Unclassified TAD/TC/WP(2011)21

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development 26-Jul-2011

English - Or. English

TRADE AND AGRICULTURE DIRECTORATE
TRADE COMMITTEE

TAD/TC/WP(2011)21
Unclassified

Working Party of the Trade Committee

OECD EXPERTS MEETING ON AUDIOVISUAL SERVICES
TOWARDS A SERVICES TRADE RESTRICTIVENESS INDEX

Highlights of discussions during the meeting held 19-20 April 2011

The attached report is for the INFORMATION of the Working Party of the Trade Committee and for the experts having attended the 19-20 April 2011 meeting.

The experts meeting launched the new phase of the STRI project with expansion of its coverage to the audiovisual sector.

Link to the Programme of Work: This document corresponds to the output results on the Services Trade Restrictiveness Index (3.1.2.1.1) foreseen in PWB 2011-12.

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JT03305467

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OECD EXPERTS MEETING ON AUDIOVISUAL SERVICES

TOWARDS A SERVICES TRADE RESTRICTIVENESS INDEX

Paris, 19-20 April 2011

I. Background

1. The OECD Experts Meeting on Audiovisual Services took place in Paris on 19-20 April 2011. About 80 people attended the meeting, including experts from academia, the private sector, and international organisations, particularly the World Trade Organization (WTO) and United Nations Educational, Scientific and Cultural Organization (UNESCO). Delegates from OECD member countries were also present. Carol Balassa, Senior Fellow, Curb Center for Art, Enterprise and Public Policy at Vanderbilt, chaired the meeting.

2. The meeting is part of a broad project ongoing in the OECD Trade and Agricultural Directorate (TAD) aimed at quantifying barriers to trade in services by developing trade restrictiveness indices (STRI). Three pilot sectors, telecommunications, business services and construction were initially studied, while audiovisual services together with transport and distribution are the sectors chosen for the next phase of the project. The objective of the meeting was to launch this new phase of the work by bringing together experts from different stakeholders to share knowledge and ideas on key issues in the audiovisual sector, including driving forces and main impediments to trade.

3. The meeting started with a general session on the link between trade in audiovisual services, cultural diversity and intellectual property rights (IPRs). This was followed by in-depth discussions on each of the following sectors: motion pictures, broadcasting services and sound recording. Each session began with background presentations by academics and experts, followed by panels of discussants made up largely of practitioners.

4. An interactive session was also organised with break-out groups where each group was asked their views on possible barriers to trade in these different audiovisual services. Each group had a chair who reported to the final plenary session.

5. The agenda for the meeting can be found in the annex to this report, along with the list of participants. Background papers and presentations can be downloaded from www.oecd.org/trade/stri. This report highlights the discussions in the meeting, including the break-out groups. For further details, readers are encouraged to turn to the papers and presentations available on the website.

II. Highlights of discussions

6. In their introductory remarks, TAD Deputy Director, Raed Safadi, and the Chair, Carol Balassa, emphasised that the objective of the STRI project is to contribute to the knowledge base in audiovisual services, and build a reliable measurement tool to enhance evidence-based policy.

7. The meeting's discussions revolved around several questions that were posed to participants for reflection:

- What are the most important driving forces for trade in the different audiovisual services sectors?
- What are the preferred modes (e.g. cross-border supply, commercial presence, or supply by natural persons) and channels (e.g. internet, broadcasting, cable and cinema) of supply to foreign markets?
- Do the preferred modes and channels of supply differ between markets? If so, why?
- Are modes of supply linked in a way that supply in one mode is impossible without the other? For instance, does cross-border supply have to be supported by establishment abroad?
- In what sense, if any, are foreign suppliers at a disadvantage to local suppliers?
- How can open markets in audiovisual services be reconciled with cultural diversity and protection of IPRs?
- What are the most important policy barriers to providing services in foreign markets? Are trade barriers complementary so that one may render many other impediments irrelevant?

Open markets, cultural diversity and IPRs

8. A recurrent theme at the meeting was the cultural importance of the audiovisual sector, which is regulated not only for economic purposes but also for its social and cultural aspects. In particular, several participants stressed that government policies can play an important role in promoting cultural diversity and media pluralism. This has been recognised at the international level by the UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions.* The Convention has been ratified by 103 countries and the European Union. It was also noted that the relationship between trade, IPRs and cultural diversity is not coherently reflected in international law and policy making.

9. A number of participants mentioned that technology advances are requiring governments to adapt the existing regulatory framework. In particular, digital technologies make it possible to transmit greater amount of content, and to distribute it through a variety of platforms and devices. This provides consumers with more capacity to watch or listen to their preferred content, reducing the effectiveness of traditional policy instruments (e.g. quotas or subsidies) in promoting cultural diversity. It was also pointed out that existing policies may interfere with the audience right to choose, or increase concentration in audiovisual service markets without improving cultural diversity. A key challenge for governments relates to finding the right balance between the economic and cultural dimension of the audiovisual sector.

Motion picture services

10. Participants provided an overview of the motion picture industry, indicating that it represents 16% of the audiovisual sector. India is the largest producer of feature films (1 132 films in 2008), though the United States is by far the leader of the movie market, representing in 2008 around 70% of the world box office revenues. The US dominance is largely driven by the major media conglomerates, such as News Corporations and Time Warner, while the so-called “independents” are all other firms everywhere in the world. The Motion Picture Association of America (MPAA), which represents the majors, reports that its member companies produce and distribute films in some 112 countries. An important feature of the majors, and of the industry in general, relates to globalisation and international fragmentation of production. Movies can be co-produced by providers in different countries, filmed abroad, and have feature stars from a wide range of countries.

11. The industry has undergone considerable changes in recent years. It has experienced growing competitive pressure from a variety of outlets, and expansion in the use of digital technologies, which make it less costly to transmit content across borders. This has increased the importance of cross-border trade (mode 1) in the sector, although the temporary movement of service providers (mode 4) and commercial establishment (mode 3) remain the dominant modes of supply. The distribution segment is also highly internationalised, predominantly through mode 3, but also increasingly via mode 1 with the digitalisation of theatres.

12. The main barriers affecting trade in motion picture services mentioned by participants include ownership restrictions (both discriminatory equity limits and non-discriminatory cross ownership limitations), quotas (e.g. broadcast time or screen time at cinemas), and different kinds of subsidies and fiscal incentives. Public ownership was additionally raised as an important impediment, and so was lack or limited protection of IPRs. Restrictions on advertising (e.g. domestic content obligations) or dubbing also play an important role, and participants discussed whether language and censorship should be considered as trade barriers as well. While some of these restrictions affect the production of motion pictures, many of them pertain to the distribution process, which is at least as important. The favoured liberalisation approach in the movie sector relies on bilateral coproduction agreements, which can be complex and costly for firms.

Broadcasting services

13. The world television market has been growing significantly over the last decade or so. Even though the large OECD countries dominate the global market, emerging economies such as India and China are experiencing strong expansion. Significant future growth is also expected in developing countries. The penetration rate is of multi-channel television is still low, and with the entry of new channels the growth potential is substantial. The distinction between the major conglomerates and smaller, independent providers is clearly important in this sector as well. The former dominate the international market and develop not only programmes (films and television shows) but also audience (ratings and advertising or retransmission revenues).

14. Technological advances are having a major impact on the television sector, with the growth in the number of channels, platforms (e.g. cable and satellite) and terminal devices (e.g. computers and mobile phones). Representatives from the telecoms industry stressed that the lines between traditional telecoms, broadcasting and content are becoming increasingly blurred. Telecoms services providers now operate as distribution networks for content, and the demand for telecoms is viewed by many as a derived demand for the consumption of content. These developments are contributing to the growth of the international demand for television services witnessed in recent years.

15. Barriers to trade in television services mentioned by participants are similar to those found in the motion picture sector, particularly ownership restrictions, quotas and preferential support. These restrictions can be particularly important for prime time and top rated channels. Equally, piracy and lack of protection of IPRs are a prominent constraint to this sector. Local dubbing requirements and censorship were raised as additional impediments. Some participants also highlighted possible bottlenecks stemming from control of access to content by a small number of major distributors, platform operators or other intermediaries, who own key facilities in the digital value chain.

Sound recording services

16. The music industry is perhaps the sector which has experienced the most significant changes in recent times, as advances in technology coupled with piracy are having a strong impact on global sales. In this context, several participants stressed the need to improve existing statistics for more accurate measurement of the sector. One study using data on popular music charts from 22 countries (representing

some 98% of the global music market) found a substantial and increasing bias toward domestic music. This home bias has not been significantly affected by the advent of new communication channels, such as Internet penetration. Domestic restrictions, such as quotas in radio time, may partly explain the growing consumption of local music.

17. While many of the barriers to trade in movies and broadcasting apply to this sector as well, participants identified IPRs as the most important constraint to international trade in the music industry. On the one hand, piracy and lack of protection of IPRs are implementation issues difficult to capture with the STRI methodology, which relies on *actual* regulations. Interesting suggestions in this area though were made at the meeting, for instance in relation to the ratification of international IPR conventions, such as those under World Intellectual Property Organization (WIPO). Another aspect relates to collection societies and performance rights, which represent another revenue stream for record companies and artists. In this context, the ability of right holders to collect their royalties in foreign countries was raised as an additional impediment.

Discussions on trade barriers in audiovisual services in the break-out groups

Group 1: Motion picture services

18. Lively discussions took place in the motion pictures group, which revolved around two broad issues: cultural diversity and the challenge for governments to strike the right balance between economic and social issues in the sector; and lack of IPR protection, namely inadequate copy-right enforcement, which is difficult to capture in the STRI since it is largely an implementation question. Another overarching issue raised by participants was concentration in the industry, and the related need for governments to establish effective competition policy rules to safeguard against possible anti-competitive behaviour. In addition, the following restrictions were highlighted by the group:

- Foreign ownership restrictions
- Broadcast time and screen quotas
- Discriminatory subsidies and taxes
- Restrictions on advertising or dubbing (e.g. local content requirements)
- Non-transparent and inefficient box office monitoring systems
- Barriers to financing (e.g. collateral requirements)
- Censorship
- Difficulties in obtaining visas for personnel

Group 2: Broadcasting services

19. *De facto* restrictions, such as piracy and anti-competitive behaviour by the private sector, also emerged as a prominent constraint to trade in broadcasting services. The need to put in place technology-neutral policies was raised by some participants as well. The group further proposed the following impediments for inclusion in the STRI:

- Foreign ownership restrictions in local broadcasting and media outlets

- Joint venture requirements
- Broadcast time quotas
- Limitations on the number of foreign channels that can be distributed on a particular platform
- Mandatory investment requirements in local productions
- Discriminatory support and taxes (e.g. subsidies being subject to cultural tests)
- Local dubbing requirements
- Limited publication of regulations (including on their desired effect) and of important market data
- Lack of dispute resolution mechanisms and of contract enforcement

Group 3: Sound recording services

20. Not surprisingly, participants in this group highlighted piracy and lack of IPR protection as a major issue in the music industry. Some suggestions were made on how to capture these implementation questions in the context of the STRI, particularly in relation to the signing of international treaties in this area, and to the establishment of administrative bodies for overseeing implementation. Collection society policies were also discussed, for example with respect to distribution of royalties between local and foreign rights holders. Other significant barriers in the sector are:

- Foreign ownership restrictions
- Subsidies and lack of transparency thereof
- Taxes (e.g. withholding and social security taxes)
- Lack of transparency in censorship systems
- Administrative visa requirements (variation in type, wait times and fees)

ANNEX I. MEETING AGENDA

OECD EXPERTS MEETING ON AUDIOVISUAL SERVICES

TOWARDS A SERVICES TRADE RESTRICTIVENESS INDEX

OECD Headquarters
Paris, 19-20 April 2011

Background and agenda

The Trade and Agriculture Directorate of the OECD has launched a project that aims at quantifying barriers to trade in services by developing services trade restrictiveness indices (STRI). Three pilot sectors, business services, construction, and telecommunication were initially chosen; a second phase adding audiovisual, distribution, and transport services has been initiated by organising expert meetings in November 2010 for distribution and transport, and April 2011 for audiovisual services.

Audiovisual services include production, distribution and projection of motion pictures; broadcasting services; and sound recordings. A host of restrictions on market access, national treatment and other regulatory measures affect the cost of audiovisual services suppliers to enter and service a foreign market. The STRI project aims at aggregating such restrictions into one index for each sector and mode of supply. In order to do so, expert advice is sought for the selection of the measures to be included in the indices.

Purpose of the meeting

The objective of the meeting is to bring together experts from the private sector, governments, international organisations and academia to share knowledge and ideas on key reform issues in audiovisual services, including driving forces, main impediments, and their impact on trade and other measures of economic performance. In particular, the meeting is to provide background information for future development of STRIs for the audiovisual sector and to inform policy analysis and policy recommendations regarding individual audiovisual sectors.

In combination with STRIs for the pilot sectors, particularly telecommunications and computer services, a set of indicators on audiovisual services will also contribute to a holistic understanding of the electronic information services supply chain. It will allow policymakers and analysts to identify bottlenecks as well as regulations that may no longer have the intended effect due to changes in technology.

Organisation of the meeting

The meeting will start with a general session on the link between trade in audiovisual services, cultural diversity and protection of intellectual property rights. This will be followed by three sectoral sessions as distinguished above: motion pictures; broadcasting services; and sound recordings. Each session will begin with background presentations by experts followed by panels of discussants, made up largely of practitioners. The sessions will also cover cross-cutting issues, such as trade and intellectual property rights, trade and cultural diversity and technology neutral regulation.

An interactive session will be organised with break out groups where each group will be asked to identify the major trade policy issues that should be captured in an STRI for the different audiovisual services. Each group will be composed of representatives from different stakeholders and will have a chair who will report to the plenary session.

Background material for the meeting will include analytical work on the subject undertaken by sectoral experts from their recent research.

Questions to be covered:

What are the most important driving forces for trade in the different audiovisual services sectors?

What are the preferred modes (e.g. cross-border supply, commercial presence, or supply by natural persons) and channels (e.g. internet, broadcasting, cable and cinema) of supply to foreign markets?

Do the preferred modes and channels of supply differ between markets? If so, why?

Are modes of supply linked in a way that supply in one mode is impossible without the other? For instance, does cross-border supply have to be supported by establishment abroad?

In what sense, if any, are foreign suppliers at a disadvantage to local suppliers?

How can open markets in audiovisual services be reconciled with cultural diversity and protection of intellectual property rights?

What are the most important policy barriers to providing services in foreign markets? Are trade barriers complementary so that one may render many other impediments irrelevant?

Contact

For further information on the meeting, including any substantive queries or logistical matters, please don't hesitate to contact the organisers at the number and email below:

Substantive queries:

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AGENDA AND TIMING

	Tuesday 19 April 2011
14:00-14:30	**Introduction** *Welcome remarks by Raed Safadi, TAD Deputy Director and by the Chair Carol Balassa, Senior Fellow, Curb Center for Art, Enterprise and Public Policy at Vanderbilt* *Setting the scene* *Introductory speech on the audiovisual sector by the Chair*
14:30-16:15	**Session I: Open markets, cultural diversity and intellectual property rights** *Speaker* Christoph Beat Graber, University of Luzern *Panellists* Todd Nissen, USTR Guiomar Alonso Cano, UNESCO Will Page, PRS for Music David Stopps, FML International Artist Management *Discussion*
16:15-16:30	**Coffee break**
16:30-18:00	**Session II: Trade in motion picture services** *Speaker* Emmanuel Cocq, Groupe d'Économie Mondiale, Sciences Po, Paris *Panellists* Greg Frazier, Motion Picture Association of America Shri Supran Sen, Film Federation of India Kyung-sin Park, Korean Film Council *Discussion*

Wednesday 20 April 2011	
9:00-11:00	**Session III: Trade in broadcasting services** *Speaker* Gillian Doyle, University of Glasgow *Panellists* Michael Wagner, European Broadcasting Union Rob Aft, Compliance Consulting André Lange, European Audiovisual Observatory José Juan Haro, Telefónica S.A. *Discussion*
11:00-11:15	**Coffee break**
11:15-13:00	**Session IV: Trade in sound recording services** *Speaker* Joel Waldfogel, University of Minnesota *Panellists* Peter Jenner, Sincere Management Shira Perlmutter, International Federation of the Phonographic Industry Martin Roy, WTO Graham Henderson, Canadian Recording Industry Association *Discussion*
13:00-14:30	**Lunch**
14:30-16:15	**Session V: Break out groups**
16:15-16:30	**Coffee break**
16:30-17:00	Groups report back to the plenary
17:00-17:30	**Way forward and close of the meeting**

ANNEX II. LIST OF PARTICIPANTS

19-20 April 2011

Australia/Australie

Mr. Patrick BLAKE	First Secretary Permanent Delegation

Austria/Autriche

Mr. Christian HEDERER	Counsellor for Energy, Trade and Industry Permanent Delegation

Belgium/Belgique

M. Jean-Louis BLANCHART	Head of Media Department Media Department Ministry of the French speaking Community of Belgium
M. Pascal BUFFIN	Premier Secrétaire d'Ambassade Politique Commerciale - DG Affaires & Coordination européennes SPF Affaires étrangères
Mr. Koen DESMARETZ	Assistant to the Director Department for Culture, Youth, Sport and Media - Policy and Management Division - Media Policy Flemish government
Mme An TAMPERE	Délégation Permanente

France

M. Pierre CHABROL	Chef de bureau adjoint Multicom1, DGT Ministère de l'Économie, de l'Industrie et de l'Emploi
Mme Elsa COMBY	Expert BAEI Centre National du Cinéma et de l'image animée Ministère de la Culture et de la Communication
Mlle Lilian HANANIA	Rédactrice DGM/ECODEV/AEI Mministère des Affaires Etrangères et Européennes
Mrs. Marguerite HITIER	Chef du pôle audiovisuel extérieur SD Audiovisuel extérieur et des TIC Ministère des Affaires Etrangères et Européennes

M. Alexandre PALKA	Chargé de mission SD de l'audiovisuel extérieur et des technologies de communication Ministère des Affaires Etrangères et Européennes
M. Florian RIOU	Direction Générale du Trésor - Sous-direction Politique commerciale et investissement - Service des affaires multilatérales et du développement Ministère de l'Economie, des Finances et de l'Industrie/TRESOR
M. Antoine SAUTENET	Rédacteur Sous-direction AEI Ministère des Affaires étrangères et européennes
Mme Sophie VERRIER	Expert du BAEI DGMIC Ministère de la Culture et de la Communication

Greece/Grèce

M. EFTHYMIOS ARAVANTINOS	Conseiller de Presse Greek Embassy
M. Frantz DHERS	Stagiaire Ambassade de Grèce

Hungary/Hongrie

Dr. Agnes JANSZKY	Counsellor Permanent Delegation

Japan/Japon

Mr. Atsushi KUWABARA	Counsellor Permanent Delegation

Korea/Corée

Mr. Je Myung RYU	Counsellor ICCP, E-Commerce, SPAM Task Force Permanent Delegation
Mr. Hyung Jong LEE	Counsellor Council, MCM Permanent Delegation
Mr. Byung Kyu KWON	Lawyer, US Attorney Law Firm YoungJin

Dr. Sang-yirl NAM	Research Fellow Center for Interntaional Organization Korea Information Society Development Institute (KISDI)

Luxembourg

Mme Claudine KARIGER	Conseiller de Direction première classe Service des Médias et des Télécommunications au Ministère d'Etat

Mexico/Mexique

Mr. Guillermo MALPICA SOTO	Director General for Negotiations on Services Directorate General for Negotiations on Services Ministry of the Economy
Mr. Mario ALANIS	Minister-Counsellor for Economic Affairs, Trade and Industry Ministry of Economy Permanent Delegation
Ms. Flavia FARINETTI	Counsellor for Economic Affairs, Trade and Industry Ministry of Economy Permanent Delegation

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Mr. Krzysztof JANKOWSKI	Expert Intellectual Property Rights and Media Department Ministry of Culture and National Heritage

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Mr. Sérgio SILVA	Head of Division Department for the Media

Slovenia/Slovénie

Mr. Janez ROGELJ	Directorate for foreign economic relations Ministry of the Economy

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Mrs. Alicia PINDADO GARCIA	Chef de Service Deputy Direction International Trade in Services Ministry of Industry, Tourism and Trade
Mrs. Mercedes RUBIO DOMINGUEZ	Conseiller Economique et Commerciale, Chef Permanent Delegation

Switzerland/Suisse

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Turkey/Turquie

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Mr. Fatos ALTUNC	Expert Ministry of Culture and Tourism
Mrs. Cigdem KOSAN	Assistant Expert Undersecretariat of the Treasury
Mr. Selcuk YAVUZKANAT	Expert Ministry of Culture and Tourism

United States/États-Unis

Mr. D. Shane CHRISTENSEN	Trade and Agriculture Advisor Permanent Delegation
Mr. Todd NISSEN	U.S. Department of State

EU/UE

Ms. Gabriela Loredana ALEXANDRU	Economic and Trade Affairs Manager DG TRADE European Union
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Ms. Anna KOWALCZYK	DG INFSO European Union

Business and Industry Advisory Committee (BIAC)/Comité consultatif économique et industriel (BIAC)

Mr. Graham HENDERSON	President Canadian Recording Industry Association

UN Educational Scientific and Cultural Organization (UNESCO)/Organisation des Nations Unies pour l'éducation la science et la culture (UNESCO)

Ms. Guiomar ALONSO CANO	Division of Cultural Policies and Intercultural Dialogue UN Educational, Scientific and Cultural Organization (UNESCO)

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Compliance Consulting

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Curb Center for Art, Enterprise and Public Policy at Vanderbilt

Ms. Carol BALASSA	Senior Fellow Curb Center for Art, Enterprise and Public Policy at Vanderbilt

European Audiovisual Observatory

Dr. André LANGE	Responsable du département Information sur les marchés et les financements European Audiovisual Observatory

European Broadcasting Union

Mr. Michael WAGNER	Deputy Director Legal Department European Broadcasting Union

Film Federation of India

Mr. Shri SUPRAN SEN	Secretary General Film Federation of India

FML International Artist Management

Mr. David STOPPS	Managing Director FML International Artist Management

IFPI

Ms. Shira PERLMUTTER	Executive Vice President Global Legal Policy IFPI

International federation of film distributors associations (FIAD)

M. Antoine VIRENQUE	General Secretary International federation of film distributors associations (FIAD)

Korean Film Council

Mr. Kyung-sin PARK	Korean Film Council

Motion Picture Association of America

Mr. Greg FRAZIER	Motion Picture Association of America

Organisation Mondiale du Commerce (OMC/WTO)

Mr. Martin ROY	Organisation Mondiale du Commerce (OMC/WTO)

PRS for Music

Mr. Will PAGE	Chief Economist PRS for Music

RTL Group

Dr. Christian HAUPTMANN	Deputy General Counsel Legal Department RTL Group

Sincere Management

Mr. Peter JENNER	Sincere Management

Telefónica del Perú S.A.A.

Mr. José Juan HARO	Telefónica del Perú S.A.A.

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Professor Christoph-Beat GRABER	Professor Faculty of Law University of Lucerne

University of Minnesota

Professor Joel WALDFOGEL	Business and Public Policy University of Minnesota

Other/Autre

M. Eric BERNARD	Avocat à la Cour de Paris
Mme Audrey BOISSEAU	European Affairs Officer SACD
Mlle Lingzi DING	Doctoral Student University of Paris 8
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M. Timothée TSAKANIKAS ANALIS	Jurist Film Producers Association
Mrs. Utta TUTTLIES	Head of Communications Association of Commercial Television in Europe

ANNEX III. PARTICIPANTS IN THE BREAK-OUT GROUPS

Group 1: Motion Pictures Services

Name	Affiliation
Mr. Greg FRAZIER (Chair)	Motion Picture Association of America
Professor Christoph-Beat GRABER	Professor - Faculty of Law i-call, University of Lucerne
M. Timothée TSAKANIKAS ANALIS	Jurist - Film Producers Association
M. Antoine VIRENQUE	General Secretary - International federation of film distributors associations (FIAD)
Mr. Emmanuel COCQ	Information Society and Media Directorate General - Directorate A: Audiovisual, Media, Internet, European Union
Mr. Pascal BUFFIN	Premier Secrétaire d'Ambassade Politique Commerciale - DG Affaires & Coordination européennes, SPF Affaires étrangères
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Mr. Byung Kyu KWON	Lawyer, US Attorney - Law Firm YoungJin
Mr. Shri SUPRAN SEN	Secretary General - Film Federation of India

Name	Affiliation
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Mr. Kyung-sin PARK	Korean Film Council
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Ms. Iza LEJARRAGA	Trade Policy Analyst - OECD / OCDE

Group 2: Broadcasting Services

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Mr. Rob AFT	COMPLIANCE CONSULTING
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Mrs. Utta Tuttlies	Association of Commercial Television in Europe
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