future of European film. However, several interviewees expressed their concern about the ambivalent attitude of the educational authorities towards the recognition of film literacy in the compulsory curricula.

### 2.3. Film and audiovisual content within school grounds

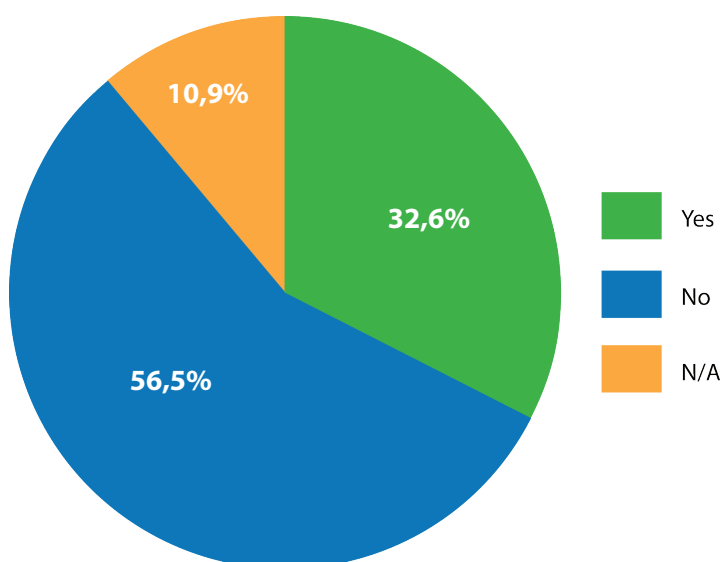
Films and other audio-visual content should be easily accessible in schools; this is, unfortunately, not always the case, unless an agreement is in place, as it grants legitimate access to films etc. License agreements may have several formats and use different platforms for access. They may also be granted to individual titles, though it is more common for them to be for a film catalogue. DVD is the predominant form but online content streaming is increasingly present in schools. Other audio-visual content such as TV-programmes are acquired online.

According to the schools survey, access to content comes through the following channels (see figure page 47).

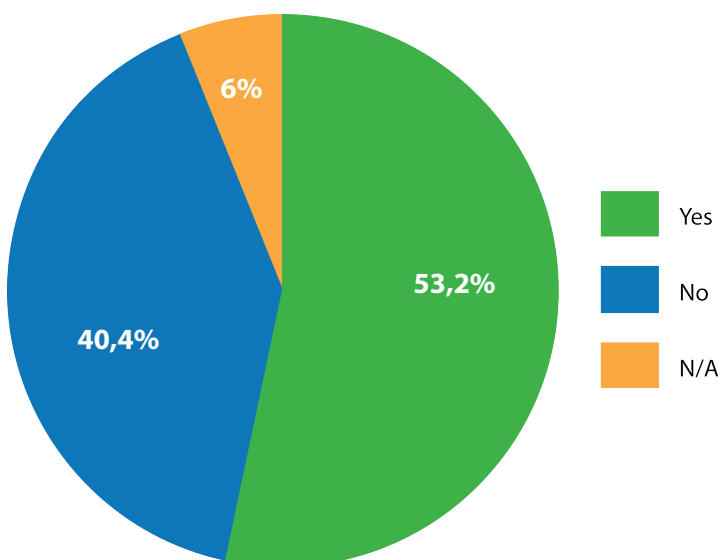
More than 60% of respondents indicate "teachers' own resources" as a source of audio-visual material. Together with school video libraries, these resources are likely to be DVDs. In both cases, especially in the case of "teachers' own resources" there is a very high probability that no screening licenses have been obtained for these DVDs and it is likely that teachers are unaware of how screening rights could be acquired.

Online access to films in schools is still generally rare in aggregated terms in Europe, essentially due to the lack of the necessary bandwidth which would allow a minimum quality picture. Where such levels do exist (and excluding here the undeclared and immeasurably illegal downloading of films) online access can be via VOD or SVOD (Video on Demand

**Does your company produce any educational aids/materials for use in film education in schools?**



**Does your company in any way collaborate with schools by providing practical or theoretical teaching programs for film education?**



or Streaming VOD) of commercial access, web platforms including HD quality videos, OTT devices<sup>[19]</sup>, or specialised platforms through which audio-visual content is made available specifically to schools and their students.

“EuroVod”, the association of European independent online film distributors, has formally collaborated with this report to provide information regarding some of their members’ relevant activities. They have repeatedly communicated their availability for general agreements to educational and film authorities, which would provide direct access to their catalogues for schools and those viewers entitled by schools. However, such proposals have yet to be transformed into generalised schemes, and in more than one case their members recall donating free catalogue access codes to schools, which had still not been used many months after the launch of the plan.

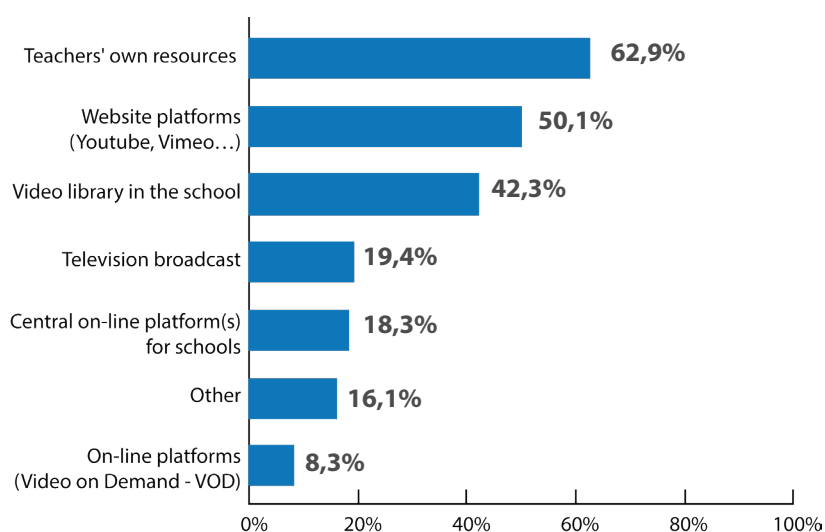
Web platforms such as YouTube, Vimeo, Daily Motion, etc. are identified as important sources of content. As it is well known, the streaming of content (downloading from those platforms is not possible in principle, unless specific software is used to alter the platforms’ original state) from these sites is free and not subject to licensing. The possible implications of such content being illegally uploaded into these websites exceed the aim of this report. However it is natural to assume that in these cases good faith will push teachers and schools to believe, sometimes in error, that all content available through “legitimate” platforms must therefore be legitimate as well, and can be shared without any further consideration to rights or educational exceptions.

We must also consider online platforms which are specifically set up for school usage. This appears to

be a most recommendable method as it combines a pre-selected catalogue intended for school usage with the corresponding licensing scheme in support of that usage. While we do describe several of such cases<sup>[20]</sup>, it cannot yet be considered to be a generalised scheme in Europe. In technical terms, as well as in relation to the questions posed in terms of rights clearance, this option is not too distinct from the possibility of a single school developing a video platform for its students, which can eventually be accessed from their own computers at home.

It must be noted that there are significant differences between the statistics of each member state. Furthermore the fact that license agreements and access to film catalogues (either DVDs or online) are common in several countries, especially in Northern Europe, whereas they remain more rare in others.

#### From where do schools acquire films and other audiovisual material?



<sup>19</sup> Over-the-top video or OTT is a general term for entertainment services accessible over a network that is not offered by a network operator. Increasingly, DVD players, video game consoles, “smart” TVs and other devices include built-in wireless connectivity which, using an available wireless network, pull content from the Internet and deliver it to the TV set or to a projector. The provider may be aware of the contents of the IP packets but it is not responsible for, nor able to control, the viewing abilities, copyright, and/or other redistribution of the content. Any content suited for TV can be delivered via these OTT applications, which typically include video platforms as YouTube or Dailymotion; catch up TV; and access to one or several SVOD movie services. Schools can have this access too, and often will, as it is progressively just a built-in offer of new connected devices.

<sup>20</sup> Austria – Film ABC; Filmmuseum Wien; Belgium – Lessen in Het Donker; MOOV; Ecran large sur le tableau noir; Czech Rep.- Jeden Svte na školách; Denmark – CFU; AVU Media; Filmcentralen; Finland – Koulukino; Valve Film School; France – Institut Jean Vigo; Italy – Schermi e lavagne; Latvia – Splendid Palace; Netherlands – Movie Zone – EYE; Natioanl Film Festival for Students, NFFS; Cinekid; Poland – FilMOTEKA Szkolna; UK – Into Film; BFI Education & Research. For details see Annex 1.

## 2.4. Film and audiovisual content outside school grounds: the role of facilitators and promoters

The study has so far focused on access to films and other audio-visual content in schools and not on the importance of film literacy-related activities, which take place out of schools. However, this distinction may not be clear in some cases: as we have shown in the long list of case studies (see Annex 1), film education takes place through a mixture of activities both in and out of school.

Schools may choose between a variety of options: 'School in Cinema' programmes offer theatrical screenings in commercial cinemas; film clubs organise screening programmes in and out of school supported by public film bodies and distributors; film festivals often include a specific educational dimension complementing their main activities; "itinerant festivals" secure access to movies that would otherwise not be available; and in this context film archives and cinémathèques play an important role, at least for schools in proximity of their location. Such a diversity of options requires collaboration between schools and external parties: film distributors, theatres, and indeed, dedicated institutions of public or private nature acting as facilitators.

We believe that the effectiveness of a regular film literacy teaching programme will depend on being delivered in schools. However, screenings outside of schools will, for many students, be the only way to experience and learn about film. The value of the cinema experience will remain essential for the appreciation of the magic of cinema and film as an art form and a contemporary language.

As documented in our country-by-country case studies (Annex 1), many pupils will receive part of their film experience and education in cinémathèques, commercial cinemas and at film festivals. Film literacy courses for teachers and practical film courses for children and youth as well as for teachers are important activities that help compensate the absence of similar training opportunities in teachers' colleges and in schools.

## 2.5. The role of film heritage institutions

The Film Heritage Institutions keep playing an important role in access to film and introducing film literacy in schools. Promotion of film education and film literacy is part of the public interest mission of Film Heritage Institutions and almost all of the members of the European Association of Cinémathèques (ACE) were and have been active in this field for decades before film teaching entered the classroom. Cinémathèques are linked to film archives internationally and are therefore able to present films in a historic context and as an art form and language.

Many Film Heritage Institutions also offer further programmes, workshops and courses for pupils and teachers:

- Cinema screenings for children and young people
- Film and media literacy workshops for children and adults to learn about film making and the medium's narrative aspects
- Guided exhibition tours to learn about the history of film (optical devices,
- 'Magic lanterns' etc.)
- Workshops, seminars and conferences for teachers and media instructors
- Development and dissemination of teaching materials about film
- Children's film festivals

The activities of the cinémathèques are most often bound to their physical locations and outreach is therefore limited to children and schools in reasonable proximity of a cinémathèque.

### 2.5.1. Film festivals for children and youth

Our research has identified 94 film festivals for children and youth spread throughout Europe. The festivals represent an important alternative to the abundance of commercial cinemas providing film for mere entertainment purposes. Films are selected on the basis of overall quality, human values, cultural diversity and entertainment factor. Many of the films shown at the festivals will never achieve commercial distribution, which is a great loss for those who cannot attend the

screenings and for the quality and diversity of cinema culture at large.

ECFA (European Children's Film Association) monitors the activities of film festivals around the world. Teachers' experience and industry professionals are shared in the ECFA journal. Some 60 children's film festivals are organised through EFCA. The organisation exists for all those interested in high quality films for children and young people: filmmakers, producers, promoters, distributors, exhibitors, TV-programmers, festival organisers and film educators. Experiences are shared in the EFCA Journal. ECFA's film festival database is also an interesting resource for teachers and students that help them finding festivals by accepting student film productions. Some festivals have travel grants for schools with limited budgets.

Audio-visual media in general and cinema in particular is a vehicle for artistic communication and cultural transmission. With a modern world which is developing into a "global village", children and young people have ever more access to culture and those who engage with cinematic media are ever more numerous. In this landscape EFCA seeks to develop a positive attitude amongst our youth towards European films with the goal of establishing profitable audiences that strengthen films' cultural, economic and political elements.

The children's film festivals very often collaborate with schools and organise screenings for them, containing introductions, analytical exercises, workshops in filmmaking etc. Examples of this kind of collaboration are included in the Case Studies section of this report.

### 2.5.2. Student film festivals

A number of festivals focus on showcasing films produced by school children and youth. The number and interest are growing due to access to inexpensive digital production equipment.

The existence of student-produced films signifies an important step in film education, from film language understanding and critical awareness of its content to creative film-thinking to convey meaning and ideas. This development has been facilitated first and foremost by digital technologies - that in turn also allow students to self-publicise their works on internet sites, such as YouTube and Vimeo.

A number of film festivals have specialised in showing students films or present these in sidebars to main festivals.

Some of the well-established festivals are: Camera Zizanio, (Greece); Encuentro de Jóvenes - Cinema Jove (Spain); Oregon - Buster.dk (Denmark); Just Film Fest (Estonia); Firenze Festival (Italy); Animateka (Slovenia); Nationaal FilmFestival voor Scholieren (Netherlands); DOK Leipzig (Germany); World Festival of Animated Film (Bulgaria).

### 2.5.3. Theatrical screenings

Research has shown that a significant percentage of children below the age group 12-14 have never seen a film in a cinema. This can be explained by the decreasing number of local cinemas in general, and in Eastern and Southern Europe in particular. New cinemas are being built in the major cities in the form of multiplexes, which prioritise commercial films with large audience potential. Alliances between schools and independent cinemas have therefore become increasingly important to ensure that all children have at some point been able to enjoy the 'cinema experience'.

In order to help facilitate this, the Europa Cinemas network of independent cinemas has provided both support and experience. Notably, this support takes into consideration specific programming in terms of European films and screenings geared toward young audiences and school pupils. Also to be considered are exhibitors' activities, publications, mailings and promotion for films and screenings, as well as participation in joint activities developed at national or European level.<sup>[21]</sup>

Due to the lack of film theatres in many rural areas, some associations and NGOs, such as Cinemobile (Ireland), Roadmovie (Switzerland) or Mucho (+) que cine (Spain), and others detailed in the Annex 1 to this report, bring the art of films through a cinema on wheels; the organizations go to different counties with the necessary equipment and organize screenings, for children or for a larger audience.

<sup>21</sup> Among many examples, some of them described in the Annex 1, this would be the case of Vision Kino's film week (Germany) or the activities of Lessen in het donker (Belgium). Some privately owned film theaters also follow this strategy: Kinobalon Programme (Slovenia), Sklavija Kino Centras (Lithuania), Cine Clube Viseu (Portugal).

#### 2.5.4. The wider role of public film agencies and private public organisations

Growing awareness of the impact and scale of moving image media, has led a vast and diverse group of public film institutions and public/private non-profit organisations to make their resources and expertise available to schools. These are often supported by specific educational material that can help teachers to deliver film literacy. Some of these institutions have become responsible for national policy and for providing schools with visual and supporting material in accordance with educational authorities.

Research carried out among National Film Institutes and Film Heritage Institutions demonstrates the allocation of an array of responsibilities to public institutions that may have had a more limited remit from the outset. This highlights the increasing acknowledgement of the importance of audio-visual content, particularly in relation to children and youth. The span of activities of 40 European public institutions are listed in the first table.

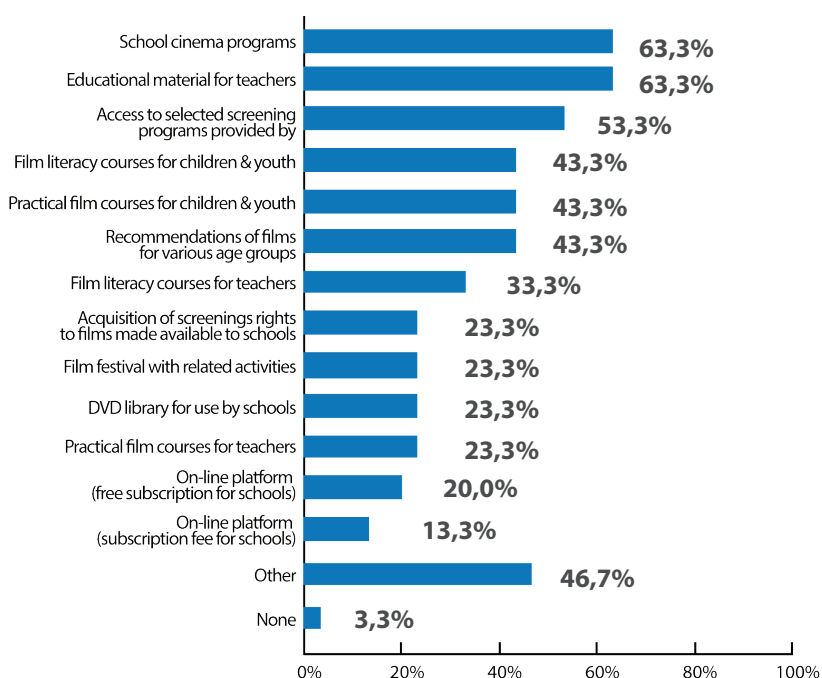
School cinema programmes, educational materials and archive/cinematheque screening programmes are the most widely available resources. As we have already mentioned however, film experiences shared with other students out of school premises will be for many the only real exposure and learning opportunity they will have.

A significant number of these activities have been explored in detail in Annex 1, Country Reports and Case Studies of this report.

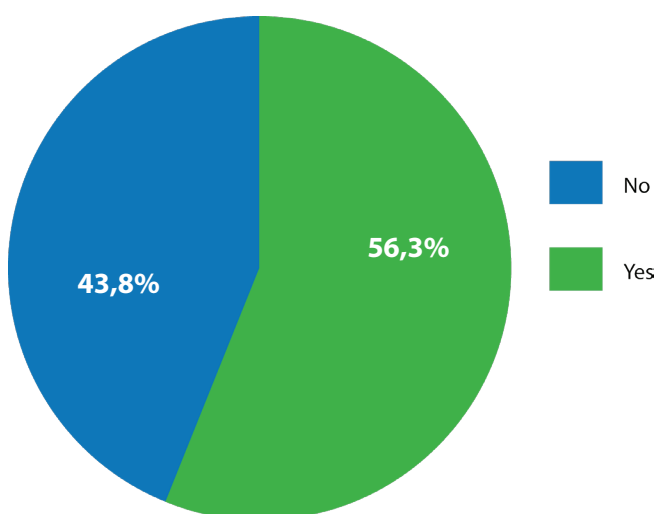
The activities and initiatives are in 56% of cases consistent with the overall policy strategy for film literacy learning. (second figure)

The engagement of public film bodies and the film industry to advocate and contribute to film education in schools can be seen as compensation for the lack of recognition and initiative by educational authorities. The publishing industry does not need to step in to secure traditional literacy in schools, but when it comes to audio-visual media, there is still progress to be made.

#### Which of the following specific activities or programs of your organisation/ institution are aimed at children & youth?



#### Are the activities/programs offered by your institution part of an overall public strategy for film literacy learning?



### 2.5.5. Good practices for promoting and facilitating film literacy

The FilmEd study has identified some ninety activities and programmes across Europe which aim at promoting and facilitating film literacy in schools. Country reports and case studies are available in the Annex 1 of the report.

Activities range from comprehensive national schemes to small semi-private programmes. The facilitators are public film institutes, film heritage institutions, public-private organisations, film festivals and private companies.

The following list aims at distinguishing between the characters of the various activities:

- Film education as a subject in its own right with film screenings in schools or cinemas as part of a pedagogical programme.
- Film workshops where students express their ideas and thoughts creatively through film.
- Film festivals aimed at children and youth, some also showing films made by students.
- Online platforms for sharing and exchanging experiences – students and teachers.
- Provision of educational materials related to specific films and age groups.
- Film literacy learning courses for teachers.

The outreach of activities varies considerably, but what they have in common is to support and promote the film literacy agenda: Analytic and critical understanding of moving images.

## 2.6. The implementation of film literacy constraints and possibilities with regards to the film industry

The barriers that stand in the way of effectively implementing film literacy in European schools can be divided into two groups. One concerns the cost of access to film and other audio-visual content, as well as a lack of availability of relevant films and other audio-visual materials. The other group is the lack of public policy (a lack of training for teachers in delivering film literacy, inflexibility of teaching priorities in schools syllabi, and lacking of infrastructure, technical resources, and teachers' ICT skills). As mentioned

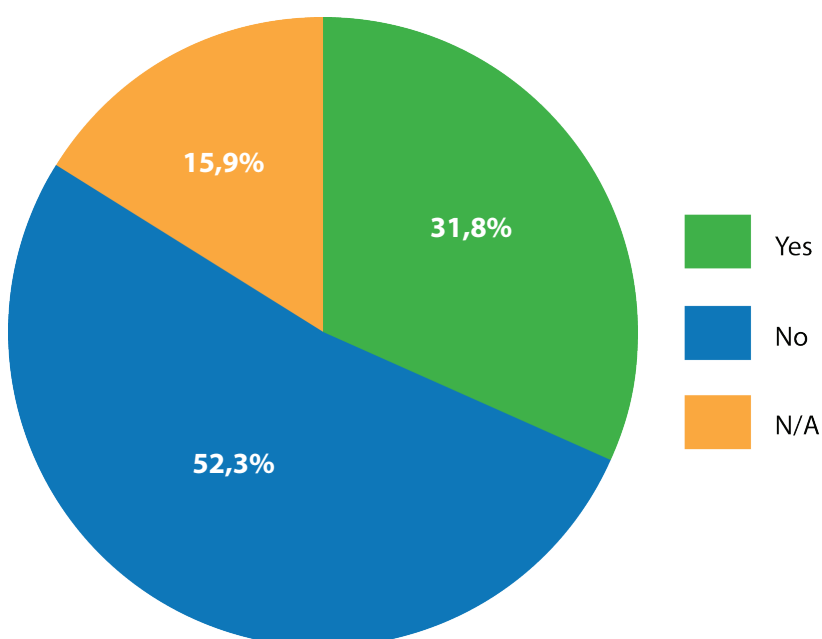
in detail in the corresponding section (1.3.5 Cost), we do not believe that the cost of infrastructure used to show films is a serious obstacle (setting aside the cost of high-speed internet which, because of its wide range of uses, would constitute more than just a film-screening cost).

### 2.6.1. Cost of access to films and other audiovisual content

As mentioned in the corresponding chapter (2.2 Supply and Licensing of Film and Other Audiovisual Content), the study of licensing systems and their costs demonstrates a diversity of options, which are not always easy for laymen to interpret. Schools were asked whether or not they had license agreements in place for the use of films, and if obtaining such agreements was a burdensome and costly experience. 21% confirmed that they had license agreements whereas the majority had no agreement or was unable to say. 76% found that obtaining licenses was burdensome, though we cannot say if this reply is based on experience or opinion.

When we asked commercial companies about obstacles preventing schools from accessing film for educational purposes, only a third had encountered obstacles (see figure).

Commercial companies indicating the existence of obstacles for schools to access films



Some distributors claim that it is not clear to schools what the best way to access education-friendly films is and that not enough of those available are considered affordable when acquired individually. Drafting contracts with individual schools is cumbersome and a standard agreement would be beneficial to all. Many schools use films without paying for a license and seem to be wholly unaware of copyright regulations. Schools and right-holders do not freely communicate between themselves and governments should be responsible for negotiating agreements with distributors.

While access to relevant films and other audio-visual content, and the cost of this are important factors, which require rational solutions, it is equally obvious that all causes are inter-linked. Without official recognition of the importance of film literacy there will not be any progress in the training of teachers, infrastructure or in securing license agreements that can give access to relevant films and other such audio-visual content.

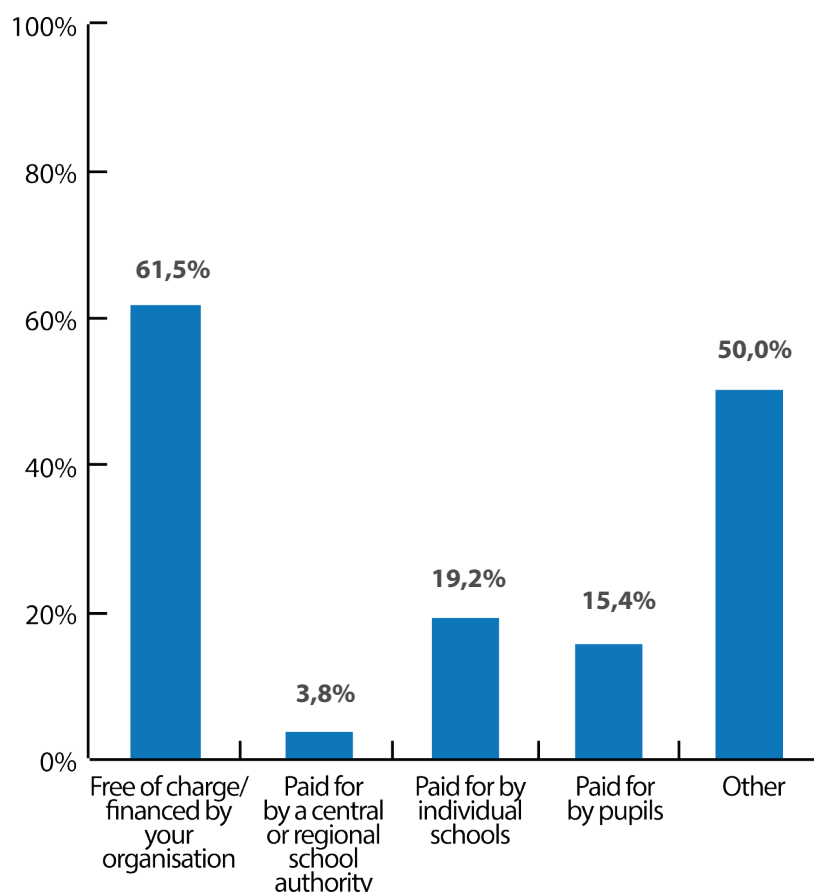
### 2.6.2. Cost of content provided by public film organisations

Various activities offered by public film organisations – mentioned earlier – are often free of charge, but payment by schools or pupils is also common. School authorities though, are often not involved in out-of-school activities and here we should note that the public film institutions normally receive their funding from Ministries of Culture or other publicly introduced schemes, such as national lotteries, and therefore are able to provide access for free or at a nominal cost. 'Other' shown as 50% in the table refers to other individual arrangements not covered by the four options (see figure).

### 2.6.3. License agreements and costs

General access to contemporary films and, in particular, films that are still in commercial distribution, requires an agreement with the right-holders. Distributors acquire relevant licenses to distribute films (through various distribution channels, including online) from producers. If license covers non-theatrical use, e.g. educational use, distributors may enter into agreements directly with educational establishments for the catalogue that they have licensed. The US

### Payment for content provided by public film institutions



Motion Picture Licensing Corporation (MPLC)<sup>[22]</sup> issues licenses through their representatives in Europe. Examples of such include the "Swedish Film AB"<sup>[23]</sup> and "Elokuvalisenssi"<sup>[24]</sup>. MPLC is representing the most important US studios but in several European countries MPLC will also offer access to major local distributors and independent distributors. "Filmbank"<sup>[25]</sup> issues Public Video Screening Licenses (PVSL) in the UK.

22 Motion Picture Licensing Corporation – [www.mplc.com](http://www.mplc.com)

23 Swedish Film AB – [www.swedishfilm.com](http://www.swedishfilm.com)

24 Elokuvalisenssi – [www.elokuvalisenssi.fi](http://www.elokuvalisenssi.fi)

25 Filmbank – [www.filmbank.co.uk](http://www.filmbank.co.uk)

The Public Video Screening Licence (PVSL) is for premises where films will be shown regularly to a non-paying audience. The PVSL will cover the use of films from Filmbank's catalogue that contains international as well as British titles.

Framework agreements are usually entered into by the national members of IVF<sup>[26]</sup> and FIAPF<sup>[27]</sup>, as is the case for example in Denmark with "Copydan AVU-medier"<sup>[28]</sup>. Other framework agreements are managed through producers Collecting Societies, as in France and Germany. In general, the choice of organisation may also depend on the structure of national copyright exceptions for educational use.

26 IVF International Video Fédération – [www.ivf-video.org](http://www.ivf-video.org)

27 FIAPF (Fédération Internationale des Associations de Producteurs de Films, International Federation of Film Producers Associations) – [www.fiapf.org](http://www.fiapf.org)

28 AVU-medier – Copydan – <http://www.avumedier.dk>

The 'Danish model' involves several parties: Local Government Denmark – Filmret (Rights-owner organisation) – Copydan-AVU media (Collecting society) – CFU (Ministerial Centre for Educational Materials) – Filmcentralen and the individual schools.

In order to give legal access to the use of national and international audio-visual material in the classroom, Filmret together with other right holders entered into a framework agreement Filmaftalen (The Film Agreement) with Local Government Denmark (KL) in 2007. The Film Agreement is managed by Copydan AVU-media. Copydan AVU-media is owned by 30 different rights organizations, representing the culture industry in Denmark.

Access to audio-visual material - films and TV-programmes is delivered by CFU either by streaming or DVDs against an annual subscription fee to Copydan AVU-media and CFU.

### Variety of costs and licensing schemes in Northern Europe

| Country                        | Licensor<br>Film access                                     | Domestic<br>fiction<br>films | Foreign<br>fiction<br>films | Documentaries | TV-<br>programs        | Cost per<br>student/<br>year                     | Paid by                                       | Percentage<br>of school<br>subscribers            |
|--------------------------------|-------------------------------------------------------------|------------------------------|-----------------------------|---------------|------------------------|--------------------------------------------------|-----------------------------------------------|---------------------------------------------------|
| Denmark                        | Filmcentralen<br>Streaming                                  | Shorts                       | Shorts                      | x             |                        | €0.3 - €1                                        | Schools                                       | 95%                                               |
| Denmark                        | AVU-media +<br>CFU<br>Streaming + DVD                       | x                            | x                           |               | Danish<br>public TV    | €0.6 (Basic<br>fee)<br>€2.5 (TV)<br>€2.7 (Films) | Schools                                       | 99% TV-<br>programs<br>68% Fiction<br>films       |
| Sweden                         | Swedish Film AB<br>DVD + streaming                          | x                            | x                           |               |                        | €1.6                                             | Schools                                       |                                                   |
| Finland                        | Toutos<br>Collecting society<br>DVD                         | x                            |                             | x             | Finnish<br>public TV   | €2                                               | Schools                                       |                                                   |
| Finland                        | Elokuvalisenssi<br>DVD                                      | x                            | x                           |               |                        | €3.3                                             | Schools                                       |                                                   |
| Norway                         | Norwaco AV-licens<br>DVD                                    | x                            |                             |               | Norwegian<br>public TV | €1.9<br>average                                  | Municipalities                                | All public<br>schools                             |
| England                        | Filmbank – provided<br>by Intwo Film<br>Streaming + DVD     | x                            | x                           |               |                        | Free                                             | Government                                    | All public<br>schools                             |
| Scotland<br>Wales<br>N.Ireland | Filmbank - PVSL<br>Public Video<br>Screening License<br>DVD | x                            | x                           |               |                        | €0.3                                             | Schools or<br>local authority                 | Variable<br>according to<br>nation and<br>schools |
| UK                             | Screenonline<br>(Heritage films + TV)                       | x                            |                             | x             | x                      | Free                                             | Provided by<br>British Film<br>Institute, BFI | All public<br>schools                             |

Filmcentralen is the Danish Film Institutes' online film service with more than 1400 films plus teaching material aimed directly at education in schools. When the Danish Film Institute funds the production of shorts and documentaries, the film institute acquires the non-commercial rights for schools and libraries.

As the situation differs somewhat from country to country, information on framework agreements and possible schemes managed collectively may be provided either by the local film producers' association or the local Ministries of Culture and Education. It could also be provided by the National Film Institutes, which in some countries play an enterprising role in the organisation/provision of access to films for educational use. Examples are explained in more detail in the UK, Danish and Finnish case studies (annex 1).

The table (page 39) shows a variety of costs and licensing schemes in Northern Europe (see previous table).

When examining the examples there is a distinction between agreements made between right-holders (or their organisations) and intermediate bodies, and those made directly between schools and licensors. The first category is characterised by a selected range of titles made by experts in film and film literacy and for which educational materials are being made available. The intermediate bodies here are public film institutes or educational authorities. The direct license obtained by a school leaves the choice of films to the individual schools and provision of educational back up is not always an option.

The variation in costs is quite significant and it would require a rather detailed study to compare the actual schemes in terms of deliverables. Schools or public authorities pay for all the schemes, thus securing a very high degree of access and subsequently a substructure to provide effective film literacy learning.

#### 2.6.4. Concluding remarks

Having considered the above, it would be a mistake to present those who put their money at risk in the film industry - and who thus have legitimate business interests to protect - as causing obstacles related to film literacy. We can confirm that the research conducted around this report, including the large amount of interviews with some of the most representative companies and organisations in the European film industry, seems to prove the existence of a positive degree of interest from right-holders and other such parties in increasing the availability of film content to schools and young audiences within the school system.

However, a serious lack of communication is evident at all levels between the film industry and the educational community, if we exclude those who, within the film industry, have children and young audiences as their main target.

Our report includes a thorough mapping of copyright laws in European countries which proves the existence of different systems and different levels of response to the issue of legitimate access to film content for educational purposes and in most cases no legal modification is actually needed at all to facilitate licensing for school use. What is certainly needed however is an effort from both "sides", and from their representatives, to work together and obtain the best possible solution in each case and context. Information regarding existing possibilities is often ignored; contractual standardisation for licenses and other formulae should be considered. Obviously, there is a role to be played by public authorities, those who are responsible for both film support and for education.



# Copyright

## 3. The legal framework. European copyright laws: exceptions and limitations to copyright concerning films for educational purposes

### 3.1. Introduction

This last part of the report describes the legal position as far as copyright in relation to film education is concerned, with particular emphasis on the particular kinds of film uses allowed in schools and their limitations, for the purpose of illustrating teaching and under corresponding licensing agreements. As it will be explained in detail, there are two basic legal schemes which may authorize the use of copyright protected audio-visual material in schools: general “limitations” or “exceptions” to copyright established by law and related to the use of that material for teaching purposes; or licenses granted by the copyright owners authorizing such use. In this chapter we will carefully consider the legal regime of both limitations and corresponding licensing systems as they operate in Member States. However, we are very conscious that, from the perspective of teachers and schools, it seems immaterial for the purpose of fostering film literacy whether the use of such content is permitted under a teaching limitation or is authorized under an effective licensing scheme. What matters the most is that access is provided in an efficient and speedy manner.

The chapter covers, first, the general framework under European copyright legislation, including brief descriptions of film protection under copyright law and the exclusive rights affected by different uses in schools. We will then consider in more detail the space provided under European law to national legislators by portraying the scope of the teaching limitation and the requirements of the three-step test, followed by a short description of different licensing solutions. Subsequently, we will turn to the details of national copyright laws in domestic laws, including a general overview of the main differences between Member States. We have structured the analysis of national laws broadly in accordance with different uses.

From our perspective these can be mainly differentiated between the use of electronic devices containing the film in any format (analogue tape recordings -still in use-; or digital recording devices as DVDs, Blue Rays and others); and, on the other hand, access to those films online, be it in VOD format (Video on Demand via streaming or downloading) or SVOD (Subscription Video on Demand). In addition, there are other scenarios to consider: schools may wish to store a copy of such a movie on a data storage

device, to be made repeatedly available to students; or they may want to store the film in a central server accessible via a school intranet. For the purpose of simplifying, we will here assimilate to streaming other forms of consecutive access to films without access to a data archive such as SVOD options offered by Over the Top (OTT) equipment<sup>29</sup>. These scenarios require serious legal analysis both as regards the overall legal framework under European Union law and under the copyright laws of Member States. Our surveys among schools in Europe, as it has been explained in full, show that for most schools DVDs are still the most common use to show audio-visual content, followed by streaming and downloading films supplied by commercial platforms and other entities. The use of shared content via a school digital film database is rare. Nevertheless, we feel that an analysis of the idea of teaching exception as regards the possibility to establish such database for the purpose of streaming a film in the classroom, and possibly beyond, also deserves attention.

This chapter concentrates on the scope of limitations or exceptions affecting the use of films in schools under existing statutory copyright law, and briefly presents, where applicable, licensing schemes based upon or complementing the teaching exception as defined in national laws. Details on specific licensing models have been described previously (see section 2.6.3).

Within the remit of this study, we will exclusively focus on the use of works and other subject matter protected by copyright law for the specific purpose of teaching. We must note, though, that this restriction (for the purpose of teaching) does not imply that certain other uses of audio-visual content within a school cannot be covered, in individual cases, by other limitations to copyright. There are other limitations which may have a basic impact on teaching film literacy: the limitation for the purpose of quotations, which will not be covered here in detail<sup>30</sup>; individual uses by students under limitations for personal copying or use, or for purposes such as private study.

There is also the limitation permitting consultation of works on dedicated terminals on the physical premises of, *inter alia*, educational establishments<sup>31</sup>. This provision - which refers to, as far as is relevant here, private study - may indeed complement existing teaching exceptions, but would require that the showing of films takes place at a terminal and on an individual basis. It cannot apply to face to face teaching of a group of pupils. In addition, only few Member States have implemented this exception to cover educational establishments<sup>32</sup>. In those countries a school might be able to rely on the "consultation" exception for individual uses in addition to what is allowed under the teaching exception.

The larger issue of how to adapt copyright limitations to digital and/or online uses is subject to an ongoing debate<sup>33</sup>, and at the time of writing, has been the object of several policy and legislative announcements of reform by the Commissioners competent in the matter. It must therefore be expressly said from the outset that the question of the scope of permissible film use in schools cannot be conclusively answered without considering the broader, and complex, issue of copyright in the digital environment.

Copyright issues arise whenever a school or teacher wishes to show films to pupils. The first question to consider is whether one of the exclusive rights under copyright law will be affected. Secondly, whether that particular act, that specific mode of screening and sharing a film or audio-visual content is permitted under an exception or limitation to copyright, and/or can be related to licensing schemes where applicable. The replies to these questions will largely depend on the copyright law of the Member State, of the school in question, as the precise scope of educational uses is governed by limitations, which differ across Member States. However, some guidance is increasingly being provided by the jurisprudence of the European Union Court of Justice.

29 Over-the-top video or OTT is a general term for entertainment services accessible over a network that is not offered by a network operator. For more information, see section 2.3.

30 This is covered by Xalabarder, in Torremans, Copyright Law: A Handbook of Contemporary Research, p. 383 et seq.

31 Article 5(3)(n) EUCD.

32 Belgium, Estonia, Hungary, Italy, Lithuania, Luxembourg, Poland, Spain and Portugal.

33 See in particular the report on the responses to the public consultation on the review of EU copyright rules (July 2014): [http://ec.europa.eu/internal\\_market/consultations/2013/copyright-rules/docs/contributions/consultation-report\\_en.pdf](http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/docs/contributions/consultation-report_en.pdf).

## 3.2. Copyright: the framework

### 3.2.1. Copyright protection of films

It is useful to clarify the general legal framework protecting film copyright. Typically, copyright protects films both as a right afforded to the film director as the principal author of the film, and as a right enjoyed by the film producer. When (as it is most often the case) other works protected by copyright have been created specifically for a film (such as scripts, costume design, stage design, cameras etc.), national laws usually foresee a statutory transfer of these rights to the film producer. In the UK, copyright for a film is owned jointly by the director and producer. The rights pertaining to authorship are protected internationally under the Berne Convention and the World Copyright Treaty; the film producer's rights are safeguarded, most importantly, under the EUCD and national legislation. The rights of phonogram producers and performers (most films will make use of musical works and include performances of such works), are protected under the World Phonograms and Performances Protection Treaty 1996 (WPPT) and the Rome Convention of 1961. Film copyright remains a complex issue, though, as significant disparities exist between national laws. These are not relevant for our project and are not developed in our study.

### 3.2.2. The european copyright directive

The main legislative instrument which controls copyright in the European Union – as far as the remit of our project is concerned – is the “Directive on Certain Aspects of Copyright and Related Rights in the Information Society (Directive 2001/29/EC)<sup>[34]</sup>, hereinafter referred to as “EUCD”. The EUCD is now implemented into the copyright laws of all Member States; other European countries, which are covered in our report as well, are not bound by the Directive, but their systems are not entirely different, as they are all regulated by international copyright convention law (the World Copyright Treaty (WCT) of 1996 and the World Performances and Phonograms Treaty of 1996).

In short, the EUCD introduces a harmonized level of copyright protection with view to create a high level of protection for right holders. As far as film copyright is concerned, the Directive establishes a harmonized

formulation as regards three economic rights under copyright: the reproduction right (Article 2), the distribution right (Article 4), and – most importantly here – the right of communication to the public (which includes the making available of works and other subject matter from a place and at a time individually chosen by the user). Such rights are established in Article 3(1) of the Directive for authors and in Article 3(2) in relation to the neighbouring rights of performers, makers of sound recordings, film producers and broadcasting organizations.

The EUCD further introduced a specific provision for technological protection measures applied to copyright protected works, and other subject matters against acts of individual circumvention and in relation to effective technological protection measures. Both the rights of making available and the technological protection measures are mandatory under international copyright convention law and each follow similar (though not identical) provisions as enshrined in the applicable Treaties mentioned.

### 3.2.3. Copyright limitations

The EUCD foresees (Article 5) that Member States may provide for a range of limitations to exclusive rights; consequently, and this is a very important consideration in our context, limitations to the reproduction right, and limitations to the rights of reproduction and communication to the public right (Articles 5(2) and 5(3)) are not mandatory<sup>[35]</sup>; they may or may not be established by the national legislator of a Member State. It is understood that these provisions are not only an option offered to Member States: they also act as a “maximum”, a red line: it is understood that Member States must not introduce more extensive exceptions or limitations than those. At the same time, the Directive is without prejudice to existing licensing schemes in individual Member States<sup>[36]</sup>, and Member States are free to require the payment of compensation.

As it will be discussed in detail later, among these limitations which may or may not be imposed by

<sup>34</sup> OJ L 167, 22.6.2001, p. 10–19.

<sup>35</sup> However, Article 5(1) introduces a mandatory exception for temporary acts of reproduction which are transient or incidental and an integral and essential part of a technological process.

<sup>36</sup> EUCD, Recital 45

Member States, the Directive includes an exception allowing the use of works for the purpose of illustration for teaching, which covers, under certain conditions, the use of films. Therefore, Member States enjoy a great deal of flexibility in the field of our study.

### 3.3. Exclusive rights and film literacy at school

Schools wishing to show films to students will in principle enter in conflict with one or more economic rights protected by copyright (i.e. a right to prohibit or consent): the reproduction right, which may cover the storing of a film (for instance in a school's intranet server), and the right to communicate works to the public, enshrined in Article 3 EUCD for authors and – under a slightly different formulation – also for other owners of “neighbouring rights”, including film producers.

The uses addressed herein will generally affect more than one exclusive right. The screening of a film in a classroom can at first be classified as an act of public performance: a right which is not harmonised as such under the EUCD but which is protected in all Member States under the Berne Convention. The right to publicly perform a work is typically defined as a use where the public is present simultaneously, that is, at the same time and place. This right should be distinguished from the right of making available, which applies where the public is present at different times and places, that is, where access to a work is offered at a place or time chosen by the user. That is the right which would be at stake in the case of a school accessing a film via streaming, or allowing said access to individual classrooms via access to a central server. If a school wishes to set up such a film database to enable internal streaming, the right of reproduction is also affected, as far as it implies the digitisation of analogue films or any electronic storage of digital content.

To consider the application of the exclusive right of communication to the public or public performance, it needs to be established whether such communication, the screening of the film, reaches “the public”, or whether it is just a private act. In the case of the latter, no exclusive right is affected. The question of the private/public dichotomy remains an important distinction for the purpose of this study, as it depends on how it is answered it

carries different legal effects. These aspects will be considered later with regards to international laws. Opinions are divided regarding what is “public” and what is “private” in a school use of a film under national laws, and there is no guidance from the Court of Justice of the EU as far as educational uses are concerned in the field of copyright. However, the Court has repeatedly used the term “public”<sup>[37]</sup> in other contexts which may allow some considerations. The Court firmly sustains that the notion of the public must be analysed in a uniform manner applicable to all economic rights related with the communication of works, that is, the rights of broadcasting and their corresponding economic rights and the right to make available. The question is much influenced by casuistic approaches. In short, the Court has indicated that the key question of whether a public is reached or not will depend on the size of the audience and on whether the use in question allows such audience to perceive the work, and whether a “new” public is reached that would otherwise not have access to the work<sup>[38]</sup>. As far as acts of making available are concerned, one needs to differentiate further. Here, the question of whether a public is reached or not by the screening cannot be conclusively answered just by referring to the “usual” size of the audience. In the case of access to a film stored in a device or a central server, there can be a “successive public”; a

37 See, in particular, Case C-136/09 *Organismos Sillogikis Diacheirisis Dimiourgou Theatikon kai Optikoakoustikon Ergon v Divani Akropolis Anonimi Xenodocheiaki kai Touristiki Etaireia*; C-306/05 – SGAE [2006] ECR I-11519 (para 34) where it is provided that in “interpreting a provision of Community law it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part” and: “it should be noted that the need for uniform application of Community law and the principle of equality require that where provisions of Community law make no express reference to the law of the Member States for the purpose of determining their meaning and scope, as is the case with Directive 2001/29/EC, they must normally be given an autonomous and uniform interpretation throughout the Community (see, in particular, Case C-357/98 *Yiandom* [2000] ECR I 9265, paragraph 26, and Case C-245/00 *SENA* [2003] ECR I 1251, paragraph 23). It follows that the Austrian Government cannot reasonably maintain that it is for the Member States to provide the definition of ‘public’ to which Directive 2001/29 refers but does not define. (para 31)”;

38 See *Airfield NV and Canal Digitaal BV v Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (Sabam)* (C-431/09); *Airfield NV v Agicoa Belgium BVBA* (C-432/09); *Football Association Premier League Ltd and Others v QC Leisure and Others* (C-403/08); *Karen Murphy v Media Protection Services Ltd* (C-429/08) at para. 197: “public which was not taken into account by the authors of the protected works when they authorised their use by the communication to the original public”.

large amount of people having that sort of individual and interactive access. In the case of film databases made accessible to all teachers and students, it may effortlessly be concluded that a public which certainly goes beyond the usual classroom size is reached. This conclusion is commensurate with the traditional interpretation of the “public”, by the internal or mutual relationship between recipients, as in German or UK law. For example, members of a family are typically considered a private group because each group member shares ties with each other. As it will be seen, the same may be true for a group of pupils congregated in a classroom, because here pupils share a relationship with the teacher and/or amongst each other. In general, however, the interpretation of the term “public” is open to discussion, and the general debate cannot be fully considered here. As regards online uses of films in schools, no authoritative decision has addressed this issue so far. Overall, the scope of application of Article 3 of the EUCD remains a complex issue which raises several important questions in the digital age and enormously transcends the scope of this study.

### 3.4. Limitations in the european copyright directive

As previously mentioned, the EUCD permits Member States to introduce exceptions or limitations to exclusive rights, or to preserve existing ones. Such flexibility of Member States is however restricted to the limitations and exceptions enumerated in Article 5 EUCD.

The Directive itself explains, in its recitals, the general purpose of these limitations as follows:

- (31) A fair balance of rights and interests between the different categories of right holders, as well as between the different categories of right holders and users of protected subject-matter must be safeguarded. The existing exceptions and limitations to the rights as set out by the Member States have to be reassessed in the light of the new electronic environment. Existing differences in the exceptions and limitations to certain restricted acts have direct negative effects on the functioning of the internal market of copyright

and related rights. Such differences could well become more pronounced in view of the further development of trans-border exploitation of works and cross-border activities. In order to ensure the proper functioning of the internal market, such exceptions and limitations should be defined more harmoniously. The degree of their harmonisation should be based on their impact on the smooth functioning of the internal market.

- (32) This Directive provides for an exhaustive enumeration of exceptions and limitations to the reproduction right and the right of communication to the public. Some exceptions or limitations only apply to the reproduction right, where appropriate. This list takes due account of the different legal traditions in Member States, while, at the same time, aiming to ensure a functioning internal market. Member States should arrive at a coherent application of these exceptions and limitations, which will be assessed when reviewing implementing legislation in the future.

#### 3.4.1. The illustrative use of audiovisual works for teaching purposes

This exception for teaching is considered to be a “classic” exception in copyright law, together with a few others. Under international convention law, these exceptions are explained as responding to particular public policy objective, ranging back to the first version of the Berne Convention 1886<sup>[39]</sup>. Educational limitations aim to foster fundamental values, which go beyond the mere remit of education, including access to culture and promoting democratic values<sup>[40]</sup>. It is therefore up to the legislator to strike a balance between the interests of right holders and the public interest in fostering education under copyright law. In this section, we describe the framework of the teaching exception under the EUCD, bearing in mind that in practical terms the matter can only be examined at the light of national law, which will be portrayed in the next section.

<sup>39</sup> Therefore, the interpretation of the text under the Berne Convention may also be used as guidance for the interpretation of Article 5(3)(a) EUCD.

<sup>40</sup> See Hugenholtz/Okedji, *Conceiving an International Instrument on Limitations and Exceptions to Copyright*, Final Report, Open Society Institute 2008, p. 29, [http://www.jprsonline.org/resources/IntlE\\_HugenholtzOkedji.pdf](http://www.jprsonline.org/resources/IntlE_HugenholtzOkedji.pdf).

## Background

Article 5(3)(a) of the EUCD is the central provision which governs the uses for the purpose of teaching. It was modelled upon Article 10(2) of the Berne Convention. Article 5(3) (a) EUCD permits Member States to introduce or maintain exceptions to the public communication right, as well as to the reproduction right, for the purpose of illustration for teaching or scientific research. The provision allows the use of any work or other subject matter for the sole purpose of illustration for teaching or scientific research, as long as the source (including the author's name) is indicated. This can however turn out to be impossible and to the extent justified by the non-commercial purpose to be achieved. The wording is broad and Member States therefore enjoy much flexibility in implementing the teaching exception. We must repeat that the EUCD does not impose on Member States opting for a particular and specific legal framework. They can regulate such education-related uses either under a copyright limitation permitting such uses for free or through solutions which are based on particular agreements, which define the scope of the exception. This can either be a compensation for right holders, or to maintain privately organised licensing schemes specifically for education establishments, thus opting for not regulating such uses under an exception but allowing right holders to exercise the exclusive rights freely. In general, at this junction one should clarify that, overall, the ultimate solution hinges upon balancing the interests of right holders and educational users. How such a balance must be conducted in general is subject to ongoing debates and the question affects all aspects of how copyright should be designed in relation to digital uses.

## Scope of the teaching exception under the EUCD

The teaching limitation established in Article 5(3) (a) applies to both the rights of reproduction and communication to the public. The type of institution which can make use of such an exception is not specified in the Directive, and there are significant divergences between Member States in this respect, for example concerning the application of the teaching exception to private education and

training bodies such as language schools<sup>[41]</sup>. In any case, it is beyond doubt that, leaving aside grey zones and arguable examples, regular public and private establishments of primary and secondary education (which are the object of this study) are covered by the limitation as implemented.

Two further important conditions must be met by schools who wish to rely on the exception in their film literacy activities. In order to qualify, the use of audio-visual work must be for the sole illustration for teaching, and must be justified by the non-commercial (teaching) purpose in order to be achieved. This is generally explained to mean that the use must relate directly to what is being taught (that is, the concrete subject matter)<sup>[42]</sup> and that it must therefore support or materially exemplify the teaching context<sup>[43]</sup>. It must directly correspond to the aims of instruction, and relate to the teaching activity as such<sup>[44]</sup>. Purely recreational or entertainment uses of films are therefore not considered to be covered, as are uses which concurrently fulfil both a teaching and another purpose, as indicated by the term "sole"<sup>[45]</sup>. Very few juridical decisions have, at national level, examined the meaning of "illustration". The German Supreme Court construed this wording as including uses for the purpose of complementing teaching and providing students with a different perspective on the taught content<sup>[46]</sup>, in addition to "deepening, explanation and illustration"<sup>[47]</sup>.

41 The institutions covered by the teaching exceptions under national laws vary. In some Member States, eligible institutions are more clearly defined (Germany: schools and universities as well as non-commercial institutions of further education and of professional training; Belgium: officially recognized or organized establishments; Portugal: institutions not pursuing direct or indirect commercial advantage; Spain: educational institutions that are part of the state school system; UK: "educational establishments" within the meaning of the Education Act 1996). In other Member States, including Cyprus, Estonia, Italy, Latvia, Luxembourg and Poland, the law does not specify exactly which type of establishment is covered. In any, the uses allowed under the national exception should be justified by the non-commercial purpose to be achieved.

42 Dreier, in: Dreier and Hugenholtz, *Concise European Copyright Law*, Art. 10 BC, p. 45.

43 Von Lewinski, in: Walter/von Lewinski, *European Copyright Law*, 11.5.48, p. 1043.

44 Xalabarder, in: Torremans, *Copyright Law: A Handbook of Contemporary Research*, p. 386.

45 Bechtold, in: Dreier and Hugenholtz, *Concise European Copyright Law*, Article 5 InfoSoc Dir., p. 378.

46 BGH, I ZR 76/12, 28.11.2013 - "Meilensteine der Psychologie".

47 As was asserted, more narrowly, in OLG Stuttgart, 4 U

The use must be justified by the non-commercial nature of the activity. This is an extremely relevant condition as regards film uses in schools. Recital 42 of the Directive explains that, for this matter, the structure and means of funding of the establishment in question are not decisive factors in determining whether the activity is to be considered commercial or not.

The question of justification, further arises with regards to the quantity of a work that may be used, and it may arise where right holders wish to offer direct licenses to schools.

So first of all, how much of a film may be used in individual cases<sup>[48]</sup>? Although some domestic laws do precise quantitative limitations, this is not the main angle to consider. The length of a film, which may be used under the coverage of the teaching exception highly depends on the nature of what is being taught, and therefore it relates to what is necessary or required in order to achieve the teaching purpose. Only the part of work necessary for the specific purpose of illustrating teaching justifies the exception to the reproduction or communication right.

And how much is this? In theory that may range from rather small parts or extracts, to the use of entire works. But as it will be detailed, many Member States restrict the use of films for teaching purposes to portions or parts of works<sup>[49]</sup>. This has direct implications for the degree to which copyright law permits schools to engage in film literacy teaching, when it is considered that such teaching requires the showing of entire movies. This is an important aspect. The use of excerpts and full length films, respectively, serves two different or complementary purposes. Excerpts can be used to study the components of cinematic language, such as framing, movement, lighting, sound, editing and of course acting. But appreciation of 'the story' depends on access to a film in full length. So both approaches are needed to become film literate. From the perspective of film

literacy, it may therefore be argued that access must be provided to an entire film so as to fully understand the narrative and how that narrative is presented using the language of film: to see a fragment of a painting is not to see the artwork in its entirety; some compasses of a symphony will not replace listening to the composition in full.

From this perspective, there is a clear divergence between what teachers and pedagogical experts require and the legal framework: even if the teaching exception under the EUCD does not necessarily impose the idea that only parts of a film may be used, Member States have adopted such restriction.

The question of what is justified by the non-commercial purpose may also become relevant where right holders offer licenses for particular online uses (such as granting free or paid access to schools to an online platform, for individual use by students or for its re-dissemination via an intranet). This is because such cases may replace other commercial forms of access available to an educational establishment to the same content, subject to specific terms and conditions under a contractual agreement. In this respect there can also be disputes over the number of films that may be used. It may well be argued that, for example, the storage of films in an internal database can no longer be justified by the teaching purpose. This aspect will be discussed in the context of German law later<sup>[50]</sup>.

It should further be understood that the issue of how these limitations are interpreted in relation to the uses in the digital environment varies from jurisdiction to jurisdiction. For example, and despite the risk of over-simplification, French<sup>[51]</sup> courts may be said to traditionally adopt a more restrictive tendency in interpreting limitations to copyright, overall applying a literal interpretation (therefore, excluding an extensive interpretation). German courts have, by contrast, extended copyright limitations to digital uses even where the relevant provision was limited

171/11, 4.4.2012.

48 This is the accepted interpretation under the Berne Convention: see Ricketson/Ginsburg, *The Berne Convention and Beyond*, 13.45.

49 This will be explained in the next section concerning national laws.

50 See *infra*, pp. 26 et seq.

51 See Galloux, "Exceptions et limitations au droit d'auteur: exception française ou paradoxe française?" in: Hilty/Geiger, *Impulse fuer eine europäische Harmonisierung des Urheberrechts* (2006), pp. 329 et seq.

to analogue uses<sup>[52]</sup>, such as the case of establishing online archives of press articles for the internal use in, for example, a company<sup>[53]</sup>.

### The three-step test and requirements of fairness

Article 5(5) EUCD specifies that the exceptions and limitations foreseen in Article 5 only apply under the conditions of the so called three-step test: limitations must apply (1) for certain special cases, (2) where there is not a conflict with a normal exploitation of the work and (3) the limitation does not unreasonably prejudice the legitimate interests of the right holder.

The test stems from Article 9(2) of the Berne Convention and is present in various international conventions which relate to copyright law. It therefore binds all Member States under international convention as well as under European law, and binds the EU itself.

The interpretation and scope of this important three step provision is debated in academia, and this may well influence future decisions in Member States. That debate predominantly focuses on the impact of the test on exceptions and limitations in general. An extensive portrayal of this debate in detail is outside of the remit of this study. However, some aspects concerning the status of Article 5(5) EUCD and its possible impact on teaching exceptions under national law should be mentioned in order to provide a more complete picture of the framework that applies to the exception.

First, and very broadly, there is a disagreement as to whether the test should be read to contain open

ended principles to be interpreted by balancing the three factors<sup>[54]</sup>, or whether it should be construed as a strict step-by-step assessment. Secondly, there are differences among Member States regarding the status of the test, and these are relevant. Some Member States have introduced the test as part of national statutory copyright law: it is a test to construct the application of the teaching limitation in every single case. When this happens, the test immediately influences the judicial interpretation of the scope of a given domestic limitation. In other Member States this option has not been taken: the prevailing view in those countries is that the test is foremost addressed to the legislator, and that therefore it should generally not operate so as to further diminish the scope of limitations and exceptions under national law. In other words, once the legislator has decided to implement a specific limitation in legislation, it would not be up to courts to alter the scope of application as it is expressed in the statutory language. However, even in these cases this does not mean that the test is entirely disregarded by courts. At times, national courts have applied the test in practice as a guideline, even though it is not necessarily a national copyright law<sup>[55]</sup> element. In those cases applicable to copyright related matters other than the object of this study, the test was employed broadly as a means to balance the interests of beneficiaries of existing limitations, authors and right holders.

Ultimately, many divergent constructions are possible under national law.

a) “for certain special cases”: As far as the teaching exception is concerned, it appears that uses for the purpose of illustration for teaching can be considered “certain special cases”.

b) “where there is no conflict with a normal exploitation”: this is beyond discussion in the use of excerpts during a class. For other cases, that can be a matter of discussion, in particular for full films. It may well be argued that there is no conflict with the normal exploitation of a film where access is provided

52 It should be noted that in the case of libraries a German decision permitted, ultimately, the transmission of works such as journal articles upon the request of individuals for research purposes provided compensation was paid to authors, though this position is not necessarily endorsed in other Member States. BGH, 25.02.99 (I ZR 118/96) – “Kopienversanddienst”, JurPC Web-Dok. 113/1999, Abs. 1 – 82; see also the decision of the Swiss Supreme Court, 4C.73/2007, 26 June 2007, in: *Entscheidungen des Schweizerischen Bundesgerichts* Vol. 133 [BGE] III, p. 473 (noting that the three-step test applies where authors are remunerated via a statutory license and that press publishers cannot rely on the test where authors receive such remuneration for establishing an online press clippings archive).

53 For example, the German BGH interpreted the limitation privileging the reproduction and distribution of press articles (Article 49 of the German Author's Right Act) as extending to a digital in-house archive, provided authors receive equitable remuneration. See BGH, (2002) *Zeitschrift fuer Urheber- und Medienrecht* (ZUM), p. 240 – “Elektronische Pressespiegel”.

54 See Hilty/Geiger/Griffiths, “Declaration on a Balanced Interpretation of the ‘Three-Step Test’ in Copyright”, (2008) 6 *International Review of Intellectual Property & Competition Law* (IIC) 39.

55 For examples see Westkamp, *Study on the Implementation of Directive 2001/29/EC*, pp. 46 et seq.

to films in a closed network which is protected by technological means and only accessible to teachers and/or students. n<sup>[56]</sup>

c) “the limitation does not unreasonably prejudice the legitimate interests of the right holder”: there appears to be widespread agreement that Member States require that some form of fair compensation is given to right holders, and that therefore they are in line with the third step of the test and fulfil the obligation under the Directive.

### 3.4.2. Overview of licensing schemes

Licensing schemes vary between Member States, and those schemes cannot be presented here in meticulous detail. Basically, a first and clear distinction must be made in any case between licenses based upon contractual agreements, and statutory licenses based on compensation, payable under the teaching exception. Neither are mutually exclusive and, as will be seen later as regards national solutions, may co-exist. However, the different types of licenses should briefly be introduced at this stage.

It is known that national legislators are free to decide whether a particular use (or any use) of films in schools should be permitted by a teaching exception. If it is not permitted, schools must seek a license because otherwise the use would infringe copyright. It is then up to right holders to decide whether they wish to retain the option to license schools on an individual basis, or whether they opt for (voluntary) collective licensing. In short, right holders can decide to license rights to a collective management organisation (CMO) to be established by right holders, or to join an existing collective management organisation. For example, umbrella licenses are available for each European Member State from aggregators or from right holders associations such as Motion Picture Licensing Corporation (MPLC), which offers specific licenses for schools. There may also be voluntary licensing schemes, as it has been described in the industry related chapter, entered into between public or semi-public bodies and right holders associations<sup>[57]</sup>. Therefore, licenses may be available

straightaway from right holders or, as the case may be, from collective management organisations, depending on both the repertoire the CMO represents and the modalities of use (DVD, online...) for which a collective management organisation is mandated<sup>[58]</sup>.

In some countries, additional schemes are in place, which also permit the use of cinematographic works in schools for extracurricular general school gatherings, or even for the pure entertainment of students. For license agreements in relation to certain older films, it should also be noted that in some jurisdictions, such as Germany, the mandate granted to a collecting society and any license based upon it does not necessarily cover uses that were unknown at the time the agreement was concluded (i.e. digital/online uses). Furthermore the fact that films incorporate a plethora of other rights means that different organisations in one country may be mandated to administer different rights in one cinematographic work, such as rights of authorship, performance rights, musical rights and producer rights. Moreover, the use of films by way of streaming or downloading is subject to direct contracts with the respective supplier (the online platform, “Over the Top” provider, etc...). These licenses are, foremost, a matter of contract law and the use of its content is therefore subject to what has been agreed between the parties.

Statutory licenses work in a different manner. In general, a statutory license is one – in the sense of a general permission – which is typically based on a limitation in the respective copyright legislation. Right holders essentially are not at liberty to prohibit the use but the economic right is replaced by such statutory license. As we will see, many Member States have implemented the teaching exception but added that compensation or remuneration must be paid. Each legislator in the EU has different options on how to organise these compensation systems. There are different routes: right holders may be compensated under a levy system<sup>[59]</sup>, or specific

<sup>56</sup> Xalabarder, “Online Teaching and Copyright: Public Policy or Market Power”, Paper presented at the ATRIP Conference 2006.

<sup>57</sup> See Sections 2.2 and 2.6 of this report

<sup>58</sup> By and large, collecting societies differ in their repertoire as well in relation to the rights (DVD, online...) such organisations are mandated to license.

<sup>59</sup> In general, a fee payable by manufacturers or importers of devices to a collecting society. The only country where compensation for teaching uses is organised under a levy system is Belgium.

collective agreements must be negotiated. Such agreements, as will be discussed later, exist in France and Germany and cover different uses, including the online use of film fragments via an intranet or extranet. They were entered between public bodies on the one hand and collecting societies on the other, since the claim for compensation can only, according to national law, be made via a collecting society.

### 3.5. Teaching exceptions under national laws

#### 3.5.1. Introduction

We have mentioned that divergent approaches and solutions exist under national law as regards the uses of films in schools under the EUCD teaching exception. The analysis covers EU Member States on a comparative basis. In addition, the laws of Norway (which has implemented the EUCD despite not being an EU Member State) and Switzerland (which is not bound under the EUCD) have been examined.

In this section we will differentiate the two basic forms of access to film and audio-visual content: screening in schools of DVDs or Blu-ray, and showing films via streaming or from copies downloaded from web platforms. As we will detail, these may be a commercial type, or referred to films stored in an intranet or a closed extranet protected by a firewall.

Obviously, no national copyright law regulates the use of films in schools discreetly but it is – in all Member States – a matter of a broader teaching exception covering, partially, a range of different uses. Furthermore only few national judicial decisions as regards the interpretation of the national teaching exception exist. In this regard, it is clear that that any inferences drawn based on the respective national terminology – above and beyond truly unambiguous articulations in the statutory language – can at best be an approximation towards a possible assessment. This is particularly true when construing the respective national laws as regards online uses. Other arguments which allow a further restriction of a given limitation where licenses are available from right holders, may also be found. In short, such arguments may be based on aspects of the three-step test, or on a more restrictive construction of whether a

use is justified within the meaning of the national teaching exception. For example, UK law permits, as will be discussed later, certain online uses under an exception only unless a licensing scheme is in place. The question of whether schools may rely on the national teaching limitation may therefore become relevant where right holders offer direct licenses, given that in such case the permitted use may no longer be considered to be justified. Thus, even where a national law appears to allow a particular use because the wording is wide enough, national courts may come to different conclusions and there may well be disputes over the interpretation of the teaching exception in future. It is therefore important to note that national teaching exceptions are generally subject to interpretation.

We have further structured the following part according to common characteristics that may be shared between certain Member States in order to more clearly illustrate particular solutions, assuming that such a structure does not denote that there are indeed clusters of Member States sharing one common approach. We have selected some jurisdictions with particularly relevant and illustrative solutions (based on the laws of Member States as well as Norway and Switzerland) which we assess in more detail, again with a specific focus on how films may be used in schools by way of online access or other shared digital technologies. For those, we also assess the existence and operation of licensing schemes and other forms of compensation, as the establishment of licensing schemes is a regular direct consequence of how the national limitation is framed.

Divergences among Member States can be asserted as regards every aspect of both the teaching exception as such, as well as in relation to issues of compensation and licensing. Member States laws differ with respect to the types of uses covered, the amount which may be used, the classes of works which may be used, the institutions permitted to rely on the teaching exception, whether compensation or remuneration must be payable (and if so, under which scheme), and whether further conditions such as a general conditions of fairness must be met.

Firstly we will provide an overview, before moving on to assess how particular uses are regulated under national copyright laws.

### 3.5.2. Comparative overview

A number of Member States have maintained rather restrictive limitations for teaching purposes that will not cover any of the activities relevant here. These are Greece<sup>[60]</sup>, Lithuania, Poland and Slovakia<sup>[61]</sup>. The teaching exceptions in these countries allow, in general terms, only certain acts of copying. Accordingly, in those countries every use of a film in a school requires authorisation and a license must be obtained (though it may be possible that screening of films in the classroom is not considered as an act of communication to the public; and in this case it would not require authorisation). A second group of Member States allows the showing of films, or portions thereof, in a classroom, that is, in those countries the limitation applies to the right of public performance only, for example Austria, Bulgaria, Croatia, the Czech Republic, and Romania. A third group of Member States (Belgium, France, Germany, the Netherlands, Portugal, Spain, and UK) have added further possible uses under the respective teaching exception, after the implementation of the EUCD. These options include, in particular, online uses under the responsibility of a school, that is, where films are not obtained for direct payment, and here acts of making available are covered.

The Nordic countries have generally maintained solutions that are not based on an implementation of the EUCD teaching exception. Generally, the showing of films in schools requires consent from right holders. As mentioned in the previous chapter, the Nordic countries generally operate on the basis of extended collective licensing agreements<sup>[62]</sup>. Extended collective licensing represents a middle route between voluntary and mandatory licensing. They may operate, generally, on the basis that, once a substantial number of right holders have agreed to a licensing scheme, the scheme is extended to all right holders by law with the possibility to opt out of

the scheme. These schemes are a way to implement some of the copyright limitations, though in a rather pragmatic manner from the perspective of schools. The nature and scope of these Extended Collective Licenses varies, and may take many different forms.<sup>[63]</sup> The use of films in schools, however, is not subject as such to any extended collective licensing agreement in Denmark and Finland, for example, where specific framework agreements cover teaching use of films, whereas in Sweden licenses need to be obtained from right holders.

Out of the remaining Member States, there are, broadly speaking, differences as regards the types of uses covered by the teaching exception, whether a full film or only extracts can be shown and whether, and for which use, compensation must be paid. Further, and in particular as regards uses of DVDs in classrooms, the language in individual Member States differs from the language used in the EUCD teaching exception, and there is a divide as to whether classroom uses should be considered as private or public.

Only Cyprus and Malta allow the showing of an entire movie under the respective teaching exception and for every use modality; otherwise national laws often restrict such uses to extracts or small fragments or parts. Italian law is not entirely clear in terms of which film uses are covered. The law permits the making of quotations from films, that is, to quote fragments or parts by way of reproduction and communication to the public, and teaching uses have traditionally been covered by the quotation exception.<sup>[64]</sup> The provision may be read so as to cover online uses as well, but the precise scope is, at present, uncertain. No compensation is foreseen.

In relation to the acts covered by the limitation, some Member States as well as Switzerland generally allow any use, such as Estonia and Latvia. Others refer to communication to the public (for example, Belgium,

<sup>60</sup> In Greece, Article 5(3)(a) was not implemented and the teaching exception (Article 27(b) Law 2121/1993 ) was not modified. See Sinodinou, in: Westkamp, *The Implementation of Directive 2001/29/EC in the Member States*, p. 246-247.

<sup>61</sup> Please see, for more detailed information, the country overviews in the Annex.

<sup>62</sup> See, for example, Article 50 Copyright Act Denmark; Articles 16, 26 Copyright Act Finland.

<sup>63</sup> Schovsbo/Riis, "Extended Collective Licenses in Action", (2012) *International Review of Intellectual Property and Competition Law* (IIC) 930.

<sup>64</sup> Article 70 Authors Right Act Italy. The provision was amended in 2003 (Article 9 of the Implementation Act) to align it with Article 5(3)(a), that is, the use must now be for the sole purpose of illustration of teaching and for a non-commercial purpose, but limited to using abridgements and quotations.

the Netherlands) as the “taking over” of portions of works (France and Spain) or making available (Germany).

Remuneration or compensation is required in several countries: Austria, Belgium, France, Germany, Spain, Switzerland and the Netherlands<sup>[65]</sup>. There is no clear reference to any compensation in Italy and Portugal.

### 3.5.3. DVDs and recorded broadcasts

Copyright laws in some Member States permit what is apparently the most common among schools: the screening of a DVD/Blu ray in a classroom or a dedicated auditorium. They can even partially cover the screening of an entire film. There may be two routes to reach such a “permission”. Firstly, some Member States perceive uses in the classroom as a private act, not public: as a result, in those Member States entire films may be shown. In other Member States, a specific exception to the public performance right applies. Furthermore the screening of films in a classroom may also be covered under more general limitations.

#### Classroom uses as private acts under national laws

Member States where the screening of a film in a classroom is not perceived as a public performance include Belgium, Germany, Ireland, Italy, and this is also the position in Switzerland and Norway. Under Italian law, the position is very clear, as the law expressly states that performances within the normal circle of (inter alia) a school shall not be considered public, provided these uses are not carried out for profit<sup>[66]</sup>. This includes the use of entire cinematographic works<sup>[67]</sup>. Irish law says that the playing or showing of a sound recording, film, broadcast or cable programme at an educational establishment and for the purposes of instruction in a classroom is not a playing or showing of the work in public for the purposes of infringement of copyright<sup>[68]</sup>.

65 For details of the resultant collective agreements in France and Germany in particular see below, pp. 30 et seq., 27 et seq.

66 Article 15(2) of the Italian Authors Right Act (Law No. 633, 22.4.1941).

67 Marchetti/Ubertaini, *Commentario breve alle leggi su proprietà intellettuale e concorrenza* (2012), p. 1406.

68 Sec. Sec. 55 (2) Irish Copyright Act 2000.

Belgium’s position is not entirely certain. The law allows acts of communication in the context of school activities for face-to-face teaching<sup>[69]</sup>, and states that these acts are permitted as private uses<sup>[70]</sup>. It was also suggested that the provision might cover the screening of a movie to entertain pupils<sup>[71]</sup> and would, consequentially, permit the screening of entire films<sup>[72]</sup>.

The position in Germany is more complicated, and deserves a broader assessment. First of all, German law allows any public performance for any event for which no entrance fee is charged<sup>[73]</sup>, but this does not apply to films shown by way of a “Vorfuehrung”, in other words a performance by way of using technical equipment such as video/DVD players (in opposition to, for example, the actual performance of a theatrical play by pupils or “Auffuehrung”). The public showing of films in a classroom using a video or DVD player would infringe the exclusive right to perform a film work<sup>[74]</sup>. However, most commentators and courts do not consider classroom uses as public, but this is subject to debate. German law defines the notion of the public as a majority of persons who do not share interpersonal relationships, neither mutually nor with the person who is responsible for the communication (ie. family members watching television or guests at private events listening to music). Uses involving the screening of a film to more than one class or to the entire school community will more easily be considered to be public screening. The majority of commentators, however, sustain that pupils and teachers in a classroom would constitute a closed or private circle, the pupils being connected through mutual relationships with each other and/or with their teacher<sup>[75]</sup>. If this view

69 Article 21(1)(3) Authors Right Act Belgium.

70 See Dusollier, in: Westkamp, *Study on the Implementation of Directive 2001/29/EC in the Member States*, p. 125 (noting that the legislator had given the example of communicating works as part of a power point presentation in class).

71 Ibid.

72 Ibid. it was noted that during parliamentary debates in Belgium the example of a powerpoint presentation to students was used.

73 Article 52 German Authors Right Act.

74 Article 19(4) Of the German Authors Right Act.

75 See Regional Court of Munich I, Case No. 21 O 47099/04; Dreier, in: *Dreier/Schulze, UrhG*, 3rd ed. 2008, Article 15 annotation 45; Rehbindner, *Urheberrecht*, 16th ed. 2010, § 24 annotation 315; Neumann, *Urheberrecht und Schulgebrauch*,

was followed, any use by way of face-to-face teaching would have to be considered as free - hence no violation of an exclusive right would take place. The relevant school authorities follow this approach, and consider classroom uses of films as private<sup>[76]</sup> and, therefore, do not require any consent. German law does not, however, allow teachers to screen films recorded from television broadcasts, with the exception of films officially declared as "school broadcasts"<sup>[77]</sup>. Of course, the situation would be completely different if the DVDs or VCR used at school have already been laid for under a license. The German Laender have for many years, established media centres from where schools may lend, free of charge, films on video and DVD, and these uses are licensed and paid through public funds by the respective ministries for education in German states.

Switzerland, which is naturally not bound by the EUCD, has a generous teaching limitation. It covers any use (i.e. it is irrelevant which particular economic right is affected) under the broad notion of "own use" ("Eigengebrauch"), which covers the use of any previously published film. Article 19(1)(c) of the Swiss Copyright Act particularly mentions any use of a work for the purpose of teaching by a teacher but only in the classroom<sup>[78]</sup>. "A classroom" may possibly be virtual, provided that the number of students being able to access the film can be predetermined. Remuneration is payable under a statutory licensing scheme and can only be claimed via a collecting society.

### Classroom uses as public performances

In some Member States, the playing of a DVD or other uses in a classroom may fall within broader exceptions covering any public performance where, typically, no entrance fee is charged, or under a specific teaching exception covering classroom uses. The latter is the case, for example, in Denmark<sup>[79]</sup> ("educational activities") and Estonia ("for immediate teaching purposes")<sup>[80]</sup>.

Similarly, Austrian law permits any public performance of film works in the context of teaching<sup>[81]</sup>. Films made specifically for educational purposes are excluded from the limitation. In contrast to Germany, the Austrian Supreme Court has decided that the use of works in a classroom is to be considered as reaching a public<sup>[82]</sup>. Remuneration to authors must be paid and can only be claimed via a collecting society.

In Bulgaria, classroom film use is permitted; the law stipulates that the free public presentation and public performance of published works in educational or other learning establishments is allowed, provided that no pecuniary revenues are received and no compensation is paid to the participants in the preparation and realization of the presentation or the performance<sup>[83]</sup>. This exception is predominantly foreseen for school events but it may also apply to performances carried out by a teacher in the course of teaching.

In Croatia, similarly, the law permits the public performance of a film in the context of teaching or at school events, under very similar conditions as required by the EUCD: this extent is justified by the educational purpose to be achieved, where the works are not used for direct or indirect economic or commercial benefit by the educational institution, the organizers or third persons, where the performers receive no payment (remuneration) for their performance and where no entrance fee is charged.

In the Czech Republic, schools may use a published film in a "lecture exclusively for scientific, teaching or other instructive or educational purposes"<sup>[84]</sup>, albeit under a limitation privileging quotations. The author and the source have to be indicated. The length of usage of the audio-visual work shall not exceed what is necessary to meet the objective teaching use. Such a provision would arguably prevent the use of an entire film. Hungarian law allows the performance of works "for purposes of school education or at celebrations held at school"<sup>[85]</sup>.

1994, pp. 92 et seq.

76 See the Letter from the "Kultusministerium Baden-Wuerttemberg", available from [www.lehrerfortbildung.de](http://www.lehrerfortbildung.de).

77 Article 47 German Authors Right Act.

78 Article 19(1)(c) Authors Rights Act Switzerland.

79 Article 21 Authors Right Act Denmark.

80 Article 22(1) Authors Right Act Estonia.

81 Article 56d Authors Rights Act Austria.

82 Austrian Supreme Court (OGH), (2008) Medien und Recht 299 – "Schulfilm"

83 Article 24(8) Authors Right Act Bulgaria.

84 Article 31(1) Authors Right Czech Republic.

85 Article 38(1) Authors Rights Act Hungary.

In Slovakia, the relevant exception allows the use of works in free-admission school performances in which exclusively pupils, students or teachers of school perform, as well as the use of the work, in as far as such use falls within the general activity of a school.

Romanian law also covers the screening of DVD in the classroom, as it allows the use of “isolated articles or brief excerpts from works in publications, television or radio broadcasts or sound or audio-visual recordings exclusively intended for teaching purposes and also the reproduction for teaching purposes, within the framework of public education or social welfare institutions, of isolated articles or brief extracts from works, to the extent justified by the intended purpose”.<sup>[86]</sup>

In Finland, the public performance of a cinematographic work is expressly excluded from the exception to the public performance right<sup>[87]</sup>.

Some Member States make specific provision for a film work copied from television. This is certainly interesting when read in the context of the so called “catch up TV”: the online recovery of broadcast programs. This includes the UK, where teachers may make use of recorded films from television broadcasts<sup>[88]</sup>. In Ireland, schools may use recordings of television broadcasts played in the classroom, subject to licensing schemes<sup>[89]</sup>.

In other Member States, including France, Spain and the UK, the performance of films to students by way of screening in classrooms is subject to a broader exception entailing both acts of making available and public performance, and it will be discussed in the next paragraph. In those countries, the use of film in a classroom is generally considered as a public act.

#### 3.5.4. Online access to films

Online access to films is becoming increasingly relevant for schools and film literacy. It is not for us to prove this statement, but it appears difficult not to assume that schools will just follow the same evolution of non-theatrical audio-visual consumption (apart from

broadcast TV): different online formats, essentially VOD (Video on demand) and SVOD (Subscription VOD), the latter usually offering movie streaming as a alternative to movie downloading, are replacing physical devices (at different speeds depending on the markets).

From a legal perspective, we want to deal with this issue from some specific angles. Indeed, access to online content from schools poses some challenging questions: some of them are beyond the scope of this report, as they refer to what we could call coexisting difficulties between copyright in its traditional form and the new online and digital reality it must be applied to, for example as regards cross-border uses. We are aware of the ongoing discussions at EU level on the need to adapt copyright rules to the digital environment and to consumers’ behaviour, particularly to facilitate online cross-border access to content. Those issues, naturally and obviously, also have an impact on schools. Indeed, new formulas which would allow a transnational catalogue of films accessible online by schools, can be imagined, together with other ideas. But this has not yet been set in stone: copyright is interpreted and enforced on a country-by-country basis, and access to films online by schools may be allowed under exceptions or under licensing, but always referring to the rights which are available in the country where the schools are based.

The term “online use” can have different meanings in the context of this study as far as copyright laws are concerned, depending on how films are acquired. First of all we will consider the copyright framework as it applies to films supplied on the basis of direct contractual licensing agreements, followed by a description of how Member States have regulated online uses within schools based on the national teaching exception.

#### **Precedence of contractual terms and conditions**

The first issue to examine here is the impact of the terms and conditions of the legal contract under which a commercial platform (or an Over the Top or OTT provider) has made its content accessible to VOD or SVOD. When films are obtained online from third parties, schools and teachers will be bound by specific contractual terms and conditions applicable to the platform hosting that film. In these cases, the question of what a school may do with that film is, principally, governed by the respective contract. For example, in the UK the BBC offers content

86 Article 33(2) Authors Rights Act Romania.

87 Article 21(1) Authors Right Act Finland.

88 See, on UK law, *infra*, pp. 32 et seq.

89 Sec. 56 of Irish Copyright Act

to schools under a business license, which includes school licenses, via its BBC I-player service<sup>[90]</sup>. Conversely, some commercial platforms such as iTunes restrict the use of films to personal uses<sup>[91]</sup>: a public screening for teaching purposes would be against that contract. This is of course a general problem not confined to film uses in schools, and it is debated amongst academic circles whether, and to what extent, private contracts may override existing national copyright limitations<sup>[92]</sup>. As of now, copyright law in some Member States declares such terms or conditions void or unenforceable, for example in Portugal<sup>[93]</sup>, Belgium<sup>[94]</sup>, and – specifically as regards uses for illustrating instructions by a teacher – the UK<sup>[95]</sup>. Other Member States remain silent.

### Use restrictions and technological protection

A second issue to comment on in this context is the use by right holders of technological protection measures (TPMs), – that is, a specific form of protection, which is sometimes also referred to as digital rights management or DRM – which may prevent the use of the work (such as limiting the number of copies which may be made) or prevent access to it by people other than the original purchaser. Right holders therefore are permitted to establish an “electric fence” around their works. This technical protection is protected under national laws<sup>[96]</sup>, on the basis of Article 6 EUCD. In short, where effective technological protection measures regulating use (such as copying) or access (such as to an online platform) are in place, a user is generally prohibited from circumventing that measure, which

in turn allows right holders (via platforms) to organise discreet and individual licensing schemes and to impose their own terms and conditions of use based on contractual agreements.

There is indeed an apparent inconsistency between the permission granted to schools to use works protected by copyright under certain teaching exceptions, and the reality which prevents this using technological protection measures. This problem is addressed in Article 6(4) EUCD. The Directive allows Member States to render the limitations (including the limitation for teaching), enforceable against the rights holder. However, that does not allow Member States to authorize a beneficiary of one of those limitations, such as a school, to resort to self-help measures, i.e. to allow schools to remove or “crack” the TPM, for example using appropriate software or by way of “hacking”. But where right holders do not take voluntary measures to remove the TPMs, and enable beneficiaries to fully make use of the exception, Member States should foresee certain procedures, such as mediation or arbitration, or access to court by the beneficiary. However, the possibility of a school actually enforcing the teaching limitation so as to enjoy the benefit fully is limited and hypothetical. Only some Member States permit the teaching exception to be enforced generally, and of those that do allow it, the limitation can only be enforced with view to showing extracts. This applies to Belgium, Cyprus, Estonia, France, Germany, Luxembourg, Malta, the Netherlands, Portugal and the UK. The use of TPMs, linked to direct licensing by right holders, may essentially limit the effectiveness of the teaching exception.

### Intranet and closed networks for educational use

Theoretically but hardly practically speaking there is a repeated talk about the promotion of online use of films for schools “outside” the ordinary commercial platforms. This could hypothetically adopt new formats, where streaming is not done from commercial platforms, but within “closed networks” for educational purposes: it can be a school intranet, making a catalogue of films accessible to all classrooms; it can also be an intranet externally accessible and protected by firewall (extranet), allowing students to access this content from home or

90 <http://www.bbc.co.uk/terms/business.shtml>.

91 iTunes offers a license to schools but this is restricted to music and books. See <https://volume.itunes.apple.com/gb/store>.

92 This complex problem cannot be considered here. For a complete treatment see Guibault, Copyright Limitations and Contracts. An Analysis of the Contractual Overridability of Limitations on Copyright, Information Law Series Vol. 9, (London / The Hague / Boston: Kluwer Law International 2002).

93 Article 75(5) Copyright Act Portugal.

94 Article 23bis, 46bis Copyright Act Belgium, though this excludes “works that have been made available upon demand, on agreed contractual terms, in such a way that members of the public may access the work from a place and time individually chosen by them”

95 Sec. 35(4) Copyright, Designs and Patents Act 1988, as amended.

96 Following Article 6 EUCD, as implemented.

from their computers or handheld devices. And that can be for the use of (and under the responsibility of) one school, or a joint endeavour of several schools, or an extranet made available by some public organization supporting film literacy.

Any such model, which affects both the reproduction right (for the storage of films) and the right of making available (where films are streamed at the request of a teacher from an internal database) protected by copyright, would be covered by the teaching limitation only when it has been implemented to include online uses for the purpose of illustrating teaching. And even when the limitation could apply, that would not normally apply to full films. For full films to be made accessible with these online sharing tools, it is clear that in most cases a license will be needed. Therefore, any such model should be combined with licensing schemes for the films included in the catalogue.

As mentioned, some Member States have indeed extended their national teaching exceptions to expressly cover online uses by schools, and in this section we will only portray the law in those jurisdictions where legislative steps have actually been taken with view to expressly extend the teaching exception to online uses.

In other words, the online uses considered in this section are not those which are subject to an individual agreement with, for example, a commercial streaming or download platform as was described in the preceding section; we can therefore also exclude any licensing agreement that may be offered by right holders and go beyond the scope of a national teaching exception. This means that in the Member States described in this section, teaching exceptions may allow certain online uses by schools without the need to obtain authorisation from right holders.

The teaching exception applies only to online uses in schools justified by the non-commercial teaching purpose.

A full presentation on a country-by-country basis is detailed in the Annex 1. But let us observe the terms under which the use of film and audio-visual content is permitted in the different countries, with a reference to compensation when applicable.

### **Netherlands**

In the Netherlands, schools may make use of portions of films for any communication to the public for the purpose of illustrating teaching, as well as any reproduction, whether in a digital or analogue format. The condition is that the work in question has been lawfully published and that the use remains within the remit of what might be reasonably accepted under social custom, a term which is not further defined by law<sup>[97]</sup>. Under Dutch law, an equitable remuneration must be paid to right holders. It is the obligation of the user (the school) to offer such payment.

### **Belgium**

Schools may also engage in certain online uses in Belgium. Belgian law broadly allows works to be communicated to the public by educational institutions for the purpose of illustrating teaching<sup>[98]</sup>. The privilege is only granted to officially recognised establishments and excludes any commercial teaching or training establishments. Furthermore, the communication must occur in a closed transmission network, that is, students may be offered access only on the basis of identification and the communication must not exceed the establishment itself. The network should be managed by the institution, which provides access. The text implies that the use is not constrained to screening in a physical classroom but may be extended to handheld devices and uses from home (which may arguably be used to access a closed network as long as access is subject to, for example a password, and – assumingly – where further use of the film is prevented by applying technological protection measures). Importantly, the Belgian lawmaker introduced a further condition that the use must not clash with the normal exploitation, that is to say, it must not cause harm to right holders. The latter repeats the third element of the three-step test. How this condition may be applied by courts in future remains open. Compensation is paid under the existing levy system in Belgium rather than on further collective agreements<sup>[99]</sup>.

97 Article 16 para. 1 a) of the Dutch Copyright Act.

98 Article 22(1)(4)(4)) in relation to authors rights and Article 46(3) in relation to related rights including film producers rights, Authors Right Act Belgium.

99 Article 61bis-61quater Authors Right Act Belgium.

## France

In France, the showing of films in public generally requires authorisation<sup>[100]</sup>, but the communication or reproduction of excerpts of works is permitted under the teaching exception and only for the use by teachers and by students directly concerned<sup>[101]</sup>. In 2009, an agreement was reached inter alia between the French Ministry of Education and relevant collecting societies. This now governs online, as well as other uses of films in schools, and stipulates tariffs for school uses<sup>[102]</sup>. The agreement distinguishes between films shown in class (covering works diffused by way of Hertzian waves and in physical support, analogue or digital) and other uses, especially uses via an intranet, a closed extranet, or direct access to Internet. For the latter, only extracts may be shown, and a limit was set at six minutes or a tenth of an audio-visual or cinematographic work. The agreement defines a “class” as a group of pupils assembled (“réunis”) within the perimeter of the establishment. The notion of “illustration for teaching” is further elaborated, entailing a use to explain or sustain discussion, development or argument insofar as this corresponds with the principle matters of the educational program. The agreement very likely excludes the possibility to create a film database.

A special system covering uses of DVDs for teaching purposes exists. Licenses may be obtained for films in their catalogue from a central purchasing service (l'ADAV) serving cultural and educational organisations for any non-commercial showing of films, which require payment for each screening, presently between EUR 120-150. The licenses are subject to further constraints; it is a condition that use is made exclusively for educational purposes. The scheme does not cover online access.

Films made for educational purposes must not be used under the teaching exception, regardless of which use is to be made.

<sup>100</sup> Article L.122-4 of the Code de la Propriété Intellectuelle (CPI),

<sup>101</sup> Article 122-5 e) Code de la Propriété Intellectuelle (CPI).

<sup>102</sup> Accord sur l'utilisation des œuvres cinématographiques et audiovisuelles à des fins d'illustration des activités d'enseignement et de la recherche, Ministère de l'Education National, Bulletin Officiel No 5, 4.2.2009, <http://www.education.gouv.fr/cid50451/menj0901120x.html>.

## Germany

Under German law, schools may make small parts of films available for the purpose of illustrating teaching<sup>[103]</sup>. Necessary reproductions are likewise covered. This may cover uses in both Intranets and extranets. The important condition to be met is that the use of film fragments must be “geboten”, which may be translated as a use which is necessary and justified for the purpose of teaching. An extension to entire works had originally been intended, but it was subsequently deleted in parliament. The introduction of this provision was heavily debated; its validity was restricted twice<sup>[104]</sup>, and at present it should cease to apply on 31.12.2014. At the time of writing, the provision is discussed in parliament and a proposal has been made to maintain it without further limitation in time. Remuneration must be paid and claims for such remuneration can only be made through a collecting society. Consequently, as mentioned, a collective agreement was established in 2009. This agreement, which was concluded between collecting societies and the German Laender, broadly states that schools may use certain portions of films in return for a licensing fee payable by the state to the relevant collecting society.

Furthermore, the question about whether a use is “justified” was taken into consideration, in relation to university intranets, by the German Supreme Court (BGH) in 2013<sup>[105]</sup>. The decision addresses the uses of literary works in university networks, which are governed by the same provision. However, the BGH made important observations as regards the notion of what is justified under the teaching exception when applied to online uses such as in a university intranet where right holders wish to offer their own licenses. The court interpreted - and this is the most important aspect - the notion of a justified, or necessary, use. It held that individual licensing should, ordinarily, take precedence, and that therefore universities are not at liberty to make available works across an

<sup>103</sup> Article 52a Authors Right Act Germany.

<sup>104</sup> See Article 137k of the German Authors Right Act.

<sup>105</sup> BGH, I ZR 84/11, 20.3.2013, (2013) Gewerblicher Rechtsschutz und Urheberrecht (GRUR) 1220 – “GesamtvertragHochschul-Intranet”. The decision concerned the interpretation of a collective agreement between collecting societies and universities.

extensive university intranet. In other words, where licenses were offered by right holders for online use, the limitation on teaching would not apply because it was not necessary or justified to rely on a limitation where licenses are available. The court however, also clarified that such licenses must contain reasonable terms and tariffs and that locating such reasonable licensing offers must be effortless. It should be noted that this decision only affects one particular case and that it cannot be fully generalised. Whether this position will also apply to schools in future, and whether a similar position will be adopted in other EU Member States or by the Court of Justice remains to be seen. However, the decision illustrates that the exact scope of what is permitted under the teaching exception may well depend on a case by case assessment.

### *Spain*

In Spain, the recent copyright law reform introduced a new provision<sup>[106]</sup> that is intended to provide schools with more freedom as regards online uses. This reform was prompted by the strictures of the old law<sup>[107]</sup> and the provision is now technologically neutral, thus encompassing online uses of films. No compensation is required. Teachers within the formal education system will not need permission to perform acts of reproduction, distribution and public communication of small fragments of films, (though, notably, not films made for educational purposes), if such acts are made only to illustrate their teaching activities, provided that the works have already been made public and the author's name and source is included, unless proven to be impossible. The clause is sufficiently extensive to cover uses of film fragments by way of streaming; evidently, individual uses by students (ie. at home) are excluded.

<sup>106</sup> Article 35(2) Authors Right Act Spain.

<sup>107</sup> See Fernandez-Molina/Muriel/Vives-Gracia/Riera/Martin, "Copyright and e-learning: Professors' Level of Knowledge about the New Spanish Law, Study supported by the Spanish Ministry of Science and Innovation, available at <http://eprints.rclis.org/16017>.

### *United Kingdom*

In the United Kingdom, copyright law was recently amended, including the reform of educational limitations applying to both works and performances<sup>[108]</sup>. These provisions include film works as well as performances as part of films, which are regulated under a great part of the Copyright, Designs and Patents Act 1988 (hereinafter CDPA). They operate on the basis of an exception subject to a license: the uses enumerated are allowed under the exception unless licensing schemes are in place. Thereby, right holders are encouraged to enter into licensing agreements.

The provisions make a basic distinction between uses by teachers and pupils on the one hand and uses made by educational establishments on the other. Whilst uses by teachers or pupils are subject to fair dealing for the purpose of illustration for instruction (including uses of small extracts of works), copying and use of extracts of works made by educational establishments are fundamentally subject to licensing, where available, as is the recording of broadcasts. For broadcasts, the Educational Recording Agency (ERA) offers educational licenses, which are being developed to permit the establishment of online resources within secure school networks.

Uses by teachers in a physical classroom may encompass the screening of a film, regardless of the technology being used. This is subject to a further assessment under the general fair dealing concept. "Fair dealing" generally means that uses must comply with certain conditions under that principle, which courts have developed over time; it must also relate, inter alia, to the amount that may be used. This would generally apply to minor uses that have minimal impact on right holders. Therefore it is uncertain whether the screening of an entire film would be covered. It should be noted that the fair dealing principle applicable to limitations under the UK Copyright system is not related to the three step test under Article 5(5) EU CD but constitutes an integral principle of copyright law in the Anglo-American system.

<sup>108</sup> Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014, 19 May 2014, Statutory Instrument 2014 no. 1372).

### 3.6. Summary

The study shows a high degree of divergence between Member States. Only two have opted for a completely literal implementation. In all other Member States, the teaching exception (in as far as it was implemented) explicitly applies to small parts, fragments or portions of films.

Copyright law – that is, the relevant teaching exception as such – has only limited influence on teaching film literacy. The general solutions in most Member States are licensing agreements. However, it is safe to conclude that as far as schools are concerned in some Member States agreements are in place, and they generally allow access and use of films, though the conditions may of course vary in terms of repertoire and rights covered. These agreements may be based upon national limitations and may foresee a requirement of compensation or remuneration, or may be governed by special framework agreements, such as Denmark. Additional licensing agreements may be proposed to educational establishments to cover uses which are not allowed under the exception. As mentioned, from the perspective of both individual teachers and schools it is largely irrelevant in those cases whether or not compensation is paid and which particular licensing scheme operates: what matters is that legal certainty is guaranteed to those users to allow freedom of educational uses. Such agreements also have the advantage that certain other purposes, such as recreational screenings or screenings to an entire school community, may be covered.

We can briefly summarise the findings in relation to particular uses and point to the main differences and peculiarities under domestic laws.

Firstly, as regards the showing of a film in a physical classroom to pupils using traditional carriers such as DVD or Blu-ray, the copyright laws in some Member States permit such use, albeit sometimes restricted to portions. Secondly, as far as streaming and/or downloads of films is concerned – which was reported as the second most frequent use of films – a clear distinction between uses that are governed by the teaching exception and direct licensing contracts based on technological protection measures must

be drawn as far as copyright law is concerned. As mentioned, both the streaming of films or its downloading will almost inevitably be governed by licensing agreements and will be controlled via the use of such TPMs. Thirdly, in Member States where the teaching exception was extended to cover online uses which fall within the context of the making available right (as opposed to just the public performance right), uncertainties about the exact scope and interpretation remain. Generally it should here suffice to state that, those Member States have added further restrictions in comparison to the wider language used under the Directive. Importantly, there is room for interpretation as regards the question of whether storing films digitally for access to an entire school community is justified, whether it complies with fair practices (such as in Belgium), whether it is reasonably acceptable under social custom (as in the Netherlands) and whether such use is in line with the three-step test.

A major observation concerns the length of a film, which may be shown. Again, particular framework agreements or voluntary collective licensing schemes may cover screening a full film, and not only extracts. However, if such agreements do not exist, the position may become complex for teaching film literacy, as opposed to using films to illustrate other topics taught – for example teaching literature by showing a cinematographic dramatization of a novel. Of all Member States, only Cyprus, Malta and (partially) the UK contain formulations wide enough to cover the screening of entire movies under the national teaching limitation. This may pose an obstacle, unless other solutions based on collective agreements are adopted.

Be it as it may, the practical scope of the teaching exception is limited, even where a Member State permits certain online uses. Licenses will still be required where films have been obtained from platforms operated by third parties, and here contractual agreements can override the teaching exception.

Where no specific licensing agreements are in place, permission must be sought from right holders, or, where possible, from national collecting societies. In this regard, the surveys indicate that many

teachers and schools feel that obtaining licenses is burdensome.

To sum up, the decisive and crucial matter concerns the legislative choice between a generous limitation and individual and voluntary licensing, and the many possible solutions that may be adopted between those two ends. These questions will inevitably need to be discussed at both national and European level and will require extensive negotiations.



## 4. Obstacles

### 4.1. Introduction

This chapter highlights the main barriers and obstacles to the implementation of film literacy and the use of films and other audio-visual content in European schools. Its purpose is to group up the main problems identified in the sections on schools and industry and in the legal framework in a single chapter. This chapter also serves as a basis for the next one: the recommendations chapter. For the purposes of this study<sup>(109)</sup>, we understand/define obstacles, barriers, restrictions or limitations as any factual, cultural, or perceptive element hampering the implementation of film literacy and the extension of the use of films and audio-visual content in schools.

With regards to this, the chapter focuses on four main kinds of obstacles/barriers: curricular and pedagogical restrictions; practical constraints; economic and legal limitations and communication problems between actors.

Obstacles to effectively implementing film literacy in Europe are not easy to identify. These obstacles are complex; they include cultural, technological,

economic and legal aspects that are not easy to overcome. Some of these obstacles are more defined than others; some are perhaps not real as such, meaning that they may be based on a uniformed perception; but that perception remains an obstacle nonetheless. Then, others can only be understood within a specific context, depending on the country or region or even the local context. Some have larger and more complex contexts, as is the case for obstacles related to educational policy or the role of teachers and their training and motivation.

### 4.2. Different kinds of obstacles

Different obstacles or restrictions to the implementation of film literacy can be identified in schools. However, in this dimension, two major categories can be established, namely, curricular and pedagogical constraints and practical restrictions.

A. Curricular and pedagogical restrictions are linked to the curricular plans and prevailing pedagogical styles in European schools.

B. Practical restrictions are linked to the school's routines, which determine the organization of time, infrastructure and behaviours.

Other major restrictions are linked to agents or factors

<sup>109</sup> Which has as an express request the identification of "obstacles and good practices for the use of films and other audiovisual content in schools, including licensing models for educational use, inter alia, technical, financial and cultural factors, as well as lack of information or possibilities within the curricula".

different from schools. These identified obstacles can be divided into two main categories: economic and legal constraints and barriers linked to a lack of communication and understanding between schools and right-holders.

C. Economic and legal constraints are those linked to the nature of the market and rights of the film and audio-visual industry, which aims at protecting investments.

D. Problems related to the relationship and communication between schools and right-holders. These are obstacles generated by the lack of communication channels between industry and schools (or within schools) which limits cooperation.

### 4.3. Curricular and pedagogical restrictions

While access to relevant films and other audio-visual content, and the associated costs, are important factors which require rational solutions, it is equally obvious that all causes in this chapter are interconnected.

#### 4.3.1. Lack of official recognition of film literacy in the curriculum

Teachers and stakeholders believe that without official recognition of film literacy in the curriculum there will not be any progress in the training of teachers, infrastructure or in securing license agreements that give access to relevant films and other audio-visual content.

This is an crucial obstacle, and the cause of many others. 81% of schools indicate that the lack of public educational policy is either a very or quite relevant factor preventing effective implementation of film literacy. As a result it is no surprise that other serious obstacles are the lack of teacher training and lack of access to relevant films. These obstacles cannot be overcome by individual schools or teachers.

#### 4.3.2. Lack of teachers' autonomy

There are also other major restrictions to do with the curriculum as well as pedagogical restrictions. For instance, teachers do not always have the autonomy to decide whether they can introduce film literacy or

present full-length films in class and, whether they can discuss films in class. Sometimes, special timing or extra-curricular time is employed at screenings, but it mostly depends on individual initiatives of teachers rather than on the school's formal activities or plans.

These kinds of constraints are generally due to the official curriculum and to the traditional pedagogical approach, which is changing in any case.

#### 4.3.3. Curricular inflexibility

A rigid and standardized distribution of subjects and time prevails over a more flexible organization of teaching. School programs and schedules are not suited to some specific pedagogical activities<sup>[110]</sup> (i.e. screenings) that probably would need more than an interdisciplinary approach.

Inflexibility of current teacher programs and schedules, and the priority given to the teaching of subjects included in the national curriculum<sup>[111]</sup> (generally more oriented to content acquisition than to skills and competencies) have been identified as relevant barriers to the use of audio-visual content<sup>[112]</sup> in our study by experts, teachers and stakeholders. As mentioned before, this situation is reinforced by the fact that almost no public education policy (or very little) has been issued in order to promote the inclusion of film literacy in national curricula.<sup>[113]</sup>

<sup>110</sup> This restriction is even more severe if we bear in mind that film literacy is not just shaped by the screenings of films. Audiovisual language education, which constitutes most of what can be understood as audiovisual or film literacy, involves more activities than the sole process of watching a film. In order to boost critical comprehension and image analysis, as well as the understanding of the cultural heritage that films and audiovisuals represent, more curricular time needs to be dedicated to the matter (which could be addressed as a separate subject or in a cross-curricular way). But, generally, the curricular restrictions do not allow it.

<sup>111</sup> Extra-curricular activities held at schools, as well activities developed by third parties involved in film education, are clear answers to this constraint. But this responsibility cannot only lie in the hands of third parties; schools should design spaces for the development of film literacy.

<sup>112</sup> Inflexibility of teachers' schedules and the priority given to the teaching of other subjects were marked as a very relevant barrier for 33.8% of respondents and a quite relevant one for 43.5%.

<sup>113</sup> As for the lack of public education policy in the field of film literacy (film education not recognized as a compulsory subject), 33.6% of teachers think it is indeed a very relevant barrier and 47.4% a quite relevant one.

#### 4.3.4. Cultural barriers in relation to audiovisual language

Another major restriction to the development of film literacy has to do with cultural barriers (in-school common practices) which prevail within some educational sectors in relation to the audio-visual language: that is, in relation to the way images are seen in schools. The treatment films and general audio-visual content receive underestimates their value as an object of study in itself. Other major areas of study, which incarnate other forms of literacy, such as reading comprehension and math skills, receive a lot of attention. This focus is on traditional literacies and the development of infrastructure, which reinforces this traditional understanding of education, makes the labour of developing other forms of literacy and other major areas of study more difficult, as is the case with film literacy<sup>[114]</sup>.

#### 4.3.5. Lack of teacher training in film and audiovisual literacy

Following on with the curricular and pedagogical restrictions, the lack of teacher training in the field of film education is considered to be a very relevant barrier.<sup>[115]</sup>

European teachers do not feel well prepared to undertake the responsibility of teaching film literacy or systematically using audio-visual content. Consequently, the lack of strategies aimed at improving teachers' skills in film education must be seen as a real obstacle to the implementation of film literacy.

Moreover, poor teacher skills concerning the use of ICT are seen as a quite relevant barrier as well.<sup>[116]</sup>

Paradoxically, a lack of motivation is not always seen as a barrier to the implementation of film literacy in schools.<sup>[117]</sup> Teachers do not see their motivation and

attitude as a problem, nor the lack of motivation from students<sup>[118]</sup>. Likewise, teachers resistance to using films and audio-visual material for teaching is not seen as a relevant barrier by most of the teachers surveyed.<sup>[119]</sup>

#### 4.3.6. Lack of supporting networks for teachers

Another factor limiting the implementation of education in film literacy is the lack of cooperation among peers. When teachers and students are supported by organizations of teachers or students, any activity related to film literacy is always benefited. However, if the work on the film should be done in isolation or solitary conditions, everything is more difficult and complex.

However, networking structures are rare in this field. Teachers do not find associations or networks in their country or at European level to help them develop their film literacy work. This lack does not mean there is not a networking base. It probably exists, but its scope should be extended in the future and its activities must be more visible and noticeable.

<sup>114</sup> This last remark shows the point of view of a large portion of teachers for whom, as stated, the principal use of films is to complement their teaching and for whom short formats are better suited. Time spent on language or literature lessons is part of the status quo; film education, on the other hand, has not yet acquired such importance.

<sup>115</sup> Lack of teacher training in the field of film education is considered a very relevant barrier in 40.4% of the answers received and as quite relevant in 47.4%.

<sup>116</sup> 50.8% of the respondent teachers think poor skills in the use of modern technologies constitute a quite relevant barrier. In addition, for 19.2% it is seen as a very relevant one.

<sup>117</sup> A lack of motivation of teachers is not seen as a barrier

in 41% of the received answers.

<sup>118</sup> Regarding the lack of motivation among students, most teachers think it is not a relevant barrier at all (67%). Just 7% of teachers think the lack of motivation in students is a very relevant barrier.

<sup>119</sup> Resistance of teachers to using films and audiovisual material for teaching is seen as a very relevant barrier by just 10% of teachers, as a quite relevant one by 37% and as not relevant at all by 53%.

#### 4.4. Practical restrictions in schools

As regards practical obstacles, we must consider time, space and technological infrastructure restrictions.

Costs of acquiring licenses (in the countries and cases when they are necessary for the screening of films in full) might also be thought to be a practical obstacle; nonetheless, we consider this problem more of a perception than a real obstacle; that means we consider it as part of the lack of communication between right-holders and schools rather than a problem resulting from high prices<sup>[120]</sup>.

##### 4.4.1. Time constraints

Firstly, a time constraint exists in relation to the use of audio-visual content and films: traditional school lessons are too short to play full movies or audio-visual works and generally no additional time is scheduled in schools to attain the purpose of presenting films and studying them<sup>[121]</sup>.

Among other identified factors, time restrictions may have led to an extended use of short clips and extracts at the expense of more extensive and enriching practices as the use of full-length films or the formation of film clubs<sup>[122]</sup>.

##### 4.4.2. Infrastructure constraints

A second restriction, which has to be taken into account in order to understand the different uses that teachers give to audio-visual works, is connected to constraints that are related to schools' infrastructure and technical resources.

<sup>120</sup> With this in mind, it is important to highlight that pricing (cost of licenses) could be a real problem within less rich countries, which are dealing with other obstacles too, such as general ICT equipment or Internet connections (For further information see 1.3.5 Cost).

<sup>121</sup> As said in the Schools chapter, this is particularly visible in secondary schools, whereas primary schools have more flexible time schedules.

<sup>122</sup> As explained in the chapter on schools, there is an extended belief by teachers on the fact that debates and film clubs are not being sufficiently encouraged. As established within the Creative Europe 2014-2020 program, there is a need to find spaces for formal activities aimed at promoting cultural practices (festivals, cinema networks and audience development) and teacher and professional training, as well as provide co-production funds, partnership agreements and umbrella stands for the development of activities, providing access to markets and online tools for professionals.

Spaces in schools as well as their equipment require a constant adaptation to new teaching demands. In the case of cinema and other audio-visual screenings, specific equipment is needed: large TV sets, or projectors, screens and sound equipment; DVD players; eventually, good quality online access (broadband) to be installed where the screening ought to take place. When projectors are used, certain space conditions must be fulfilled. Whilst equipment is generally becoming cheaper and more accessible, the technological infrastructure remains an important barrier (and so it is perceived<sup>[123]</sup>) for the general use of audio-visual content and therefore for film literacy.

##### 4.4.3. Lack of information about available resources

Even if there are different Internet platforms that give access to films in Europe, their usage is still not widespread. Teachers probably do not have enough information about the existence and the conditions of utilisation of available resources, such as these online video platforms<sup>[124]</sup>, possibilities introduced by technology and digital convergence, or about online availability of educational material.

#### 4.5. Economic and legal constraints

As explained in the previous chapter, the use of full films in schools requires licensing as it is most often not covered by the teaching exception. Such licenses require involvement on the part of the industry. But educational use is not a business priority for the audio-visual and film industries and, as a consequence, there is a general lack of practice and standardization in this area.

<sup>123</sup> 35.4% of teachers see the lack of infrastructure and technical resources in schools as a very relevant barrier and 41.4% as quite relevant. Trends in research show that today's projects target the development of creative classrooms and technology-compatible spaces. Not just Wi-Fi zones or screening resources; new developments include new tools and new services (thus, new skills).

<sup>124</sup> 52.6% of the respondent teachers stressed that their schools do not provide these types of platforms nor access to existing ones. Furthermore, 37.2% said they do not know if they have access to these types of networks. Just 10.2% said that their schools offer this possibility.

#### 4.5.1. Lack of cooperation between industry and schools

Schools are not familiar with the legal and industrial realities behind films. Under these circumstances, cooperation between industry and schools is rare and sporadic. A lack of communication is also sometimes the case between the public authorities dealing with education and those dealing with the film industry. This lack of communication negatively affects the field of content licensing and the implementation of creative solutions for the difficulties related to the rights ownership of films.

The efforts of Film Heritage Associations, strong as they are, may compensate this obstacle for schools, as they facilitate access to full films. But they have a limited reach in global terms. Only schools located near these types of institutions benefit from their services. Mobile efforts (initiatives of “mobile cinema”) for full film screenings have been put into practice (different associations work in this field) but they do not reach all regions. There are differences between countries, but in general, these efforts fall short. In addition, not all countries have such associations (or organisations) nor a national strategy aimed at covering all regions/national territories.

#### 4.5.2. Licensing costs (and how it is perceived by teachers)

Teachers are concerned by the costs that acquiring films entail (which they usually perceive as a great obstacle). The fact is that the real increase in licensing possibilities, and the licensing agreements themselves, are unknown to a large portion of teachers.

With that in mind, the perception of film costs being a problem to film literacy represents an obstacle in itself regardless of whether this reflects legal realities under national laws.<sup>125</sup> This belief, although not exactly objective, is in itself a barrier to the extent of the use of audio-visual content in schools.

<sup>125</sup> Answers in this regard are decisive: 46% of respondents think the cost of acquiring films or screening rights is a very relevant barrier, and 38% state it is a quite relevant one. The percentage of teachers thinking this way could also explain the large number of educators using their own resources, as it is easier to buy a film and play it than to complete forms and acquire licenses they consider expensive. Even so, the lack of access to relevant films and other audiovisual material is seen as a less important barrier. Just 22.7% of respondents think it is indeed a very relevant barrier. However, 45.7% of them agree that it is a quite relevant one.

#### 4.5.3. Information about the lack of a clear and general licensing regime

The legislative instrument, the “Directive on Certain Aspects of Copyright and Related Rights in the Information Society Directive 2001/29/EC) (EUCD),” has not been implemented in a similar way in all EU Member States, creating legal uncertainty for users of protected content.

Despite the (in this context, partial) implementation of the EUCD in the copyright laws of all Member States, and the existence of similar provisions in international multilateral legal instruments,<sup>126</sup> the situation in every country is different regarding what is allowed, what is not and to what extent. The EUCD does not make it compulsory to consider film screenings (of full films) under the teaching exception.<sup>127</sup> The EUCD relates the exception to the use of films as illustration for teaching, which is often perceived in national laws as a use limited to extracts or parts, and therefore is not applicable to the showing of entire movies. This issue, again, is left to the discretion of each country.<sup>128</sup>

To start with, the nature of the act of sharing a film with students is viewed differently across Europe. For some Member States it is considered a public performance, where students in a classroom are seen as an audience comparable to those of any other public screenings; in those cases, a license is required. In other countries, such screenings are viewed as being comparable to a private viewing, like sharing a movie with some friends at home.

Online access to films and audio-visual content is covered differently depending on the country, also creating insecurity and making a generalized, standard practice to be followed by the somewhat

<sup>126</sup> See: The World Copyright Treaty (WCT) 1996 and the World Performances and Phonograms Treaty, 1996.

<sup>127</sup> As explained in the legal chapter, limitations to the reproduction right, and limitations to the right of reproduction and communication to the public right, are not mandatory: they may or may not be established by Member States.

<sup>128</sup> As previously stated, the EUCD recommends introducing an exception for illustration for teaching – but this remains an option for Member States. A majority of Member States (see Annex 1) have implemented Article 5(3)(a) of the EUCD. Two have opted for a completely literal implementation while in all other Member States the teaching exception (insofar as it was implemented) applies to small parts, fragments or portions of films.

difficult industry. Even when such use is allowed and covered by the exception, it may become impossible in practical terms due to the existence of technical barriers in films and, more generally, due to the terms and conditions established by the platforms (which do not necessarily address education). Therefore, copyright rules might be conceived as an obstacle for uses going beyond classroom uses where no dedicated licensing framework that alleviates schools from seeking individual permissions and entering into direct negotiations with right holders exists. As such schemes only exist in some Member States, the acquisition of individual licenses poses a serious obstacle. However, neither the varied implementation of the Directive nor the fact that national legislations might disallow certain uses constitute the principal barriers to the use of film at schools. The most important obstacle arises where there is a lack of information about what is permitted under national law (lack of precise legal information) coupled with the lack of transparency as to whom to contact for clearing rights. The major legal obstacle relates to showing full-length films via streaming that cannot be acquired through an easily accessible platform. This is something national authorities must work on together with right holders to set up effortless access schemes (namely, a blanket license), which enable individual schools to obtain their licenses.

#### 4.6. Lack of communication and understanding between schools and rights-holders

Our research confirms that teachers generally do not pay attention to the copyright or licensing issue behind their school screenings; and at the same time, the film industry does not have the educational use of films among its priorities.

Likewise, teachers often ignore that using online platforms for the streaming of available free content may be illegal at times, depending on the country, and depending on the terms and conditions established by the platform. Distributors consider their pricing affordable, but many schools perceive it to be expensive<sup>[129]</sup>. On the one hand, the

truth is that the surveyed school teachers consider the cost of licensing a very or quite significant barrier to the implementation of film literacy,<sup>[130]</sup> but the actual cost of licenses varies substantially – from €0.3 to €3.3 per student per year.<sup>[131]</sup>

Teachers are generally not familiar with licensing agreements available to them or even entered into by their schools, but the truth is that licensing systems appropriate for schools are available in many European countries, as it has been explained in detail. Acquiring such licenses is sometimes possible without individual negotiation. Framework agreements in some countries have been negotiated between central school authorities (or designated organisations) and rights-holder organizations, and/or collecting societies, that represent several production and distribution companies which, in turn, secure access to diverse catalogues of films. Such license agreements are made available to schools either against a subscription fee or for free. But not all of this is known, and therefore, not all is actually implemented by those it is addressed to. We conclude that there is an important distance and communication problem, which can be considered to be an obstacle.

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Countries dealing with other major problems may find these costs higher than countries with better infrastructure and higher income levels.

<sup>130</sup> 84% of teachers replying to the questionnaire think so. Nevertheless, 24% do not consider obtaining licenses to be burdensome; this figure probably corresponds to the 21% that say they have acquired licenses.

<sup>131</sup> In England a catalogue of domestic and international feature films is available for free to all public schools delivered by Into Film. Screenonline, provided by the BFI, British Film Institute, gives free access to heritage film and TV-programs for all public schools.

<sup>129</sup> In any case, this consideration on prices as being affordable or not depends on the context of each country.



## 5. Conclusions and recommendations

### 5.1. Conclusions

This study shows that the main obstacles to film literacy and the use of films and other audio-visual content in schools are linked to the fact that film literacy is not recognized in the school curricula as a compulsory subject, as well as to the lack of information on licensing agreements for schools. Teachers normally ignore the agreements and licenses their schools have and are not aware of the real costs of screening rights. There is also a widespread lack of communication between schools and right holders. Industry says the cost of film and audio-visual works is not expensive at all and that they provide different solutions for the provision of these works at schools. The problem is then linked to the fact that no general arrangements have been made. Individual solutions, such as the buying of licenses by individual schools, are proving to be inefficient.

Finally, the non-compulsory application of the copyright exception for teaching has resulted in a divergent application of such disposition. The screening of full movies at schools continues to be a matter of national interpretation: in some countries, it is seen as a private act (which does not require a license) and a public screening (which does require a license) in other countries. In addition, national legislations differ in terms of the uses allowed under the teaching exception (use of extracts; online uses; etc).

The study shows that teachers generally use short audio-visual formats including film fragments. Almost two-thirds of European schools, according to the surveyed teachers, have less than 50 films available in their schools. Equipment for the screening of films is not bad at European level, even though other important kinds of infrastructure need to be procured. Better broadband connections and the introduction of a media coach in schools could help improve conditions for the enhancement of film literacy.

Better communication and cooperation between general educational authorities and rights-holders is then needed in order to find general solutions on licensing for schools. On the other hand, there are several initiatives being implemented in different countries that have had a positive impact on film literacy. Such initiatives are taken by individual teachers, NGOs, film institutes and archives as well as other major agents. The strengthening of these activities, including film festivals, can also help improve film literacy. In short, greater efforts need to be taken involving schools, national educational authorities, the general film and audio-visual industry as well as other major European actors, in order to effectively bolster film literacy and the use of films and other audio-visual content in Europe.

## 5.2. Recommendations

### 5.2.1. Public film literacy policy

The EC should encourage Member States to acknowledge film literacy as a compulsory subject in school curricula, either as a self-contained subject or as a clearly defined subset of media literacy skills useful for the 21st Century. This would include making resources available to establish pedagogical parameters and an appropriate physical and technological environment (facilities and ICT infrastructure respectively).

Within the process of curricular harmonization spreading throughout Europe, film literacy should be considered a cross-curricular topic present at all levels of compulsory schooling. For this to become a reality, it would be necessary to identify, and define the main, specific media and film literacy elements that should be included. This would also mean setting clear objectives and methodologies for its teaching. In this regard, it would be important to include these actions within EU policies aimed at promoting general media literacy skills.

### 5.2.2. To promote film literacy and media literacy in the context of multiple literacies

The EC and member states should actively promote awareness among teachers and schools of the impact of audio-visual content and media on children and young people, and of the importance of acquiring critical and creative competences through effective and competent teaching of film and media literacy. The EC should boost campaigns on the need for a cultural shift as regards the understanding teachers have of images (still and moving), which are often seen as neutral content rather than as complex and meaningful objects of study. This means that the study of other types of literacies, such as the language of images, should be encouraged.

This is the case with respect to the concept of multiple-literacies and transliteracy. These concepts help develop media and film literacy and, therefore, need to be taken into account as well. The incorporation and promotion of these kinds of disciplines should be addressed through inclusive campaigns (open to new terminologies), initiatives and activities aimed

at creating Europe-wide networks and common approaches to media and film literacy.

### 5.2.3. Time flexibility and autonomy for teachers

Teachers should have a broader autonomy to decide, set up and design their lessons, including greater possibilities to break down time limitations some subjects have (namely, the possibility of scheduling extra-curricular time). It will be useful to encourage educational authorities and schools to promote more flexible curricula (and time schedules) and thus allow the screening of full-length movies.

### 5.2.4. Lifelong teacher training

The EC should encourage teacher-training courses:

Firstly, the EC should recommend that all Member States implement media and film education programs in teachers' colleges and universities (for initial and in-service teacher training, including master's degrees).

In addition, the EC should also recommend the promotion of permanent, teacher-training courses in order to make teachers confident, competent and skilled users of media, information and communication technologies.

Finally, the EC could also support the establishment of a European network for the provision of teacher-training in the field of film literacy with an official certification recognized at European level. This network could also foster cooperation between Member States.

### 5.2.5. Supporting teachers

The EC should encourage Member States to promote other measures addressed at supporting teachers in the field of media and film literacy. One of the recommended actions is the promotion of "media coaches" within schools. The role of media coaches should be similar to the role of those in charge of school libraries or ICT coordinator (which has become more popular in recent years). Thus, films and other audio-visual content as well as other resources for film literacy, will be facilitated by experts, who would take this responsibility away from teachers. As suggested, this could result in a major use of audio-visual material and in greater levels of film literacy.

Secondly, the Commission should recommend and

promote European networking in the field of film literacy. This is to say, to promote the creation of online teachers' communities for the exchange of good practices and experiences, with links to filmmakers, directors, actors, cinema and film industry and other stakeholders.

#### **5.2.6. Online educational platforms**

The EC should promote and support the creation of European educational VOD/SVOD platforms made available to schools. Such platforms should try to increase the volume of films and other audio-visual content for teaching purposes; give larger access to non-national European independent films and World Cinema and work in the promotion of European cultural diversity.

The EC should also consider purchasing screening licenses for a selection of European films to be made available for all schools on one or several online platforms. A catalogue of 50-100 films would be a rich contribution to the sharing of European culture – and as added value there would be an increased interest in viewing new European films. All films should be contemporary and available in original language with the option of subtitles in national languages. Film literacy experts from each country could select exemplary films with their prospective young audiences in mind.

These online platforms could be complemented by resource-platforms dedicated to media and film literacy. Such platforms could include coordinated information on training methodologies, objectives, exercises, recommendations for films and educational materials etc. Public organizations such as FHI, Film institutes and other relevant associations should be asked to pool their resources to the benefit of schools and individual teachers.

#### **5.2.7. Preferable infrastructure for creative classrooms**

The EC should promote the establishment of Creative Classrooms, which have suitable facilities for the exhibition, creation, discussion and study of any sort of media and online resource (as well as traditional resources). In this context, it is important to promote the use of specific spaces for screening films (auditoriums or wall-projections in blacked-out rooms with proper sound will increase concentration and learning quality) and/or to promote going to the cinema for specific sessions of film literacy. The EC should encourage Member States to

support better access to high-speed internet in schools, as well as the necessary internal implementation of basic IT in schools, allowing internet connection in classrooms and common facilities where films are shown.

#### **5.2.8. Promoting cooperation between public service broadcasting and schools**

The EC should encourage cooperation between public service broadcasters (PSB) and schools as a complement to their main functions. The PSB's mission should include the creation or extension of easy online access to audio-visual content, especially to resources aimed at pedagogical uses. They should also support the creation of specific websites dedicated to film literacy.

This could be done through cooperation between the PSB system and educational system, and could involve industry, professionals, teachers and authorities.

#### **5.2.9. Use of school libraries for developing media activities**

The EC should encourage European schools to act as media and film education invigorators. For that, current school libraries (as happens in some countries) could extend their activities to film, general audio-visual content and general media, and thus become media centres. The creation or transformation of such centres should include a major ICT development and a general modernization of their infrastructure. This could also end up as a benefit, extending to other areas of study. These media centres should have as their mission the promotion and coordination of all ICT-related activities in school.

#### **5.2.10. Uses of online content in education**

The EC should promote the advantages of online access to audio-visual content for the purposes of teaching in general and promoting film literacy more specifically. The EC should support the clarification of the legal regimes of such use by reducing or suppressing uncertainties as to the exact scope of the teaching limitation in these cases.

A proposal might therefore be made to include a new, redrafted provision in a future version of the EUCD, that is to say, in the legislative part rather than in the recitals. Such a provision would clarify the scope of the teaching limitation more clearly and in detail; it should be made technology-neutral, i.e. expressly covering both

analogue and digital forms of communication.

Furthermore, the provision should be extended to cover entire works. Such an extension could be made on condition of maintaining it strictly closed for exclusive use by schools using firewall platforms; films made specifically for educational uses should be excluded from this limitation.

It should also be ensured that licensing agreements, as stipulated under contractual terms and conditions of commercial online platforms, would not override or diminish the teaching exception.

#### **5.2.11. Educational approach according to copyright rules**

The EC should include the educational perspective in its current review of the European Copyright framework, carefully considering current realities in Member States. Until new European legislation is in place the EC should advise Member States to construe limitations of copyright with the objective of promoting and clarifying the conditions (and limitations) under which schools and teachers can use films in education without acquiring licenses.

#### **5.2.12. Improving information on educational licenses availability**

The EC should advise Member States to set up mechanisms in the case that licensing may be needed for school use of films, TV programs and other audio-visual content. For instance, general licensing agreements are negotiated by relevant authorities on a collective basis, and not by schools left on their own to deal with this legal complexity, thus securing access to relevant materials for all schools.

It is necessary to improve teachers' knowledge on existing educational licenses through all means, be it with direct communication campaigns addressed to them, or with the direct involvement of educational authorities and their ordinary communication tools addressed to schools.

#### **5.2.13. Film heritage/industry organizations/ film festivals and schools**

The EC should promote the rapprochement and active cooperation between film institutions/film festivals/ industry institutions and the schooling system.

The objective is to promote better information and cooperation.

Film institutions (such as film heritage institutions, film institutes or film festivals) could reinforce their educational mission by strengthening their cooperation with schools. This can be done by promoting screenings or educational activities, creating didactic materials and supporting-activities scheduled by schools in their area of influence.

#### **5.2.14. European media literacy observatory**

The EC should promote the establishment of a Media Literacy Observatory, which would obtain and establish indicators as well as assess and evaluate projects related to media and film literacy, and work in close coordination with film agencies and education authorities of Member States. Being open to dialogue with relevant stakeholders, the Media Literacy Observatory would thus become a consultation and support centre for educational authorities as well as for other public and private entities.

This observatory could have a Media Education Centres Network in all countries aimed at contacting all film literacy actors (film festivals, film heritage institutions, cinémathèques, public and private organizations and associations, etc.) and gather institutions to build open dialogue among them.

Moreover, this Observatory would contribute to the implementation of film literacy resources in Europe, acting as a European good practices network, contributing with its expertise in future film literacy projects, and creating a global point of view.

#### **5.2.15. Public funding and film literacy in schools**

Several of the previous recommendations, and in particular those related to teacher training in the field of film literacy, should be included among the objectives deserving public funding from the EC. Besides that, the EC could study the possible connection between public funding of film distribution in Europe, and making those supported films available to schools. Changes to film support schemes with this purpose should be promoted within a process of dialogue between the film industry and the school and education community.

## European Commission

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