

German Federal Film Board (FFA)

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REPORT ON THE IMPACT OF THE DEVELOPMENT OF THE PLATFORM ECONOMY ON AUDIOVISUAL PRODUCTIONS IN GERMANY AGAINST THE BACKGROUND OF A POSSIBLE INVESTMENT OBLIGATION

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GLOSSARY

AVMSD	EU Audiovisual Media Services Directive: The legal basis for investment obligations for international video-on-demand providers.
A-VOD	Advertising video-on-demand: Advertising-financed streaming of video content, e.g. on YouTube or streaming offers from TV providers (RTL+, Joyn).
B-VOD	Broadcaster video-on-demand: Collective term for video-on-demand platforms of traditional broadcasters or TV stations, which includes all types of financing (subscriptions, advertising, on-demand fees, broadcasting fees).
Buy-out	Also "full buy-out" or "total buy-out": The permanent acquisition of all licensing or commercialisation rights to an audiovisual production for a one-time fee, usually by the client (e.g. TV or VOD provider).
EST	Electronic sell-through: Digital purchase transaction in which an unlimited right of use is acquired for individual films or series that can also be downloaded.
Exclusive	Audiovisual productions licensed for exclusive commercialisation by VOD providers, possibly limited in time or territory.
GMPF	German Motion Picture Fund: Funding programme of the Federal Government Commissioner for Culture and the Media (BKM) to support high-budget series and films.
IP	Intellectual Property, here: The ownership of licensing or commercialisation rights of audiovisual productions and all associated (mostly fictional) content, e.g. stories or characters.
Local content	The term "local" is used synonymously with "national" in the context of this report in the sense of activities and content in a specific country. The term is used primarily as a distinction from globally marketed U.S. content.
Originals	Commissioned productions for VOD providers with exclusive commercialisation on their platform.
Paid-VOD	Paid video-on-demand: Collective term for all paid video-on-demand offerings, i.e., those financed by subscription or on-demand fees (see S-VOD, T-VOD, EST).
Platforms	In the context of this report, the term "platform" is used synonymously with "video-on-demand offer" (for more on the definitional classification, see annex).

S-VOD	Subscription video-on-demand: Streaming of video content financed by subscription fees, e.g. with international providers such as Netflix and Prime Video or national providers such as RTL+ Premium.
T-VOD	Transactional video-on-demand: Digital rental business in which a limited right to use individual films or series is acquired.
Independence	Here: The economic and creative independence of producers vis-à-vis clients in the VOD and TV industry. According to EU guidelines, this is the case if there are no significant economic links with clients, no majority production for them and no participation in licensing rights.
Diversity	Here: The content, aesthetic, creative and social range of audiovisual content produced for first releases in cinemas, on VOD platforms or on TV.
VOD	Video-on-demand: Audiovisual content such as films, series, television programmes and videos that are made available on an internet platform for time-sensitive use as a download or for direct viewing (streaming). In the → AVMSD, these are referred to as "On-demand audiovisual media services".

Translation note

This study was originally published in German language and translated into English by Goldmedia and Dr. Werner GmbH. To improve readability and comprehensiveness, German-language quotes and source titles were translated into English in the continuous text and footnotes where appropriate. The original German sources are listed in the bibliography.

1 Introduction

1.1 Background, mandate, and research question

On 28 August 2021, the German Federal Film Board (FFA) commissioned Goldmedia GmbH Strategy Consulting to prepare a report on the "*Effects of the development of the platform economy on audiovisual productions in Germany against the background of a possible investment obligation*".

The importance and use of video-on-demand offers in Germany is steadily increasing. Subscription-financed (S-VOD) and advertising-financed offers (A-VOD) are the main growth drivers. With a forecast revenue of more than EUR 4.3 billion¹ for 2021, these providers form a relevant economic pillar of the German media market. The result is a significant increase in demand for audiovisual productions and content.

Since its revision in 2018, the EU Audiovisual Media Services Directive (AVMSD, cf. Chap. 1.3) allows member states to oblige national and international providers of video-on-demand services to invest in local or European productions.² The aim is to maintain and promote an independent and diverse European production landscape.

Against this background, the FFA would like to have an independent economic report examine the extent to which there is a need for such an investment obligation in Germany and what possible effects and orientation possibilities exist in this regard.

This is intended to provide the responsible political decision-makers with the basics as well as scope for action for the further processes of decision-making.

The central research question of this report is: To what extent is there a need for an investment obligation for video-on-demand providers in Germany in order to maintain and promote the independence and diversity of the audiovisual production landscape?

¹ cf. Goldmedia (2020): Streaming market Germany 2020.

² A comprehensive account of the situation of "the promotion of independent audiovisual production in Europe" can be found here: European Audiovisual Observatory (EAO) (2019): The promotion of independent audiovisual production in Europe.

The report consists of three main components:

- A review of the market situation and the effects of the platform economy and video-on-demand providers on the production landscape in Germany.
- A needs assessment on the necessity as well as the possible dimensions and effects of an investment obligation, and
- An overview of the implementation of investment obligations in Europe

A legal examination of the feasibility and the legal framework is not part of the report.

1.2 Methodology and approach

Methodologically, a mix of primary data on the use of VOD offers, secondary data analyses from extensive desk research and expert interviews with representatives of various industry segments were used for the report. On this basis, a media-economically sound analysis and calculation of the dimensions and potentials were carried out. Specifically, this included the following steps:

- **Primary data analyses** on the use of VOD offerings in Germany and on the programme libraries of the individual providers, primarily based on the Goldmedia VOD ratings.
- **Secondary data analysis** of relevant external sources and studies as well as FFA's own data to determine the status quo in the context of the market review. This also includes a **comparison with various databases or sources** on media companies and content productions in Germany (Goldmedia, SPIO, FFA, Standortmonitor.net, NRW production study, etc.).
- **Expert interviews** with a total of 17 representatives of the national and international film industry (production, film distribution, cinema, TV, VOD as well as national and international funding institutions and legislators) on the effects of the platform economy. The **interviews were conducted either by telephone or face-to-face via video call by experienced interviewers** on the basis of a semi-structured questionnaire, and their core statements were summarised in writing. The interviews lasted about 60 minutes on average.
- **Economic modelling and forecasts** on the economic significance and economic impact of a possible investment obligation for platform providers.

1.3 About the AVMS Directive

The Audiovisual Media Services Directive (in short: AVMS Directive or AVMSD) aims to ensure harmonised framework conditions of a market for audiovisual media services across the EU and thus contribute to the promotion of cultural diversity as well as to ensure an adequate level of consumer and child protection.³

The AVMSD distinguishes between three types of audiovisual offerings:⁴

- **Audiovisual media service:** services for the provision of broadcasts under an editorial responsibility of media service providers for the information, entertainment or education of the general public via electronic communications networks, either television programmes or on-demand media services.
- **On-demand audiovisual media service:** an audiovisual media service provided by media service providers for reception at the time chosen by the users and on their individual demand from a catalogue of programmes defined by media service providers.
- **Video-sharing platform service:** a service that offers programmes, user-generated videos, or both, to the general public, for which the video-sharing platform operators have no editorial responsibility, in order to inform, entertain or educate using electronic communications networks. The organisation of the programmes or videos is determined by the video-sharing platform operators, including the use of automated means or algorithms, in particular display, tagging and sequencing.

The directive thus differentiates between classic linear TV programmes and live streams, non-linear video-on-demand offers as well as video or social media platforms such as YouTube, Facebook or TikTok.

With the latest revision of the AVMSD, the European Parliament and the European Council agreed in 2018 on new regulations to "take account of changes in the European media landscape".⁵ The revision focuses primarily on companies

³ cf. Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).

⁴ cf. *ibid.*

⁵ Europäisches Informations-Zentrum Niedersachsen (EIZ) (2020): New Audiovisual Media Services Directive.

in digital value chains and platform providers.⁶ These are to be held more accountable by the new and amended regulations.

Thus, the AVMSD obliges on-demand audiovisual media service providers – hereafter referred to as video-on-demand or VOD providers or VOD platforms – to ensure a minimum quota of 30 per cent of European works in their catalogues. These works must also be given special prominence.

In addition, the revision of the Directive allows EU Member States to introduce or extend an investment obligation: States can oblige international media service providers established in another Member State but targeting viewers in the respective country to make a financial contribution to the production of European works. The prerequisite is an existing or similar obligation for national providers. The contributions may take the form of levies to governmental agencies or funding institutions and/or investments in audiovisual productions.

A number of EU countries (e.g. France, Spain, Italy, Portugal, Belgium, Czech Republic, Slovenia) have already made use of the new regulation; in other countries (e.g. Denmark and the Netherlands) it is being planned or discussed (cf. Chap. 4.1).

The possibility of an investment obligation in audiovisual productions in Germany based on the AVMSD is the background to this report.

⁶ The term "platform" is used in the context of this report in the sense of the AVMSD and refers to any kind of video-on-demand offerings. A definition and classification of the term platform in the context of video-on-demand offers can be found in the annex.

2 Review of the German film market and VOD platforms

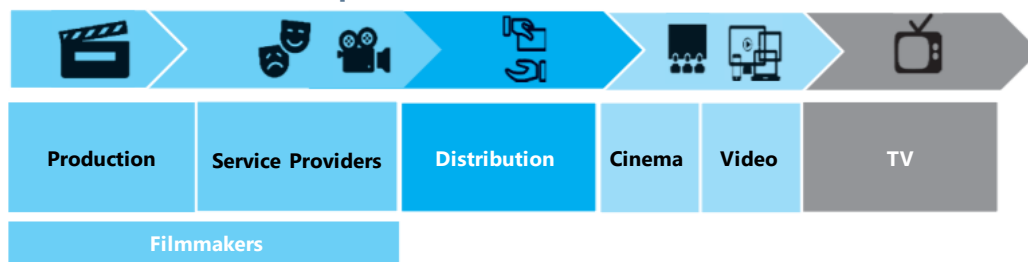
This section analyses the current situation and development of the German film industry. The focus is on the development of the video-on-demand market and the effects on audiovisual production in Germany.

2.1 Situation of the German film industry

The German film and audiovisual production industry⁷ is undergoing a profound change that encompasses all areas of the industry. This is largely due to changing usage patterns through digital technologies and increasing internet bandwidths, which allow content to be accessed at any time via video-on-demand platforms.

Traditional film production and commercialisation in Germany is characterised by a high degree of fragmentation. Along the value chain of a film (cf. figure below) there is a complex interplay of numerous specialised players. Distribution and sales companies act as the central link between production and commercialisation.

Fig. 1: Classic value chain of the film industry and its (sub-)sectors (without VOD platforms)



Source: Castendyk/Goldhammer (2018)

In this system, the cinema is an important revenue and attention generator for later release stages in home entertainment and TV. For this, it usually receives an exclusive release window. Commissioned productions for the TV or DVD market skip the distribution and cinema stage but leave the basic structure of the system untouched.

⁷ This means that all players involved in the production, marketing, commercialisation and communication of fictional and non-fictional audiovisual productions (films, series, TV formats, digital formats) are covered by this report.

A special role is also played by film funding, which supports all stages of value creation as an overarching control and protection mechanism to maintain the independence and diversity of the industry.

Due to the growth of digital markets, video-on-demand platforms are now increasingly moving into the centre of cinematic value creation and expanding their influence on other players. As a result, the established mechanisms and release stages are coming under pressure and are increasingly being dissolved or made more flexible (cf. Chap. 2.3.10).

The COVID-19 pandemic has further accelerated this change. While video-on-demand platforms benefited from the restrictions on public life, many sectors of the traditional film and cinema industry experienced sales declines, some of them dramatic.⁸ Despite a gradual market recovery, significant and lasting changes in the market structure are nevertheless discernible. Many experts assume that a return to the status before the coronavirus pandemic cannot realistically be expected.

In the following, we will first look at the situation of the individual players in the traditional value chain. The situation of the video-on-demand platforms will be examined separately in the following chapter.

2.1.1 Production industry

Development of the production market

The classic German production market, to which the report refers in the following, consists of about 900 companies, two-thirds of which are predominantly active as TV producers and one-third as cinema film producers. Another 1,300 production companies are active in the field of advertising, image, and industrial film production. The cinema and TV production companies employ about 37,000 people in Germany of whom about a quarter are freelancers.⁹

In 2019, the total revenue of the German production industry (excluding subsidies) was around EUR 5.1 billion. This means that the market remained stable

⁸ According to an expert report by the scientific services of the German Bundestag, the film industry as well as the performing arts and art market are the segments of the cultural and creative industries most affected by the pandemic and have been thrown back to the revenue level of 17 years ago (cf. Wissenschaftliche Dienste des Deutschen Bundestages (2021): Effects of measures to combat the COVID-19 pandemic on cultural life in Germany – Developments in the cultural and creative sectors over the years 2020-2021).

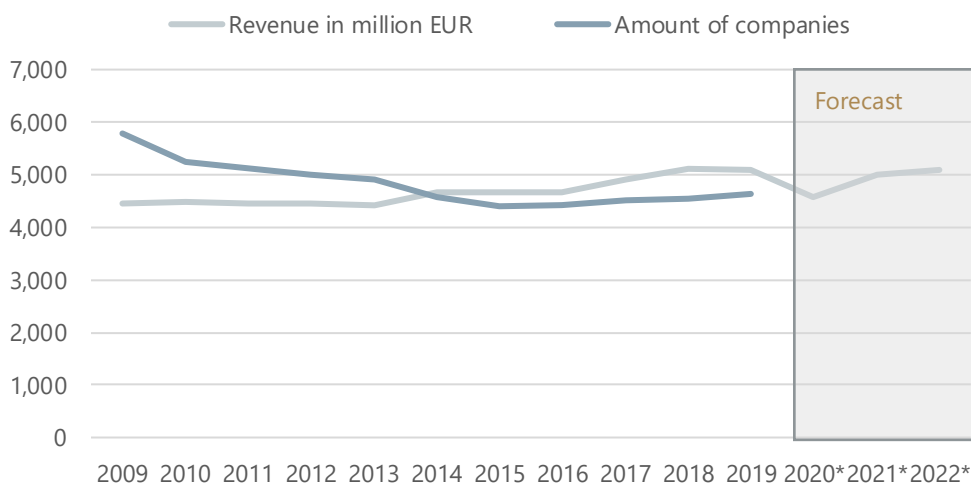
⁹ cf. Castendyk/Goldhammer (2018): Produzentenstudie 2018, pp. 13-18. A current survey of the German producer landscape as part of the follow-up study is still in the field phase at the time of the report's preparation.

compared to the previous year after previously recording, in part, significant increases of up to five per cent per year due to rising demand (cf. Chap. 2.3.2).¹⁰ The number of companies declined sharply for a long time, but has stabilised or increased slightly since 2015 (cf. figure below).

Due to the aggravated conditions in the coronavirus pandemic, a decline in revenue of about minus ten per cent (incl. advertising) is to be expected for the entire production industry in 2020. For traditional film producers, a decline of four to five per cent is to be expected with cinema productions being hit harder than TV and VOD productions. Due to the good order situation and the successful adaptation to pandemic-related constraints in filming, a recovery is expected for 2021.

The number of people in employment, which was still around 28,500 in 2019, is also expected to recover in 2022 after interim declines of around minus nine per cent. The basis for this assumption is the high demand for content (cf. Chap. 2.3.2) combined with the successful implementation of pandemic-related requirements for filming, according to experts.

Fig. 2: Number of companies and amount of revenue in the production sector (film, TV, video, advertising) in Germany, 2009-2022



Source: Goldmedia Standortmonitor.net (2021).¹¹ Basis: "Production of films, video films and television programmes" segment (WZ class 59.11), as of 17.09.2021, * Forecasts 2020-2022: Goldmedia analysis.

An increasing concentration of companies and revenue can be observed in the production landscape. For example, the market share of the largest production

¹⁰ cf. Goldmedia Standortmonitor.net (2021): Basis: Segment "Production of films, video films and television programmes (WZ class 59.11)".

¹¹ The Goldmedia Standortmonitor.net is based on data from official sources such as the Federal Statistical Office (DESTATIS), the statistical offices of the federal states, the Federal Employment Agency and other renowned data providers. In addition, sector-specific primary and secondary data are continuously supplemented (cf. <https://standortmonitor.net/>).

companies (>EUR 25 million revenue) increased from 49 per cent in 2011 to 55 per cent in 2017, although their number decreased slightly. The number of companies with a revenue of EUR 10 to 100 million increased significantly, while the number of micro-enterprises with less than EUR 0.1 million decreased significantly.¹² According to the majority of expert views, this trends of concentration has intensified in recent years. The extent to which small production units can profit from the increased demand and falling market entry barriers for VOD productions is debatable (cf. Chap. 2.3.2).

Development of production and investment volume

In 2019, TV broadcasters' investments in German productions (TV, VOD, and cinema) amounted to a volume of around EUR 2.5 billion. International VOD providers (cf. Chap. 2.2) invested a total of only around EUR 180 million.¹³ In 2020 and 2021, the expenditure of the TV broadcasters remained stable overall, while the investments of the VOD providers increased to EUR 220 million.

The most important clients of the producers are the ARD state broadcasters, which invested around EUR 846 million in German productions in 2019.¹⁴ This volume increased slightly in 2020 to around EUR 857 million. Around three quarters of the expenditure went to independent producers and over half to commissioned productions. According to Goldmedia estimates, a similar level can be expected for 2021 – despite the coronavirus.

ZDF's order volume in 2019 was EUR 721 million. About two-thirds of this was awarded to independent producers.¹⁵ The volume fell in 2020 and 2021 to EUR 694 million and EUR 650 million respectively, and in 2022, ZDF is planning higher investments of around EUR 700 million again.¹⁶

RTL Group and ProSiebenSat.1 each invested an estimated EUR 500 million in German productions in 2019. In the following years, 2020 and 2021, according to the surveyed experts and Goldmedia estimates, the volume at RTL increased while it declined at ProSiebenSat.1. The reason is the stronger orientation of the RTL Group towards fictional content and the associated VOD strategy.

¹² cf. Castendyk/Goldhammer (2018): Producer Study 2018, p. 66.

¹³ cf. European Audiovisual Observatory (EAO) (2021b): Yearbook 2020/2021. Key Trends.

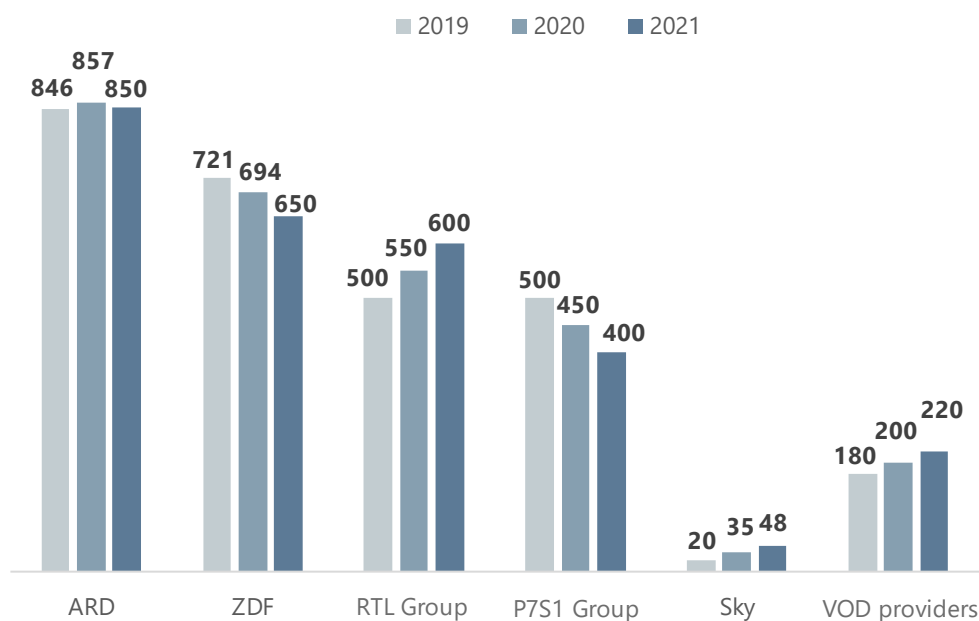
¹⁴ cf. Baumbach-Goetze (2021): ARD Producers Report for the Year 2020.

¹⁵ cf. ZDF (2020): The ZDF programme 2019-2020: Declaration of Commitment: Review.

¹⁶ cf. ZDF (2021): ZDF in virtual exchange with producers.

According to Goldmedia estimates¹⁷, the investments of international VOD providers as well as Sky in German productions increased significantly in 2020 and 2021 but are still below the expenditure of TV providers.

Fig. 3 Investments in audiovisual productions by client in Germany, 2019-2021, in million EUR



Sources: Goldmedia analysis/Estimation (2020/2021), Ampere Analysis (2019), Baumbach-Goetze/Schröder (2020), Baumbach-Goetze (2021), Comcast (2020/2021), EAO (2019/2021b), Expert talks, RTL Group SA (2020/2021), ProSiebenSat.1 Media SE (2020/2021a), ZDF (2020/2021), * VOD providers: Netflix, Prime Video, Disney+, Apple TV+ (excluding VOD platforms of TV providers).

Overall, the investments of the largest clients for audiovisual productions in Germany have thus remained stable – despite the coronavirus pandemic – at (estimated) around EUR 2.8 billion each in the years 2019 to 2021.

The investment sums mentioned include both TV productions and feature films for which the TV broadcasters are also important financing partners. Their activities as co-producers are usually linked to rights for the subsequent first TV broadcast or for commercialisation on digital platforms.

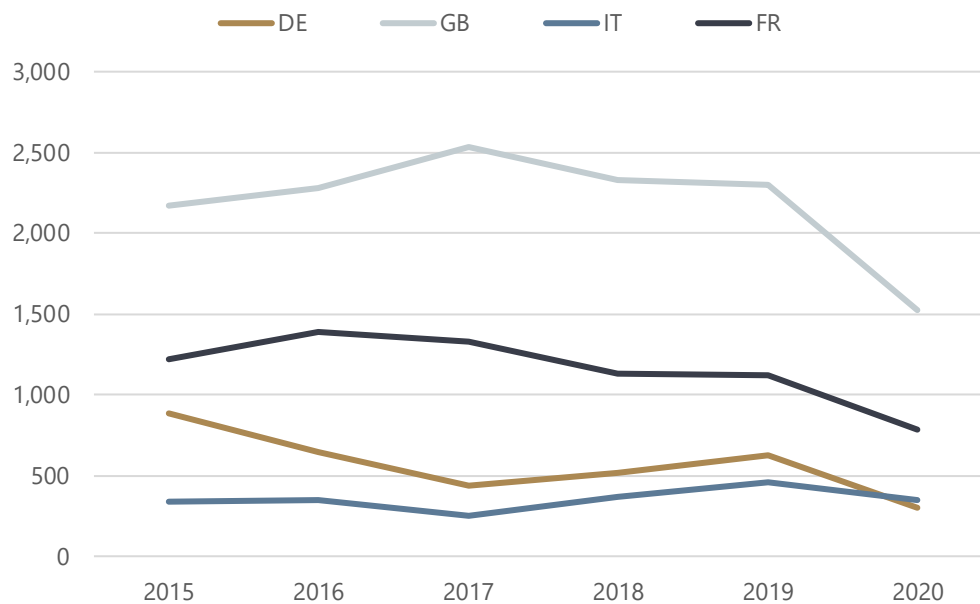
Especially in terms of investments in cinema films, Germany is clearly behind Great Britain and France in an international comparison and at a similar level to Italy (cf. following figure).

According to the European Audiovisual Observatory (EAO), the investment volume rose to EUR 628 million in 2019 but the financing of cinema films is under pressure because of the coronavirus crisis. As a result, investments fell by more

¹⁷ cf. also chapter 3.3.

than 50 per cent to around EUR 300 million in 2020. Many experts are also currently observing a strong downward trend.

Fig. 4 European comparison of investments in feature films, 2015-2020, in million EUR



Source: EAO (2022)

Development of production output

On average, about 900,000 TV programme minutes as well as about 150 feature films and about 100 cinema documentaries are produced in Germany each year.¹⁸

The production landscape is characterised by increasing dynamics. Due to the growing importance of the video-on-demand market, the demand and production of serial content is increasing.

According to the EAO, the volume of fictional European productions measured in hours is thus shifting increasingly in the direction of high-quality series (high-end TV series, or HETV for short¹⁹, cf. the following figure). According to the experts' unanimous opinion, this trend is also clearly recognisable in Germany.

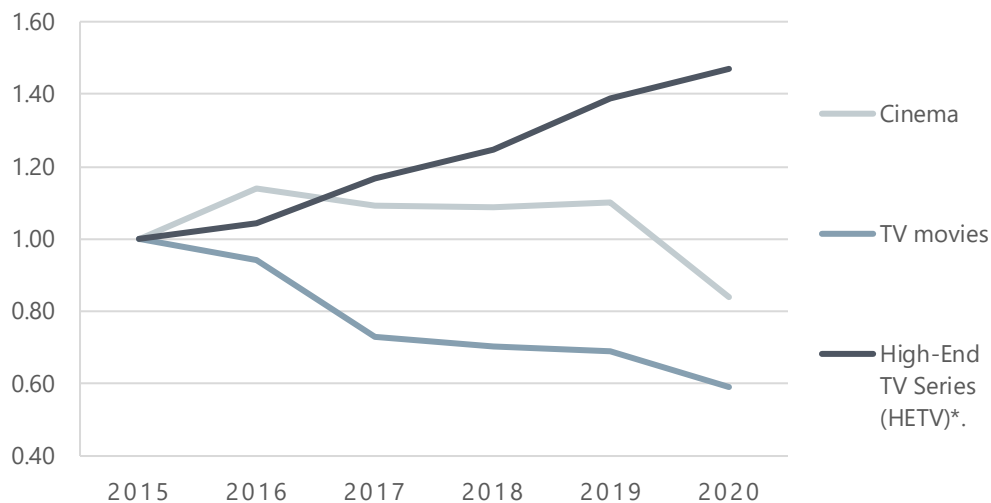
Although the data also show that the growth in series up to 2019 was not directly at the expense of the production volume of films but rather at the expense of TV films.

¹⁸ cf. Castendyk/Goldhammer (2018), Producer Study 2018, pp. 13-18.

¹⁹ High-end series are defined as series with two to 13 episodes per season. A qualitative delimitation or statement on the size of the production budgets is therefore not possible.

However, the numerous, time-consuming series productions lead to a strongly increasing utilisation of the available production capacities (cf. Chap. 2.3.3). This also affects cinema film productions, which are also affected by the previously mentioned declining investments and thus face several structural challenges.

Fig. 5 Development of the production volume of fictional content in the EU, 2015-2020, in hrs. per year, values indexed: 2015 = 1.00



Source: Simone/Kanzler (2021), supplementary unpublished data for 2020, * HETV: series with 2-13 episodes per season.

The experts agree that the most important instrument to alleviate the shortage of resources is to expand the work and promotion of junior staff. There is a considerable shortage of personnel, especially in the technical and organisational fields. On the other hand, young creative professionals in the fields of directing, cinematography, screenwriting, and production face a lack of development opportunities and high entry barriers (cf. Chap. 2.3.4).²⁰

Distribution of licensing rights

For production companies, the commercialisation and licensing rights of the content they produce are the most important economic asset. Building up their own rights catalogues ("libraries") enables them to participate in the value of the content they produce in the long term, aside from one-off production fees, and to obtain financial resources for the development of new material (cf. Chap. 2.3.5).²¹

A share in the licensing rights is therefore of great importance for producers. While this is the rule for cinema productions, so-called "buy-out" productions (also "full buy-out" or "total buy-out") predominate in TV productions, where all

²⁰ cf. Producers' Association (2021a): Study on young talent.

²¹ cf. Castendyk/Goldhammer (2018): Producer Study 2018, p. 91.

commercialisation rights go to the commissioning broadcaster. In 2017, these accounted for around 67 per cent of commissioned productions at private broadcasters and as much as 82 per cent at public broadcasters. Overall, however, a decline in buy-out productions was recorded compared to 2011.²²

In order to allow television producers to participate financially in an intensified or prolonged use of productions (including buy-out productions) both on the various linear programmes of ARD and ZDF and on mediatheques (within the framework of the new telemedia change concepts), ARD and ZDF have concluded new agreements with the corresponding associations in recent years for both fictional content and documentaries. These provide for additional payments for the re-broadcast of works on other channels or when certain viewing figures or certain dwell times in the media libraries are reached.²³

In commissioned productions for VOD platforms, which are becoming an increasingly important source of income for producers, the "buy-out" model is generally used. While international and other ancillary rights sometimes remain for producers in TV productions, all worldwide rights remain with the platform providers (cf. Chap. 2.3.5).

Independence and diversity

The relationships between producers and clients are directly related to the independence and diversity of the production landscape. According to the experts interviewed, this is also important in order to authentically reflect and preserve cultural diversity in Europe and Germany in audiovisual productions. It is therefore also a central goal of the EU based on the AVMSD (cf. Chap. 1.3).

In contrast to most EU member states, there is no concrete definition of the term "independent producer" in German law. The criteria for independence from broadcasters set out in the AVMSD include the following factors:²⁴

- **ownership of the production company,**
- **the amount of content delivered to the same providers; and**
- **ownership of secondary rights.**

²² cf. Castendyk/Goldhammer (2018): Producer Study 2018, p. 18 and p. 92-94. In contrast, 38 per cent of productions for public broadcasters in 2017 included revenue or profit sharing for producers, but only 29 per cent of productions for private broadcasters.

²³ cf. ZDF (2016): ZDF and the TV producers; ARD (2021): Cornerstones for balanced contractual conditions and a fair division of commercialisation rights in productions.

²⁴ cf. European Audiovisual Observatory (EAO) (2019): The promotion of independent audiovisual production in Europe, p. 22.

A producer is thus to be understood as financially and creatively independent if there are no significant economic ties with clients and the majority of the production is not done for them.

Furthermore, the leeway in the commercialisation of licensing rights is used as a criterion. Accordingly, the independence of producers is endangered if a client retains all rights to productions, including secondary rights. The reason is that in this case a producer cannot build up a catalogue of works for which the secondary rights can be sold on other markets.

The criteria are transferable to VOD providers. They are reflected in the legislation of most EU states²⁵ as well as in the definition of the German producers' association.²⁶

Compared to other EU countries, the production landscape in Germany has so far received little regulatory protection. In France, for example, producers have long been supported in their independence: There, the market power of broadcasters and U.S. studios is limited by investment obligations in independent productions and minimum quotas for local content.

In Germany, producers are supported within the framework of film subsidies. The background to this is that after the end of the Second World War, the West German film industry was quickly squeezed out by a superior force from Hollywood. In order to protect the cinema industry and to compensate for the relatively small size of the German market compared to the U.S. film titles distributed worldwide, the German Federal Film Board (FFA) was founded in 1968 on the basis of the German Film Law (Filmförderungsgesetz – FFG).

Since then, the FFG has guaranteed producers certain licensing rights and revenue shares in subsidised cinema productions, which strengthens their independence. For their part, the federal states established their own funding programmes to strengthen regional independent film production.

For a long time, producers of television productions were confronted with an oligopolistic landscape structure of a few public-sector clients. It is true that the TV stations developed into important financing partners for cinema films for which producers are protected by the above-mentioned funding regulations. In the case of commissioned productions for their own TV programmes, however,

²⁵ cf. Chap. 4.1.

²⁶ According to the definition of the producers' association, the following is decisive for a production company to be independent: its ownership structure, the control of productions, the scope of programmes supplied to one and the same commercialiser and the ownership of commercialisation rights. In the case of interlocking ownership under company law, the majority of the capital or voting rights (75%) must be owned by the producer. In the case of natural persons as members, they are not exclusively active for individual commercialisers (cf. Producers' Association, 2021b: Independence).

the independent production landscape was not obliged to participate in the rights.

The emergence of private TV stations in the 1990s did create intense competition for content. However, the independence of the production landscape was still not supported by law. In addition, only a few private broadcasters or groups of broadcasters were relevant as clients for the producers.

The buying power of a few clients from the TV industry rewards producers who orient themselves as closely as possible to the programme requirements of the broadcasters. This ultimately provides less impetus for dynamism and innovation than in the case of free material development.²⁷ In addition, such market conditions promote vertically intertwined structures: Thus, to this day, numerous production companies are intertwined with media groups such as Bertelsmann, Constantin or with subsidiaries of the public broadcasters such as ZDF Enterprises.²⁸ Both are ultimately structural obstacles to independence and diversity.

The framework conditions agreed by the production industry with public service clients (see above) are first steps towards strengthening their independence. Comparable agreements with private or VOD providers have not yet been concluded. The tax-financed film funding of the German Motion Picture Fund for VOD and TV productions (GMPF, cf. Chap. 2.2.7), in contrast to cinema funding, does not include any regulations to protect independent producers.

The extent to which the growth of VOD services promotes the diversity of the content landscape is debatable. It is true that international VOD providers are increasingly asking for content in genres that have hardly played a role in German productions up to now. In the opinion of many experts, the increase in the range of content is offset by the fundamentally global, commercial orientation of the platforms. Through specific aesthetic requirements, which are increasingly being adapted by national providers, the platforms ultimately create similar programming constraints as with classic TV productions. This does not support the cultural diversity that is made possible by independently produced cinema films.

A diversity of content is also connected to a diversity of content producers. This is why both the clients of the TV and VOD industry, and the producers are committed to promoting culturally diverse creative and production teams.

²⁷ cf. Castendyk/Goldhammer (2018): Producer Study 2018, p. 92.

²⁸ cf. *ibid.*, S. 61.

Creative workers and professionals

Due to the high demand for content because of the streaming boom, there is a great need for creative professions and organisational as well as technical professionals. As a result, they can call for significantly higher salaries and negotiate improved working conditions (cf. Chap. 2.3.3). This has the effect of significantly increasing production costs.

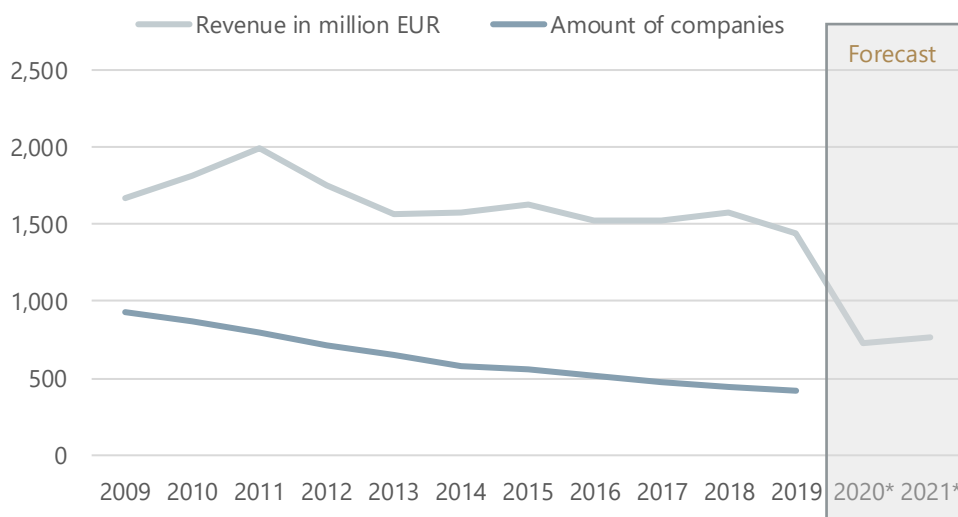
This development is seen by numerous experts and described as a phenomenon of rising costs vs. rising output. High fee demands lead to an increase in the total costs of a production. However, if the total budgets of the clients remain stable or increase only slightly, the total number of productions may stagnate or decrease.

2.1.2 Film distribution and sales industry

As intermediaries in the film industry, distribution and sales companies form the interface between production companies and commercialisers such as cinemas, TV stations or on-demand platforms.

In 2019, a total of 419 companies were active in the economic sector "film distribution and sales (excluding video rental stores)", which achieved a revenue of around EUR 1.4 billion. Compared to previous years, both the number of companies and the revenue decreased. During the pandemic-related restrictions on cinema operations and the decline in physical retailing, revenue in this segment halved (cf. following figure).

Fig. 6 Number and revenue of companies in the film distribution and sales sector in Germany, 2009-2021



Sources: Goldmedia Standortmonitor.net (2021). Basis: "Film distribution and sales (excluding video stores)" segment (WZ class 59.13), as of 17.09.2021, * Forecasts 2020-2021: Goldmedia analysis

Cinema film distribution plays an important role in the financing of films and the further distribution and licensing of rights to cinemas, video distributors, on-demand platforms, or TV channels. Film producers usually participate in the profits of film distributors in the form of a net revenue share.

In 2019, there were 144 distributors with at least one film on the market, according to the Head Organisation of the German Film Industry (SPIO), with a total revenue of EUR 425 million. In 2020, 117 distributors were still active despite the coronavirus-related temporary cinema closures, but they released 50 per cent fewer feature films and 41 per cent fewer documentaries.²⁹

The central role of distribution and sales companies in cinematic value creation is coming under pressure due to the increasing relevance of video streaming platforms and "direct-to-consumer" business models (cf. Chap. 2.3.10). This has resulted in significant financial losses for distributors in various places:

- Proceeds from cinema ticket sales are a significant source of income for film distributors. In addition, cinema success determines the value of productions in downstream release stages, e.g. licence sales to TV and S-VOD providers. The decline in ticket sales and the drop in sales during the coronavirus pandemic are therefore major challenges for distributors.
- In addition, distributors and sales agents are confronted with a strong decline in revenues in the physical video market, which is hardly compensated by digital transaction models (EST/T-VOD) (cf. Chap. 2.1.4). The reason is that the user budgets for digital formats are often tied up by S-VOD providers. The commercialisation risk for films can therefore hardly be offset by possible revenues in home entertainment.

Although S-VOD platforms are buyers of licence sales for distributors and sales agents, the payments are comparatively low and not transparently linked to success parameters, according to the experts.³⁰ The commercial orientation of large S-VOD providers also tends to favour large distributors and licence dealers.

In addition, there is the great relevance of the sale of free TV licences (also as "backing" for film financing), which is, however, confronted with declining TV investments in cinema productions (cf. Chap. 2.1.1). At the same time, less and

²⁹ cf. SPIO/Berauer (2020, p. 23): Film Statistics Yearbook 2020; cf. SPIO/Berauer (2021, p. 16ff.): Film Statistics Yearbook 2021.

³⁰ The exception is so-called "first-pay" agreements, in which a VOD platform acquires the exclusive digital first commercialisation right of cinema titles. Here, the licence sums are usually tied to reaching certain viewer thresholds ("escalators").

less attractive titles can be purchased via the international licence trading market as these are increasingly produced exclusively for platforms or acquired by them at high prices for global marketing.

Thus, many rental and distribution companies have less and less profitable attractive content and financial resources at their disposal. In response, the larger distributors are increasingly expanding their own production capacities, which further increases the vertical integration of the industry (cf. Chap. 2.1.1).

2.1.3 Cinema industry

Despite the increasing importance of digital platforms, cinema was the most important release stage for most newly released blockbusters until the outbreak of the coronavirus pandemic and the associated lockdown measures. At the same time, cinema commercialisation serves to determine the economic significance or attractiveness of films.

However, the digital release formats pushed forward in the wake of the pandemic situation have changed the established commercialisation mechanisms of the film industry. The cinema industry in particular is affected by this development.

In the following, the development of cinema ticket sales and the cinema market as well as the share of German productions in cinemas are examined and the status of the German Film Law (FFG) is analysed.

Development of cinema ticket sales

A creeping decline in ticket sales at the cinema has been observed for more than 20 years. On average, around 2.2 per cent fewer tickets were sold each year between 2001 and 2019. The reasons for this are manifold.

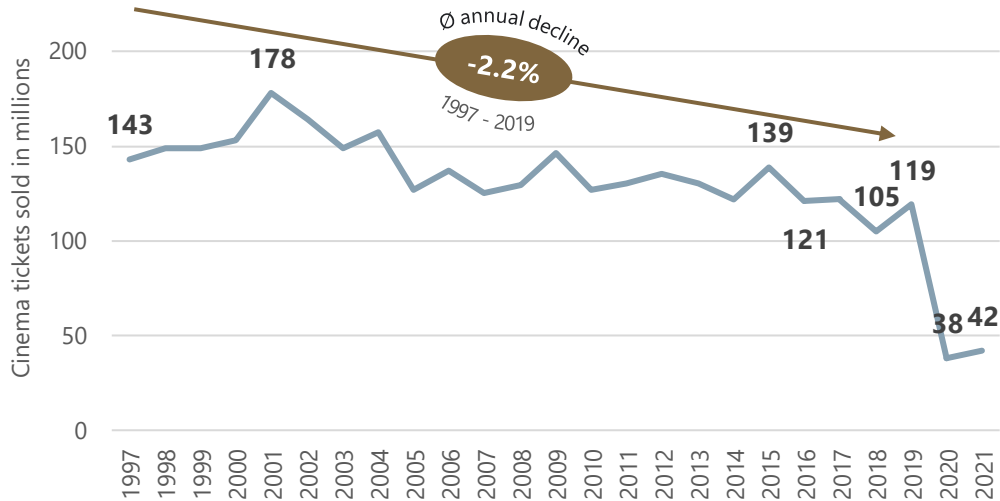
Before the outbreak of the coronavirus pandemic, 119 million cinema tickets were sold in Germany in 2019. In 2020, sales plummeted drastically to only around 38 million tickets sold due to pandemic-related cinema closures and strict distance and hygiene rules. This means a decline by more than two thirds and a fatal slump for the cinema industry.

According to estimates from Gower Street Analytics³¹ from September/October 2021, the number of cinema visits should recover slightly in 2021 (due to reopenings because of established hygiene concepts and intensive investments to reduce contagion risks) to around 47 million tickets sold.

³¹ cf. Mensch (2021c): Autumn start boosts box office forecasts.

However, this forecast was not achieved due to the renewed worsening of the pandemic situation. Instead, according to the FFA, around 42 million tickets were sold, which is only slightly above the dramatically low 2020 dimension.³²

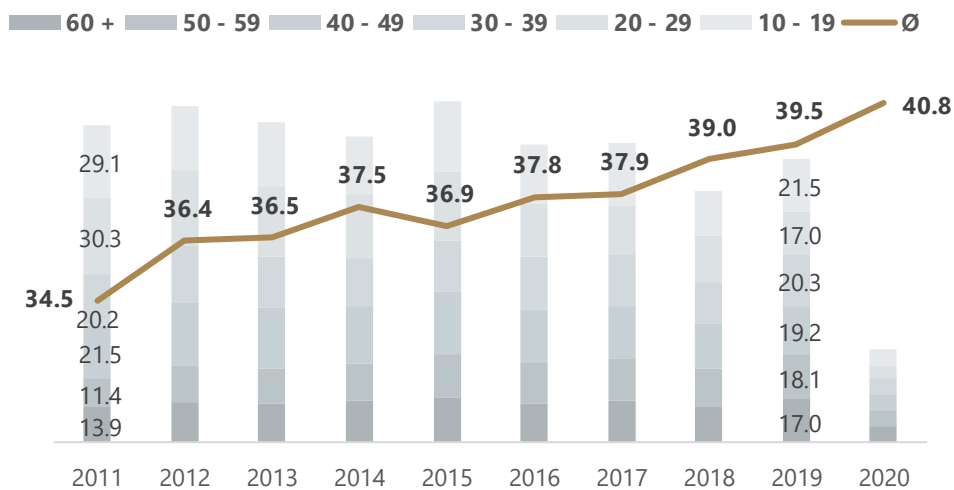
Fig. 7: Number of cinema tickets sold in Germany, 1997-2021, in millions



Sources: FFA (2021a/2022), Goldmedia analysis (2021)

An important reason for the long-term decline in ticket sales is the falling reach among younger age groups. For example, the number of tickets sold to visitors under 30 years of age fell from 59.4 million in 2011 to 38.5 million in 2019. Conversely, the average age rose from 34.5 to 39.5 years in the same period.

Fig. 8: Number of cinema tickets sold in Germany by age cohorts and average age, 2011-2020, in millions



Sources: FFA (2021a), Goldmedia analysis (2021), PwC (2020/2021)

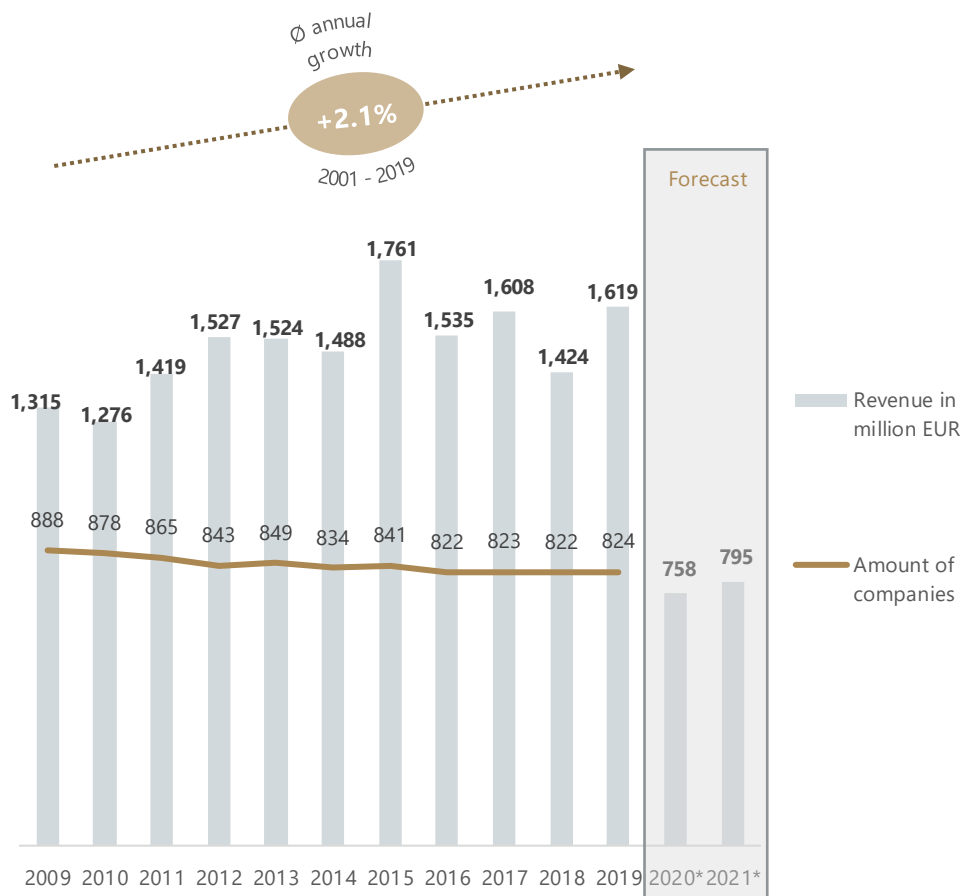
³² cf. FFA (2022)

Development of the cinema market

Despite the decline in the number of cinema tickets sold, cinema revenues increased at an average annual growth rate of 2.1 per cent between 2009 and 2019. This is due to the general increase in the average expenditure of cinema-goers on consumption ("concessions") as well as increased ticket prices.

Restrictions due to the coronavirus pandemic caused a significant drop in sales.

Fig. 9 Number and revenue of cinemas in Germany, 2009-2021

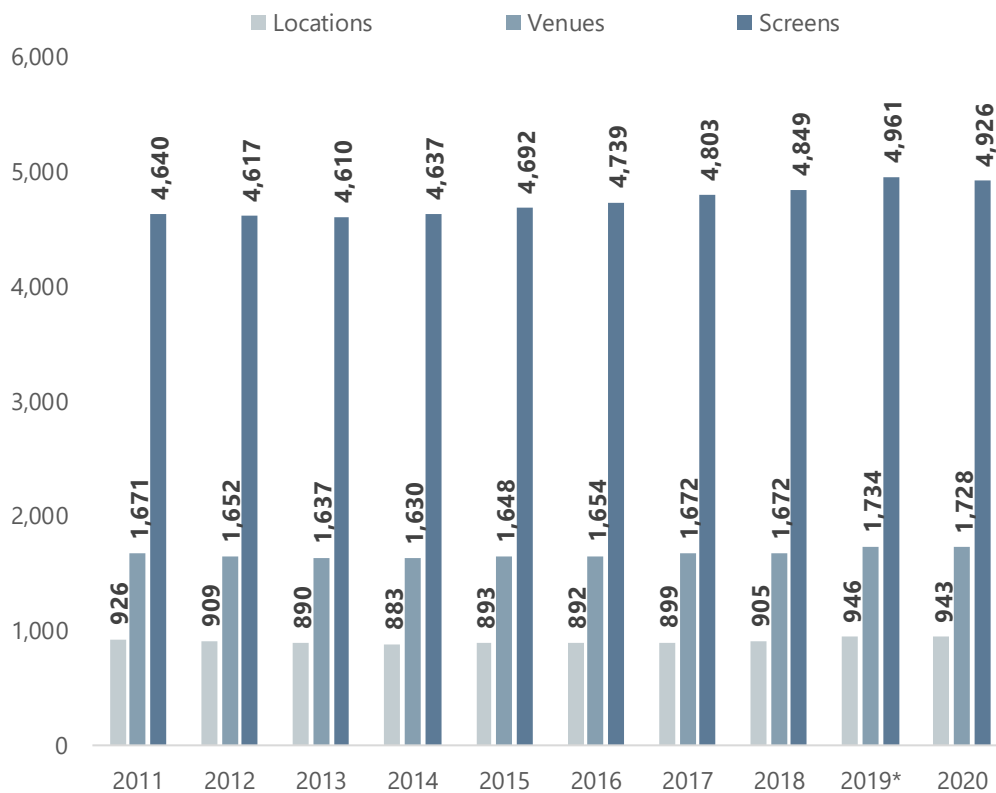


Source: Goldmedia Standortmonitor.net (2021). Basis: "Cinemas" segment (WZ class 59.14), as of 17.09.2021.

* Forecasts 2020-2021: Goldmedia analysis

The cinema stock has developed positively over the last ten years. The number of cinemas and venues has remained stable with a constant slight increase in stock.

The number of screens has also been characterised by consistent growth since 2013. Slight declines in 2020 are due to the impact of the coronavirus pandemic.

Fig. 10: Development of the cinema stock in Germany, 2011-2020

Source: FFA (2021a, p. 8), * The disproportionate increase in the key figures cinema companies, locations, venues, screens and seats compared to 2018 is due to changed allocations in the area of travelling cinemas and associated screening venues

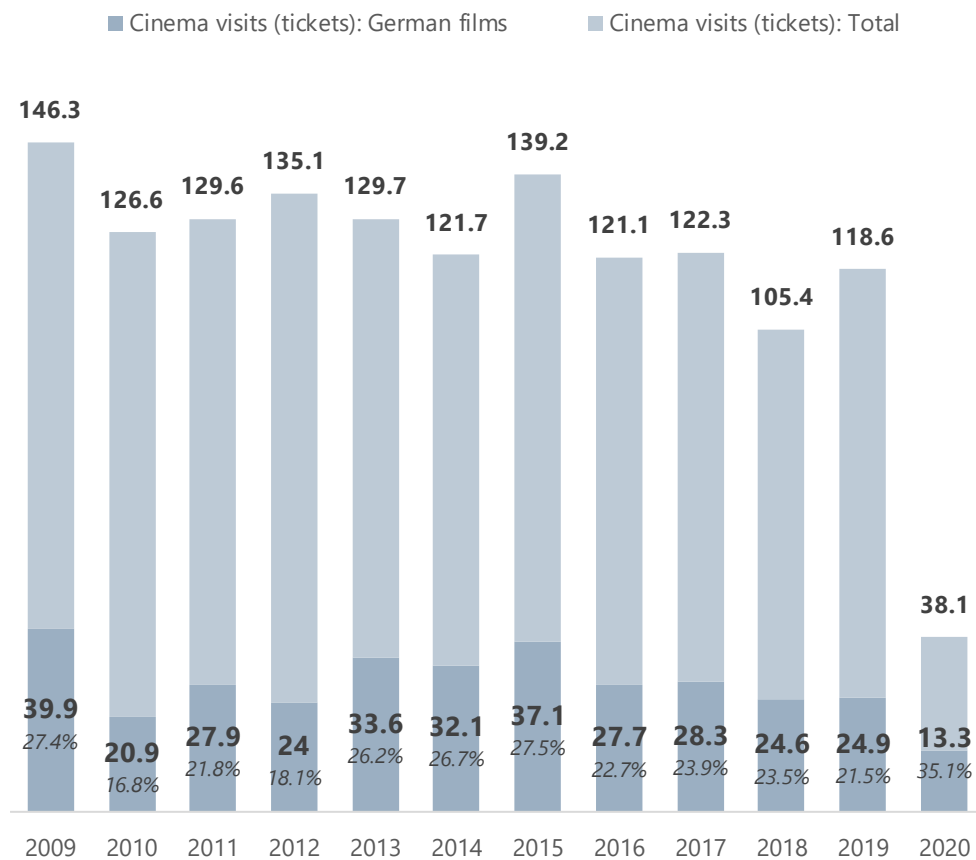
Despite the low absolute market concentration in terms of the number of providers, the relative market concentration in terms of revenue in the cinema segment can be classified as high. The four largest cinema chains – Cinestar, Cineplex, Cinemaxx and UCI Kinowelt – dominate the important sub-market of multiplexes with around 90 per cent. This submarket accounts for almost half of all ticket sales.

Development of German productions in the cinema

In the period from 2009 to 2020, the share of attended German productions averaged around 24 per cent of the tickets sold in each cinema year. It should be noted that the shares are subject to relatively strong annual fluctuations. This is mainly due to individual successful German film titles.³³

³³ For example, in 2013 and 2015, which registered above-average shares of German productions, productions of the "Fack Ju Göhte" series were released, which were also the highest-attended films of the respective year.

Fig. 11 Number and shares of German films in the total number of tickets sold in Germany, 2009-2020, in millions and per cent



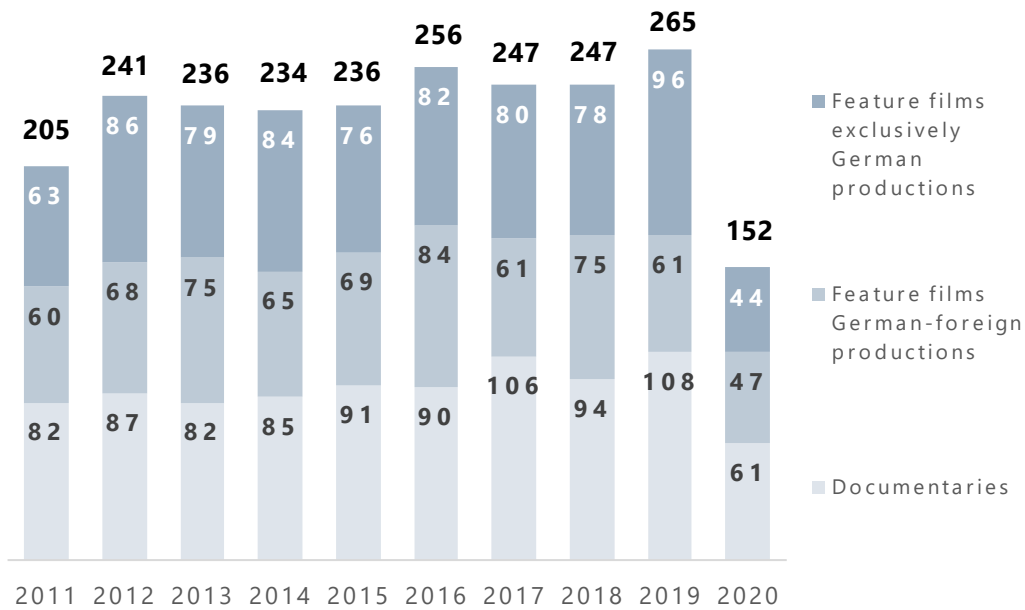
Sources: FFA (2013/2021a)

The highest relative share of German productions was registered in the pandemic year 2020. However, this was due to the fact that the cinema release of numerous potential U.S. blockbusters was postponed, and German cinema productions thus had less international competition.

While the number of cinema tickets sold for German productions is subject to a long-term negative trend analogous to the total number of tickets sold, at the same time more and more films tend to be produced by German producers.

In 2011, 205 German film productions were premiered. By 2016, the number of German premieres had risen by almost a third to 265 films. However, it is evident that the higher production output of German producers in the past has not led to an increase in ticket sales.

Fig. 12 Number of first German feature films (incl. co-productions), 2011-2020



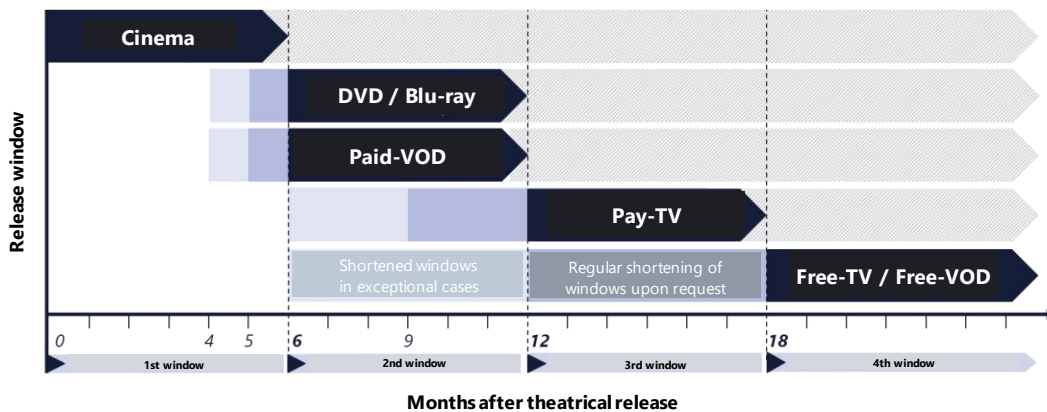
Source: SPIO/Berauer (2021)

Situation of the German Film Law (FFG) and the release windows

The commercialisation of films that have been supported by federal or state film funding is subject to statutory blocking periods, which are basically stipulated by Sections 53 to 58 of the German Film Law (FFG) (cf. the following figure).

The possibilities for film commercialisation of funded productions in Germany result from the so-called commercialisation cascade. The first window of this commercialisation cascade is reserved for screenings in cinemas before film commercialisation via other media is permitted.

Fig. 13: Film release windows according to the FFG 2017



Source: Goldmedia (2021); Dieterich (2020) according to: German Film Law (FFG), 2017/BGBL I p. 3413, Sections 53-58

In the meantime, international majors are increasingly shortening or completely abolishing the exclusive release windows for their productions.³⁴ While most producers and commercialisers of secondary rights are in favour of abolishing these strict release windows for funded productions in Germany, cinema companies largely reject parallel releases or even a further shortening of the blocking periods.³⁵

After the temporary closure of cinemas during the COVID-19 pandemic, individual German film distributors also decided to largely forego a cinema release for some German productions, although they were actually produced for the cinema³⁶, and to offer them directly as P-VOD offerings.³⁷

The coronavirus pandemic thus had the character of a real experiment regarding the discontinuation of traditional release windows, which further intensifies the discussion on the shortening of commercialisation blocking periods (cf. Chap. 2.3.10).

In this context, the planned amendment of the German Film Law was postponed in favour of a temporary transitional solution in the form of a "small amendment", which was passed in May 2021. This includes, among other things, a partial flexibilisation of the release windows with the involvement of the cinema companies.³⁸ In preparation for the amendment planned for 2024, the Federal Government Commissioner for Culture and the Media has initiated a film policy dialogue to accompany the further development of future regulations together with industry players.

2.1.4 Video industry

The business with the transactional distribution and sale of film and series titles is most directly and strongly affected by the digital transformation.

The physical rental business with film and series products (DVDs and Blu-rays) by video stores has already been largely displaced by digital rentals (T-VOD), whose market share grew to around 88 per cent in 2020.

The physical purchase business still plays a role through collectors and older target groups but is also clearly declining. Sales are increasingly shifting from

³⁴ cf. Birkel et al. (2017): Study on the economic importance of the film industry in Germany, p. 347.

³⁵ cf. Goldmedia (2017): Economic Importance of the Film Industry in Germany, pp. 89-91.

³⁶ For example, X-Verleih, the distributor of the comedy "The Kangaroo Chronicles", which was affected by the cinema closures, received special permission from the FFA to undercut the regular blocking period and temporarily offer the film for sale as a high-priced download a few weeks after its cinema release.

³⁷ P-VOD refers to premium VOD offers that give users access to certain films at an early stage of commercialisation in return for payment of a one-off, comparatively high fee.

³⁸ cf. Mensch (2021a): Bundestag passes FFG amendment.

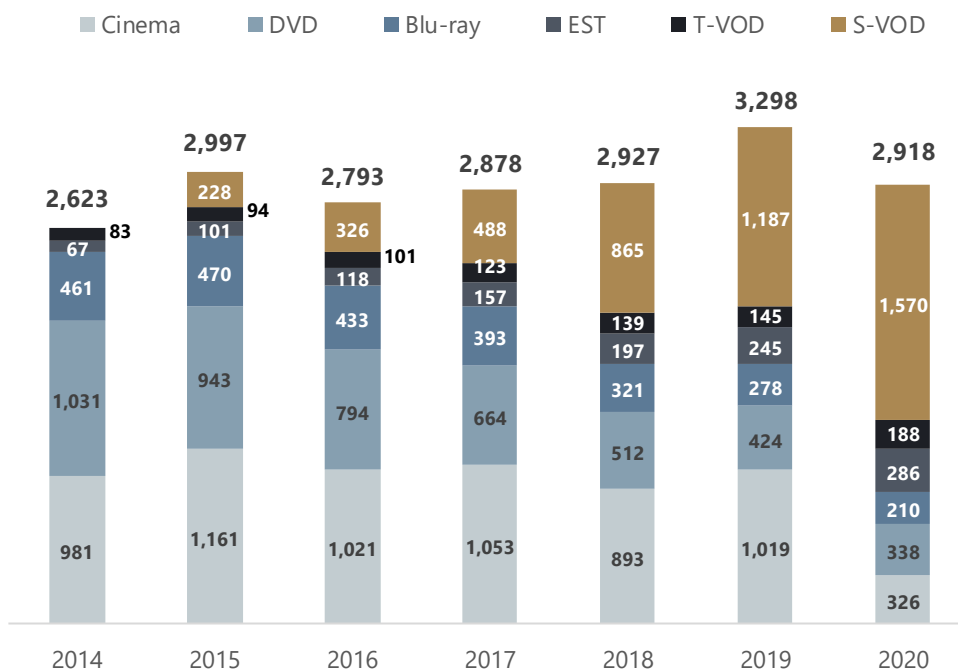
stationary retail to digital providers such as Amazon. At the same time, the importance of digital purchases and downloads (EST) is growing.

The pandemic measures have further reinforced the shifts in the purchase business: In 2020, for example, the share of stationary DVD/Blu-ray sales fell sharply (in the case of electronics retailers by more than 50 per cent). In contrast, the share of e-commerce sales remained stable, and the market share of digital downloads (EST) increased by 16 per cent.³⁹

Although the digital rental and purchase business (T-VOD or EST) is experiencing steady growth, it is only generating a fraction of the previous physical transactions and revenues (cf. Chap. 2.2.2). The main reason for this is the strong competition from S-VOD providers who tie up customer budgets with attractive content and subscription offers. This has implications above all for film distributors for whom an important revenue pillar is being lost. Since, depending on the contract structure, producers and creative professionals can also participate in video sales, the reduced revenues will also be felt by them.

The following figure illustrates the development of the distribution of sales in the cinema and home video market.

Fig. 14: Development of sales in the cinema/home video market in Germany, 2014-2020, in million EUR



Source: GfK/FFA (2021)

³⁹ cf. GfK/FFA (2021): The home video market in the year 2020, p. 28.

2.1.5 TV industry

The TV industry in Germany is the most important client for producers (cf. Chap. 2.1.1) and at the same time a highly relevant commercialisation channel for audiovisual productions. In addition, the digital transformation is leading to ever greater intersections between classic TV offerings and non-linear video-on-demand.

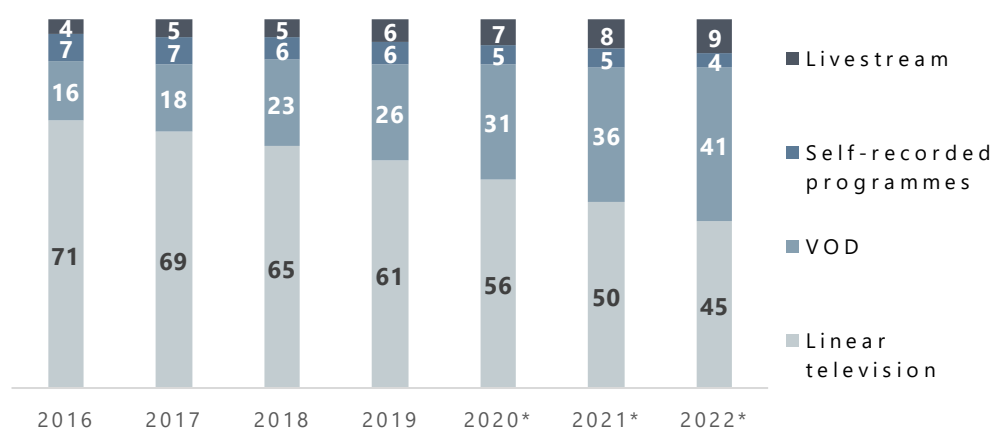
Development of TV sales and use of videos

Due to the coronavirus crisis, in which many advertisers reduced their spending, the net advertising revenues of private TV providers initially fell by 8.8 per cent to around EUR 4.0 billion. A recovery to around EUR 4.3 billion is forecast for 2021.⁴⁰ In the medium term, however, a further decline in advertising revenues is to be expected due to strong competition in the online sector.

The pay-TV market declined by 5.3 per cent in 2020 to around EUR 2.1 billion in revenue. Stagnation is expected for 2021, but revenues are also under pressure here in the medium term due to competition from VOD providers.⁴¹

The development of video use shows that the share of linear television use is clearly declining while non-linear VOD offers can increase significantly. Already for 2022, the share of linear television in total use is expected to drop to around 45 per cent.

Fig. 15 Development of video usage in Germany, 2016-2022, in per cent



Source: Goldmedia analysis according to Egger/Gerhard (2019). Basis: German-speaking population aged 14 or over in Germany (2019: n= 2,000; 2018: n= 2,009; 2017: n= 2,017; * Forecasts 2020-2022 Goldmedia analysis.

⁴⁰ cf. Vaunet (2021b): VAUNET expects revenues of around EUR 14.3 billion for audiovisual media in Germany in 2021 – coronavirus slows growth.

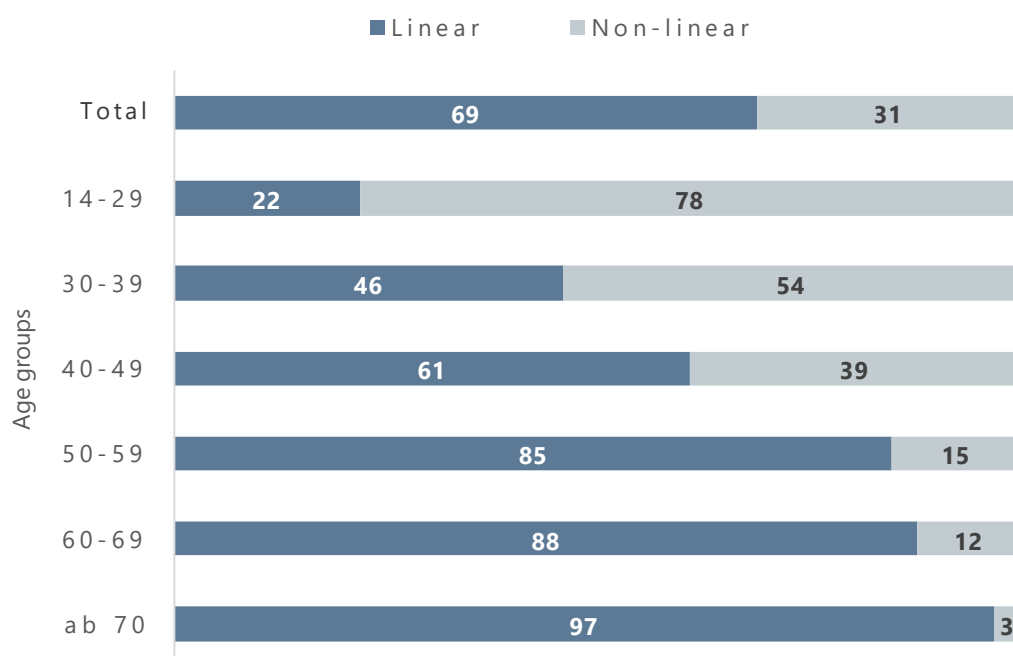
⁴¹ cf. ibid.

Despite this recognisable trend, linear use of video offerings was (still) the most widespread form of use in the overall population in 2021. In 2021, around 81 per cent of people aged 14 and over tuned in to linear TV programming at least weekly.⁴²

More than half of the population aged 14 and over (69 per cent according to ARD/ZDF and 55 per cent according to the media institutions) are even reached daily by linear television. However, the high ratings are mainly due to the generations over 40 years of age who use linear television most often on a regular basis (cf. following figure). The younger generations, on the other hand, show a different picture: Not even a quarter (22 per cent) of 14- to 29-year-olds are reached daily by linear TV at all.⁴³

Nevertheless, the two largest regular trend studies on video use (ARD/ZDF Mass Communication Trends and the Digitalisation Report Video) clearly show the trend that younger target groups under 40 and increasingly also the age cohorts 50-59 and 60-69 are switching to non-linear use.

Fig. 16 Comparison of usage shares: linear television and non-linear video usage* by age group in Germany, 2021, in per cent

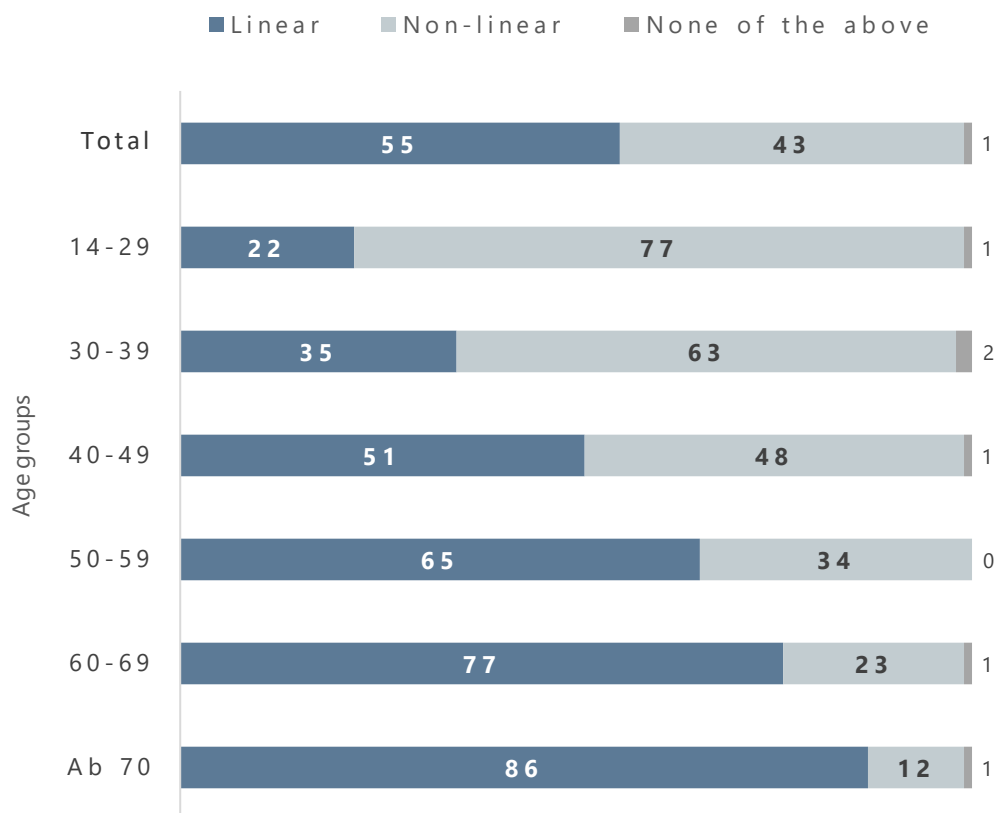


Source: Goldmedia analysis according to Kupferschmitt/Müller (2021). Basis: German-speaking population aged 14 and over, n= 2,001, use yesterday, Mon-Sun, 5 a.m.-2 p.m., * non-linear video use: all video content outside of linear television.

⁴² cf. Kupferschmitt/Müller (2021): ARD/ZDF Mass Communication Trends 2021, p. 377.

⁴³ cf. Kupferschmitt/Müller (2021): ARD/ZDF Mass Communication Trends 2021, pp. 375-378; cf. die medienanstalten (2020): Report on Digitalisation – Video 2020, p. 79.

Fig. 17 Comparison of usage shares: linear television and non-linear video usage* by age group in Germany, 2020, in per cent



Source: Goldmedia analysis according to the media institutions (2020). Basis: 70.598 million people aged 14 and over in Germany, n= 8,281, * non-linear video use: all video content outside linear television, "Don't know" (between 0.2 and 0.8 per cent in the age groups factored out).

The development is rapid: Despite the overall more intensive demand for video content during the pandemic, it became apparent that linear TV offerings were the only ones that could *not* profit from the increasing use in the long term.⁴⁴ The stagnation is presumably due to the fact that the intensity of use of linear offerings continues to rise among the older population on the one hand, while on the other hand fewer and fewer young people turned to classic, linear offerings in 2021 (compared to the previous year).⁴⁵

Complementary use of TV and VOD

Linear television and non-linear VOD offerings are still frequently used together. In the meantime, around three quarters of German households have taken out at least one paid subscription to a streaming platform in addition to classic television.⁴⁶

⁴⁴ cf. Deloitte (2021): Media Consumer Survey 2021, pp. 4-12.

⁴⁵ cf. Kupferschmitt/Müller (2021): ARD/ZDF Mass Communication Trends 2021, pp. 377-378.

⁴⁶ cf. Deloitte (2021): Media Consumer Survey 2021, p. 4-7.

Linear TV continues to be used by VOD users, but the frequency of use has decreased and the streaming of video content is largely used as a supplement to or in combination with the linear TV programme. A negative correlation between the frequency of use of linear and non-linear video offers can be observed: The more often VOD offers are used, the less often the linear programme is accessed.⁴⁷ The long-standing trend of shifting from offline to online media use and from linear to time-sovereign content thus continues.

According to the Digitalisation Report Video 2021⁴⁸, the TV set remains highly relevant for video consumption. While the reception of content via cable and satellite is declining at a high level, the proportion of users who access content digitally via the internet on the TV screen ("Over the Top", OTT) is steadily increasing.

Strategic orientation

The digital and cross-media competition for video users has led to a strategic reorientation of many TV providers. In order to continue to reach broad sections of the population, they are increasingly focusing on their own streaming platforms and media libraries.⁴⁹

In competition with large international platforms, synergy and economies of scale play a major role: For example, the Bertelsmann Group will bundle all its digital content on the RTL+ platform⁵⁰ while ProSiebenSat.1 entered a joint venture with Discovery, Inc. for the Joyn platform, and the public service broadcasters are increasingly interlinking the ARD and ZDF media libraries.

This is reflected in the investments and volumes of audiovisual productions, which are increasingly flowing into high-quality series for the marketing of the platforms (cf. Chap. 2.1.1). Due to these developments, national TV providers are also relevant in the following chapter that examines the situation of VOD platforms in Germany.

2.2 VOD platforms: Situation in Germany

This section looks at the current situation and development of video-on-demand platforms in Germany.

⁴⁷ cf. Egger/Gerhard (2019): Motion picture usage 2019, pp. 396-398.

⁴⁸ cf. die medienanstalten (2021): Report on Digitalisation – Video 2021.

⁴⁹ These platforms are also summarised under the term "B-VOD" (Broadcaster Video-on-Demand) and are financed by subscriptions, in-stream advertising or broadcasting fees.

⁵⁰ In the following, the name RTL+/RTL+ Premium is used synonymously with the former platform name TVNow/TVNow Premium.

2.2.1 Overview: VOD platforms in Germany

Video-on-demand (VOD) describes the possibility of downloading digital audiovisual content such as films, series, TV programmes and videos from a platform independently of a linear broadcast or watching them directly online via streaming. Various financing models have become established:

Tab. 1: Overview of financing models, providers and net revenues in the German video-on-demand market, in million EUR

	Subscription VOD (S-VOD)	Transactional-VOD (T-VOD)	Electronic Sell-Through (EST)	Advertising-VOD (A-VOD)	Public broadcasting media libraries
	PAID-VOD				
Provider (examples)	Netflix, Prime Video, Disney+, Apple TV+, Sky Ticket, DAZN, Joyn Plus+, etc.	Prime Video, Google Play, iTunes, Rakuten TV, etc.	Prime Video, Google Play, iTunes, etc.	Joyn, RTL+, YouTube, Facebook, etc.	ARD Media Library, ZDF Media Library
Financing	Subscriptions	Payment per individual rental	Payment per individual purchase	Advertising	Broadcasting contributions
Revenue 2020	2,502	170	343	1,309	-
Revenue 2021*	3,134	193	460	1,476	-

Source: Goldmedia analysis (2021), * Estimate/Forecast

Overview and reach of Paid-VOD platforms

The term Paid-VOD covers all video-on-demand offers that are subject to a fee, i.e. financed by subscriptions (S-VOD) or purchase or rental fees (EST/T-VOD).

The Paid-VOD providers active in the German market⁵¹ are led by the U.S. companies Netflix and Amazon (Prime Video). In 2021, these were once again the market leaders by a clear margin, measured by the number of people who have access to the respective Paid-VOD offer.⁵²

⁵¹ The data listed below includes all S-VOD providers in Germany regardless of content, i.e. including sports providers such as DAZN and Eurosport.

⁵² cf. Goldmedia VOD Ratings (2021).

Tab. 2: Paid-VOD providers in Germany, Q2/2021, ranked according to people who have access to the offer

Rank	Offer	Provider	Start in Ger.	Seat	Business model
1	Netflix	Netflix Inc.	2014	USA	S-VOD
2	Prime Video	Amazon.com, Inc.	2014	USA	S-VOD, T-VOD, EST
3	Disney+	Walt Disney Company	2020	USA	S-VOD
4	DAZN	Perform Group	2016	UK	S-VOD
5	Sky Go	Sky Deutschland GmbH/Comcast Corp.	2011	D	S-VOD (for Pay-TV customers)
6	Magenta TV	German Telekom AG	2018	D	S-VOD
7	Google Play	Google LLC	2012	USA	T-VOD, EST
8	Sky Ticket	Sky Deutschland GmbH/Comcast Corp.	2016	D	S-VOD
9	RTL+ Premium	Media Group RTL	2016	D	S-VOD
10	iTunes	Apple, Inc.	2008	USA	T-VOD, EST
11	Apple TV+	Apple, Inc.	2019	USA	S-VOD
12	Sky Q/ Sky On Demand	Sky Deutschland GmbH/Comcast Corp.	2011	D	S-VOD, T-VOD, EST
13	Joyn Plus+	ProSiebenSat.1 Media SE, Discovery, Inc.	2019	D	S-VOD
14	PlayStation Video	Sony Corp.	2010	JP	T-VOD, EST
15	Vodafone Video library	Vodafone GmbH/ Vodafone Group	2011	D	T-VOD, EST
16	Eurosport Player	Eurosport Media GmbH/ Discovery, Inc.	2008	D	S-VOD
17	Rakuten TV	Rakuten TV Europe/ Rakuten K.K.	2017	ES	T-VOD, EST
18	Horizon Go	Vodafone GmbH/ Vodafone Unitymedia	2012	D	S-VOD
19	Microsoft Store	Microsoft Corp.	2005	USA	T-VOD, EST
20	Videoload	German Telekom AG	2003	D	T-VOD, EST
21	Starzplay	Amazon.com, Inc.	2018	USA	S-VOD
22	MUBI	MUBI, Inc.	2007	USA	S-VOD
23	Chili	CHILI S.p.A.	2019	IT	T-VOD, EST
24	Flimmit	Flimmit GmbH	2007	AT	T-VOD, EST
25	Realeyz.tv	EYZ Media GmbH	2009	EN	S-VOD, T-VOD, EST
26	kivido	SUPER RTL Television GmbH & Co. KG	2015	EN	S-VOD
27	Videociety	Splendid Medien AG	2010	EN	T-VOD, EST
28	Pantaflix	PANTAFLIX AG	2016	EN	T-VOD, EST

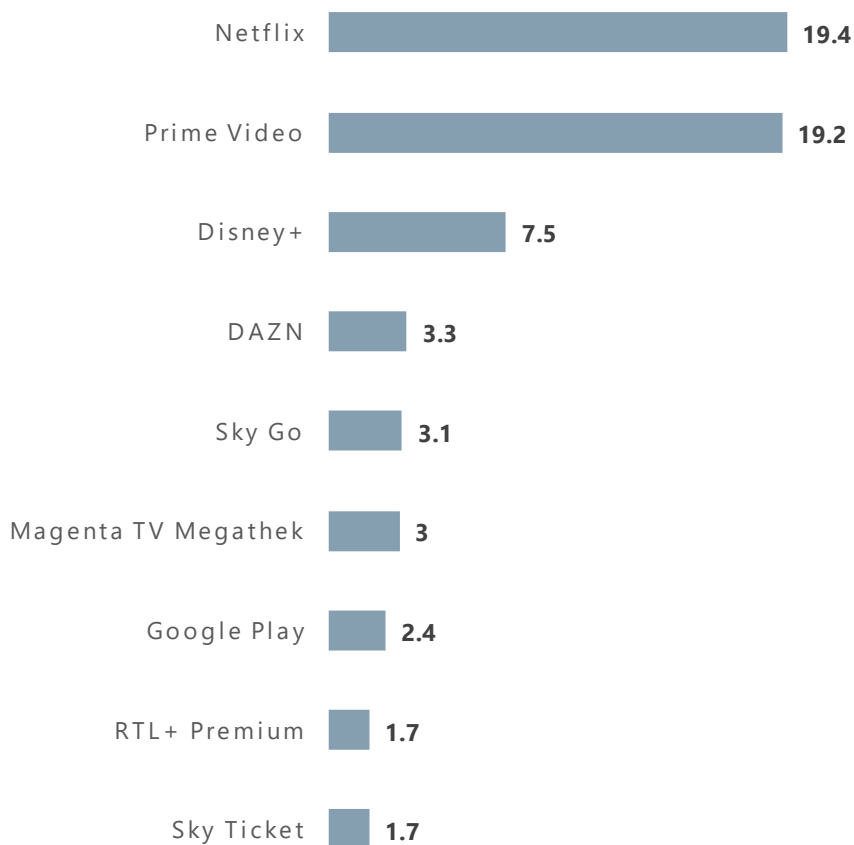
Source: Goldmedia VOD Ratings (2021)

The Paid-VOD market is dominated by a few U.S. providers. In the second quarter of 2021, more than 19 million people in Germany had access to the services of the two market leaders Netflix and Prime Video.

Around 7.5 million people already had access to the Disney+ platform, which was only launched in Germany in March 2020. This is followed by DAZN (sports) with 3.3 million people, Sky Go with 3.1 million people and Magenta TV Megathek with 3.0 million people.

The subscription- and ad-financed VOD offer of the TV channel group RTL (TVNow, since autumn 2021 RTL+) reached a total of 4.7 million persons in Q2 2021, of which 1.7 million persons were attributable to the subscription-financed premium offer.

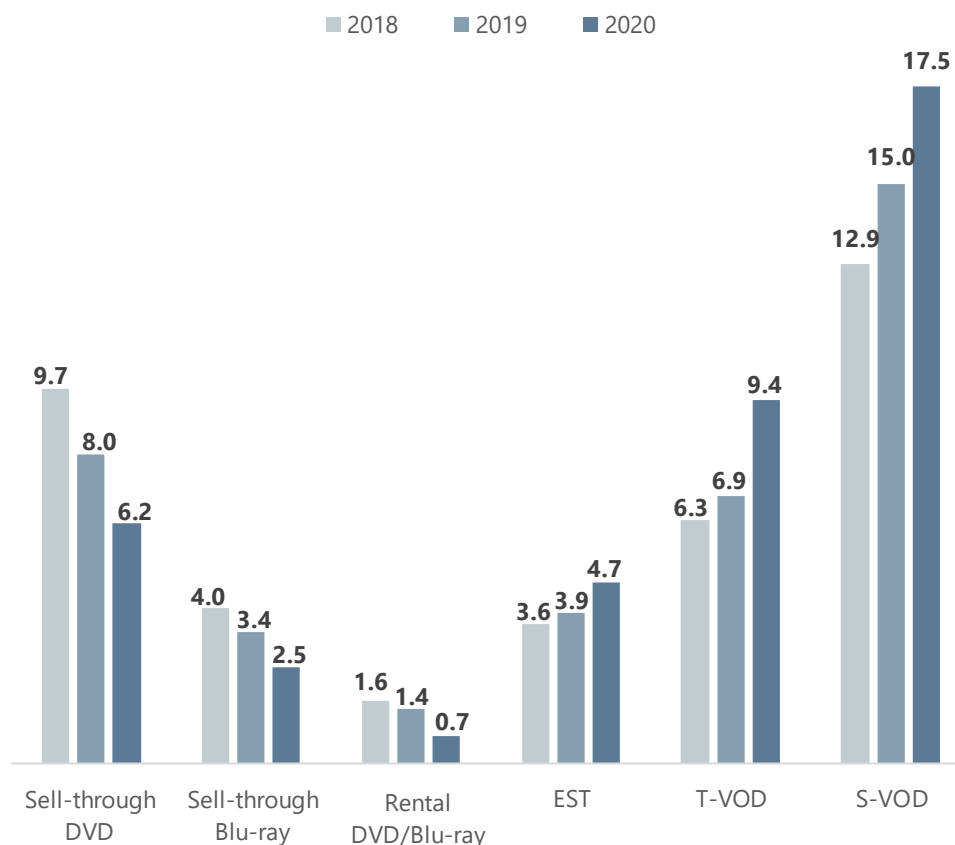
Fig. 18 Paid-VOD platforms with the widest reach according to persons with access to the offer in Germany, Q2/2021, in millions



Source: Goldmedia VOD Ratings (2021)

As the following figure shows, the reach of subscription-financed streaming platforms (S-VOD) in particular is steadily increasing.

Fig. 19: Reach of buy and rent videos as well as Paid-VOD offers in Germany, 2018-2020, in millions of persons



Source: GfK/FFA (2021)

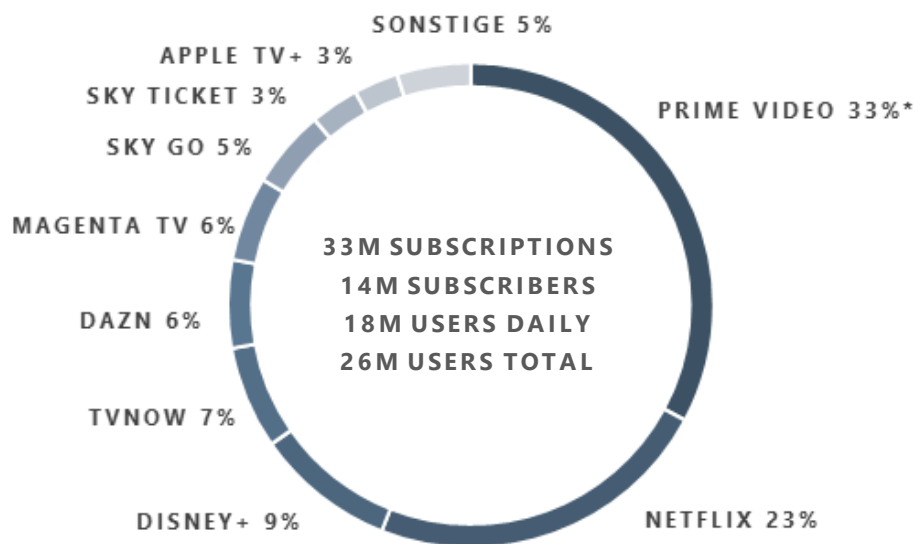
S-VOD market shares

In the case of S-VOD use, a distinction must be made between two groups – subscribers and users. The paying subscribers are the economic basis for the business success of the Paid-VOD providers. It is important to distinguish between subscribers and subscriptions, since a subscriber often takes out several subscriptions with different providers, and at the same time a paying subscriber enables access for several users.

According to Goldmedia VOD-Ratings.com, a total of around 26 million people in Germany used S-VOD services in the second quarter of 2021, 18 million of them daily. A total of 33 million S-VOD subscriptions were held by around 14 million subscribers, i.e., paying customers.

U.S. providers accounted for more than two-thirds of subscriptions. Prime Video leads with 33 per cent, followed by Netflix with 23 per cent and Disney+ with nine per cent.

Fig. 20: Distribution of S-VOD subscriptions in Germany across platforms, Q2/2021, in per cent



Source: Goldmedia VOD Ratings (Q2/2021), * Prime Video: Subscription number corresponds to the number of Prime customers who use Prime Video.

The comparison of subscriptions and users shows that many subscribers use more than one S-VOD provider: On average, according to VOD Ratings, each subscriber booked around 2.4 streaming platforms in parallel in the second quarter of 2021 compared to 2.1 in 2019. This development shows that not necessarily many new VOD users contribute to market growth, but that already active VOD users drive growth by booking additional subscriptions.

Due to widespread account sharing, the number of viewers and users of VOD services is significantly higher than the number of subscriptions. On average, a subscription was shared by around two people in 2021. The number is particularly high for Netflix and Disney+, with 2.8 and 2.7 users per subscription respectively.

S-VOD subscriptions in source comparison

Data collected in the context of market research studies is always subject to a certain margin of error, which can cause a difference to the providers' own data. Goldmedia VOD-Ratings.com offers a high degree of reliability due to its daily collection of a very large sample from an extensive panel of participants.

For validation purposes, the data is additionally cross-checked with available third-party sources on the number of S-VOD subscriptions (see table below).

There are some differences between the sources that can be attributed to the methodology – for example, the handling of multiple use of access (see below) – as well as the complexity of recording users in hybrid business models (A-VOD and S-VOD).

Tab. 3 Number of S-VOD subscriptions by platform in Germany, mean values of available sources, 2020, in millions

PLATFORM	SOURCES	AVERAGE NUMBER OF SUBSCRIPTIONS
NETFLIX	Goldmedia/GfK/EAO/ Netflix/Comparitech	9.8
PRIME VIDEO	Goldmedia/GfK/EAO	11.5
DISNEY+	Goldmedia/GfK/EAO	2.9
SKY (GO/TICKET)	Goldmedia/GfK/EAO	2.9
APPLE TV+	Goldmedia/GfK/EAO	1.0
RTL+ PREMIUM	Goldmedia/GfK/EAO	1.5
JOYN PLUS+	Goldmedia/GfK/EAO	0.7

Sources: Goldmedia VOD Ratings (2021), EAO (2021c), GfK SE (2021), Kauemle (2021)⁵³, Moody (2021)

Impact of Covid-19 on S-VOD use

During the pandemic measures, the use of S-VOD services rose sharply in 2020 among all age groups: While in week 11/2020 (before the pandemic) 43 per cent of internet users with access to S-VOD services used the streaming services at least weekly, in week 16/2020 (during the first lockdown) the figure was 72 per cent.⁵⁴

⁵³ cf. Kauemle (2021): Netflix Office Opening in Berlin. Calculation: Share of German subscribers in the total number in the DACH region according to Netflix (11 million), proportional to the population of the countries.

⁵⁴ cf. Goldmedia VOD ratings quoted from Federal Ministry for Economic Affairs and Energy (BMWi) (2020): Monitoringbericht Kultur- und Kreativwirtschaft 2020, p. 68.

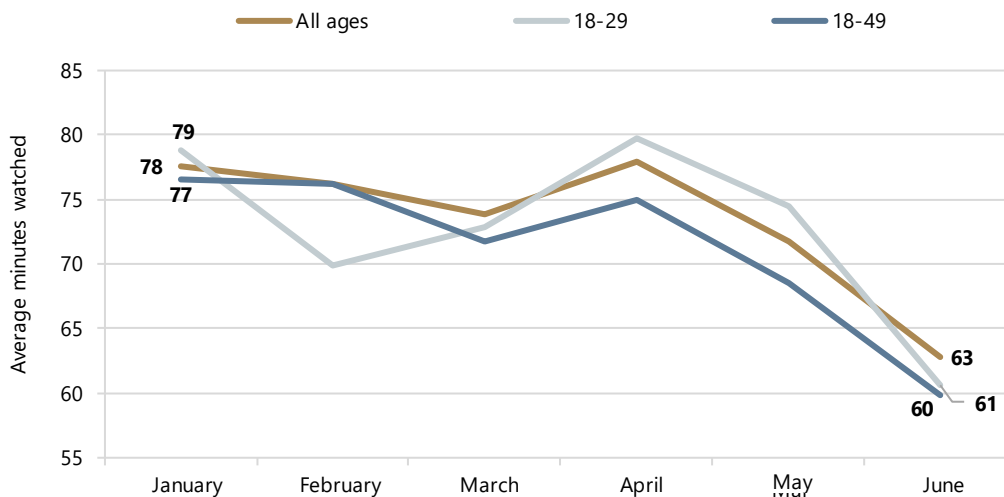
Fig. 21: Share of S-VOD use among internet users with access to S-VOD services in Germany, comparison before and during the pandemic, calendar weeks 11/2020 and 16/2020, in per cent



Source: BMWi (2020, p. 68), basis: internet users aged 14 and over with access to S-VOD services.

With the lifting of the restrictions in summer 2021, the values for the frequency of use in the second quarter of 2021 settled back to the level of the end of 2019. This meant a decrease in the average daily usage time from 78 minutes in January to 63 minutes in June 2021 (cf. figure below).

Fig. 22 Average daily usage time of S-VOD offers in Germany, January–June 2021, in minutes



Source: Goldmedia VOD Ratings (2021)

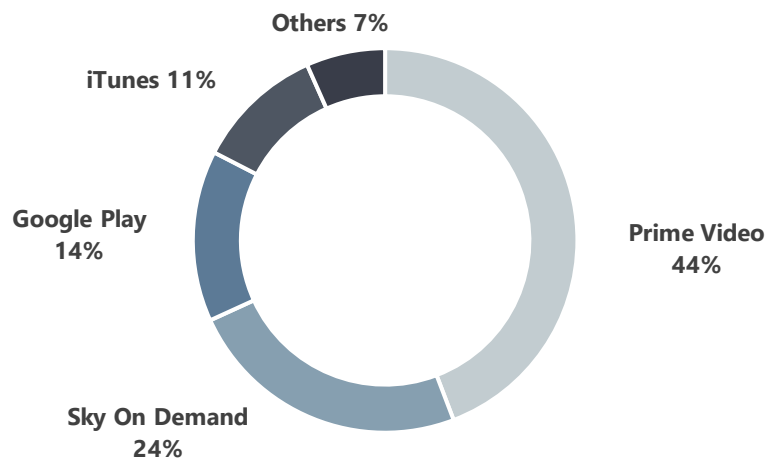
According to a study by the University of Münster⁵⁵, the increased use of S-VOD offers during the pandemic also has lasting effects: The first lockdown and the market entry of Disney+ in March 2020 increased both the number of S-VOD users and the share of S-VOD use in the total time budget that viewers spend on videos, with a lasting effect. Older viewers in particular were increasingly won over to S-VOD use during this period.

⁵⁵ cf. Herborg (2021): Streaming providers from Hollywood take viewing time from German TV stations.

EST/T-VOD market shares

In the transactional video-on-demand market, Prime Video has established itself as the leading offering achieving high and still increasing market shares. According to Goldmedia VOD Ratings, the offering accounted for 44 per cent of usage in Q2 2021. Other relevant providers are Sky On Demand with 24 per cent, Google Play with 14 per cent and Apple's iTunes platform with eleven per cent.

Fig. 23 Distribution of EST/T-VOD use in Germany across platforms, Q2/2021, in per cent



Source: Goldmedia VOD ratings, basis: use of the platform on the previous day

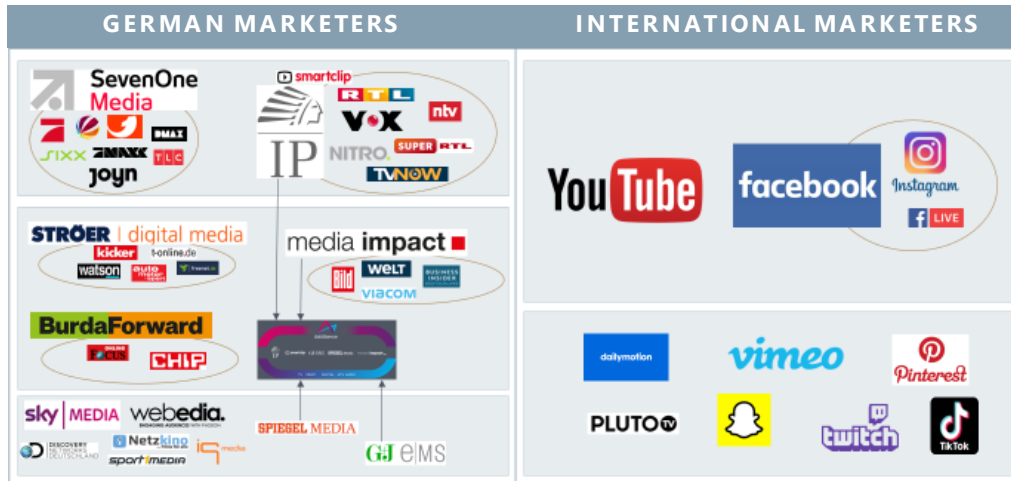
Key trends are growing price pressure in digital rental (T-VOD) – fuelled by popular short-term discount offers such as Amazon's "99 cent promotions" – and a growing relevance of the higher-priced purchase segment (EST). This is strengthened by multi-week exclusive EST windows at the beginning of the digital commercialisation of new titles.

A-VOD market shares

The German A-VOD market can be divided into two large groups of marketers: German marketers on the one hand, and international platforms on the other.

The U.S. platforms YouTube, Facebook/Instagram and Amazon's Twitch are among the largest marketers on the German A-VOD market. It can be assumed that due to the strong market position of YouTube and the increase in importance of Instagram Video as well as possibly other providers such as Twitch and the Chinese TikTok, the overall market development will also be strongly driven by various international providers in the future.

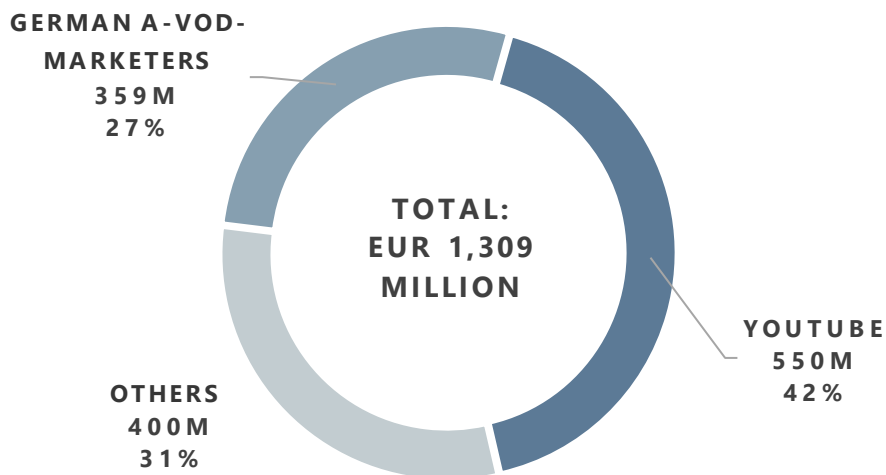
Fig. 24: Overview of A-VOD platforms in Germany, 2021



Source: Goldmedia (2020), list may not be complete, exemplary compilation, AdAlliance = IP Deutschland, smartclip, G+J elms, SPIEGEL Media, media impact.

In 2020, the German A-VOD marketers such as SevenOneMedia from the ProSiebenSat.1 media group and, on the other hand, IP/Smartclip from the RTL family of marketers, as well as many smaller German marketers, only achieved a share of around 27 per cent of the German ad-financed VOD market. In contrast, YouTube alone accounted for a market share of 42 per cent.

Fig. 25: Share of German marketers and YouTube in the online video advertising market (A-VOD) in Germany, 2020, in EUR (net) and per cent



Source: Goldmedia analysis, according to Goldmedia (2021): Online Video Monitor 2021

2.2.2 Development of revenues in the VOD market

VOD platforms were the big beneficiaries of the coronavirus pandemic and – contrary to the rest of the film industry – saw significant increases in demand and revenue.⁵⁶

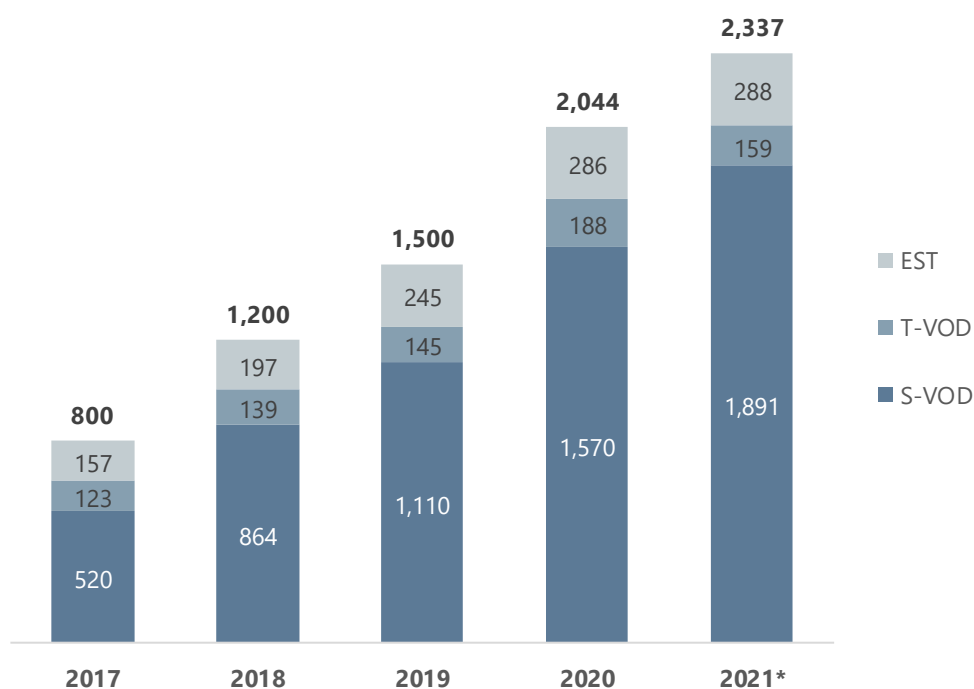
Beyond pandemic-related growth, the German VOD market is expected to continue to show considerable momentum in the future: The large number of attractive contents, the favourable prices and the large supply suggest that the demand for video streaming will remain high and that the dynamic growth in the VOD market will thus continue in 2021 and beyond.

Development of revenues in the Paid-VOD market

Revenues in the Paid-VOD market are driven by high and further-increasing revenues in the subscription-funded sector.

The S-VOD market has recorded high growth rates, especially since the market entry of Prime Video and Netflix in 2014. Between 2017 and 2021, sales increased by an average of around 38 per cent per year.

Fig. 26 Revenue development in the Paid-VOD market (S-VOD/EST/T-VOD) in Germany, 2017-2021, in million EUR (net)



Source: Goldmedia analysis (2021) according to VAUNET (2021b), FFA/GfK (2021), * Forecast Paid-VOD 2021 according to VAUNET, distribution S-VOD/EST/T-VOD: own calculation Goldmedia.

⁵⁶ cf. Bundesministerium für Wirtschaft und Energie (BMWi) (2020): Monitoringbericht Kultur- und Kreativwirtschaft 2020.

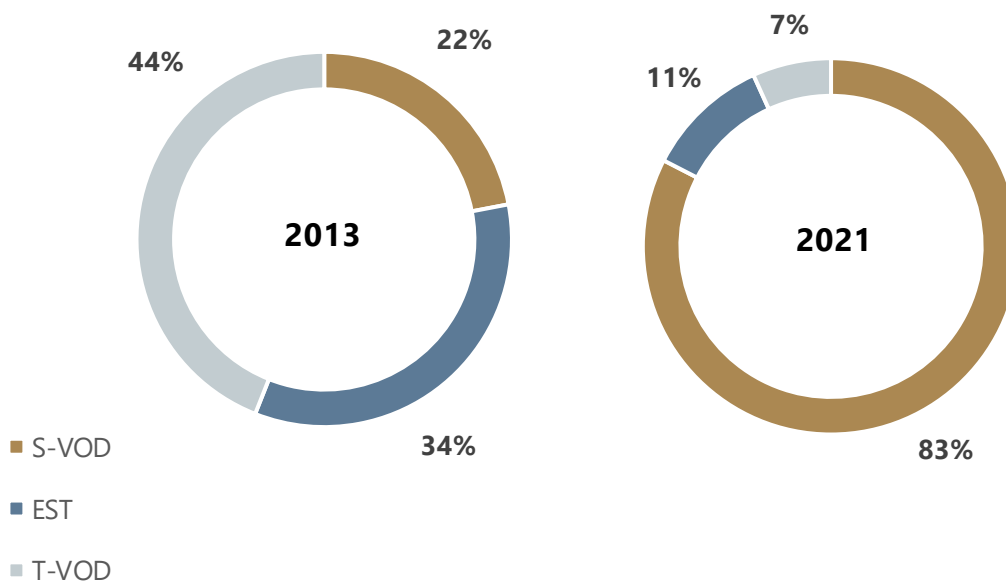
The coronavirus pandemic and the market entry of Disney+ in spring 2020 provided a further boost. Overall, however, increases at a more moderate level are expected for 2021 and the following years.

S-VOD growth is increasingly driven by price-side developments, while gains in reach and usage are losing momentum. In older target groups, there is still considerable untapped potential, but in younger target groups, the S-VOD market is already relatively saturated (cf. Chap. 2.2.3).

The revenue volume of the EST and T-VOD market is only about one fifth of the clearly dominant S-VOD market. Although continued revenue growth can also be observed in the transactional market, this will be increasingly concentrated on the purchase segment in the future due to negative price dynamics in the rental segment.

While, until 2013, the German market for paid video-on-demand was strongly characterised by single-transaction models of T-VOD and EST, subscription models (S-VOD) have since rapidly established themselves as the most important business model in the German market.

Fig. 27: Market share of business models in the German Paid-VOD market, 2013 and 2021, in per cent



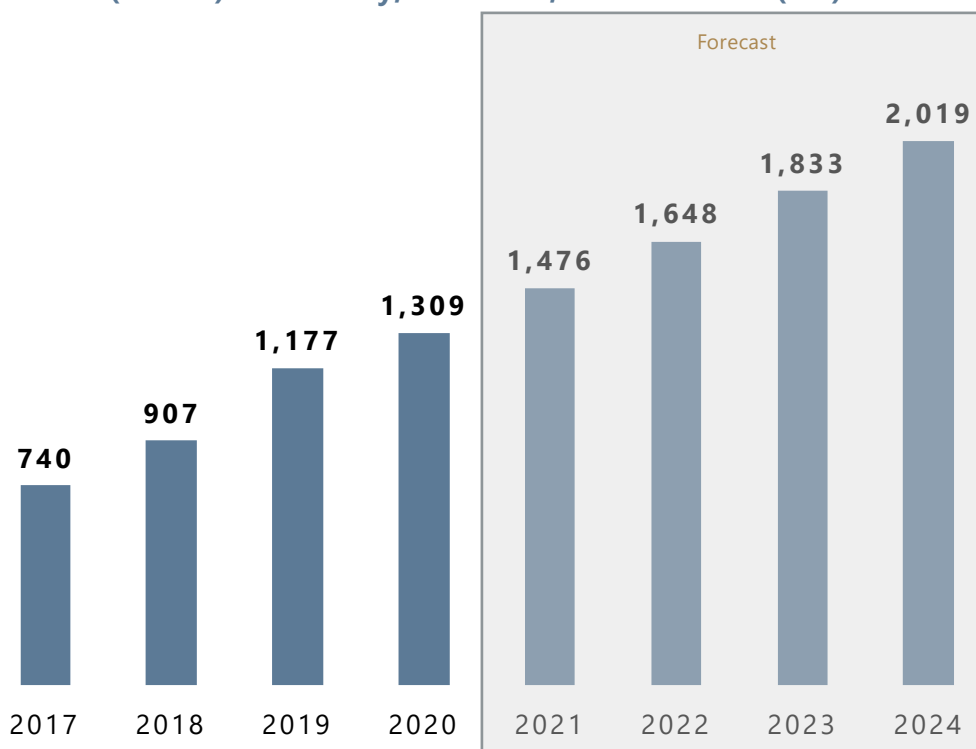
Source: Goldmedia VOD Ratings (2021)

Development of revenues in the A-VOD market

The net advertising revenues generated in Germany by the marketing of in-stream video advertising via A-VOD platforms were still only EUR 10 million in 2009.

Since then, the market has developed extremely dynamically. The total market volume rose to around EUR 1.3 billion by 2020 and is expected to have grown further to around EUR 1.5 billion in 2021. The coronavirus pandemic has contributed to the growth of this advertising market while many other advertising markets have shrunk.

Fig. 28: Development/forecast of the online video advertising market (A-VOD) in Germany, 2017-2024, in million EUR (net)



Source: Goldmedia (2021d), Forecasts 2021-2024: Goldmedia analysis

According to Goldmedia's forecast, the online video advertising market will grow to around EUR 2.0 billion by 2024. This corresponds to a compound annual growth rate (CAGR) of eleven per cent between 2019 and 2024.

The German providers and the U.S. platform providers are participating very differently in the strong overall market growth. YouTube and Facebook (incl. Instagram) are primarily responsible for the growth in the overall market, while the

web video revenue of German providers on their own platforms has recently tended to stagnate.⁵⁷

Development of revenues in the VOD market in source comparison

The following table shows the development of revenues in the Paid-VOD, S-VOD and A-VOD segments based on various sources.

It becomes clear that the basic trends are predominantly estimated or measured in a similar way but that the exact key figures show a noticeable range of fluctuation. This is partly due to different definitions and delimitations of the segments.

Tab. 4 Development of online video sales in Germany, comparison of available sources, 2019-2021, in million EUR

	2019			2020			2021		
	PAID	S-VOD	A-VOD	PAID	S-VOD	A-VOD	PAID	S-VOD	A-VOD
Goldmedia	2,020	1,656	1,177	2,392	1,954	1.309	2,774	2,290	1,476
EAO⁵⁸	1,949	1,630 ⁵⁹		2,523	2,139				
Statista⁶⁰	1,931	1,162		2,467	1,547		2,905	1,887	
PwC⁶¹	1,319	947		1,749	1,354		1,906	1,485	
GfK⁶²	1,586	1,187		2,024	1,570		2,388	1,944	
VAUNET⁶³	1,500	1,200	780 ⁶⁴	2,100	1,600	883	2,300	1,800	998

Source: Goldmedia analysis (2021) according to the above sources

⁵⁷ According to Nielsen, the gross advertising revenues of German marketers were around EUR 629 million in 2018. Compared to 2017 (EUR 681 million), the revenues of German providers fell by around eight per cent despite overall positive market development. Gross revenues, however, only give an indication of the volume of advertising placed, but not the prices paid in real terms (cf. FFA (2019): Evaluierungsbericht zur Entwicklung des FFA-Abgabeaufkommens, p. 64ff.). Accordingly, the share of YouTube and Facebook Video was already around 60 per cent in total in 2019. Based on figures from the OMG (2018), the market share of YouTube and Facebook Video was 73 per cent in 2019. This does not include video sales from the retail media sector, e.g. from Amazon. For 2021, the OMG forecasts further growth in gross advertising revenues from YouTube and Facebook Video of ten per cent each (cf. OMG, 2020).

⁵⁸ cf. European Audiovisual Observatory (EAO) (2022b): Yearbook 2021.

⁵⁹ cf. European Audiovisual Observatory (EAO) (2021a): Trends in the VOD market in the EU28, p. 51.

⁶⁰ cf. Statista (2021b): Video-on-Demand.

⁶¹ cf. PwC (2021): German Entertainment and Media Outlook 2021-2025, p. 159.

⁶² cf. Weidenbach (2021): Forecast of revenues from subscription video-on-demand in Germany until 2020.

⁶³ cf. VAUNET (2021a): Revenue of audiovisual media in Germany 2020-2021, p. 13.

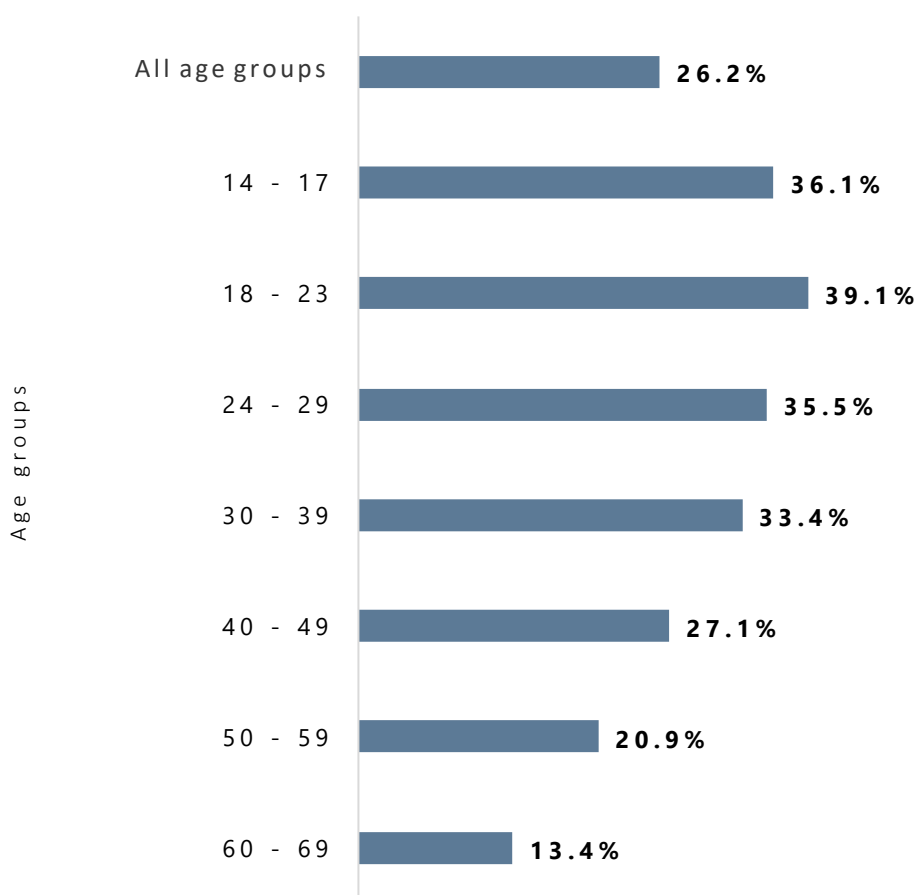
⁶⁴ cf. *ibid.*, p. 27.

2.2.3 Socio-demographics of Paid-VOD users

Overall, around 26 per cent of the total population aged 14 and over used Paid-VOD services on a daily basis in the second quarter of 2021. The use is particularly pronounced in younger age groups.

Paid-VOD services are used most intensively by 14- to 29-year-olds, with 35-39 per cent daily use. Video streaming services are also part of everyday life for around a third of 30–39-year-olds. A lower reach is evident in older target groups. In Germany, for example, around 21 per cent of 50- to 59-year-olds and 13 per cent of 60- to 69-year-olds used Paid-VOD services daily in mid-2021.⁶⁵ Accordingly, there is still considerable potential in these age groups, which is also expressed in the popularity of TV media libraries.⁶⁶

Fig. 29 Daily reach of Paid-VOD platforms in Germany by age group, Q2/2021, in per cent



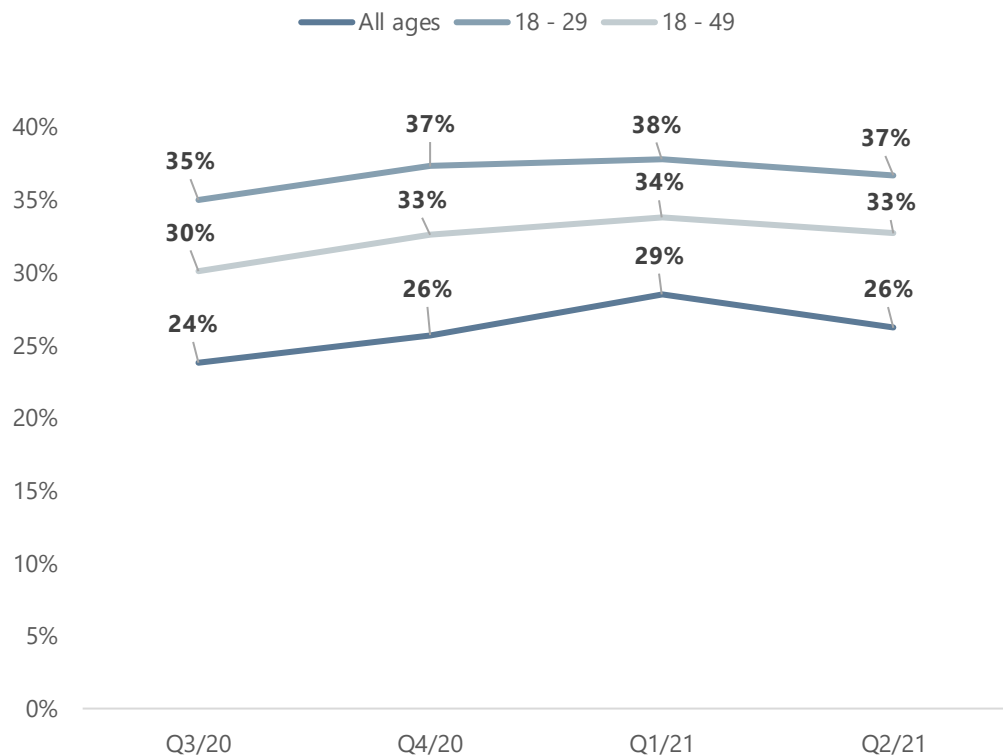
Source: Goldmedia VOD Ratings (2021), Basis: Paid-VOD users aged 14 and over

⁶⁵ cf. Goldmedia VOD Ratings (2021), Q2/2021.

⁶⁶ cf. Deloitte (2021): Media Consumer Survey 2021, p. 9.

As the figure below shows, younger and older target groups show similar seasonal movements in Paid-VOD usage.⁶⁷

Fig. 30: Distribution of daily use of Paid-VOD platforms in Germany, Q3/2020-Q2/2021, in per cent



Source: Goldmedia VOD Ratings (2021), Basis: Paid-VOD users aged 14 and over

The average age of Paid-VOD users is 39 (measured from age 14). Disney+ has the youngest user base with an average age of 35.⁶⁸

Usage by gender is distributed differently among the leading streaming providers. While Disney+ and Prime Video have almost equal shares of both sexes, Netflix and RTL+ are dominated by a female, young audience.

The female share of the platforms is around 57 per cent for Netflix and even around 70 per cent for RTL+. The oldest viewers of the streaming services are Magenta TV (Ø 48.4 years) and Sky Ticket (Ø 43.3 years), which at the same time also have the highest proportion of male viewers with over 58 per cent in each case (cf. following table).

⁶⁷ The movements were additionally influenced by the pandemic-related measures in the period under review, but also reflect overarching seasonal movements.

⁶⁸ cf. Birkel et al. (2021): Market and usage of paid streaming services, p.101-102.

Tab. 5: Socio-demographics of users of selected VOD platforms in Germany, average age and distribution of users by gender, Q4/2020, in per cent.

PLATFORM	Ø AGE	MALE	FEMALE
PRIME VIDEO	40.3	51.6	48.4
NETFLIX	36.0	42.7	57.3
DISNEY+	35.3	49.3	50.7
SKY TICKET	43.3	58.1	41.9
MAGENTA TV	48.4	58.6	41.4
RTL+	38.6	30.1	69.9
JOYN	38.7	43.4	56.6

Source: Goldmedia VOD Ratings (2021), Basis: VOD users aged 14 and over

2.2.4 Scope and structures of the programme libraries of Paid-VOD platforms

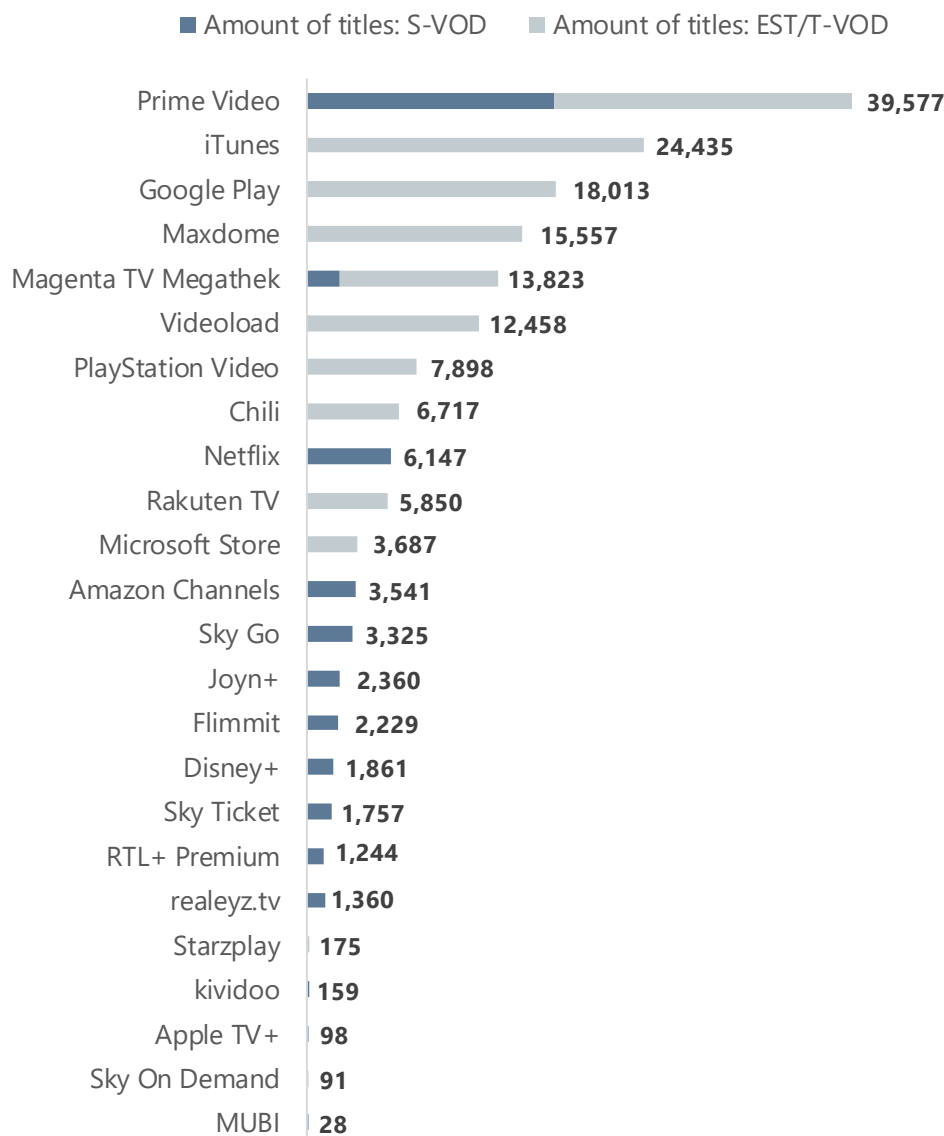
The Paid-VOD platforms active in Germany pursue different content strategies geared to their respective business models and target groups. This is reflected both in the scope and structure of their programme libraries as well as in the presence of German productions.

A distinction must be made between the total volume of German films and series and the productions realised exclusively for the platforms ("originals") or titles licensed for exclusive commercialisation ("exclusives"). The latter are of great and growing importance for the platforms and the German production location. Examples include "Isi & Ossi" (Netflix), "Dark" (Netflix), "Wir Kinder vom Bahnhof Zoo" (Prime Video), "Check Check" (Joyn Plus+) or "M - Eine Stadt sucht einen Mörder" (RTL+ Premium).

Scope of the programme libraries

The German Paid-VOD market comprises a total of around 175,000 titles distributed across the various platforms (as of February 2022). The S-VOD market comprises around 44,000 titles. Prime Video offers by far the largest S-VOD catalogue with around 18,000 titles followed by Netflix with around 6,000 titles. In the EST/T-VOD segment, the platforms iTunes, Google Play and Maxdome offer the largest catalogues alongside Prime Video, each with over 15,000 titles.

Fig. 31: Number of available titles in the programme libraries of the Paid-VOD platforms in Germany, 2022



Source: Goldmedia VOD Ratings (2022), as of 02/2022

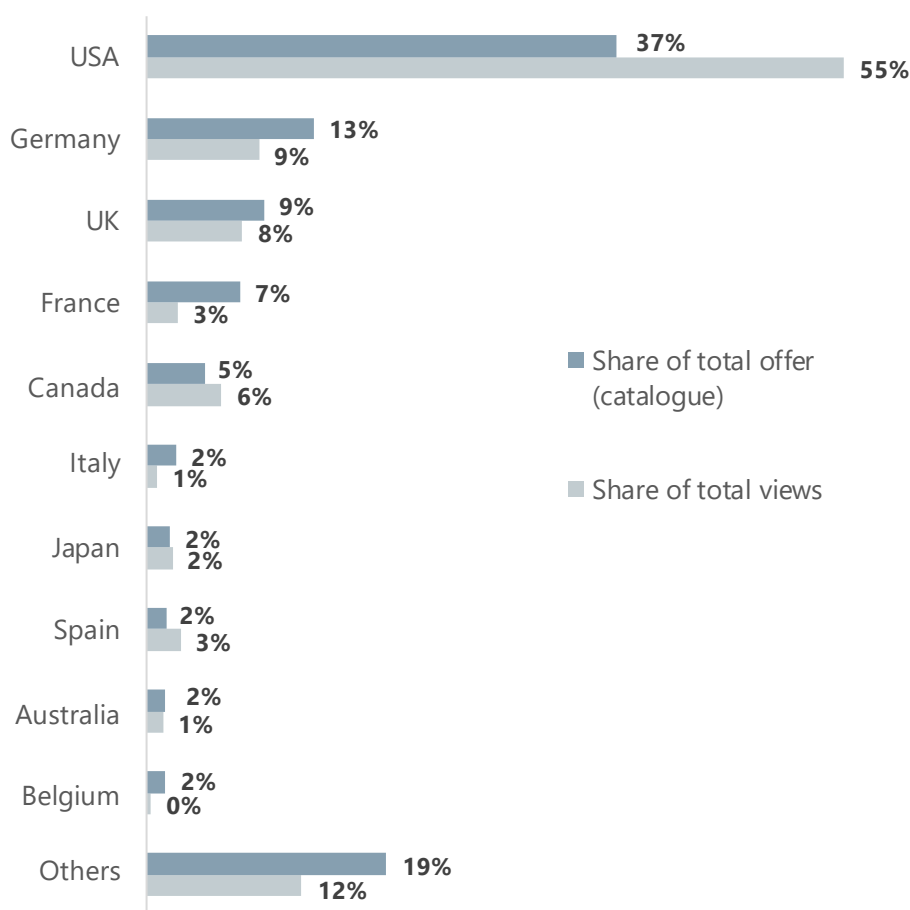
Share of German productions in the programme libraries

More than a third of the titles in the programme libraries of Paid-VOD providers in Germany came from the USA in 2021.⁶⁹ Productions from Germany followed in second place with a total share of 13 per cent. With nine and seven per cent of titles respectively, the UK and France were only slightly less represented as production countries than Germany.

⁶⁹ cf. Goldmedia VOD Ratings (2022). The allocation of titles by country of production is based on the origin of the production companies. It is based on information from the streaming providers as well as the sources IMDB (<https://www.imdb.com/>) and TMDB (<https://www.themoviedb.org>). Co-productions are assigned to several countries of production.

The distribution of titles watched by country of production shows a similar picture, except that U.S. productions accounted for an even larger share: More than half of the content watched by Paid-VOD providers came from the USA. Here, too, German productions followed in second place with nine per cent of the titles watched.

Fig. 32 Distribution of the production countries of the titles in the programme libraries of the Paid-VOD platforms in Germany, Q1-4/2021, in per cent

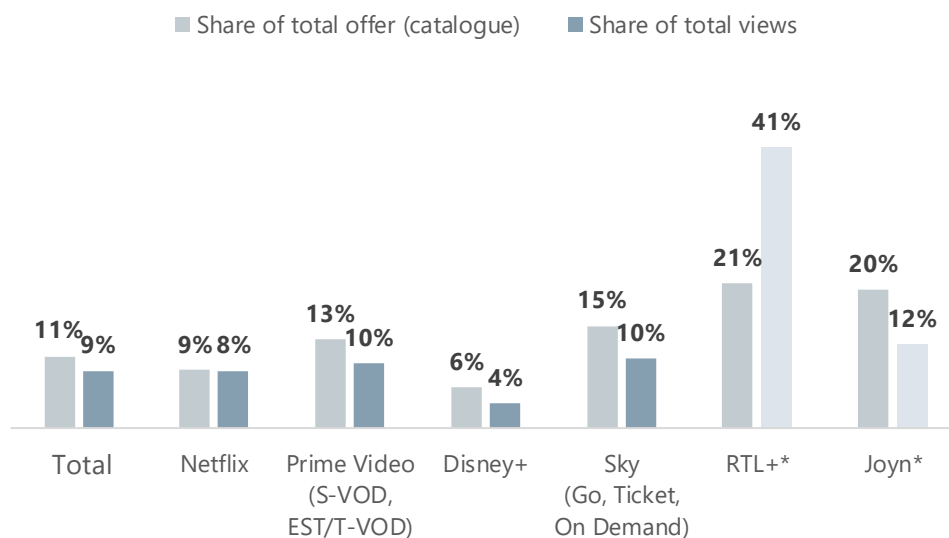


Source: Goldmedia VOD Ratings (2022), basis: origin of production companies, incl. co-productions

For feature films, the share of German content in the programme libraries of Paid-VOD providers was around eleven per cent in 2021. In terms of usage, German films accounted for around nine per cent (cf. chart below).

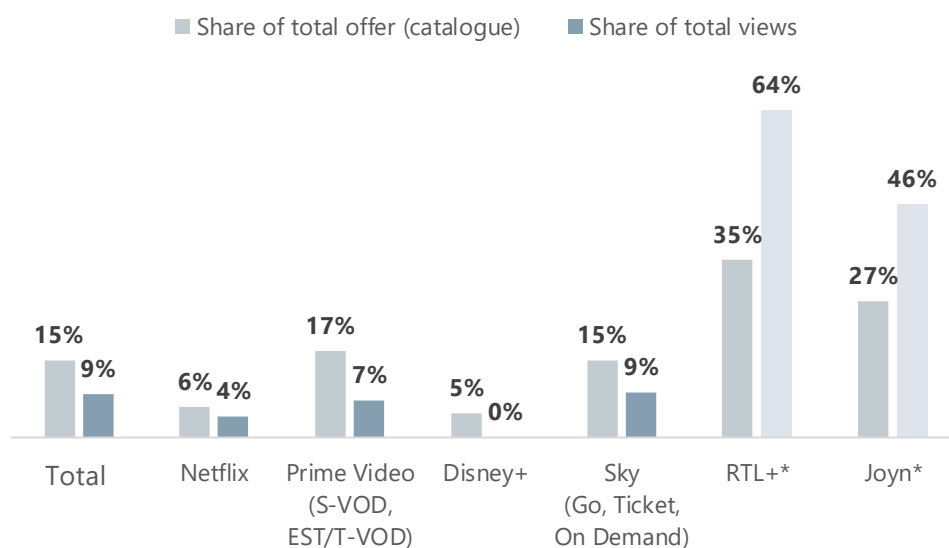
In a comparison of selected platforms, RTL+ and Joyn had the largest share of German films in their catalogue, each with around 20 per cent. The film offerings of Sky and Prime Video consisted of 15 and 13 per cent German films respectively in 2021. Around ten per cent of German films were used here. Netflix and Disney+ followed with shares of nine and six per cent of the catalogue and eight and four per cent of the use of German films.

Fig. 33: Share of German films in the programme libraries of Paid-VOD platforms in Germany, by platform, Q1-4/2021, in per cent



Source: Goldmedia VOD Ratings (2022), basis: origin of production companies, incl. co-productions*
 RTL+/Joyn: incl. A-VOD offer, usage values not meaningful due to low case numbers

Fig. 34: Share of German series in the programme libraries of Paid-VOD platforms in Germany, by platform, Q1-4/2021, in per cent

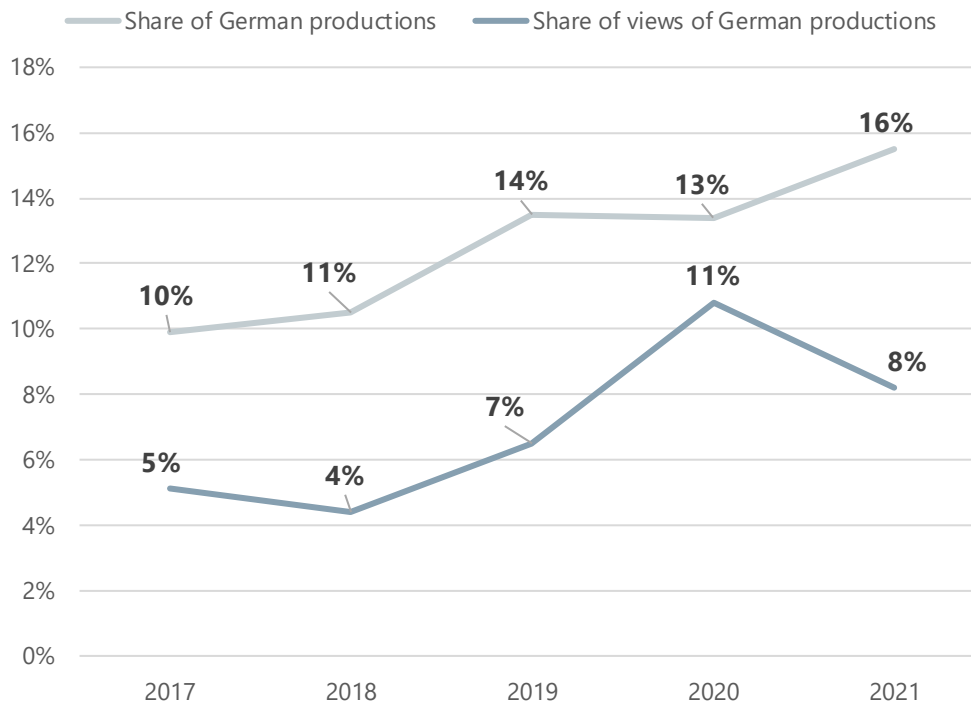


Source: Goldmedia VOD Ratings (2022), basis: origin of production companies, incl. co-productions.
 * RTL+/Joyn: incl. A-VOD offer, usage values not meaningful due to low case numbers

A larger catalogue share of German content can be observed in the series. Overall, around 15 per cent of the series on offer on the platforms were of German origin in 2021. At the same time, however, German series also account for only nine per cent of total usage. The usage shares of the international platforms considered are in the single-digit range.

If we look at the ratio of catalogue and usage shares of German series productions on S-VOD platforms over time, we see a consistently higher supply in relation to demand. Only in 2020 did demand temporarily approach the supply share.

Fig. 35: Development of supply and demand of German series productions on S-VOD platforms, 2017-2021, in per cent



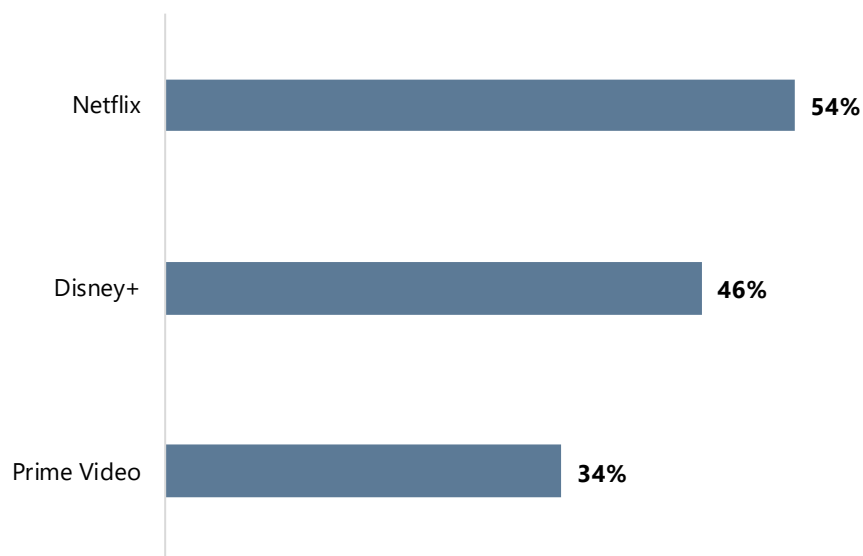
Source: Goldmedia VOD Ratings (2021), basis: origin of production companies, incl. co-productions

Exclusive content and commissioned productions

Content produced or licensed exclusively for a platform, which is usually marketed as "originals" or "exclusives", is an important unique selling point of the various providers from the customer's point of view. In order to keep their catalogues attractive in the long term, the platforms will therefore make more and more offers available, especially in the segment of in-house productions.

The importance of the "originals" of the various platforms is exemplified by the share of use on the three leading VOD platforms. More than half of the views of titles on Netflix in Germany are accounted for by Netflix "Originals" or "Exclusives". And on Disney+, too, 46 per cent of the titles viewed are own productions. Even on Prime Video, despite a significantly larger content catalogue, the share of views of "Originals" is 34 per cent.

Fig. 36 Share of use of exclusive productions of Paid-VOD platforms in Germany, Q2/2021, in per cent



Source: Goldmedia VOD Ratings (2021)

German "Originals" and "Exclusives" still make up a small share of the content catalogues of the largest VOD platform providers. For the international S-VOD providers, this is well below one per cent in each case, with Netflix having the largest offer so far with 28 titles, ahead of Prime Video with 11 and Sky with 7 titles. The national providers RTL+ and Joyn (A-VOD and S-VOD) have only slightly higher shares of 1.7 and 2.0 per cent respectively.

Tab. 6: Share of German Originals/Exclusives by Paid-VOD platforms, Q3/2020-Q2/2021

PLATFORM	TITLES IN THE CATALOGUE	GERMAN ORIGINALS	SHARE OF THE CATALOGUE	PROPORTION OF CONTENT USED
NETFLIX	5,047	28	0.55%	1.59%
PRIME VIDEO	37,901	11	0.03%	0.65%
SKY (GO, TICKET, ON DEMAND)	4,902	7	0.14%	0.49%
DISNEY+	1,541	2	0.13%	0.23%
RTL+	1,370	24	1.75%	1.71%
JOYN PLUS+	2,000	40	2.00%	24%

Source: Goldmedia VOD Ratings (2021)

In the period under review (Q3/2020 to Q2/2021), Netflix offered 28 German originals or exclusives, which accounted for one per cent of the total catalogue and 1.6 per cent of usage. For the other international platforms, the share of both the catalogue and usage was significantly less than one per cent.

On RTL+, German originals and exclusives also played only a minor role, each accounting for around 1.7 per cent of the catalogue or usage. Although most originals and exclusives were available on Joyn Plus+, the high view share can only be attributed to a few series formats with comparatively low overall usage.

2.2.5 Levies of the VOD platforms in Germany

Film levy (FFA)

According to the German Film Law (FFG), all companies that commercialise films must pay a legally defined share of their revenues to the German Federal Film Board (FFA). This so-called "film levy" must be paid by cinemas, the video industry including online providers, television broadcasters and programme marketers.

The levies paid by the companies to the FFA serve to promote and safeguard the German film industry and the "German film as an economic and cultural asset [...]. In addition, the aim is to maintain and further develop the quality and diversity of German filmmaking."⁷⁰ All stages of development, from film production to commercialisation in the cinema and at the subsequent stages of commercialisation, can be taken into account by this FFA funding.

Section 153 of the FFG regulates the levy system for providers of VOD services. The film levy of VOD providers is based on the annual net revenue of the revenues generated and amounts to 1.8 or 2.5 per cent. If the providers' annual net revenue is less than EUR 500,000, they are exempt from the levy. The amount of the levy is calculated according to the revenue generated with cinematographic works by the respective providers in the previous year.⁷¹

GEMA

For VOD platforms to be allowed to use music in their video content that is offered online via download or streaming, they usually have to pay copyright fees to the The German Society for Musical Performing and Mechanical Reproduction Rights (GEMA).

⁷⁰ cf. German Film Law (FFG).

⁷¹ cf. Filmförderungsanstalt (FFA) (2021b): Filmabgabe.

The levies for VOD platforms are based on tariff VR-OD 4 (cf. table below).⁷² Different standard remunerations apply per content category on the basis of the "causally attributable"⁷³ net revenues from film video use, which are generated, among other things, through viewing and subscription fees, advertising or sponsoring.⁷⁴ In case of missing or very low revenues, minimum remunerations apply. The providers report the underlying revenues and call-up figures to GEMA.

Irrespective of the above remuneration rates, the minimum amount for the use of works and rights of the GEMA repertoire under this Tariff is EUR 240 net per year, i.e., EUR 20 net per month. This amount can be offset against the usage-based billing, but is non-refundable.

Tab. 7 GEMA: Standard and minimum remuneration for film/video-on-demand offerings according to tariff VR-OD 4

No.	Category	Download to Own		Streaming	
		Standard remuneration (in %)	Minimum remuneration (in EUR)	Standard remuneration (in %)	Minimum remuneration (in EUR)
1	Feature film	3.15%	€ 0.1650	2.60%	€ 0.0550
2	Series long (per eps.)	3.00%	€ 0.0490	2.50%	€ 0.0235
3	Short film	3.12%	€ 0.0210	2.60%	€ 0.0080
4	Series/show/reality short (per eps.)	1.33%	€ 0.0180	1.10%	€ 0.0060
5	Show/reality long (per eps.)	1.75%	€ 0.0750	1.50%	€ 0.0250
6	Concert film/music formats (if serial: per eps.)	5.40%	€ 0.3135	4.50%	€ 0.1045
7	Documentary film/documentary (if series: per eps.)	2.10%	€ 0.0225	1.75%	€ 0.0087
8	Guidebooks, reports, news coverage (if serial: per eps.)	1.20%	€ 0.0100	1.00%	€ 0.0022
9	Clips (if serial: per eps.)	1.50%	€ 0.0050	1.25%	€ 0.0011

Source: GEMA (2020)

⁷² cf. GEMA (2020): Video On Demand – Download and Streaming.

⁷³ *ibid.*, S. 4.

⁷⁴ cf. *ibid.*, p. 4: The tax base also includes sponsoring, barter, compensation or gift transactions as well as foreign income that relates to the operation of an offer in Germany.

S-VOD providers are subject to a special regulation that allows them to pay a standard flat-rate remuneration of 3.125 per cent of net revenues. The minimum remuneration is EUR 0.25 per month and subscriber. A change to call-up-based remuneration is possible at any time.⁷⁵

GVL

While GEMA is responsible for the remuneration of authors of musical content, the Copyright Collection Society (GVL) is responsible for the remuneration of the actors involved in the production, such as musicians and record producers.

Accordingly, as soon as a recorded or sung recording is used, fees accruing to the parties involved in the content cease to apply.

Up to now, streaming of audiovisual content has not been covered by the rights administered by the GVL. However, since June 2021, the "Act on the Adaptation of Copyright Law to the Requirements of the Digital Single Market" has been in force in Germany⁷⁶. This new "Copyright Service Provider Act" (UrhDaG) regulates a direct remuneration claim for music and art creators for the uses of their rights on platforms such as YouTube or Facebook. In the course of this reform, an adjustment of the GVL's tariffs regarding streaming platforms is to be implemented.⁷⁷

Tax levies

Until now, the revenues of digital corporations such as Netflix and Amazon have often been booked and taxed via a registered office outside the country in which these revenues were generated. The revenues of the platforms in Germany, for example, are transferred via the Netherlands (Netflix) or Luxembourg (Amazon) to the company's headquarters in the USA.

In this way, the platforms use opportunities in other, more favourable tax countries than, for example, Germany, to structure their tax burden. The financial advantages of the respective countries and international tax laws are legally exploited by the providers.⁷⁸

⁷⁵ cf. *ibid.*, p. 5.

⁷⁶ cf. GVL (2021): Frequently asked questions.

⁷⁷ cf. *ibid.*

⁷⁸ cf. Schmutz (2021): Why Amazon hardly pays any taxes in Europe.

According to estimates, Netflix made around EUR 1 billion in revenue and almost EUR 140 million in profit in Germany alone in 2020. The company's tax expenditure in Germany is estimated at around EUR 250,000, which corresponds to a tax rate of only 0.2 per cent.⁷⁹

Amazon generated total revenues from all its activities in Germany in 2019⁸⁰ of around EUR 20 billion. Amazon claims to have paid a total of EUR 261 million in taxes, duties and social security contributions in Germany. Exactly how much corporate income tax the company pays remains open.⁸¹

The Disney group already made headlines in 2014 after setting up an intra-group bank in Luxembourg where the company's profits were taxed at less than one per cent.⁸²

With the help of the OECD reform planned for 2022/23 on fairer international tax distribution (OECD Pillar 1) and a global minimum taxation (OECD Pillar 2), this will no longer be possible in the future. Under minimum taxation, all profits made by a company worldwide are to be taxed at a minimum of 15 per cent. If less is paid in one country, the country where the company is based can pay tax on the difference. This should apply to all internationally active companies, including the large digital platforms. This is intended to prevent the circumvention of higher tax payments via subsidiaries of corporations based in so-called tax havens.⁸³

However, the effectiveness of this reform is in doubt as it can be assumed that the tax rate of companies like Netflix will only increase marginally as a result. This is because, despite the reform, hardly any more profits have to be booked in Germany, which consequently only leads to small additional tax revenues.⁸⁴ The situation is different for companies from Germany, which have to pay a regular trade tax amounting to 3.5 per cent of annual revenue plus regional assessment rates.

2.2.6 Investments of the VOD platforms in Germany

The providers of the internationally and nationally active streaming platforms invest huge sums of money worldwide in the production of audiovisual content and its marketing.

⁷⁹ cf. Coerper et al. (2021): Study: Scholz' minimum tax brings little.

⁸⁰ cf. Fuchs (2020): How much tax does Amazon pay in Germany?

⁸¹ cf. *ibid.*; cf. Schmutz (2021): Why Amazon hardly pays any taxes in Europe.

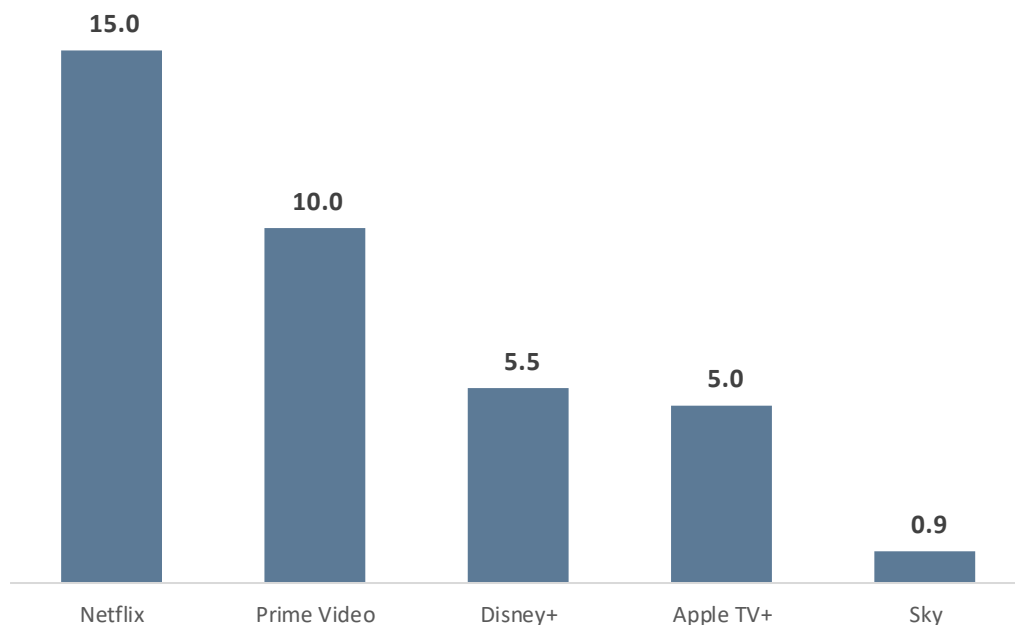
⁸² cf. Frankfurter Allgemeine Zeitung (FAZ) (2014): Luxembourg Leaks: Disney and Skype also "saved" taxes.

⁸³ cf. Bundesministerium der Finanzen (2021): Tax justice.

⁸⁴ cf. Coerper et al. (2021): Study: Scholz' minimum tax has little effect.

The background to this is the importance of exclusive, attractive content in the intense competition for the attention and time as well as financial budgets of users (cf. Chap. 2.3.1). Netflix is the provider with the highest expenditure worldwide, but competitors such as Amazon, Apple and Disney are also active with massive budgets.

Fig. 37 Annual global investment in audiovisual productions by international VOD platforms, 2021, in billion EUR



Sources: Goldmedia analysis/estimation according to PwC (2020/2021); Low (2021); Spangler (2021a); Levy (2021).

Investments are increasingly spread across many local markets. The German VOD market is also increasingly seeing European and German production orders from the platforms.

One reason for this is the current EU Audiovisual Media Services Directive, which was adopted in 2018 and has been transposed into national law in the various countries since September 2020. According to this directive, the share of European films and series in the offerings of streaming platforms must be at least 30 per cent (cf. Chap. 3.1).⁸⁵ This, as well as the increasing importance of local productions in the global strategy of the platforms (cf. Chap. 2.3.2), has an impact on the platforms' investments in audiovisual content and strategies.

⁸⁵ See Official Journal of the European Union (2018): Directive 2018/1808/EU of the European Parliament and of the Council of 14.11.2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in order to address changing market circumstances.

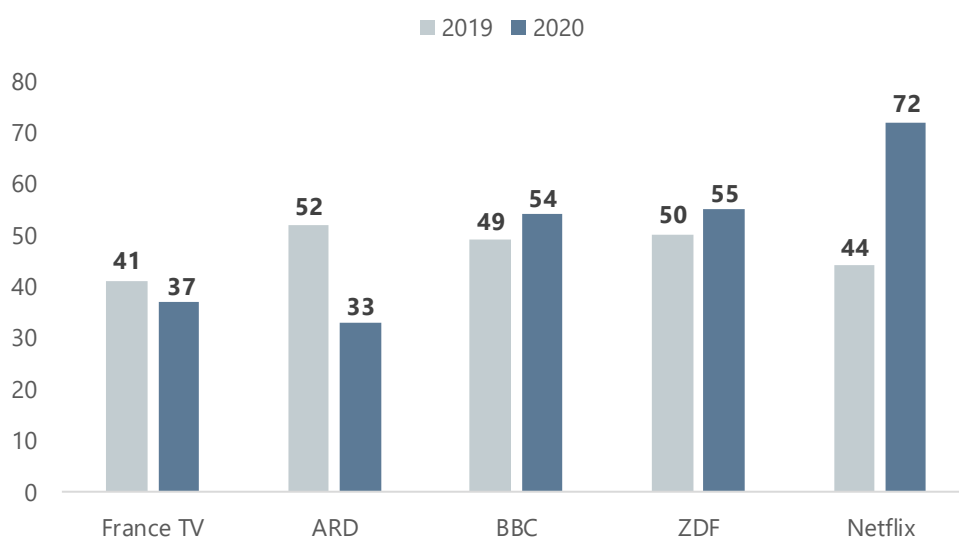
Netflix

Netflix planned global investments totalling around EUR 15 billion (USD 17 billion) for the production of its own content in 2021.⁸⁶ In the meantime, the U.S. streaming provider also wants to use larger investments in local productions in the German market. In the course of 2021 and the next two years, EUR 500 million will be spent on the production of German-language content for the streaming platform. Accordingly, German productions account for about one per cent of Netflix's global investments each year. A total of 80 new German series, films or shows are expected to emerge from this. A new company headquarters for the German region with approximately 80 employees was opened in Berlin in September 2021.⁸⁷

In November 2021, it was announced that Netflix was acquiring the visual effects company "Scanline VFX", which was founded in Germany and operates worldwide.⁸⁸

These investments are in the context of a global growth strategy based on diverse international and local content. Netflix is therefore also stepping up its activities across Europe. In 2020, the provider had already risen to become the largest European client in terms of the number of commissioned titles, ahead of the major public broadcasters.

Fig. 38: Largest commissioners of European fictional content by number of titles commissioned, 2019-2020, in million EUR



Source: Bisson, (2021)

⁸⁶ cf. Low (2021): Netflix Reveals \$17 Billion in Content Spending in Fiscal 2021.

⁸⁷ cf. Armbruster (2021): Netflix focuses on German content.

⁸⁸ cf. Klaiber (2021): Netflix buys German visual effects studio Scanline VFX.

Netflix also invests a lot of money in marketing for the platform, comparatively more than the other streaming providers. In 2018, a total budget of over EUR 1.7 billion (USD 2 billion) was spent on advertising and marketing.⁸⁹ In the following years, however, spending was scaled back somewhat and reduced to a total of around EUR 900 million (USD 1.4 billion) in 2020.⁹⁰ EUR 26.8 million of this was used for Netflix's gross advertising expenditure in Germany in 2020, which corresponds to a share of around two per cent.⁹¹

Prime Video

In 2020, Amazon invested around EUR 9.5 billion (USD 11 billion) in video and music content for its Prime service. This represents a 41 per cent increase from the approximately EUR 6.9 billion (USD 7.8 billion) invested in 2019.⁹²

Like Netflix, Amazon plans to further increase its investments in the following years and invest more in international and German productions. With various content such as the comedy format "LOL: Last One Laughing" and the series production "Wir Kinder vom Bahnhof Zoo", Amazon already presented two new German productions at the beginning of 2021. Now more are in the pipeline, with Amazon's goal being to "create great originals for [...] customers in Germany that will also inspire a global audience".⁹³

Amazon and Amazon Prime have long been headquartered in Munich with additional research and development centres in Aachen, Berlin, Dresden and Tübingen.⁹⁴ In 2020, Amazon employed a total of around 1.3 million full- and part-time employees worldwide as well as seasonal workers. In Germany, the total number of employees in 2020 was 23,000. According to Amazon, this number should be increased to 28,000 in 2021 through 5,000 new hires in areas such as the shipping centres, marketing and research and development. Amazon does not disclose how many employees will be recruited for the respective areas.⁹⁵ In 2021, the total number of employees in Germany included more than 19,000 permanent logistics employees.⁹⁶ It is estimated that 4,000 to 11,000 people

⁸⁹ cf. Hansen (2018): Netflix invests 2 billion in marketing.

⁹⁰ cf. Finanzen.ch (2021): Global marketing expenditure.

⁹¹ cf. Nielsen Advertising Statistics 2020 (2021): Development of Netflix's gross advertising expenditure.

⁹² cf. Spangler (2021a): Amazon Spent \$11 Billion on Prime Video and Music Content in 2020, up 41% From Year Prior.

⁹³ Georgia Brown (Director European Amazon Originals at Prime Video) as quoted in Gräber (2021): Prime Video stockt auf: Amazon invests more in German formats.

⁹⁴ cf. Amazon.de GmbH (n.d.): Unsere Unternehmensstandorte in Deutschland.

⁹⁵ cf. Källicke (2021): Neue Karrierechancen.

⁹⁶ cf. Amazon Logistics Team (2021): Facts about Amazon logistics centres.

work for Amazon outside of logistics, only a small fraction of which will be employees for the Amazon Prime service.

In 2020, Amazon invested around EUR 350 million in advertising measures.⁹⁷ The share of the budget allocated to Prime Video is not known, but broad campaigns are regularly used to promote the service and new content.

Disney+

Disney invested around EUR 860 million (USD 1 billion) in the production of its own content for Disney+⁹⁸ in the first year after the market launch in 2019. By 2024, annual investments are expected to increase to around EUR 7 to 8 billion (USD 8 to 9 billion) and to EUR 12 to 14 billion (USD 14 to 16 billion) for all streaming content including the U.S. platforms Hulu and ESPN+. In total, the Disney Group plans to invest around EUR 29 billion (USD 33 billion) in film and series productions in 2022.⁹⁹

Disney+ spin-off Star planned to expand its catalogue locally in 2021 with ten European in-house productions – two of which are from Germany.¹⁰⁰

The Walt Disney Company employs around 200,000 people worldwide.¹⁰¹ Disney has been active in Germany for over 60 years with its headquarters in Munich. In 2021, around 300 people were employed there, but it is not known how many of them are responsible for Disney+.¹⁰²

In the first year after the launch of Disney+, the Walt Disney Company spent around EUR 4.3 billion (USD 5 billion), almost twice as much as in the previous year, on advertising and marketing. A large part of this was used for marketing the new platform.¹⁰³ Since the launch, EUR 450 million (USD 525 million) has been spent on advertising and marketing by the Walt Disney Company's offshoot of Disney+ alone.¹⁰⁴ In Germany, broad advertising campaigns are regularly run to market the platform, also in cooperation with media partners such as ProSieben and Bild-Zeitung.¹⁰⁵

⁹⁷ cf. Nielsen Advertising Statistics 2020 (2021): Development of gross advertising expenditure by Amazon in Germany.

⁹⁸ cf. Rumbucher (2020): Disney+ boss: "Why not produce in Germany? "

⁹⁹ cf. Levy, 2021: Disney's Streaming Budget Already Rivals That of Netflix.

¹⁰⁰ cf. Lorenzen (2021): Disney+ Star: Streaming extension focuses on German productions.

¹⁰¹ cf. Commission on Concentration in the Media (CEC) (2021): The Walt Disney Company: Brief Portrait.

¹⁰² cf. LinkedIn (2021c): The Walt Disney Company.

¹⁰³ cf. Statista (2021a): Advertising expense of the Walt Disney Company.

¹⁰⁴ cf. Merchan (2021): Disney+ Marketing in 2020.

¹⁰⁵ cf. App (2020): The Disney+ advertising strategy.

AppleTV+

The U.S. company Apple is planning a worldwide "content offensive" with its streaming service AppleTV+ for the year 2022. The content portfolio, which has been comparatively small so far, is to be expanded by at least one new, exclusively produced series per week.¹⁰⁶ In January 2022, Apple hired a creative director for German productions.¹⁰⁷ In 2019, Apple already invested more than EUR five billion in the production of series and films for its own service.¹⁰⁸

In 2021, around EUR 500 million was spent worldwide on advertising for AppleTV+.¹⁰⁹ The gross advertising expenditure of the entire Apple group in Germany was more than EUR 120 million in 2020, according to Nielsen Media Research.¹¹⁰ In total, more than 2,500 people are employed by Apple in Germany.¹¹¹

Sky

Sky plans to double its group-wide investment in original content to over EUR 1.4 billion by 2024.¹¹² The focus is on local, European productions: 60 "Sky Originals" from Germany, Great Britain and Italy are planned for 2022 alone.¹¹³

In the future, Sky will increasingly support film productions in Germany and Europe, such as the German film "Plan A", which was co-produced by Sky and released in cinemas in December 2021.¹¹⁴ The continuation of popular German Sky original series also fall under Sky's future investments. With the production studio under construction in London since 2019, a further EUR 3.5 billion has been invested to promote the European production of its own content.¹¹⁵

In 2020, the gross advertising expenditure of Sky Deutschland GmbH in Germany reached a volume of around EUR 220 million, according to Nielsen Media Research. The pay-TV provider's expenditure thus increased by around EUR 125 million compared to the previous year.

¹⁰⁶ cf. Günther (2021): A look behind the scenes of Apple TV+.

¹⁰⁷ cf. Schasche (2021): Franziska An der Gassen becomes creative director at Apple.

¹⁰⁸ cf. Handelsblatt (2019): Apple invests six billion dollars in its own series and films.

¹⁰⁹ cf. Gallagher (2021): Apple TV+ planning 50 new shows for 2021, doubles production slate.

¹¹⁰ cf. Nielsen Advertising Statistics 2020 (2021): Gross advertising expenditure by Apple in Germany until 2020.

¹¹¹ cf. Apple (2018): 1.76 million jobs in Europe.

¹¹² cf. O'Regan (2020): Sky plans to double its budget for original content to stg£1bn.

¹¹³ cf. Pauker (2021b): Sky doubles investment in own productions.

¹¹⁴ cf. Müller (2021b): Sky wants to support more feature films as a co-producer.

¹¹⁵ cf. Westphal (2019): Sky invests EUR 3.5 billion in new production studio.

In 2020, Sky was one of the companies with the highest gross advertising expenditure in Germany.¹¹⁶ More than 1,800 employees work in Germany at the company's locations in Munich and Schwerin.¹¹⁷

RTL+

With the relaunch of TVNow as the multimedia content platform RTL+, the Bertelsmann Group is continuing to expand its range of audiovisual in-house productions.

RTL+ plans to provide at least one new "original" per week in 2021 and beyond. The total budget of RTL Group for the acquisition and production of content for the channels is more than one billion EUR per year.¹¹⁸ Spending on productions by RTL+ and the Dutch RTL platform Videoland amounted to EUR 85 million in 2020 and is to be increased to EUR 350 million in 2025.¹¹⁹

RTL has about 4,000 employees nationwide and internationally; how many of them belong to RTL+ is not known.¹²⁰

The advertising expenditure of the entire RTL broadcasting group amounted to around EUR 94 million in 2020, an increase of EUR 28 million compared to the previous year.¹²¹ Increasingly extensive advertising campaigns are being carried out for the marketing of the high-budget RTL+ exclusive content, which also utilises the reach of the broadcaster's own TV channels.

Joyn

The ProSiebenSat.1 Group currently operates Joyn as a joint venture with Discovery, Inc. and announced investments of EUR 170 million per year in new content at the beginning of 2021. Of this, EUR 120 million is to be invested in in-house productions.¹²² Thus, 20 new in-house productions of the VOD platform and the expansion of the existing programme have been announced for 2021.¹²³

The gross advertising expenditure of Joyn GmbH (7TV Joint Venture GmbH) in Germany was around EUR 19.8 million in 2019 according to Nielsen Media Re-

¹¹⁶ cf. Nielsen Advertising Statistics 2020 (2021): Gross advertising expenditure by Sky in Germany until 2020.

¹¹⁷ cf. Sky Deutschland GmbH (n.d.): Over 1800 employees give Sky a face.

¹¹⁸ cf. Bialek (2020): Interview with Bernd Reichart.

¹¹⁹ cf. RTL Group SA (2021): RTL Group Strategy.

¹²⁰ cf. LinkedIn (2021b): RTL Deutschland GmbH.

¹²¹ cf. Nielsen Advertising Statistics 2020 (2021): Gross advertising expenditure of RTL Television in Germany until 2020.

¹²² cf. PwC (2020): German Entertainment and Media Outlook 2020-2024, p. 90.

¹²³ cf. Pauker (2021a): Content-Offensive; cf. Presseportal (2021): There have never been so many Originals!

search. The VOD provider's advertising spend thus fell to less than a third compared to the previous year.¹²⁴ Behind ProSiebenSat.1 are over 8,200 employees,¹²⁵ around 200-500 of whom are estimated to be employed at Joyn.¹²⁶

Magenta TV

Deutsche Telekom is further expanding its Megathek and the range of its Magenta TV service. To this end, investments are being made in the production of its own "Originals" and "Exclusives" as well as for licences for external content.¹²⁷

According to Nielsen Media Research, Telekom's gross advertising expenditure in Germany amounted to around EUR 260 million in 2020. The highest investments were made in television advertising with more than EUR 121 million.¹²⁸

It is not known in detail how much is invested in the production of content and advertising for Magenta TV. The exact number of employees responsible for Magenta TV is also unclear. In total, however, Telekom employed around 89,000 people in Germany in 2020.

In general, it is apparent that both German and international platforms are currently investing more in the production of German and European content and will do so in the future. In particular, the "originals" and "exclusives" of the providers are coming to the fore as these are of increasing importance for the success of the providers in the future as a unique selling point that binds them to the customer. For example, local production sites are being promoted with the establishment of their own studios and company headquarters in various German and European countries. Furthermore, a lot is spent on advertising measures for the services of the platforms.

2.2.7 Film funding

German Motion Picture Fund (GMPF)

The German Motion Picture Fund (GMPF) is the most important instrument for promoting audiovisual productions for VOD providers in Germany.

Since 2015, the GMPF has provided support for the production of high-budget series and films by producers or co-producers with a registered office or branch in Germany. The grant is awarded without a decision by a committee if certain

¹²⁴ cf. Nielsen Media Research (2021): Gross advertising expenditure of Joyn in Germany until 2019.

¹²⁵ cf. ProSiebenSat.1. Media SE (2021b): Company Portrait.

¹²⁶ cf. LinkedIn (2021a): Joyn GmbH.

¹²⁷ cf. Hottes/Zollondz (2021): MagentaTV app.

¹²⁸ cf. Nielsen Advertising Statistics 2020 (2021): Gross advertising expenditure by Telekom in Germany until 2020.

requirements are met, which are examined according to the order of the applications received.¹²⁹

The aim of the funding programme is to offer an incentive to realise new and creative formats in Germany and thus strengthen the competitiveness and innovative power of Germany as a film location internationally.

The GMPF funded twelve productions in 2020 with a total of around EUR 20.5 million. Of these, nine titles were commercialised on VOD platforms and three by public TV broadcasters. In 2021, EUR 50 million was awarded to 19 productions, of which 13 were commercialised on VOD platforms and six by public broadcasters.¹³⁰

Productions for the provider Netflix received the largest amount of funding in 2021 with over EUR 16 million. The production company Dark Ways received the maximum amount of EUR 10 million for the mystery series "1899". Other significant funding amounts were received, for example, for productions for Prime Video ("Der Greif"), RTL+ ("Torstraße 1"), ZDF ("Der Schwarm") and the series "Babylon Berlin (Staffel 4)" commercialised by ARD and Sky¹³¹. In 2020, productions for other VOD and TV providers such as Joyn, Magenta TV and TNT were funded.

More than half of the GMPF funding in 2021 was awarded to productions commercialised by international S-VOD platforms. Productions for national S-VOD providers and public broadcasters each accounted for 19 per cent. Productions for Sky, the pay-TV/S-VOD hybrid, received a further ten per cent. In 2020, productions for Sky still accounted for the largest funding amounts.

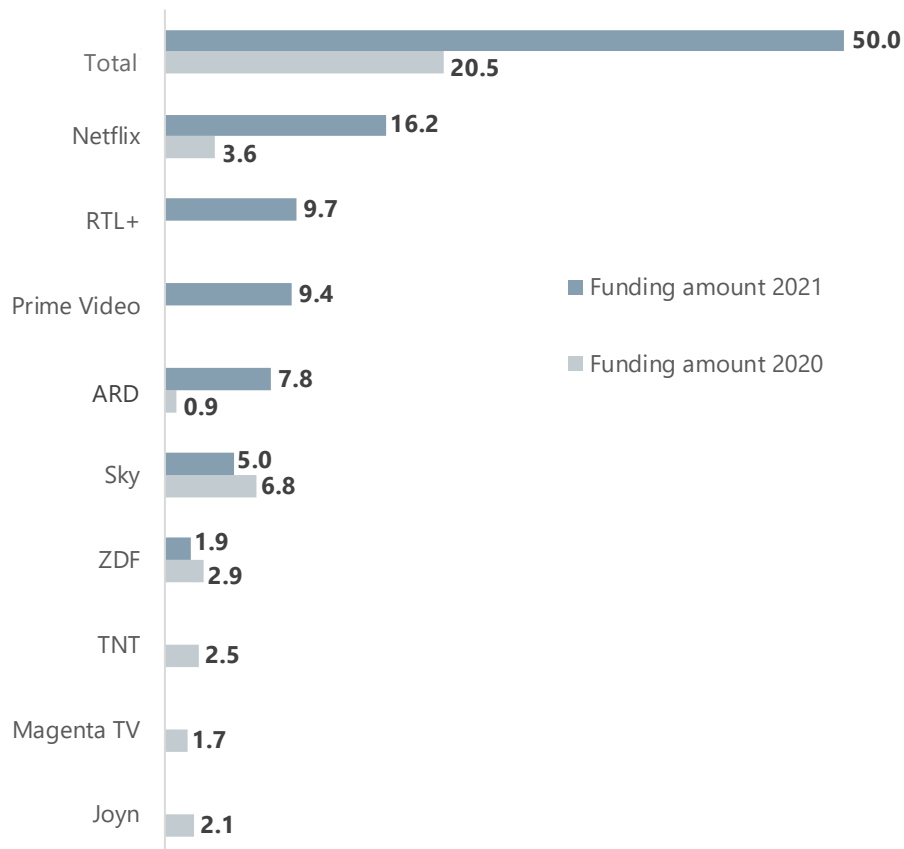
A fundamental shift in GMPF funding in favour of international platforms is not discernible. In the course of the last few years, productions for numerous national and international VOD and TV providers have been funded. In recent years, international platforms submitted only a portion of the productions they commissioned for GMPF funding.

¹²⁹ The funding requirements include various minimum budgets per content category, a minimum share of German production costs of 40 per cent and sufficient available funding. Production companies that have already produced a film or series in the last five years are eligible to apply (cf. FFA (2021c): German Motion Picture Fund (GMPF)).

¹³⁰ The GMPF budget for 2020 was originally EUR 15 million. Due to high demand, an additional EUR 5.5 million was reallocated from the DFFF. In 2021, the GMPF budget was nominally increased to 30 million EUR and was raised to 50 million EUR in the middle of the year (cf. Mensch (2021b): GMPF funds already fully approved despite increase).

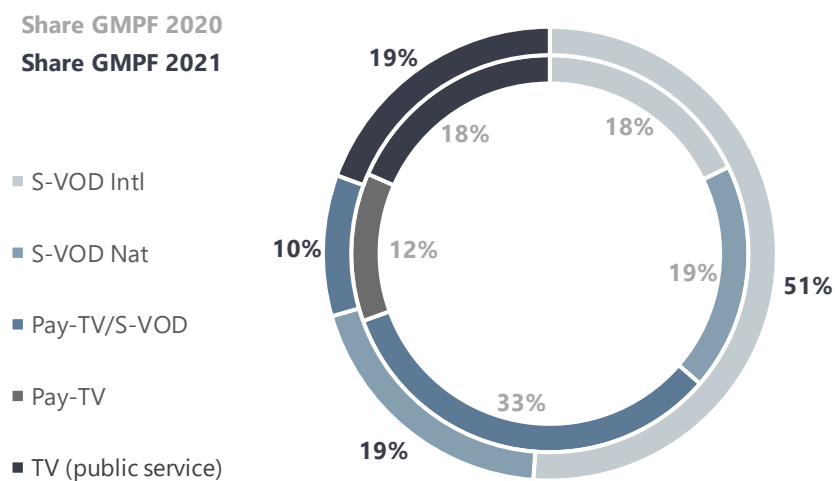
¹³¹ The GMPF funding awarded to the production company "X Filme Creative Pool" for "Babylon Berlin (Season 4)" was allocated in equal parts to the participating providers ARD and Sky within the framework of the evaluation presented.

Fig. 39: German Motion Picture Fund funding amounts by recipient, 2020-2021, in million EUR



Source: Goldmedia analysis according to FFA (2021c)

Fig. 40: Shares of the provider segments in the funding budget of the German Motion Picture Fund, 2020-2021, in per cent



Source: Goldmedia analysis according to FFA (2021c)

The GMPF is important for Germany's attractiveness as a film location in international competition. The interest is great: the GMPF funds for 2021 were already exhausted in July despite an increase, so a backlog of funding applications is to be expected for 2022.

One point of criticism of the GMPF is its lack of predictability due to the cap on subsidies. Compared to guaranteed tax incentives, which are granted in many other countries¹³², this is an obstacle to attracting international producers.

The so-called "first come, first served" system, in which applications are processed in the order in which they are received (see above), also puts German TV broadcasters at a disadvantage. They are allowed to finance a maximum of 70 per cent of the budget of a funded project, whereas no comparable restriction applies to international VOD platforms.

Since the GMPF only covers a maximum of 20-25 per cent of the budget, TV providers must cover the remaining part of the budget through other sources or funds, which puts them at a temporal disadvantage compared to VOD platforms in the award procedure. The advantage is that TV providers are bound to the framework conditions imposed by other funding instruments, which, for example, grant producers certain licensing rights.

The tax-financed subsidies based on the German Film Law (FFG) as well as the tax-financed German Federal Film Fund (DFFF) have not played a role for the productions of international streaming services so far. The reason for this is the funding requirements, which provide for regular cinema commercialisation.

Regional film and media funding of the federal states

In addition to the GMPF, the regional film and media funding of the federal states is another important source of funding for the production of audiovisual formats in Germany. Producers use the regional funding programmes to produce series formats for national and international streaming providers, among other things.

The relevant funders of serial projects for VOD platforms are:

- the Media Board Berlin-Brandenburg (MBB),
- FilmTelevisionFund Bavaria (FFF),
- the Media and Film Association Baden-Württemberg (MFG),
- the Film and Media Foundation North Rhine-Westphalia (FMS),
- the Central German Media Fund (MDM),

¹³² Such tax relief or rebates are granted in the United Kingdom, France, Italy, Hungary, the Netherlands and Canada, among others.

- HessenFilm and Media,
- nordmedia (Lower Saxony),
- the MV Film Fund (Mecklenburg-Western Pomerania) and
- the MOIN Film Fund Hamburg Schleswig-Holstein.

Other cultural institutions in individual federal states (e.g. Film Office Mecklenburg-Western Pomerania or Filmbüro Bremen) primarily provide funds for the development and production of low-budget TV and cinema film productions.

The overarching goal of the regional funding institutions is to strengthen the regional film and media industry and culture. In addition to the respective federal states, national and international TV and VOD providers also hold shares in the funding institutions and co-finance them through levies. For example, WDR, ZDF and RTL are among the shareholders of FMS.¹³³

In addition to production, the regional broadcasters also promote the development of serial content. In doing so, they take into account both projects with already established commercialisation partners and independent content developments. Some institutions also offer funding for line producers, which can be applied for, for example, by animation and visual effects companies (MFG, FFF). In addition, there are special programmes, e.g. for international co-productions (FFF, FMS, MFG), high-end series (FFF, MBB, MOIN) or "innovative serial formats" (FMS).¹³⁴ Investments in film infrastructure can also be taken into account.¹³⁵

The largest regional funders for series productions in 2021 were the FFF and FMS with around EUR 7.5 million each and the MBB with around EUR 7.3 million. The FMS and MBB mainly funded productions for (private) VOD providers. FFF and MDM funded VOD and public service providers to a similar extent. MFG, HessenFilm, nordmedia and MOIN mainly or exclusively funded productions for public broadcasters. MV Film Fund awarded funding exclusively for content development in the series sector in 2021.

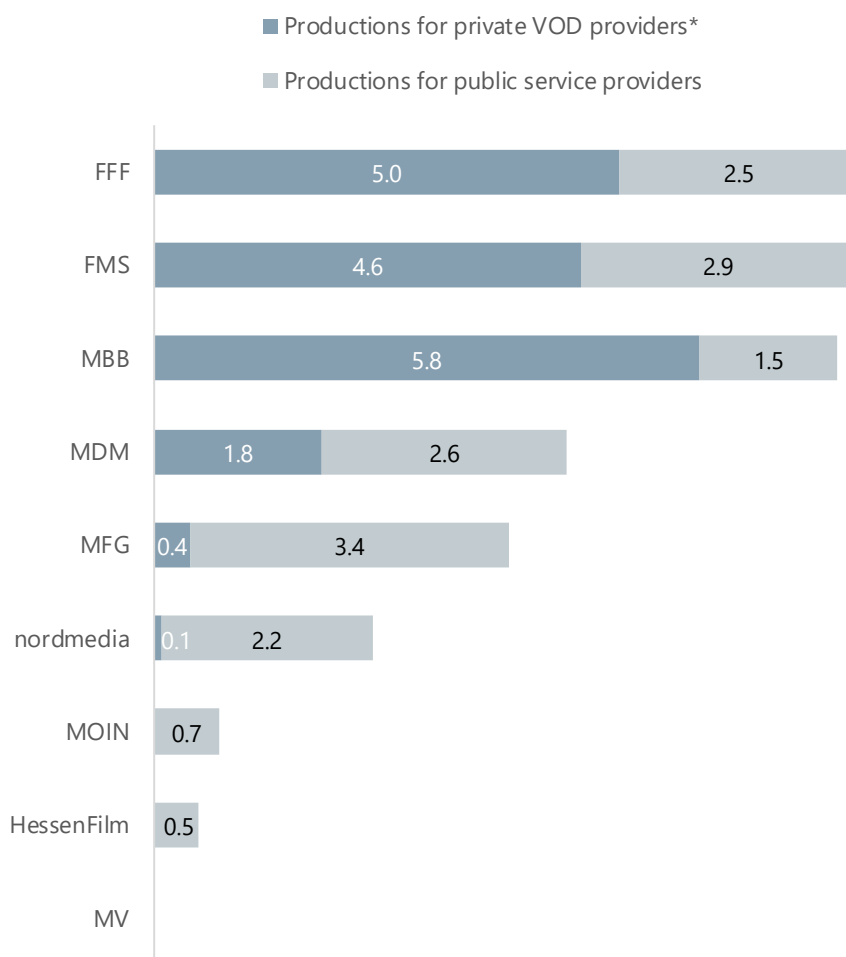
The shares shown vary over the course of the year and do not allow any conclusions to be drawn regarding a fundamental preference for provider segments.

¹³³ cf. FMS (2021): Company.

¹³⁴ In the film sector, in addition to production and development funding, some state funders offer programmes for distributors, festivals, film-related events, young talent projects and scholarships as well as cinema operations, among others. Other media such as games, immersive media, radio plays and other online content also receive funding from some institutions.

¹³⁵ For example, MBB 2021 supported the creation of a new digital production studio as part of a series production (cf. MBB (2021): EUR 13 million for digital film production in Berlin-Brandenburg).

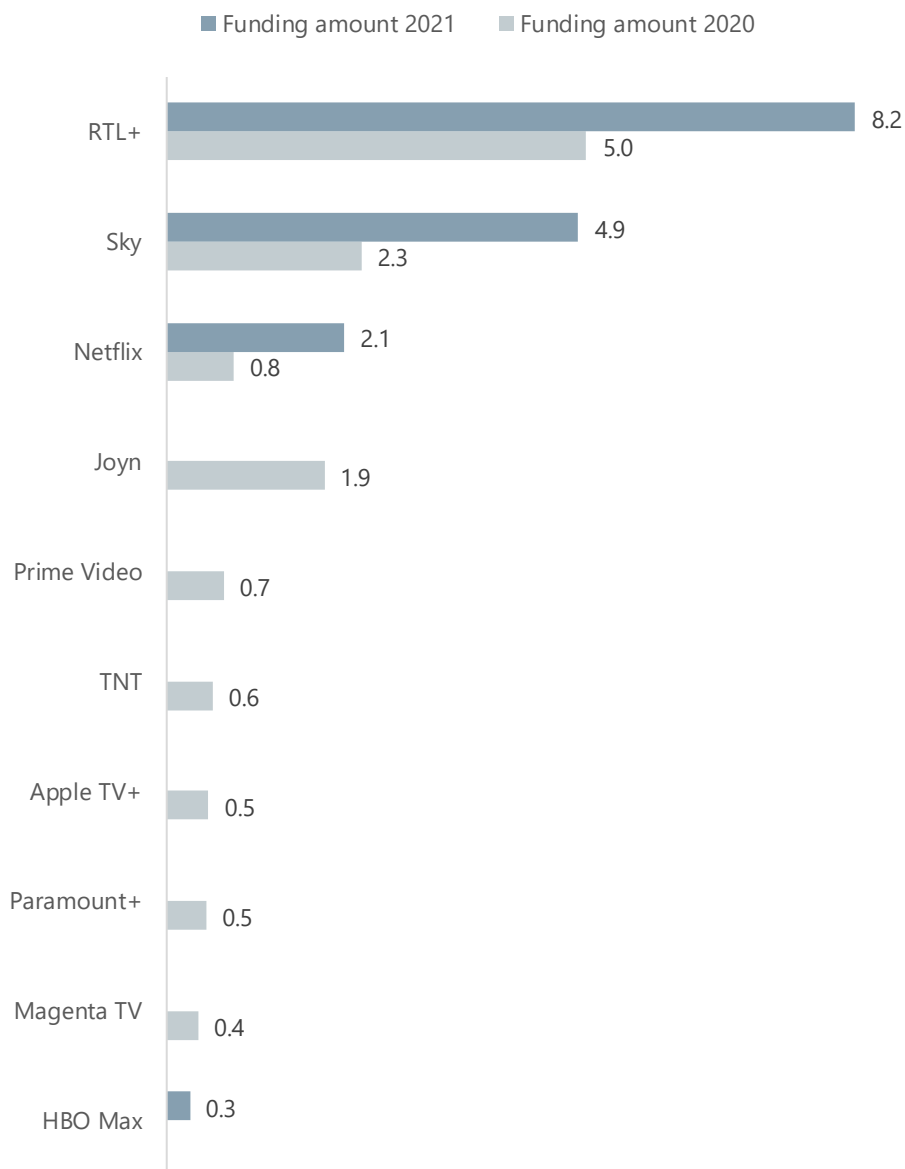
Fig. 41 Funding amounts of selected regional funding institutions for series productions, comparison of productions for private VOD and public service providers*, 2021, in million EUR



Sources: Goldmedia analysis according to reports by the state funding institutions, * VOD providers here include the platforms RTL+, Joyn and Sky (Go/Ticket), whose productions are also commercialised in the linear TV programme. Public service providers also operate VOD offerings ("media libraries"), but are considered here in distinction to private providers. Pure web series without the participation of VOD or public service providers are not considered.

Regarding the funded productions based on the evaluating private VOD platforms, there was a greater concentration on a few providers in 2021 than in the previous year. In 2020 and 2021, state institutions funded productions for the national VOD provider RTL+ with EUR 5.0 and 8.2 million respectively. Productions for the provider Sky received EUR 2.3 and 4.9 million in regional funding respectively. Productions for Netflix were awarded EUR 0.8 million and EUR 2.1 million respectively. In 2020, other VOD providers such as Prime Video, Magenta TV or Joyn received funding contributions of EUR 0.4 to 1.9 million from regional funding programmes.

Fig. 42: Funding amounts of regional film and media funding for series productions with commercialisation by private VOD providers* in Germany, by provider, 2020-2021, in million EUR



Source: Goldmedia analysis based on reports from the state funding institutions , * The funding amounts of the national VOD providers RTL+, Joyn and Sky (Go/Ticket) include projects that are also commercialised in the linear TV programme. Productions for the international provider HBO Max are currently being commercialised in Germany by Sky.

The evaluation shows that regional funding agencies of the federal states are just as important partners in the financing or production of serial formats for national and international VOD platforms as funding programmes of the federal government.

2.3 Implications for the independence and diversity of the German producer landscape

Developments in the film industry and the video-on-demand market have far-reaching effects on the audiovisual ecosystem in Germany. At the core of this is a change in market and influence structures leading to an increase in the intensity of competition. The positive and negative aspects of this change are discussed below.

2.3.1 Market dynamics and consolidation

The rapidly growing importance of subscription-financed streaming platforms is leading to fundamental shifts in the strategic orientation of numerous companies. Increased consolidation and vertical integration can be observed both internationally and in Germany.

At the level of globally active U.S. media groups, this concerns, for example, the takeovers of Warner by AT&T and 21st Century Fox by Disney, the merger of WarnerMedia and Discovery or the acquisition of the traditional Hollywood studio MGM by Amazon.¹³⁶

The focus is on their respective global streaming platforms. The aim is to bundle financial, informational and content resources in order to achieve competitive advantages in the VOD growth market. The opportunities of the merged VOD platforms lie above all in the possibility of direct global commercialisation of content, the exclusion of intermediaries and thus considerable economies of scale and cost-saving potential. Local providers have considerable competitive disadvantages in such a context. Since their platforms do not have international reach, they lack the possibilities for their own global commercialisation and re-financing of their content.

On the other hand, the platform customers must be regularly provided with new content and thus be bound to the platform. For this so-called "stickiness", high-quality exclusive productions are of great importance. The production and marketing of such prestige projects are cost-intensive as are the technical provision, the meaningful analysis of the collected user data and the programming of algorithms for individual content recommendations. For this, the trust of lenders and investors must be won, who make the high investment sums possible in the

¹³⁶ The takeover of MGM by Amazon is currently still being examined under antitrust law and is the subject of intense debate (cf. Rumbucher (2021a): MGM takeover: Even more headwind for Amazon).

first place.¹³⁷ Therefore, large, vertically integrated companies have an advantage here as well.

The international concentration tendencies are also making themselves felt on the European and German markets. For example, the UK-based European pay-TV market leader Sky was acquired by the U.S. group Comcast in 2018.

The production landscape in Germany is also changing: in 2019, Leonine Holding was formed, the majority of which is financed by the U.S. investor KKR. This emerged from the acquisition or merger of well-known German production and distribution companies such as Tele München Gruppe and Wiedemann & Berg and operates as a vertically integrated studio with international ambitions.¹³⁸

Well-known German production companies are also expanding: For example, in October 2021, the Cologne-based MMC Group acquired the post-production company Magic Eye to "further [drive] its strategic growth course".¹³⁹ In February 2021, Bavaria Film bought the production company Story House.¹⁴⁰

In the TV sector, Bertelsmann CEO Thomas Rabe in 2020 already advocated mergers of private broadcasters such as RTL and ProSiebenSat.1 to create "national champions" against U.S. streaming competition.¹⁴¹ This approach has so far not been pursued further in favour of ProSieben/Discovery's own streaming platforms RTL+ or Joyn. Meanwhile, ARD and ZDF are gradually moving closer together with the dovetailing of their two media libraries¹⁴² and are taking stakes in various production companies with their collecting societies such as ZDF Enterprises.¹⁴³

The German production landscape, which is mainly characterised by small and medium-sized enterprises, is therefore increasingly facing very powerful platforms as new (and old) clients. The asymmetries are obvious. As a result, the need for consolidation is also growing on the producer side, not least in order to achieve stronger negotiating positions.¹⁴⁴

¹³⁷ cf. Rumbucher (2021b): SVoD development: No linear growth in every quarter.

¹³⁸ cf. Müller (2020): Leonine takes over SEO Entertainment.

¹³⁹ Müller (2021a): MMC Group Cologne takes over Magic Eye.

¹⁴⁰ cf. Heine (2021): Bavaria Film takes over Story House companies.

¹⁴¹ cf. Müller (2020): Bertelsmann CEO in favour of merger of RTL and ProSiebenSat.1.

¹⁴² VOD cooperations between German TV broadcasters were already planned in the past, but failed in 2012 and 2013 for antitrust reasons.

¹⁴³ The ZDF subsidiary Network Movie is also aiming for strong growth (cf. Zarges (2021): Network Movie wants to grow further. Will this distort competition?).

¹⁴⁴ Such concentration is again a potential obstacle to independent creative freedom: If more capacities and production stages are tied to one's own company, the so-called "pipeline" must be filled with projects. This requires long-term securing of the order situation. A flexible and lean structure, which many independent producers value, is made more difficult by the compulsion to fill order books.

This makes it increasingly difficult for smaller, independent producers¹⁴⁵ to hold their own against larger competitors on the production side and financially strong clients on the platform side. The diversity and independence of the German production landscape is thus – in the opinion of many experts – under considerable pressure. This in turn leads to a threat to the diversity of content that is produced and shown (cf. Chap. 2.3.7).

Even if, in addition to the overall concentration tendencies, an increased dynamic can be seen, which is made possible by increased demand and lower market barriers (cf. Chap. 2.3.2), access to the resources and orders of the platforms often remains denied to many independent producers.¹⁴⁶ On the other hand, many experts also speak of numerous opportunities due to the increasing demand and the need for attractive content.

2.3.2 Rising demand for content ("golden times")

Due to the high demand for new content through streaming platforms, German production services will be in much greater demand overall. For example, Wolf Bauer, former head of UFA, said as early as March 2019: "For us producers, the expansion of the German market means that the golden age of television that has long been cited in the USA is finally becoming a reality."¹⁴⁷ Between 2019 and 2021, overall investments by the main clients for audiovisual productions in Germany remained stable at (an estimated) EUR 2.8 billion despite the pandemic (cf. Chap. 2.1.1).

The background is that local content has become a decisive success factor for streaming providers in national as well as global competition, and at the same time the USA alone cannot serve the global demand for attractive content. High-budget exclusive productions are a key differentiator: Netflix series such as "Dark" (Germany), "House of Money" (Spain) or "Squid Game" (South Korea) represent a strategy of global commercialisation of locally produced content geared to international target groups.

German TV and VOD providers are also increasingly bringing their production levels for high-end series such as "Babylon Berlin" up to international standards and increasing their production budgets. This strategy is increasingly being

¹⁴⁵ At best, there seem to be opportunities for cooperation as executive producers or showrunners who are independent but work with platforms for individual formats.

¹⁴⁶ Further information on the development of German production companies is being collected by Goldmedia as part of another study at the time of publication of this report.

¹⁴⁷ Wolf Bauer as quoted in Siebenhaar (2019): "Streaming platforms are being hyped too much at the moment".

adapted by other competitors and leading market observers to say that "there could not be a better time to be a European content creator".¹⁴⁸

The revival of the production market and higher-quality standards by the streaming providers are also seen as fundamentally positive by the industry players. Small, independent producers in particular see new opportunities for the successful development and distribution of their own content as the high demand is accompanied by lower barriers to market entry and a high willingness to pay for good ideas.

A current example is the series "Billion Dollar Code", which the German producer Oliver Ziegenbalg is realising for Netflix. According to his own statement, he was able to prevail with his idea and realise the series he developed with a lot of creative freedom for a comparatively high budget.¹⁴⁹

New opportunities are also opening up for feature films: For example, the thriller "Kidnapping Stella" was acquired by Netflix in 2019 shortly before its planned cinema release and appeared as the first German exclusive film on the platform. In an interview with Der Spiegel, director Thomas Sieben reports that he realised from his conversations "that Netflix is the perfect place for 'Kidnapping Stella'. After all, the industry knows: it's not getting any easier in the cinema."¹⁵⁰

Other films are made for the big screen, but for his genre film, he sees no problem in commercialising it on the streaming platform. In addition, distribution on Netflix makes it possible to reach an international market. The creative freedom offered by cooperation with the streaming platforms gives the film and series market a "creative boost [that was last seen] perhaps in the New Hollywood of the seventies, when suddenly everything seemed possible again and young talents were allowed to make things."¹⁵¹

In addition, the cooperation with streaming platforms allows a freer, broader adaptation of content: Book drafts or concepts that have so far been considered too elaborate, too complicated and therefore not feasible for the production of feature films would have a greater chance of being realised on streaming platforms. In his opinion, these factors improve the quality of German productions and their worldwide perception.

¹⁴⁸ Bisson (2021): Netflix now the largest commissioner of Scripted European content.

¹⁴⁹ cf. Holzki (2021): Netflix's million-dollar budget: How streaming services turn screenwriters into entrepreneurs.

¹⁵⁰ cf. Kaefer (2019): First German Netflix film.

¹⁵¹ cf. *ibid.*

German filmmakers and sophisticated genre productions such as the series "Dark" would no longer have to rank behind other countries as they have found a way to be successful internationally thanks to the streaming platforms.¹⁵²

The cooperation of the German film industry with streaming platforms also has advantages for actors. For example, according to actor Moritz Bleibtreu, their series allow for a greater diversity of roles, more multi-faceted characters and more engagements giving more actors a chance.¹⁵³

The dynamic competitive environment has the advantage for producers that the various streaming platforms compete with each other for high-quality content. This enables producers to negotiate attractive ideas and material with the platforms, which can positively influence contract conditions.

However, the profiles and target groups of the platforms are not necessarily congruent, which is why not all content is equally suitable for all providers. The experts interviewed therefore consider the additional negotiating power for producers to be only partially given.

The significantly increased demand for content has, on the whole, positive implications for the industry through increased financial and creative opportunities. On the other hand, the opportunities for producers have an immediate market downside as the following section on the increasing intensity of competition shows.

2.3.3 Increasing intensity of competition ("War for Talent")

The high demand for audiovisual content has greatly increased the intensity of competition on the German production market. In contrast to the established production and funding system, which has occasionally been criticised for its insufficient demand-related overproduction,¹⁵⁴ the existing production capacity is now being largely exhausted. Especially the production of elaborate series formats, which tie up personnel for longer periods than, for example, TV films, reinforces this development even further. This is reflected in increasing bottlenecks in the availability and cost of creative workers and skilled labour. In the course of the much-cited competition between platforms ("streaming wars"), a "war for talent" has long since broken out affecting the entire industry.

The shortage of skilled labour is particularly noticeable in the case of technical and organisational staff, which concerns the so-called "below the line" costs and

¹⁵² cf. *ibid.*

¹⁵³ cf. Georgi (2021): "Everything looks equally cool".

¹⁵⁴ cf. Wiedemann (2015): An evaluation of film funding based on the German Film Law (FFG).

includes, for example, editing, visual effects or assistant directors. These trades are often in high demand or booked up for a long time. The effects can be seen in the example of the production company Komplizen Film, which recorded an average salary increase of 40 per cent in the period from 2014 to 2021. For individual trades such as equipment (+70 per cent), production management (+80 per cent) and motif production management (+110 per cent), the increase was particularly high. The shortage of skilled workers is further exacerbated by the lack of young talent (cf. Chap. 2.3.4).

For creative personnel "above the line", such as actors, directors, cinematographers or writers, the shortage of personnel and young talent is less glaring, but nevertheless strong price increases or high fee demands can be observed here.

Many industry players attribute these developments to the high willingness to pay and the exclusive commitment of talent by the international platforms. For example, Constantin managing director Martin Moszkowicz expressed his concerns to the *Süddeutsche Zeitung* in October 2021: "The streamers are sitting in a made nest and taking good people off the market by signing exclusive contracts. That is not healthy for the market." ¹⁵⁵

Other industry players see this as an attempt to establish themselves in the market independently of the existing producer landscape and to implement an American understanding of production as a service ("work made for hire") with company-owned skilled workers (cf. Chap. 2.3.6). The streaming platforms, on the other hand, see themselves as partners of the creatives and strive for closer integration with the "creative community". ¹⁵⁶

In the view of some experts, the competition has certainly triggered positive developments for creative workers and professionals. In addition to higher salaries, better working conditions are increasingly demanded, for example the reduction of overtime and the introduction of binding codes of conduct. Overall, this has led to "professionalisation" of the sector.

As a consequence of the increasing price and demand dynamics, however, it is becoming more and more difficult for many independent producers to attract sufficient skilled workers for their projects. This is especially true for smaller producers who usually have only limited financial reserves and possibilities to raise capital.

It is becoming increasingly challenging for all players in the production and TV industry to realise fictional projects with the available budgets in the quality that

¹⁵⁵ Martin Moszkowicz as quoted in Tieschky (2021): "We are the creators".

¹⁵⁶ cf. Zarges (2019): Netflix moves its German team to Berlin.

viewers have come to expect. A structural imbalance in comparison with the financial possibilities of the listed U.S. companies is often cited. Thus, this development also promotes market concentration tendencies among local companies (cf. Chap. 2.3.1).

2.3.4 Promoting young talent

The high demand for local productions and the need for corresponding skilled workers (cf. Chap. 2.3.3) create a variety of new employment opportunities. This offers clear potential for young creative workers whose professional situation is sometimes problematic.

As the current study of young filmmakers by Goldmedia on behalf of the Producers Association shows, young filmmakers are confronted with high barriers to market entry despite having successfully completed their studies in directing, producing or screenwriting at renowned film schools.¹⁵⁷ Many of them cannot finance their livelihood through their creative work alone and therefore cannot realise their first feature film until several years after graduation.¹⁵⁸

In terms of financial support for the films of young talent, TV stations and funding institutions have so far been the main partners. According to the young talent study, streaming platforms have not played a role so far, which stands in the way of possible opportunities for new production companies (cf. Chap. 2.3.2).

Representatives of the streaming platforms respond to such criticism by referring to the participation of young talents in their productions, e.g. for collaborative script development in so-called "writer's rooms" as well as to programmes for the promotion of creative talents.¹⁵⁹

Experts from the production sector criticise that the platforms do not participate in the academic training of the talents but then withdraw them from the market by means of attractive exclusive contracts (cf. Chap. 2.3.3). Although this can give talents greater financial security, the effect on their creative development is controversial among experts (cf. Chap. 2.3.6).

Experts also see a recruitment problem in technical and organisational film professions: According to them, the often challenging working conditions make these professions less attractive, which means that fewer and fewer new talents

¹⁵⁷ In addition, there is a "gender gap": Young female producers in particular are at a clear disadvantage compared to their male colleagues and on average receive considerably less production budget for their first feature-length film (cf. Produzentenverband (2021a): Study on young talent).

¹⁵⁸ cf. *ibid.*

¹⁵⁹ For example, Netflix announced in November 2021 that it would also introduce its mentoring programme for young authors, which has been tested in the USA, in the DACH region (cf. Niemeier (2021): Netflix wants to support young authors).

are coming on board. Platforms, they criticise, exacerbate the existing shortage by retaining numerous professionals independently of projects without contributing to the solution through their own training programmes.

In principle, improving the promotion and prospects of young people is seen by most players in the sector as an essential lever for absorbing the increased demand and intensity of competition (cf. Chap. 2.3.3).¹⁶⁰ Due to their steadily growing market relevance, platform providers are seen by many experts as having a responsibility to become more involved in promoting young talent.

2.3.5 Threats to financial independence

More and more production companies are entering into cooperation with major streaming platforms for the production of their content. Such forms of cooperation will continue to gain in importance in the future. Financial connections and dependencies arise between the platforms as clients and the producers as contractors, which are criticised by many producers, especially in legal and licensing issues.

For production companies, different types of revenue models are generally important for economic success:

- the "**producer's fee**" as a one-off, fixed fee or share of the production budget; this can be between five and 15 per cent of the total budget
- A **profit share** as a share of the net revenues generated, mostly from the sale of cinema tickets or home entertainment products
- a **bonus** for reaching certain thresholds, usually a certain number of viewers.
- trading in the **licensing rights** of own or purchased productions

The producer's fee is a secure, but short-term and non-performance-related source of income that usually serves to cover general operating costs ("overhead") and only allows for low margins. In contrast, the other revenue streams offer success-dependent benefits ("upside") and participation in the commercialisation of the achieved market value of the project. Rights trading with national and international film rental companies, distributors, licence traders, TV broadcasters or digital providers offers the opportunity to build up a capital stock in the long term through own content catalogues.

¹⁶⁰ A current example of an initiative in the promotion of young talent is the dual course of study "Production Management Film and TV", which will be offered by Ansbach University of Applied Sciences in cooperation with the University of Television and Film (HFF) Munich from the summer semester 2022 onwards. The aim is to provide practical training for organisational specialists in the areas of production, production and recording management. The course was initiated by Constantin Film (cf. Ansbach University of Applied Sciences (2021): "Production Management Film and TV").

Profitable rights trading on a larger scale can only be done with the appropriate resources and is therefore reserved for larger, often partly vertically integrated companies such as UFA, Constantin, Leonine or Studiocanal.¹⁶¹ Nevertheless, on a smaller scale, independent production houses can also benefit from such regular revenues.

It is not only the trade in already produced content that is important. Rather, the ownership of intellectual property (IP) is attractive, especially in global, digital competition. Through the possibility of sequels, film or series spin-offs of a title or cross-media marketing, e.g. in the form of games, books or merchandising, a successfully developed idea can lead to diverse sources of income.

Producers can in turn invest such income in the time-consuming and cost-intensive development of new material. This creativity, independent of clients and funding regulations, supports the development of a culturally diverse and high-quality content landscape.

However, sufficient capitalisation is already almost non-existent on the independent German and European production market, since the profit shares from cinema films are often low¹⁶² and in TV productions often only less valuable international and other ancillary rights remain for the producers.^{163/164} It was only a few years ago that German producers were able, after lengthy negotiations, to secure better contractual and rights arrangements with public-sector clients (cf. Chap. 2.1.1). Producers consider this a success, even though some experts see only minor effects on their financial situation.

Producers now see this progress as endangered because the platforms usually demand all commercialisation rights for commissioned productions and offer only a one-time "producer's fee" in return. Netflix's "Service Agreement", which producers usually enter into, provides for such a "total buy-out" or "full buy-out".

¹⁶¹ Even the "Hollywood studios" such as Warner Bros. or Disney were for a long time mainly licence dealers who commissioned productions and marketed their rights catalogues worldwide. This is changing due to the "direct-to-consumer" models, in the course of which the created content is increasingly used on the group's own platforms. The cross-media interlocking of films, series, games, music, etc. makes the ownership of attractive copyrights (also "intellectual property") all the more valuable.

¹⁶² In the case of films, part of the ticket revenue is initially retained by the cinemas and distributors, whereby the latter also offset their marketing costs. The remainder is usually shared between the producer and the leading creative professionals ("above the line").

¹⁶³ cf. Goodfellow (2021): How Europe's indie producers are fighting to retain IP and revenues amid streaming boom.

¹⁶⁴ cf. Tieschky (2021): "We are the Creators".

A European producer told the British trade magazine "Screen" that streaming platforms in the USA usually pay a special premium for retaining all rights. However, this is not granted to European producers. This imports the "work made for hire" model common in the U.S., which reduces producers to mere service providers without them receiving any financial compensation for successful creative achievements and the waiver of licensing rights. In addition, the platforms retain the rights to possible sequels, and even the reversion of rights to the producers in the case of a halted project development is complex.

This asymmetrical position deprives producers of the opportunity to participate in potential successes, prevents sustainable growth and thus endangers economic independence, according to the critics. Due to a lack of negotiating power, most producers would nevertheless accept these conditions. Although these problems have so far mainly affected series productions, there are fears that the business practices will be extended to feature films and other productions.¹⁶⁵

Many producers see the reputation associated with streaming productions and the international visibility of their content as further reasons for their willingness to submit to these disadvantageous conditions. This is especially true for smaller or independent producers, while established production companies are more able to reject or renegotiate offers from the platforms. Nevertheless, the latter also complain about their lack of negotiating power vis-à-vis the platforms.

From Netflix's point of view, however, every cooperation between producer and platform is agreed individually. The decision on the distribution of rights would depend on various production-dependent factors; there would be no general and binding "total buy-out".¹⁶⁶

This contractual and substantive flexibility is an important aspect for the consideration of independence, but cannot be examined in detail within the scope of this report due to confidentiality clauses.¹⁶⁷

¹⁶⁵ cf. Goodfellow (2021): How Europe's indie producers are fighting to retain IP and revenues amid streaming boom.

¹⁶⁶ cf. Filmimpuls (2020): Netflix appeases German producers regarding full buyouts in service agreements.

¹⁶⁷ Examples of co-productions include the Swiss cinema film "Early Birds" (Netflix/Hugo Film/CH Media) and the series "Freud" (Netflix/ORF) and "Babylon Berlin" (Sky/ARD). For the German-French cinema production "Stowaway", Netflix acquired all rights outside these two territories. In contrast, there has been no participation by the platforms in DFFF-funded films in Germany to date as evidence of co-productions.

In the expert interviews, the platforms referred to a variety of contractual constructions and forms of cooperation. For example, there are co-productions, bonuses for commissioning new series, profit-sharing based on certain user numbers or a "development bonus" for the acquisition of an advanced project.

However, the share of retained rights is usually dependent on the financing and thus risk share of the platforms. The platform providers are calling for more time to develop such models together with the industry and point to industry agreements that have already been concluded, such as the Joint Remuneration Rules (GVR), which the acting association BFFF and the trade union ver.di negotiated with Netflix for the first time in 2020.¹⁶⁸

Producers see these as "tender beginnings" at best, which are usually countered by unfavourable general contractual conditions even if the platforms do differ from each other.¹⁶⁹ Overall, however, flexibility tends to decrease as the competitive focus on exclusive content leaves less room to manoeuvre.

The consolidation of the media groups described at the beginning is again viewed critically here, for example, there are fears that Amazon's purchase of MGM (cf. Chap. 2.3.1) could lead to unfair conditions for independent producers.¹⁷⁰

German TV broadcasters feel that the participation of producers in the rights is necessary and justified. At the same time, however, they see the question of contractual conditions as a purely private matter that is the responsibility of the producers and the broadcasters and is covered by the principle of contractual freedom.

2.3.6 Threats to creative independence

A possible influence on financial independence is also directly linked to qualitative aspects such as the editorial or creative independence of the producers.

Thus, a sufficient amount of own financial resources and capital through income from profit-sharing and licensing rights allows more freedom in the development of creative content. The associated self-image as "creative producers" who participate in the value of their ideas in the long term is an essential prerequisite

¹⁶⁸ cf. FilmUnion Verdi (2020): Joint remuneration rule with Netflix.

¹⁶⁹ The demand for new, cross-platform principles for cooperation with VOD providers is set out, among other things, in the "Code of Fair Practices" of the European Producers Club (cf. EPC, 2021: Code of Fair Practices for VOD services when commissioning new works from independent producers).

¹⁷⁰ cf. Rumbucher (2021a): MGM takeover: Even more headwind for Amazon.

and motivation for many producers to produce high-quality and diverse content.¹⁷¹

The model of purely executive producers who are only paid one-off fees ("work made for hire"), who have to adapt to the needs of their clients and often have little influence on the selection of other talents, is contrary to this self-image. If this model were to dominate the market, we would have to reckon with a downward trend in the production of culturally high-quality and diverse content.

Platforms, on the other hand, argue that the "producer's fee" (cf. Chap. 2.3.5) offers a secure source of income and, due to the high budgets of series projects for streaming services, often brings in more revenue than comparable TV projects.¹⁷² It enables producers to quickly invest creative budgets in new projects instead of tying up resources in costly licensing negotiations. Moreover, the long-term revenues from international and other ancillary rights have hardly been relevant for public TV broadcasters even in the case of commissioned productions. On the contrary, the current revenues came largely from successful cinema productions.

Likewise, the exclusive employment of young talents in particular on platforms (cf. Chap. 2.3.3) is conducive to their creative development as it offers them a secure environment with high creative demands and freedom.¹⁷³ Some experts, on the other hand, criticise that the development of individual creative "signatures" is hindered because predefined content and aesthetic standards have to be met under high pressure to perform.

Concerns about the editorial independence of producers and creatives in cooperation with streaming platforms therefore remain. The Netflix success series "Dark" again serves as an example here: After the outstanding success of the first season, which was produced by the production company Wiedemann & Berg, Netflix subsequently signed the series' producer Jantje Friese and director Baran bo Odar exclusively in 2018. They now work exclusively for Netflix with their company "Dark Ways".¹⁷⁴ Another example is producer Anna Winger who

¹⁷¹ This was stated, among others, by Constantin CEO and producer Oliver Berben during a discussion at the German Producers' Day 2021 (cf. Producers' Alliance (2021a): German Producers' Day 2021).

¹⁷² For example, the budget for Netflix series productions averages around EUR 6 million of which between 5 and 15 per cent remains with the producers (cf. Holzki (2021): The Billion Dollar Code). According to experts, the fee is usually significantly lower than the fee for TV projects, but the higher budgets would more than compensate for this.

¹⁷³ The position of the "show runner" as a producing scriptwriter, which is common in U.S. series and has been transferred to local productions on the platforms, also usually has a positive connotation.

¹⁷⁴ cf. Odar (n.d.): Biography.

is now producing exclusively for the streaming platform after her Netflix success series "Unorthodox".¹⁷⁵

The often-reported great creative freedom that platforms offer producers and other talents (cf. Chap. 2.3.2) are countered by dependencies and the requirements of the platforms. These are also expressed in the form of tight creative and financial control reported by experts, which limits the self-determination of producers. In addition, there is a new distribution of tasks and structures due to the position of the "showrunner" adopted from the USA that assigns considerable production responsibility to the leading authors.

This raises concerns, especially among independent producers, that they will switch to the platforms because of the promised creative freedom, but that they will ultimately be hindered in their own growth by unfavourable conditions. Due to the increasing relevance of streaming platforms compared to other forms of film and series commercialisation, there is a danger that many producers will ultimately become dependent on only a few clients.

The treatment and support of creatives and producers by the platforms is rated positively by experts. There are clear contact persons and quick decision-making structures. However, at the same time there is a considerable administrative burden for series productions. Some of the creatives are very closely monitored; for example, there is an obligation to report weekly. This restricts freedom and is often difficult for smaller production companies to implement on their own. This increases the willingness to cooperate with larger producers and thus the tendency towards market concentration.

2.3.7 Cultural diversity

The cultural diversity of audiovisual productions in Germany is related in many ways to the market developments analysed. Various opportunities and risks are to be named in this context both on the content level and on the entrepreneurial level:

A majority of industry players agree that the activity and competition of streaming providers has led to positive development for local content. According to Katja Hofem, who moved from JOYN management to Netflix in November 2020, "local DNA (...) has become immensely important. Growth takes place in local markets".¹⁷⁶ Especially the German video platforms Joyn and RTL+ as well as the

¹⁷⁵ cf. Schultze (2021): Netflix binds Anna Winger to itself.

¹⁷⁶ cf. Lückerrath (2021a): Streamer expands team in Berlin.

media libraries of ARD and ZDF have focused on local content from the beginning (as well as due to a lack of European or global presence or licensing rights). Therefore, the relevance of high-quality local content for streaming providers creates more demand and diversity in the content market. This manifests itself at the producer level where new and smaller players are given opportunities that they often would not have had in the previous ecosystem (cf. Chap. 2.3.2) as well as at the content level.

Thus, German productions receive a new public perception due to high budgets or production values in genres that were previously little served (e.g. mystery, thriller, action) while series from countries such as Spain, South Korea or Mexico also become hits in Germany that would probably not have managed to gain much attention in Germany in previous commercialisation regimes.

Conversely, German content is also reaching new target groups worldwide via the platforms. In addition to the dominance of U.S. productions and established cinema and TV formats, more diverse voices and content are also gaining an audience in Germany. It must be mentioned here with reservation that the streaming formats implemented so far by small production companies do not allow any conclusions to be drawn about a fundamental, sustainable trend. Larger production companies such as Constantin, UFA or Wiedemann & Berg (Leonine) are also regularly involved in streaming productions.¹⁷⁷

In addition, elaborate streaming formats are usually deliberately produced for global commercialisation. They therefore contain a local "core", for example, through settings or characters, but at the same time an attractive "shell" for international target groups often by serving clearly defined genre narratives. Country-specific features would thus blur in favour of a uniform confection – or, as Moritz Bleibtreu puts it: "Everything looks equally cool."¹⁷⁸

In the view of some market players, this focus on commercial exploitability contradicts the higher goal of promoting cultural diversity. They see the need to strengthen diversity beyond the mechanisms of supply and demand as is the case with the cultural mandate of public service broadcasters. This is the only way to reflect the reality of life in the country and to ensure high-quality cultural programming. The range of nationally relevant topics must be preserved.

Content for children and young people also plays an important role. So far, these have hardly been the subject of local production strategies of the international

¹⁷⁷ In the opinion of some players, larger production companies are even preferred because the clients trust them more to manage the complex production processes (cf. chapter 2.3.2).

¹⁷⁸ Moritz Bleibtreu as quoted in Georgi (2021): "Everything looks equally cool".

streaming platforms, so that the existing contents in the programme libraries are mostly U.S. productions. In the opinion of some experts, this means that underage viewers, who represent an important target group for the platforms,¹⁷⁹ are not taught enough European values and are not offered enough local identification figures.

A study by the University of Rostock also came to the conclusion that the series formats commissioned by streaming platforms hardly differ from TV productions in terms of diversity. Although they represent a diversity of ethnicities and sexual lifestyles, they show clear deficits in terms of gender equality. The creative teams are also male-dominated.¹⁸⁰

According to experts, the activities of the streaming platforms could therefore have a negative impact on cultural diversity because under their apparent cultural diversity, a homogenisation of local content along global economic interests takes place. At the same time, actual diversity is hindered by the scarcity of local resources. The chances of independent local productions that do not meet aesthetic standards could also be reduced on the world market.

The increasing orientation of national clients towards the aesthetic standards of the U.S. platforms could further strengthen this effect. National VOD and TV providers are increasingly dependent on international co-productions to meet the costly demand for high-quality formats. This can support the cooperation of European providers and the representation of cultural diversity. However, competition with formats from streaming providers stands in the way of such diversity.

The shift of budgets in favour of VOD productions also puts pressure on the cinema, which plays an important role in cultural diversity (cf. Chap. 2.3.10).

Experts criticise that in the future, local content production could also be dominated by U.S. corporations that are not overly interested in cooperating with national ecosystems and only exploit them.

¹⁷⁹ Netflix and Disney+, in particular, are currently competing for younger audiences with significant investments in major family productions and brands. For example, in September Netflix bought the rights catalogue of the popular Roald Dahl stories for EUR 100 million. For a similar sum, Netflix acquired the exclusive rights to the cinema animated film "The Mitchells vs. the Machines" from Sony Pictures during the coronavirus Crisis. Younger target groups are also an important user group for Disney+ as a large family brand (see Lawrence (2020): New Disney+ Data Shows How Important Younger Viewers Are For Its Huge Success).

¹⁸⁰ According to the study, women's roles in streaming productions are significantly underrepresented – especially in Germany – are cast along traditional gender images, are mostly young and slim and practice professions that emphasise their emotional competence (cf. Prommer et al. (2020): Gender representation and diversity in streaming and SVOD services).

In the screen interview (cf. Chap. 2.3.5), a producer argues as follows: Producers as well as platforms love the diversity of the European market, but "the business rules they are proposing will end up creating a very homogeneous set of companies producing only what they [the platforms] want."¹⁸¹ As a result, "not intentionally, they're destroying a market based on independent producers."¹⁸²

In contrast, improved commercial exploitability of local content also has positive implications for the visibility and presence of German films and series. In addition, the platforms are also active outside of their major flagship projects and, as already described, are involved at various points in the value chain in the form of co-productions and licence purchases (cf. Chap. 2.3.5).

The existing catalogues of the platforms thus cover a range of content that, depending on the platform, may well include smaller titles for niche target groups. The accusation that these are hardly visible on the platforms is countered by the recommendation systems, which are geared to individual customer wishes and can bring niche titles closer to the relevant audience.

Many of the streaming platforms have only been active on the German market for a relatively short time and have now begun to build up local staff with cultural know-how and the corresponding networks. Thus, there is further potential for development in the expansion of cooperative structures with producers, creative professionals and the promotion of young talent.

2.3.8 Lack of transparency: information asymmetry

In the digitalised world, data has become an important commodity. (Usage) data can significantly influence market power and negotiating positions. Detailed usage information is not only an essential competitive advantage but an integral part of every digital platform.

It is of great interest for producers, licence traders and other market participants to gain insight into the commercialisation and positioning of their content on video-on-demand platforms to obtain information and feedback on success, target group appeal and use. This is important for transparent profit-sharing as well as for the development and negotiation of new content. However, such information is only disclosed to a very limited extent by the streaming platforms for which they have long been criticised by numerous market participants.

¹⁸¹ Anonymous producer as quoted in Goodfellow (2021): How Europe's indie producers are fighting to retain IP and revenues amid streaming boom.

¹⁸² cf. *ibid.*

In September 2021, Netflix's co-chief executive Ted Sarandos himself admitted that his platform's usage data was indeed mostly "a big black box"¹⁸³ – coupled with a promise to become more transparent with creative practitioners and the public.¹⁸⁴

On the one hand, the existing lack of transparency can be seen as understandable behaviour to protect business secrets in a highly competitive market environment in which usage data or its intelligent use essentially determine the success of one's own offers.¹⁸⁵

At the same time, there remains a fundamentally high creative and financial risk in the production and commercialisation of audiovisual productions. Even with the best data, this general risk can only be offset to a limited extent.¹⁸⁶ The data situation was also often problematic in previous forms of cinematic commercialisation. However, this lack of information affected all market participants equally when they relied on transparently collected sales figures and market research data as a common business basis ("industry currency").

However, the new, detailed analysis possibilities of the streaming platforms establish an information imbalance that cannot be seen as conducive to independent and diverse local content production. Market research data and surveys on the use of VOD platforms can reduce this disparity but are partly not recognised by the platforms as a bargaining chip compared to their own data.

Some experts have reported on the selective publication of title-related usage patterns. There are also initial approaches to profit-sharing on the basis of certain usage indicators. However, a transparent common currency is not in sight.¹⁸⁷ Above all, the mechanisms of platform-internal marketing and individualised presentation of content through recommendation systems can neither be traced nor influenced externally. Thus, producers often lack valuable information for

¹⁸³ cf. Spangler (2021b): Netflix Releases New Data on Most Popular TV Shows and Movies.

¹⁸⁴ As a rule, Netflix has so far only published selective success reports based on its own favourable metrics. For example, the central metric has so far been the number of households that have watched at least two minutes of a title. In addition, a daily "top ten" by territory is published on the basis of unknown calculations. In response to public criticism, Netflix now reports the top titles according to the number of minutes watched (cf. Spangler, 2021b: Netflix Releases New Data on Most Popular TV Shows and Movies).

¹⁸⁵ Behind this is considerable pressure for growth as the accuracy and efficiency of data analysis depends on the size of the database – i.e. the user:population and their viewing times.

¹⁸⁶ Approaches to predicting the success of films using data analysis and artificial intelligence have been around for many years. However, due to the great complexity of creative and external factors that can influence the evaluation, a general residual risk remains.

¹⁸⁷ cf. Arbanowski et al. (2021): Ansätze für eine Nutzungserfassung von Video-Streaming-Angeboten.

the market-oriented development of new content and successful future negotiations with the platforms.¹⁸⁸

2.3.9 Strategic realignment of the German TV industry

While VOD platforms are reaching ever broader and also older sections of the population, the usage figures for linear television are declining. In response to this, German TV providers are increasingly positioning themselves as national streaming providers in order to reach their target groups via linear as well as non-linear distribution channels (cf. Chap. 2.1.5).

As a result of the strategic reorientation, TV providers are reducing their investments in cinema co-productions in favour of exclusive series formats in order to equip their platforms with attractive content (cf. Chap. 2.3.10). In contrast to cinema films, TV- and VOD-commissioned productions are not provided with a regulatory framework through funding guidelines, although there are industry agreements for fair framework conditions with public service providers (cf. Chap. 2.1.1). However, the financial participation opportunities for producers are usually significantly lower than for films.

The shifting of production budgets thus represents another risk factor for the independence of producers in Germany. At the same time, it puts considerable pressure on the cinema industry as a whole as the following section shows.

2.3.10 Displacement risks for the German cinema industry

The increasing use of digital forms of commercialisation has resulted in far-reaching upheavals in the film industry (cf. Chap. 2.1). In addition to declining TV use and the displacement of physical home entertainment, the traditional cinema industry is also coming under pressure. This poses major challenges for cinemas and film distributors alike.

As a result of the streaming boom, the overall rising budgets for audiovisual content are increasingly moving into the production of serial formats for VOD platforms. As a result, the production of cinema films is becoming increasingly challenging (cf. Chap. 2.1.1). Both TV broadcasters and U.S. studios as well as distributors describe the investment in films as declining. Particularly far-reaching is the significant decline in spending by public broadcasters on cinema co-

¹⁸⁸ Another transparency factor that is relevant for contract conditions is the decision-making structures of U.S. media groups. These are increasingly aligned with global strategies due to the upheavals in film commercialisation that accelerated in the coronavirus crisis. Therefore, one expert criticised that local managers of the U.S. studios in Germany had less and less influence on the strategies and decisions set in the USA, which made communication noticeably more difficult. Cf. also König (2021): Comcast: Sky Deutschland loses independence.

productions, which cannot be compensated for by other financing partners such as independent distributors. The shortage of skilled workers and the increasingly exclusive, long-term commitment of creative talent and skilled workers by streaming providers further complicates the financing and planning of cinema films.¹⁸⁹

The consequence is a declining importance of cinema films on the production and content market, which has implications for the cultural diversity of the content landscape. Cinema is of great importance for independent producers who are protected and supported by the regulations of the FFG. A declining cinema market means a weakening of the long-term financial stability of independent producers. Up to now, this stability has been largely based on the income from the commercialisation of rights and profit-sharing from films, while TV productions have largely brought in short-term revenues (cf. Chap. 2.3.5). Greater dependence on TV and VOD clients compared to cinema productions, therefore, reduces the scope for independent script development.

The year 2020 and the effects of the coronavirus pandemic have further promoted VOD growth and massively affected the cinema industry. At the same time, established structures of film commercialisation – the so-called release windows (or profit windows) – have been increasingly changed by vertically integrated "direct-to-consumer" models (cf. Chap. 2.1). Cinema companies are confronted with a significant shortening of the exclusive release windows that they have vehemently defended up to now.

In the process, U.S. studios pushed through a fundamental shortening or flexibilisation of the cinema release windows. This has strategic reasons as parent companies of the production companies are active as platform providers for VOD services. Warner Bros., for example, is releasing all of its own films in 2021 and 2022 (including blockbusters such as "Dune" or "Matrix 4") on its in-house platform HBO Max parallel to the U.S. cinema release.¹⁹⁰ In the German market, a launch of HBO Max is not yet foreseeable due to a longstanding agreement between Warner and Sky.¹⁹¹ However, other providers from the U.S. television

¹⁸⁹ The reason for this is that the acquisition of financing and funding partners for (cinema) film productions is usually based on a so-called "package" which, in addition to the script, also includes the casting of the director and main roles. Due to the shortage of human resources, producers increasingly have to bind creative professionals and specialists to themselves and give them guarantees regarding the realisation of the film production before the financing is secured.

¹⁹⁰ cf. Miskulin (2021): Dune and The Matrix 4: Warner's cinema films will also be released for streaming in 2022.

¹⁹¹ cf. Lodderhose (2021): HBO Max To Launch In Nordics & Spain In Fall, With Portugal, Central & Eastern Europe To Follow In 2022.

industry such as Peacock from NBC Universal and Paramount+ from Viacom CBS are pushing into the German VOD market.¹⁹²

In addition, some films intended for cinema release were released purely digitally. For example, Universal released its animated film "Trolls World Tour" during the first lockdown as a high-priced transactional title ("Premium VOD", P-VOD for short). Disney made the live-action adaptation of "Mulan" available exclusively as P-VOD on Disney+ despite the reopening of cinemas in summer 2020, and other titles followed.¹⁹³ Netflix and Prime Video invested large sums in cinema productions that they market as exclusive "originals" on their S-VOD platforms including German films such as "Berlin, Berlin: The Movie", U.S. titles such as "The Prince from Zamunda 2" and family films such as the Sony production "The Mitchells vs. the Machines". In addition, there are isolated experiments with short release windows in cinemas for commissioned productions of the platforms.

International streaming platforms are thus also gaining increasing influence in cinema commercialisation in an environment that is currently still very unstructured and experimental. Previously valid agreements between U.S. providers and German cinemas, which cushioned disadvantages compared with FFG-regulated German productions¹⁹⁴, have been terminated in favour of global platform strategies.

Some cinemas are reacting by not using titles that are supposed to be available digitally close to the time of their release. They still see the cinema as playing an important role in the visibility, marketing and refinancing of films and emphasise the unique quality of experience that will continue to make the cinema relevant in the future. Many other experts support this view.

Cinema operators criticise that the streaming providers use the marketing power of the cinema to support the launch of their platform titles but in return show little flexibility in the design of the deployment (cf. contract conditions, Chap. 2.3.5). This imbalance is reinforced by the platforms' considerable lead in data-based customer communication.

¹⁹² cf. Leistikow/Michelsen (2021): Peacock: Start, prices and packages of the streaming service; cf. Tabatabaei (2021): Paramount+: U.S. streaming service comes to Germany in 2022.

¹⁹³ Disney also made the title available at no extra cost in the regular S-VOD subscription after a limited P-VOD window (cf. Aschenbrenner, 2020: Mulan on Disney+ at no extra cost).

¹⁹⁴ These "gentlemen's agreements" included a blocking period of four months. The FFG previously prescribed six months, with possible reductions to five or four months in exceptional cases.

The crisis and reorganisation of the cinema industry also poses considerable challenges for film distributors. After the decline in sales in the home entertainment business (cf. Chap. 2.1.4), another important source of revenue collapsed due to the coronavirus-related cinema closures. Vertical integration and "direct-to-consumer" models of international companies are further weakening the position of distributors (cf. Chap. 2.1). Streaming providers do acquire licences from distributors for their content catalogues.¹⁹⁵ However, it is mainly large or vertically integrated distributors and rights traders who can profit from this as they offer commercially attractive content and can negotiate more favourable contract and rights conditions. Experts from smaller, independent distributors, on the other hand, report little or declining interest on the part of the large platforms in culturally diverse cinema productions.

Since the distribution industry is essential for the marketing of cinema films, the current development not only weakens the financing of diverse cinema content (see above), but also its visibility and relevance in the public eye. Experts fear a devaluation of the cinema film if short-term commercialisations for the promotion of streaming titles gain in importance compared to regularly marketed cinema releases.

The reorganisation of previous commercialisation processes also has advantages for distributors and cinemas as well as producers: Instead of rigid blocking periods, more flexible commercialisation processes tailored to individual titles will gradually become possible. Cinemas can exchange titles with low audience numbers more quickly. Producers increasingly have the opportunity to cooperate more directly with medium-sized cinemas. In turn, cinemas can establish new forms of digital customer communication in direct contact with visitors in which producers and distributors can also participate.

2.3.11 Change in the German film industry

The previously diverse, fragmented, often regionally structured commercialisation chains will in future be replaced by commercialisation logic dominated by a few large companies. The central role of streaming services in the new audiovisual ecosystem therefore raises questions about their cooperation with other market players.

¹⁹⁵ The evaluation of the platform catalogues (cf. chapter 2.2.4) shows that some providers are very active in purchasing licences in order to expand their range of titles along the targeted groups. For example, licence packages and deals for an exclusive digital first release after the cinema release ("first pay" window) are negotiated with distributors, whereby the licence sums are based on reaching certain thresholds in cinema ticket sales ("escalators").

A central point of criticism is that the globally active streaming platforms use the locally developed film infrastructure – e.g. in terms of professional staff, young talent and promotion – but transfer most of the profits to the parent companies outside Germany via so-called tax havens (cf. Chap. 2.3.3).¹⁹⁶

Participation in national structures, e.g. through payments into funding instruments or through initiatives in the training of young people, is seen by some representatives of the platform side as evidence of their growing commitment but is assessed as too low by the producers. The support provided by the German Motion Picture Fund (GMPF, cf. Chap. 2.2.7) is also viewed critically as it provides one-sided support for productions for streaming services. The restrictive handling of licensing rights and data is also problematic because the platforms hinder the necessary exchange of finance and information along the value chain.

Platform providers, on the other hand, see themselves in an ongoing process of integration into the German film industry, which still needs more time (cf. Chap. 2.3.6).

2.3.12 Summary: New value creation, new market structures

The cinematic ecosystem in Germany is facing far-reaching upheavals that are being decisively driven by new viewing habits as well as by a few, yet powerful, international platforms.

The developments outlined in this section have already led to a shift in market conditions for audiovisual productions in Germany: Due to the rapid growth of streaming use and the vertical integration or consolidation of large media and production houses, the established cinematic value chain is increasingly being restructured at the expense of existing cinemas and distributors.

This structural change brings with it new opportunities as well as considerable risks, especially for the independence and diversity of German producers. A central reason is that commissioned productions for streaming platforms are becoming an increasingly important source of income for producers, but the platforms retain all licensing rights. As a result, producers cannot profit from their works in the long term and invest less in the development of independent, creative content.

While the financially strong streaming platforms are becoming active as demanders for numerous ambitious productions on the German market, the increasing demand is leading to a shortage on the staff side: The best talents are

¹⁹⁶ cf. Ludwig (2020): Netflix saves millions through tax havens.

exclusively bound by platforms, many other trades and creative professions are booked up for months. Young people trained in Germany, who have often encountered resistance on their way into the industry, can be given new opportunities here. However, this perspective is by no means secure.

Overall, it is not only production values that are rising, but costs in general, and this also applies to independent productions that are not as well funded or do not have global commercialisation opportunities as the productions of the international streaming platforms.

In terms of content, the series formats of the streaming platforms bring about an increase in the genre-related range and international appeal of German productions. However, the focus is on serving aesthetic standards along global commercialisation goals and genre target groups. Tight control of production processes further restricts the creative leeway of producers and creative professionals. The representation of country-specific characteristics, individual creative signatures and the diverse national and European cultures is hardly promoted.

At the same time, the culturally diverse cinema landscape is coming under pressure. Important financing partners of the TV industry are increasingly shifting their budgets to VOD or series productions in order to keep up with the streaming competition. U.S. studios pushed through significant cuts to exclusive cinema release windows during the pandemic, also in favour of streaming strategies. The flexibilisation does allow for more tailored marketing of films. However, the aforementioned developments could favour marginalisation of German cinema films. This would also endanger the independence of producers since only in the case of films is a share in licensing and success guaranteed by funding regulations. In addition, less and less funding would be available for the development of culturally diverse content.

Overall, numerous asymmetries between independent producers in Germany and global streaming platforms can be identified. These include the financing of productions and their marketing and commercialisation, the negotiating power between platforms and local producers, the availability of usage data and editorial issues.

Thus, the film industry in Germany faces a number of future risks that could adversely change the independent production landscape in particular and thus the cultural diversity of content.

3 Needs assessment: necessity and possible impact of regulatory measures

This section examines the need for regulatory measures such as an investment obligation or a levy based on the AVMSD and their potential impact on the audiovisual production landscape in Germany.

To this end, the status quo of previous regulatory measures is first presented and the positions and perspectives for further regulatory activities are analysed. On this basis, the economic market dimensions and structural effects on competition are then examined. Answers to the question of a possible investment obligation are derived accordingly from the demand dimensions developed in this way.

3.1 The AVMS Directive as a regulatory basis

The basis for the possibility of an investment obligation or for contributions or levies for video-on-demand providers is the revision of the EU Audiovisual Media Services Directive (AVMSD, cf. Chap. 1.3).

The text of Directive (EU) 2018/1808 amending the existing Directive 2010/13/EU was published in the Official Journal of the European Union on 28 November 2018 and entered into force in December 2018. The requirements arising from the revised Directive have now been or will be transposed into national law by the Member States (cf. Chap. 4.1).

The requirements set out by the Directive are intended to enable European companies and film and other media projects to "create and promote European content in order to provide consumers with greater cultural diversity and a more varied choice of products and services".¹⁹⁷

The essential aim of this amendment to the Directive is to ensure that media service providers active in the territories of EU Member States make "appropriate investments in European works"¹⁹⁸.

¹⁹⁷ Margrethe Vestager as quoted in Europäisches Informations-Zentrum (EIZ) Niedersachsen (2020): New Audiovisual Media Services Directive: Commission provides guidance on implementation in Member States.

¹⁹⁸ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in order to take account of changing market circumstances, p. L 303/74, point 36.

One component is "extended obligations to promote European works in on-demand services, which [in future] must guarantee a share of European content of at least 30 per cent in their catalogues and must also highlight this content."¹⁹⁹

Prior to the revision, the AVMSD left Member States the choice of obliging media service providers established in their territory to meet the above-mentioned minimum quota or to invest in European productions. These investments can be structured as levies to funding or state institutions and/or direct investments in European productions.

As a result of the revision, the minimum quota including the highlighting of European works is now obligatory. In addition, Member States are free to enact levy or investment obligations. In doing so, they can now also oblige international providers that are active in their respective territories.

The guidelines on the possibilities of imposing such an investment obligation result in particular from Article 13(1) and (2) of the revised AVMSD:

"Article 13

1. Member States shall ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30 % share of European works in their catalogues and ensure prominence of those works.

*2. Where Member States require media service providers under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contribution to national funds, they may also require media service providers targeting audiences in their territories, but established in other Member States to make such financial contributions, which shall be proportionate and non-discriminatory.*²⁰⁰

The revision of the AVMSD thus lays the legal foundation for obliging national as well as international video-on-demand providers to make investments or contributions or levies for European and national audiovisual productions. The "non-discriminatory" obligation of international providers requires an already existing or identically implemented obligation of national providers.

Several EU states, including France, Italy, Spain, Portugal and Belgium, have already made use of the possibility of an investment obligation for international VOD providers. In most cases, existing obligations for national providers have been extended and, in some cases, introduced in addition to levy obligations.

¹⁹⁹ *ibid.*, p. L 303/74, item 36.

²⁰⁰ *ibid.*, p. L 303/86.

The regulations were designed across countries in such a way that the investments flow primarily to the independent production landscape (cf. Chap. 4.3).

The provisions of the Directive are supplemented by the Guidelines 2020/C 223/02 and 2020/C 223/03, which were published on 07.07.2020 after consultation with the competent representatives of the EU Member States and provide the Member States with guidance on the practical implementation of the amended AVMSD.

Guideline 2020/C 223/03 specifies that the 30 per cent minimum proportion of European content is to be calculated based on film titles and TV series seasons, without, however, specifying the temporal dimension of the point in time or period covered.²⁰¹

The revised AVMSD provides that media service providers may be exempted from the obligations if they reach only a "low" audience or generate only "low" revenues. Guideline 2020/C 223/03 fleshes out these exemptions by setting thresholds "in order to ensure that obligations relating to the promotion of European works do not undermine market development and in order to allow for the entry of new players in the market".²⁰²

- As a "low" revenue limit, the European Commission recommends applying the existing revenue limit for micro-enterprises. Accordingly, media service providers whose total annual revenue does not exceed EUR two million should be exempt from the 30 per cent requirement.²⁰³
- The European Commission recommends that a threshold value of less than one per cent – measured in terms of the number of viewers²⁰⁴ in the respective national total market – be regarded as "low".²⁰⁵

²⁰¹ It should be noted that "the actual share of European works in VOD catalogues can vary on a day-to-day basis. [...] This raises the question at which point in time the compliance with the 30 % share should be ensured. [...] the Commission considers that Member States may freely decide what method to adopt in monitoring compliance with Article 13(1) of the AVMSD" (Commission Communication (2020/C 223/03) (2020), Section II, point 4).

²⁰² *ibid.*, Section I, point I.

²⁰³ *cf. ibid.* section III, point 3.

²⁰⁴ As measurable units, "audience size could be determined by the number of active users of a particular service, e.g. the number of paying subscribers for subscription video on demand (S-VOD) services, the number of individual customers/accounts used to purchase content for transactional video on demand (T-VOD) services and the number of unique visitors for advertising video on demand (A-VOD) services". (*ibid.* Section III, point 4.1.1).

²⁰⁵ *cf. ibid.* section III, point 4.1.2.

3.2 Discussion of the regulatory perspectives

3.2.1 Overview of the positions of the market players

As was already made clear in Chap. 2.3, the views of the various players on the market for audiovisual productions in Germany diverge when it comes to possible regulatory options. The fundamental question is to what extent the current market conditions and developments lead to a structural as well as culturally and economically damaging imbalance between clients and producers.

In the various expert discussions, the representatives of international streaming platforms and media groups as well as the national TV and VOD providers rejected an investment obligation with reference to the threat to the – from their point of view – well-functioning competition. They fear aggravation of the shortage of skilled workers and further increases in production costs. Instead of more regulation, a reduction or harmonisation of the existing regulation²⁰⁶ for national providers is necessary so that they can hold their own against international corporations on a level playing field.

German production companies, on the other hand, are clearly in favour of an investment obligation with reference to the increasing market imbalance between the financially strong global platforms and the mostly medium-sized production landscape. They see an investment obligation as a necessary lever to better integrate international platforms into the local audiovisual ecosystem and at the same time protect the independence and diversity of the German production landscape. Producers' associations are therefore calling for a regulatory "triad" in addition to a pure investment obligation:

- Part of the investment should go to independent producers.
- Part of the rights should remain with the producers or revert to them after a certain period of time.
- Transparent revenue and profit-sharing schemes should be guaranteed.

These approaches are, in the eyes of the critics, unjustified and harmful interventions in the free market.

²⁰⁶ Representatives of private TV and VOD providers are calling for an alignment of the EU minimum quota for European productions, which according to the AVMSD is 50 percent for TV programmes and 30 percent for VOD platforms. In the marketing of advertising time, which has already been made more flexible by the revision of the AVMSD (cf. Niemeier (2018): More advertising? Marketers promise a sense of proportion), they also see a need for further action due to competitive disadvantages compared to unregulated A-VOD providers. The maximum funding amounts for GMPF funding (cf. Chap. 2.2.7) should be aligned in their opinion so that TV providers do not have a time disadvantage in the awarding of funding and project financing.

Representatives of the cinema and distribution industry express more diverse positions but emphasise the need to implement and shape a possible investment obligation not only for the benefit of producers. It is necessary to protect local and European culture and the film industry against international platforms. However, in their opinion, regulatory measures must support the entire film industry, especially the cinema industry, and also include national TV providers.

The following table summarises the basic needs, positions and demands of the proponents and critics of regulation.

Tab. 8: Positions of the players in the segments of the audiovisual production market on the need for an investment obligation (IO) for video-on-demand providers in Germany, 2021

Market segment*	Need for IO	Positions/Arguments	Demands
PRODUCTION	Yes	<ul style="list-style-type: none"> ▪ Financial and creative independence is threatened by "buy-out" models of the international streaming platforms endangered ▪ Cultural diversity is endangered by global commercial orientation of platforms ▪ Market imbalance and structural asymmetries vis-à-vis global media corporations ▪ International providers retain professionals and use local infrastructure without adequate investment and returns for the cinematic ecosystem ▪ Increase in production bottlenecks due to IO is limited and can be absorbed by new blood and quality (more high-quality productions) 	<ul style="list-style-type: none"> ▪ Implementation of an investment obligation ▪ Regulatory control: compulsory share for independent producers, participation in licensing rights, transparent profit sharing ▪ Stronger integration of VOD providers into cinematic ecosystem (funding cycle, cinema financing, newcomers, etc.)
CINEMA	Yes	<ul style="list-style-type: none"> ▪ Cinema business threatened by streaming platforms and the dissolution of exclusive cinema windows ▪ Displacement of the cinema film due to sharply declining expenditure by TV stations on co-productions ▪ Devaluation of the cinema through use for marketing purposes ▪ Market imbalance and structural asymmetries vis-à-vis global media corporations 	<ul style="list-style-type: none"> ▪ Implementation of an investment obligation as a "lever" for the protection of the cinema industry ▪ Regulatory control: Compulsory share for cinema productions with exclusive cinema window according to the French model

<p>DISTRIBUTION AND SALES</p>	<p>(Yes)</p>	<ul style="list-style-type: none"> ▪ Cinema industry and established film structures endangered by streaming platforms ▪ Displacement of the cinema film due to sharply declining expenditure by TV stations on co-productions ▪ Devaluation of the cinema through use for marketing purposes ▪ Relevance of streaming platforms in the licensing business is limited to large rental/distribution companies and crowds out other partners (especially TV broadcasters) ▪ Market imbalance and structural asymmetries vis-à-vis global media corporations ▪ International providers retain professionals and use local infrastructure without adequate investment and returns for the cinematic ecosystem ▪ Protection of local and European culture necessary ▪ No pure increase in production volume necessary ▪ Investment obligation leads to further aggravation of the skills shortage and production bottlenecks (inflationary effect) ▪ Flexibilization of release windows necessary 	<ul style="list-style-type: none"> ▪ Implementation of an investment obligation not absolutely necessary, but useful as a "lever" to protect the cinema industry ▪ Supporting not only producers, but also strengthening the cinema and film industry holistically ▪ Regulatory control: compulsory share for cinema productions with exclusive cinema window according to the French model ▪ Investment obligation also for TV channels to counteract the sharp decline in cinema co-productions ▪ Implement investment obligation as purchase obligation for VOD and TV providers for German and European cinema films ▪ Transparency obligation for VOD providers ▪ Stronger integration of VOD providers into cinematic ecosystem (funding cycle, cinema financing, newcomers, etc.) ▪ Supplementary redesign or increase of the film levy for VOD platforms
<p>TV/VOD NATIONAL (PRIVATE)</p>	<p>No</p>	<ul style="list-style-type: none"> ▪ Structural asymmetry between German TV stations and international platforms ▪ Rising production costs due to additional demand from the platforms ▪ Investment obligation leads to distortion of free competition and loss of quality through quota fulfilment ▪ Investment obligation leads to further aggravation of the skills shortage and production bottlenecks (inflationary effect) 	<ul style="list-style-type: none"> ▪ No implementation of an investment obligation ▪ Reduction of regulatory hurdles for national TV/VOD providers in order to achieve equality with international VOD providers ("level playing field"). ▪ Preserve freedom of contract ▪ Protect not only producers but also aggregators and other important market participants.
<p>TV/VOD NATIONAL (PUBLIC SERVICE)</p>	<p>No</p>	<ul style="list-style-type: none"> ▪ Structural asymmetry between German TV stations and international platforms ▪ Danger of displacement for the German film industry by international platforms 	<ul style="list-style-type: none"> ▪ No implementation of an investment obligation ▪ Reduction of regulatory hurdles for national TV/VOD providers in order to achieve equality with international VOD providers ("level playing field").

		<ul style="list-style-type: none"> ▪ Rising production costs and shortage of skilled workers due to additional demand from platforms ▪ Investment obligation leads to further aggravation of the skills shortage and production bottlenecks (inflationary effect) ▪ Investment obligation leads to restrictions and complication of programming 	<ul style="list-style-type: none"> ▪ No stronger integration of international platforms in the film ecosystem as this would increase the risk of displacement for the German film industry.
VOD (INTL)	No	<ul style="list-style-type: none"> ▪ No structural asymmetry or market failure, no basis for regulation ▪ Dynamic competition leads to creativity and diverse content ▪ Already high level of investment by international VOD providers ▪ Contract design is a matter of individual negotiation ▪ Diverse cooperation models with producers, dynamic process with local teams ▪ "Buy-out" fair and secure model with full financing and risk assumption ▪ Balancing resource scarcity through free market forces ▪ Investment obligation leads to distortion of free competition and loss of quality through quota fulfilment ▪ Investment obligation leads to further aggravation of the skills shortage and production bottlenecks (inflationary effect) 	<ul style="list-style-type: none"> ▪ No implementation of an investment obligation ▪ More time for the expansion of further cooperation models ▪ Reduction of regulatory hurdles for national TV/VOD providers to put them on an equal footing with international VOD providers. ▪ Protect not only producers but also aggregators and other important market participants.

Source: Goldmedia analysis (2021), expert interviews* The positions represent a summarised majority opinion in each segment. They are based on expert interviews and extensive research. However, differing and complementary positions within the segments are possible. The positions of vertically integrated companies that cannot be clearly assigned to any segment have been integrated into other segments.

In the following, a weighing of the need for possible regulatory perspectives is carried out on the basis of various relevant criteria.

3.2.2 Weighing up regulatory perspectives

Investment situation

International video-on-demand providers have noticeably increased their investments in German productions. Expenditure of around EUR 220 million is assumed for 2021. This represents an increase of ten per cent compared to the previous year 2020. However, the expenditure is significantly lower than that of

German TV providers who invested more than ten times as much for VOD, TV and cinema co-productions with around EUR 2.5 billion (cf. Chap. 2.1.1).

However, due to the relevance of local content, demand from VOD providers will continue to increase.²⁰⁷ This will at least maintain the positive order situation as well as the considerable demand pressure on production capacities. The experts interviewed therefore see no fundamental need to further increase production volumes at the overall market level.

The situation is more differentiated for the individual platforms. Some international providers are already investing significantly in local productions. For example, regulatory critics see the investment announcement by Netflix (cf. Chap. 2.2.6) in September 2021 as evidence of positive, demand-oriented market dynamics that do not require an additional investment obligation. Other platforms, on the other hand, are still investing significantly smaller sums. An assessment of the level of investment must at the same time keep in mind the dimension of the platforms' global expenditure on content and the relevance of the German market (cf. also model calculations, Chap. 3.2.3). Proponents of regulation see a disproportion here. In their view, the platforms invest too little in the local market compared to the revenue generated in Germany.

Consideration of A-VOD platforms

In addition to the discussion focussing primarily on S-VOD platforms, the inclusion of advertising-financed A-VOD providers can also be considered as is practised, for example, in Portugal and France in the form of an advertising levy (cf. para. 4.1).

Participation in productions does not correspond to the business model of the market-dominant international video sharing platforms YouTube,²⁰⁸ Facebook, Instagram, Twitch and TikTok. However, they do benefit from the cinematic content base, for example through trailers, film reviews or fan content – and now also as a platform for feature films.²⁰⁹

²⁰⁷ Ensuring the 30 per cent minimum quota for European productions also plays a role here, although this can also be covered by licence purchases.

²⁰⁸ Although a few originals were produced for the S-VOD service "YouTube Premium" in the meantime, this strategy was discontinued again due to lack of success. Since then, "YouTube Premium" has mainly offered ad-free access to all content on the platform.

²⁰⁹ One example is the Netzkino service, which commercialises feature films on YouTube financed by advertising, among other things. Other film distributors have also begun to use YouTube as an A-VOD commercialisation channel.

International A-VOD platforms generally pursue other models of investment in content. For example, Facebook/Instagram, YouTube²¹⁰ or Twitch²¹¹ allow the individual content producers ("creators") on their platforms to participate to a considerable extent in the advertising revenues generated with their content above certain thresholds.²¹²

In addition, more and more platforms such as Netzkino.de or Pluto TV are emerging that make series and feature films available on demand financed by advertising.²¹³

An inclusion of A-VOD platforms also concerns the mixed-financed national offerings RTL+ and Joyn. In this context, the proportionality must be examined. On the one hand, these platforms would already be subject to an investment obligation on the basis of their S-VOD offerings. This, however, has no financial consequences as the providers already invest large sums in local content in relation to their subscription revenues. On the other hand, the providers RTL and ProSiebenSat.1 already pay film levies based on their linear TV programming. However, an additional A-VOD levy may reflect the strategic reorientation in favour of their VOD platforms.

In the obligation of A-VOD providers, a distinction could be made between VOD and video sharing services (cf. Chap. 1.3) by making a distinction based on the editorial responsibility for the content offered.²¹⁴

Competitive demand (structural asymmetry)

The current market developments (cf. Chap. 2.3) are the effects of intense competition, which leads to a dynamic change in the market environment. The high demand is causing a shortage of production capacities, which can be compensated for by new professionals from film schools,²¹⁵ more attractive working conditions and a strengthening of film infrastructures.²¹⁶

²¹⁰ The basis is participation in the "YouTube Partner Program" (cf. YouTube (n.d.): What we stand for). For this, a YT channel must have achieved a valid playback time of more than 4,000 hours for public videos in the last 12 months and at the same time have more than 1,000 subscribers.

²¹¹ cf. Mölleken (2021): Twitch leak shows revenue of top earners.

²¹² The revenue share for creators on YouTube is up to 55 per cent of the advertising revenue generated (cf. Spangler (2021c): YouTube Tops 2 Million Creators in Ad Revenue Sharing Program).

²¹³ Netzkino.de additionally offers paid subscriptions without advertising. Pluto TV additionally offers live TV streaming financed by advertising.

²¹⁴ Editorial responsibility is used in the AVMSD to demarcate video-sharing platforms and is also partly used by other European countries in the context of investment obligations.

²¹⁵ cf. Producers' Association (2021a): Study on young talent.

²¹⁶ International experts point to the importance of accompanying increasing production investments with government spending that will strengthen the entire film industry.

The market dynamics go hand in hand with growing concentration tendencies (cf. Chap. 2.3.1). However, the possible formation of oligopolies must be viewed in a differentiated manner: The international streaming providers compete intensively with each other for content and customers who they would like to retain for as long as possible. In doing so, they partly pursue different business models; at the same time, other platforms are entering the market.²¹⁷ The Federal Cartel Office, which initially prohibited the cooperation of German TV providers in setting up their own VOD platforms in 2012/13,²¹⁸ saw no more competition problems a few years later.²¹⁹

However, the international providers have clear competitive and purchasing advantages over nationally operating providers due to possibilities of global refinancing of content without intermediaries. They emphasise the importance for the public perception that local players can compete with the platforms "on their own".

Above all, however, a structural asymmetry towards independent German producers is discernible. For these, a few financially strong international companies, which are under considerable pressure to grow (cf. Chap. 2.3.1), are becoming the central clients. In addition, there are problematic aspects of rights distribution and data transparency (cf. Chap. 2.3).

More advantageous contractual conditions for producers can be considered as the content of private sector negotiations or industry agreements. Such agreements and key points have already been reached with the public service broadcasters (cf. Chap. 2.1.1). It seems unsurprising that producers consider comparable benchmark agreements desirable in view of the market power of the platforms.

However, such often lengthy negotiations could be overtaken by changing market conditions. The asymmetries cited also call into question balanced negotiating positions. Often, decisive contractual elements such as the distribution of rights for commissioned productions are fundamentally non-negotiable for all

²¹⁷ For example, Netflix has so far been operating purely as a film and series service – with attempts to expand into the games sector – while Apple TV+ is cross-financed by the hardware business and Prime Video by the overall Prime offer. The offerings of the U.S. media groups and studios must be seen in the context of increasingly cross-media and merchandising-supported business models.

²¹⁸ The projects "Germanys Gold" of the public broadcasters and "Amazonas" of the private TV stations.

²¹⁹ In 2018, Andreas Mundt, President of the Federal Cartel Office, saw no more competition problems in a press release before the launch of Joyn: "... However, the market for paid video on demand is still a strongly expanding market and has potent competitors, for example Amazon, Netflix, iTunes and also Sky as well as public service offerings." (Bundeskartellamt (2018): Bundeskartellamt clears expansion of 7TV to include Maxdome and Eurosport).

platforms. In addition, many experts point to possible scope for circumventing industry agreements by expanding internal production teams and subsidiaries.

Due to the importance of local productions for the German market, which is relevant for revenue, the migration of commissioned productions to other territories is comparatively low from the experts' point of view.²²⁰

It remains to be seen to what extent the platforms will positively develop their relationships with producers and creative practitioners. The platforms see themselves as partners of the creatives and demand more time to establish different types of cooperation (cf. Chap. 2.3.5). Many producers doubt this willingness. They see the movements so far – for example, the first framework agreements for creatives²²¹ – as a reaction to public pressure, possible regulatory intervention and debates about the one-sided commercialisation of funding.

Consequently, there are market dynamics with long-term problematic effects on the content landscape that have developed from free market activity but could significantly change the traditional production market in Germany in the long term.

Systemic need

The creation of cinematic value in Germany is supported by a funding cycle for which returns from the successful commercialisation of audiovisual (cinema) productions are necessary and desirable (cf. Chap. 2.2.10). These also benefit producers and enable the creation of diverse productions. The funding regulations also include aspects of rights participation.

Due to the growing importance of streaming providers, which results in increasing budget shifts (cf. Chap. 2.1.1), financial resources are increasingly being withdrawn from the cinema-centred system. The platforms are only integrated into the structures to a limited extent: While the few producers commissioned by them are in part already comprehensively funded (cf. Chap. 2.2.7), the platforms at least pay a film levy to the FFA (cf. Chap. 2.2.5). However, many experts consider this levy to be too low. The (too low) taxation of the platforms' profits from their activities in the German market is also criticised (cf. Chap. 2.2.5).

²²⁰ Although such shifts of production to other EU countries can already be observed today, cost and subsidy aspects are usually the decisive factors. For smaller EU countries with less revenue potential, this issue is much more problematic. There are reports of pressure from streaming platforms to forego regulatory measures as otherwise production resources would be shifted to other countries.

²²¹ cf. the agreement of the actors' association BFFF and ver.di with Netflix (chapter 2.3.4).

Thus, an increasing share of the rising investments and VOD revenues remains with a limited group of providers. The result is limited room to manoeuvre to maintain a balanced overall ecosystem.

It seems problematic to integrate the platforms more strongly via funding guidelines, e.g. through new requirements for the distribution of rights. Since international providers are hardly dependent on funding, they could easily circumvent the regulations. German TV providers, on the other hand, would be much more affected. They are already disadvantaged in GMPF funding (cf. Chap. 2.2.7) and are integrated into the more regulated broadcasting market. Due to declining advertising revenues, they rely on their own VOD platforms in order to continue to reach broad viewer groups. The demand for a "level playing field", i.e., comparable competitive conditions for national TV broadcasters and global online platforms through the dismantling or harmonisation of existing regulations, seems understandable.

However, such a reduction could also reduce the protection of independent producers vis-à-vis national contracting authorities. Some experts also argue that a "level playing field" would not be possible anyway due to the significantly greater financial power of global providers. Moreover, national TV and VOD providers would not be financially affected by an investment obligation (see above).

Cultural need

European and German culture thrives on its great diversity. In order to represent this authentically in the media landscape, independent, creative producers are needed who can develop appropriate content.

However, the financial and creative independence of many producers is under pressure. The focus is also on the international commercial exploitability of the content, which pushes their local identity into the background. This raises the question of whether cultural diversity can be sufficiently reflected in the content produced in the future.

On the other hand, aspects of economic efficiency must be considered. Over-regulation of audiovisual content production can lead to an excessive focus on regulatory requirements to the neglect of actual demand. Some players therefore see the risk of a loss of quality. Instead, they propose guidelines for improving the visibility of culturally diverse content on platforms, for example, in the form of theme days or quotas for the payout of certain content.

Conclusion

Regulation with the exclusive aim of increasing production volumes in Germany is not necessary. A possible investment obligation for streaming platforms must therefore be considered against the background of political and systemic trade-offs.

There is intense competition, which leads to diverse content and a revival of the production landscape. At the same time, this competition is becoming increasingly asymmetrical due to the growing market power of a few providers.

In this context, an investment obligation seems appropriate to encourage greater integration into and engagement of international platforms with the cinematic ecosystem and to preserve the independence and diversity of the production landscape. Industry agreements, funding guidelines or incentive schemes are a first step towards steering the relevant investments.

Nevertheless, it should be borne in mind that regulatory intervention in a complex and dynamic market environment carries risks. The potential impact of different policy design options is examined in Chap. 3.4.

3.2.3 Model calculations on the need for an investment obligation

A quantitative basis for deriving a need for an investment obligation lies in the activity of the international streaming platforms in Germany in relation to the relevance that the German market has in a global comparison. This is considered on the basis of two model calculations.

Model calculation of the German Producers Alliance

The German Producers Alliance derives a need for regulatory activity from the overarching level of investment by S-VOD providers in a national and global comparison.

In doing so, it refers to data from the European Audiovisual Observatory, according to which VOD providers invested significantly less in German productions in 2019, at around EUR 180 million, than local TV broadcasters, at EUR 2.5 billion (cf. Chap. 2.1.1).

According to the study, German productions accounted for only about 0.1 per cent of the global investments of the internationally operating platforms with some providers investing more than others.²²² In the case of Netflix, the Producers Alliance estimates a German investment of around EUR 150 million for 2020,

²²² cf. Producers' Alliance (2021b): Demands on Investment Obligation 2021.

which corresponds to one per cent of global expenditure and 15 per cent of the revenue generated in Germany.

An investment obligation of 25 per cent for EU productions would thus mean a volume of EUR 250 million or an additional volume of EUR 100 million in investments at Netflix alone, of which EUR 200 million would remain for German-language content at a quota of, say, 80 per cent.

This is "not a revolution", but only a slight increase or stabilisation of investments for Netflix. For other, so far less-active providers, the investment obligation would have greater consequences.²²³

Model calculation Goldmedia

As outlined in Chap. 2.2.4, German productions – despite the public appeal of individual exclusives and originals – play only a subordinate role in the catalogue volume and the use of international VOD platforms. Here it must be examined to what extent the underlying investment volume in German productions adequately reflects the importance of the German market for the providers.

For this purpose, Goldmedia has prepared a model calculation on the basis of subscription and usage data, the revenues calculated from these and a well-founded estimate of the investment volumes (cf. the following section) of the VOD providers. This comes to the conclusion that the level of investment of internationally active VOD providers in German productions is significantly below the share of revenues generated in Germany.

In 2020, the German market accounted for an average of 4.2 per cent of the worldwide subscriptions of international VOD providers. The providers thus generated an average of 3.4 per cent of their global revenues.²²⁴ At the same time, only 0.4 per cent of their global investments in audiovisual content flowed into German productions.

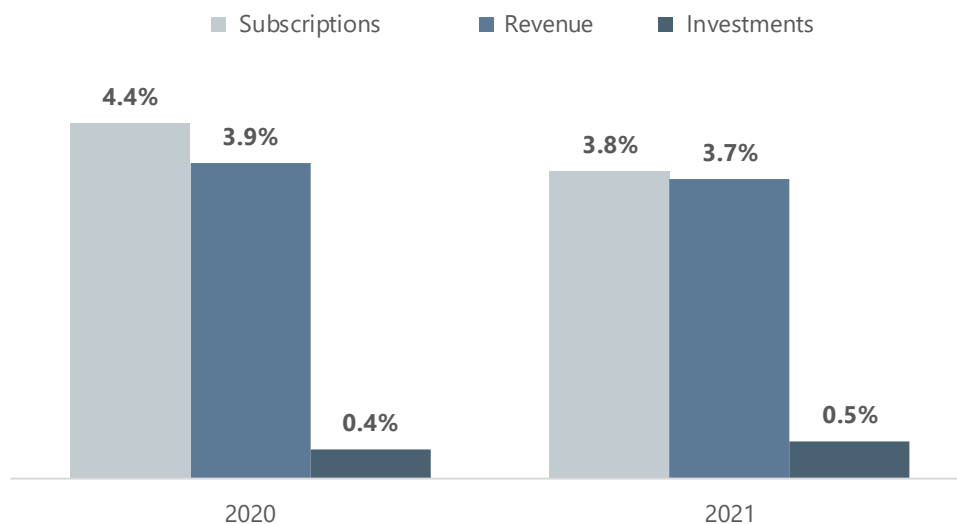
These shares will hardly have changed in 2021. Although increasing investment activity can be observed in Germany, this is accompanied by rising subscriptions and revenues worldwide (cf. Chap. 2.2.6).

This relationship indicates a fundamental need to encourage streaming platforms to invest in a way that better reflects the importance of the German market and enables a corresponding return flow of funds into the national cinematic ecosystem.

²²³ cf. Produzentenallianz (2021a): German Producers' Day 2021.

²²⁴ Prime Video is primarily responsible for this difference as the Prime subscription includes numerous other services that reduce the share of video revenues.

Fig. 43: Average German share of worldwide subscriptions and revenues as well as of audiovisual investment volumes of international S-VOD platforms, 2020-2021, in per cent



Source: Goldmedia analysis (2021). Basis: Netflix, Prime Video, Disney+, Apple TV+ (without Sky), Initial investment in audiovisual content (excluding catalogue licences, marketing, personnel, etc.)

The organisational investments of the platforms, e.g. for the establishment of local offices and personnel structures as well as the sometimes-considerable marketing expenses (cf. Chap. 2.2.6), are not part of the calculation. The reason for this is that there is no direct return flow from them into the film system. Rather, they serve as an indication of the financial leeway available to international providers.

3.3 Dimensions and outcomes of an investment obligation

Based on extensive primary data and additional surveys within the framework of the VOD ratings as well as the research and evaluation of additional data sources, Goldmedia has carried out a robust calculation or estimate of the effects of a possible investment obligation for VOD providers in Germany on the total volume of the production market.

This model calculation is only to be understood as an approach to show the possible dimensions of regulation under certain conditions.

3.3.1 Data basis and assumptions

For the model calculation, the following data was used for the year 2020 and forecast for the following years:

- the number of subscriptions per platform²²⁵
- the average subscription prices or revenues per subscriber and platform²²⁶
- the net sales (excl. VAT) calculated from this per platform
- the estimated amount of investment in German productions per platform²²⁷
- the estimated level of investment in German productions in the overall market²²⁸

In order to take into account the market entries of new platforms, some of which have already been announced and some of which are expected in the future (cf. Chap. 2.3.10), estimates for their development and commitment were also integrated.

The parameters of a possible investment obligation that must necessarily be determined for the calculation (cf. Chap. 3.4 and 4.3) were taken into account for the model calculation as follows:

- An investment obligation **between five and 25 per cent of** the previous year's net sales
- A restriction of the investment term to **initial investments** that flow directly into the creation of the production in the form of in-house, commissioned or co-productions or early licence purchases ("pre-buy" or exclusive licences for initial commercialisation). This excludes the purchase of licences for completed titles at later stages of commercialisation (catalogue titles). Also excluded are indirect investments through participation in regional funding bodies (cf. Chap. 2.2.7).
- A narrowing of the obligation to **S-VOD providers**
 - Pure sports providers are excluded

²²⁵ The subscription figures were determined on the basis of the Goldmedia VOD ratings with the inclusion of further sources (cf. Chap. 2.2.1).

²²⁶ The calculation of average subscription prices was supported by additional surveys on the use of different price levels of the platforms. The pro-rata prices for hybrid offers (e.g. Amazon Prime or Telekom/Magenta TV) were determined on the basis of the estimated value share of the VOD service in the total offer on the basis of market research data.

²²⁷ The estimation and forecast of the platforms' investments is based on extensive, research-based title and database analyses, including funding volumes and press reports.

²²⁸ The estimate of the total market volume is based on press reports and statistics from the commissioning parties, title data from the Goldmedia VOD ratings and the analysis of further third-party sources, including project budgets and funding data (cf. Chap. 2.1.1 and Chap. 2.2.7).

- Transactional EST/T-VOD providers are excluded as these are generally not relevant as retail platforms for the initial investments considered here.
- A possible obligation of **A-VOD providers** to make initial investments is **not taken into account**,
 - as initial investments in video sharing services without editorial responsibility (e.g. YouTube, Facebook, TikTok) do not correspond to the primary business model and
 - in the case of mixed-financed offerings by national VOD and TV providers (RTL+, Joyn), there is already a – financially inconsequential – obligation to make initial investments on the basis of their S-VOD offerings (cf. Chap. 3.2.2).
- Instead, **A-VOD services** are expected to pay a **levy of one per cent** of their net revenue in the previous year. This amount corresponds to the situation in Portugal, for example, and is chosen conservatively,
 - to reflect the relatively low importance of film and series content in the overall context of video sharing platforms, and
 - as national VOD and TV providers already pay a film levy as part of their linear programming.
- A limitation of investment to **German productions**, equating to a corresponding sub-quota for German content within a commitment for European productions
- **No restriction of content** to specific genres or genres (e.g. cinema film, feature film, series), so that fictional as well as non-fictional content and entertainment formats are taken into account regardless of the commercialisation channels (exception: sports).
- A **take-up threshold** of **EUR 10 million** based on the previous year's revenue (net) to exclude a disproportionate burden on smaller platforms and niche providers (chosen as an example)
- A possible **graduation** ("ramp up") of the investment obligation from ten per cent to 25 per cent over a period of five years (chosen as an example)

The chosen parameters are not to be understood as a recommendation for such a regulation but serve as the basis for an exemplary model calculation to show

the possible effects of an investment obligation. Other variants and options are also conceivable. The set of parameters selected here appeared to be realistic from an expert's point of view.²²⁹ All other external factors were kept, *ceteris paribus*, in this model calculation; external wild cards, such as further pandemic waves, were not taken into account in the model calculation.

3.3.2 Model calculation Goldmedia

According to Goldmedia calculations, an investment obligation for VOD providers based on the previous year's net revenue would lead to noticeable increases in the investments of international providers in audiovisual productions in Germany. The overall level of investment in audiovisual productions by all market players, however, would increase only slightly.

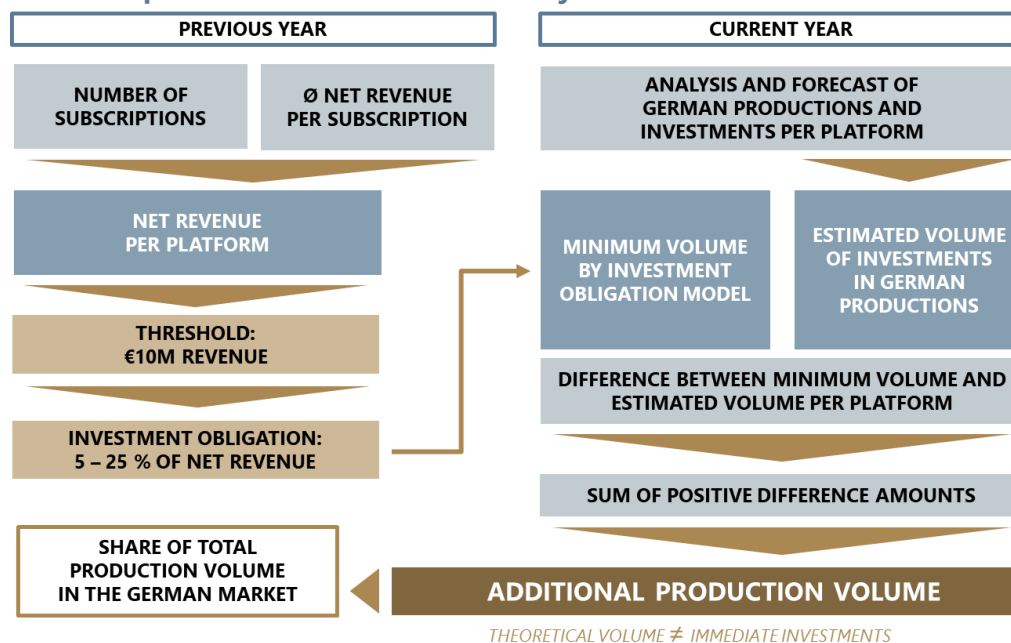
The following calculation steps were carried out for the model, which are also shown in the following figure:

- 1) determining the **previous year's net revenue** per platform from the number of subscribers and the average revenue per subscriber
- 2) the determination of the **amount of the investment obligation** per platform on the basis of the previous year's net revenue
- 3) the estimate of the **actual or expected investments** per platform in audiovisual productions in Germany
- 4) the determination of the **additional production volume through an investment obligation** as the difference²³⁰ between the (2) obligatory and (3) estimated or expected investments.
- 5) determining the **share of additional production volume in the total market**, i.e. in all audiovisual productions in Germany by all commissioners or financiers in the TV, VOD and cinema segments.

²²⁹ All calculations start with the year 2020 in order to be based on real data. However, the possible implementation of an investment obligation is likely to take at least two or three years, so that the economic constellations may have developed further by then.

²³⁰ Only positive amounts flow into the sum of the differences per platform. These arise if the investments of the providers are below the level prescribed by an investment obligation. If providers already invest more than prescribed, the difference is negative and is not accounted for further so that the calculated production volume is not distorted or reduced.

Fig. 44: Schematic representation of the model calculation on the effects of an investment obligation for S-VOD platforms on the production volume in Germany



Source: Goldmedia analysis (2021)

The **threshold** excludes all providers with a net revenue of less than EUR 10 million in the previous year from an investment obligation and is not part of the further calculation.

As a possible **amount of** an investment obligation, shares of the previous year's net revenue between five and 25 per cent are presented.

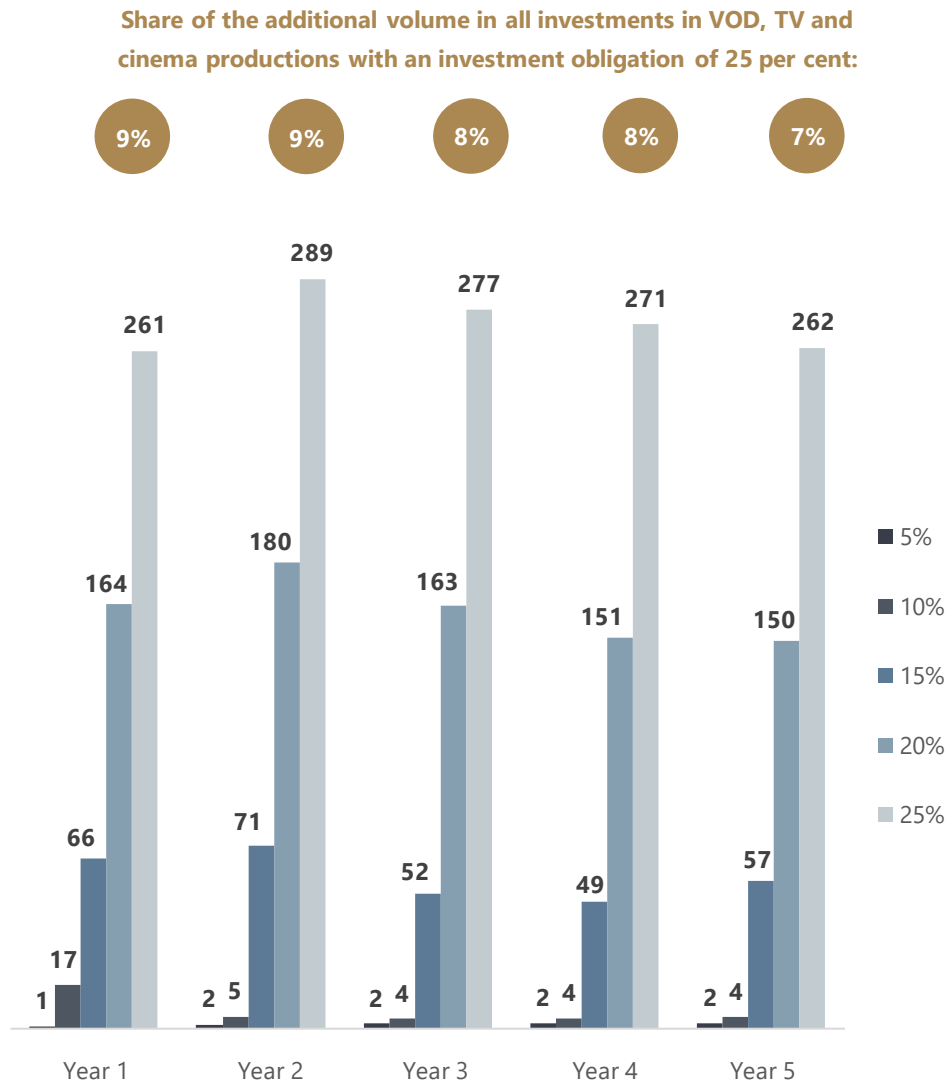
The years 2021 to 2025 serve as the **period** for the calculation.²³¹ The dimension of the investment obligation is calculated in each case under the assumption that the measure is introduced in the year in question.

The following figure illustrates the **results** of the model calculation, i.e.:

- the investments that S-VOD providers have to make additionally depending on the level of the obligation
- The share of this additional expenditure in all investments in VOD, TV and cinema productions in Germany (with an obligation of 25 per cent).

²³¹ The years 2021 and 2022 are to be regarded as purely theoretical as implementation is not yet to be expected here (cf. Chap. 3.3.3).

Fig. 45: Model calculation: Additional production volumes due to an investment obligation according to the amount of the previous year's net revenue for S-VOD platforms in Germany, year 1-5, in million EUR



Source: Goldmedia analysis (2021)²³²

The theoretical introduction of an investment obligation of 25 per cent in the first year would result in an additional production volume of EUR 261 million flowing into the market. This sum corresponds to around nine per cent of all investments made by all market players in audiovisual productions with a first commercialisation on VOD platforms, TV or in cinemas in Germany. Thus, there would only be a moderate impact on the market as a whole.

²³²

In order to be based on available market data, the models presented in this chapter are based on calculations for the year 2021 as well as forecasts for the following years.

With an obligation of 20 or 15 per cent of the previous year's revenue, the additional production volume in 2021 would be EUR 164 and 66 million respectively. An obligation of ten per cent would result in 17 million EUR additional volume, an obligation of five per cent around 1 million EUR. The impact on the overall market would be small to very small.

This means that many VOD providers already reinvest at least low single-digit percentages of their net sales in local productions. Nevertheless, newer international providers would still be partly affected by a low obligation. Some larger international providers already invest double-digit percentages of their revenue in local productions and would only be obliged to increase their expenditure from a level of 15 or 20 per cent. National VOD and TV providers would not have to increase their already high investments compared to the S-VOD revenue of their platforms.

If implemented in the second year, the impact of an investment obligation of 20 or 25 per cent would be slightly higher than in 2021, at EUR 180 or 289 million, respectively, due to the significant growth in revenues in the previous year as a result of user gains and price increases. At the same time, significant growth in independent investments is not yet expected for all providers. Especially with new U.S. platforms entering the market, low spending is to be expected at first. At the same time, the results show that the level of ten per cent of sales only has a small impact of EUR five million, i.e. is now already being reached by many providers without an obligation.

In the following years three to five, the effect of a possible regulation will gradually decrease slightly as most providers will increase their relevant expenditure on their own initiative from the expert's point of view. Revenue growth in the S-VOD market, on the other hand, will weaken. This means that the difference between obligatory and independent investments will decrease. However, obligations of 20 or 25 per cent are still expected to have a noticeable impact: If the scheme were introduced in the fifth year, a level of 25 per cent would still trigger EUR 262 million in additional investment, and at 20 per cent around EUR 150 million. These levels will thus continue to be reached independently by only a few providers.

The effects on the overall market remain moderate even with the implementation of an obligation in years two to five. The shares of additional investment in all audiovisual productions in Germany (VOD, TV, cinema) decline slightly to eight and seven per cent respectively. The reason for this is, on the one hand, the decreasing dimension of the obligation (see above). On the other hand, a steady increase is to be expected in total investment – after a temporary slight

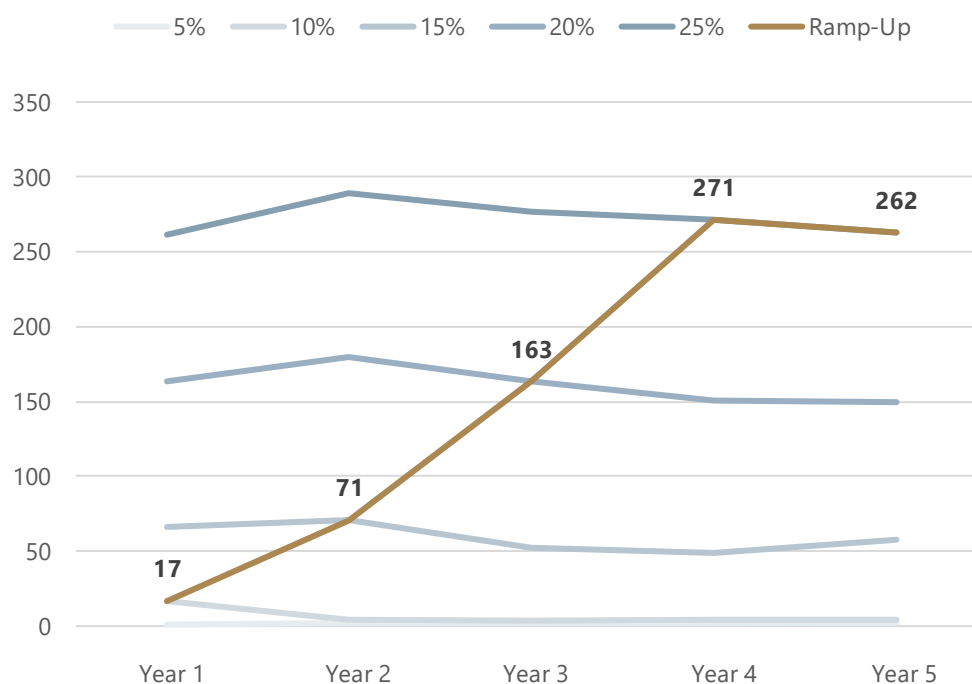
decline due to the coronavirus pandemic. The continuing high demand for VOD content compensates for the declining cinema investments.

Thus, only moderate increases in the production volume in the overall market can be expected as a result of an investment obligation for S-VOD providers. These effects can be further cushioned, for example, by a gradual introduction ("ramp-up", cf. Chap. 3.3.1).

In the following, two options for the introduction of an investment obligation are compared on the basis of the above-mentioned model calculation, which can be seen in the following figure.

- **Option 1: Immediate introduction** of an investment obligation amounting to five to 25 per cent of revenue as of the first year
- **Option 2: Staggered introduction** (ramp up); in this case, the prescribed investment volume increases gradually from ten per cent in the first year to 25 per cent in the fourth year; this allows the market to successively adapt to the new market situation

Fig. 46: Model calculation: Additional production volumes through an investment obligation of five to 25 per cent of the previous year's net revenue for S-VOD providers, comparison of an immediate and staggered introduction (ramp-up), year 1-5, in million EUR



Source: Goldmedia analysis (2021)

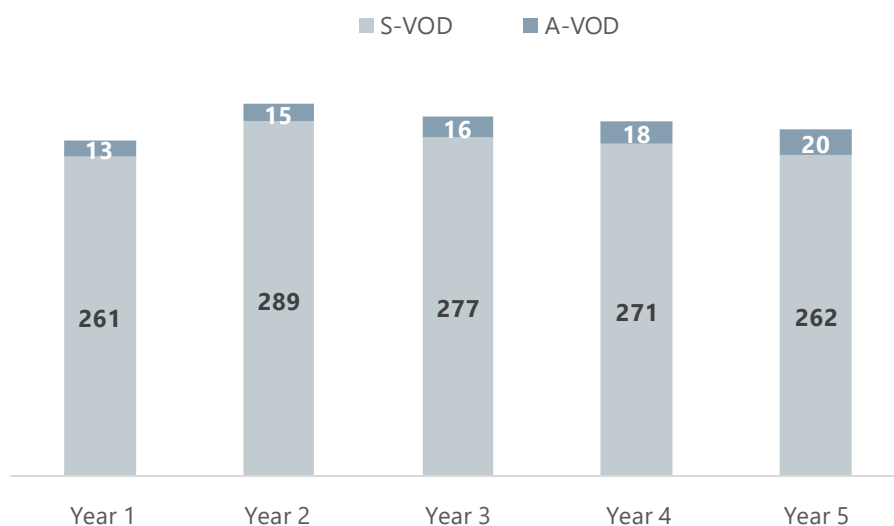
The model calculation shows that a ramp-up enables a gradual and predictable increase in the level of mandatory investments. In this example, the level of additional investments in the market increases from EUR 17 million in the first year to EUR 271 million in the fourth year.

In addition to the investment obligation for S-VOD platforms, the assumptions presented in Chap. 3.3.1 include a levy obligation for advertising-financed **A-VOD platforms**.

If this A-VOD levy is included in the analysis and system, the dimensions of an investment obligation increase only slightly. This is primarily due to the low level of the levy of one per cent of net advertising revenues in the overall market that is used in this model calculation.²³³

The following figure shows the maximum investments that can be expected through regulatory measures with the assumptions listed in Chap. 3.3.1, i.e. with an investment obligation for S-VOD platforms of 25 per cent and a levy obligation for A-VOD platforms of one per cent of the previous year's net income.

Fig. 47: Model calculation: Additional production volumes through an investment obligation of 25 per cent of the previous year's net sales for S-VOD platforms and a levy of one per cent of net advertising sales for A-VOD platforms in Germany, year 1-5, in million EUR



Source: Goldmedia analysis (2021)

A levy of one per cent would therefore result in obligations for A-VOD providers totalling around EUR 13 million in the first year. Analogous to the growth of the

²³³ This is based on the revenues of all ad-financed VOD offerings in Germany (cf. Goldmedia (2021d): Online Video Monitor 2021).

online advertising market (cf. Chap. 2.2.2), the levy obligation increases gradually to around EUR 20 million in the fifth year.

On the basis of a higher levy of, for example, around five per cent of net advertising sales, as introduced in France (cf. Chap. 4.1), there would be significantly different potential for the film ecosystem in Germany.

Overall, the model calculation shows that an investment obligation for S-VOD providers of up to ten per cent of the previous year's net revenue has only a very small impact on production volume. This level certainly leads to increases for individual providers but is already achieved independently by most providers in the foreseeable future.²³⁴ An investment obligation of 15 per cent causes noticeable increases in the mid double-digit million range. Only from an investment obligation of 20 to 25 per cent are larger increases in the three-digit million range to be expected for the production market.

However, these results are still moderate in relation to the total volume of the production market in Germany. A gradual introduction (ramp-up) can facilitate the implementation and help cushion possible demand overhangs.

An A-VOD levy obligation of one per cent provides additional funding to the support system that reflects market growth without placing an undue burden on providers.

3.3.3 Reflection and discussion of the model calculation

The above model calculation represents a reliable analysis based on extensive market data and calculations. However, it only serves to illustrate possible dimensions of the effects of an investment obligation and is not intended as a concrete recommendation for action.

The calculations for the first and second year are based on the years 2021 and 2022 and serve as a foundation on available market data. A possible regulatory implementation can only realistically be expected from 2023 onwards. In the meantime, changes in the strategies and investment volumes of the platforms are possible, which would change the data situation accordingly.

A fluctuation range of approximately five to ten per cent is to be expected in the results due to various calculatory and competition-related influences. In addition to a certain lack of precision in the number of subscriptions (cf. Chap. 2.2.1),

²³⁴ For hybrid platforms, reaching this level depends on the calculation of revenues attributed to their VOD offerings.

this also affects the share of revenue that is used to calculate the level of investment in hybrid business models.

For example, Prime Video subscription prices include other services such as premium shipping, music streaming, games and e-reading. The VOD offers of providers such as Vodafone or Telekom are, in turn, mostly integrated into packages with telecommunications services.

The amount of the investments actually made is also subject to a certain margin of error due to the lack of disclosure by the providers. Ultimately, the forecasts for the coming years are dependent on many factors, such as the market entry of further providers, the currently still unclear handling of content from Great Britain after the country's exit from the EU and the further course of the coronavirus pandemic (cf. Chap. 3.3.1).

Moreover, the calculated theoretical production volumes do not equate to an immediate release of funds for new production. Rather, this depends on the accompanying competitive circumstances and production capacities (cf. Chap. 2.3.3) and their further development.

It should also be borne in mind that the aggregate sums listed are distributed very differently across the individual providers according to their current and expected investment activity. For example, a 15 per cent obligation would not affect individual international providers as their investments are presumably already above this level.

Other platforms, whose investment activities are still significantly lower-threshold, would, on the other hand, be induced to significantly increase their expenditure. National TV providers would probably not be affected by the obligation due to their already high share of German productions and the still comparatively low platform revenues.

With a view to the implications of the streaming boom for the audiovisual production landscape in Germany discussed in Chap. 2.3, the model calculation thus serves as a basis for an assessment and evaluation of the dimensions of a possible implementation of an investment obligation.

It should be noted that the financial magnitudes of such regulation – even at higher percentages – are moderate compared to the overall size of the German production market and can potentially be further cushioned by various forms of design. The further effects on the industry are discussed in more detail below.

3.4 Possible effects of options for an investment obligation

In the following, the possible effects of an investment obligation on audiovisual productions in Germany are examined with regard to the following players:

- producers
- creative workers and professionals
- cinema operations
- rental/distribution companies
- VOD providers (national and international)
- TV provider (as broadcaster and client)
- audience

The effects depend on the concrete design or policy options of a possible regulation. Therefore, the study is divided into three different options:

- **Option 1:** No implementation of an investment obligation
- **Option 2:** Implementation of a purely monetary investment obligation without further steering instruments
- **Option 3:** Implementation of a content-based investment obligation with further steering instruments, whereby the productions in question have to fulfil certain formal or content-related conditions

Basically, it becomes clear that if regulatory measures were not taken (Option 1), the effects of streaming growth – positive as well as negative – described in Chap. 2.3 (Option 1) would continue. A purely monetary investment obligation (Option 2) would mostly reinforce these developments.

In the case of a control of compulsory investments (Option 3), it must also be considered that every possible combination of control mechanisms entails numerous direct as well as indirect consequences. Due to the high degree of fragmentation and complexity of audiovisual production, each design must be subjected to a thorough and far-reaching examination. At this point, individual factors and "adjusting screws" are discussed with regard to their overall tendency, but not every characteristic can be examined.

It should also be borne in mind that, within the framework of this analysis, a wide range of further influencing factors within and outside the sector are possible in the future, which were not yet known or foreseeable at the time the report was prepared. Such factors are kept, *ceteris paribus*, analogous to the model calculation (cf. Chap. 3.3). The following table summarises the main possible effects on the various market segments.

Tab. 9 Overview of possible effects of different options regarding an investment obligation (IO) for video-on-demand providers in Germany according to market segments

Market segment	Option 1: No IO	Option 2: IO without control	Option 3: IO with Control
PRODUCTION	<ul style="list-style-type: none"> ▪ Decline in independence and diversity ▪ Declining licence income and profit sharing ▪ Increasing consolidation ▪ Low transparency of usage data ▪ Increasing shortage of resources and skilled workers ▪ Increasing production costs 	<ul style="list-style-type: none"> ▪ Accelerating the impact of Option 1 ▪ Improved order situation 	<ul style="list-style-type: none"> ▪ Possible protection of independence and diversity ▪ Improved participation in licensing rights and successes ▪ Improved transparency of usage data ▪ Improved order situation ▪ Possible cushioning of the shortage of skilled workers through improved promotion of young talent
CREATIVES AND CREW	<ul style="list-style-type: none"> ▪ High demand and fees ▪ Decreasing entry barriers for young professionals ▪ Security through permanent positions or long series productions ▪ Restriction of creative freedoms ▪ Decreasing opportunities for revenue sharing 	<ul style="list-style-type: none"> ▪ Accelerating the impact of Option 1 	<ul style="list-style-type: none"> ▪ Protecting creative freedoms by strengthening independent productions ▪ Protection of financial freedoms through revenue-sharing arrangements ▪ Improved promotion of young talent
DISTRIBUTION AND SALES	<ul style="list-style-type: none"> ▪ Further increase in competition with streaming platforms ▪ Further decline in cinema and home video revenues 	<ul style="list-style-type: none"> ▪ Accelerating the impact of Option 1 	<ul style="list-style-type: none"> ▪ Possible protection through strengthening of the cinema or funding system

Market segment	Option 1: No IO	Option 2: IO without control	Option 3: IO with Control
	<ul style="list-style-type: none"> ▪ Increasing pressure on the financing and distribution of cinema films ▪ Increasing concentration and vertical integration 		
CINEMA	<ul style="list-style-type: none"> ▪ Further decreasing revenues ▪ Increasing pressure on the financing of cinema films and exclusive cinema windows ▪ Possible devaluation of the cinema through use for streaming promotion 	<ul style="list-style-type: none"> ▪ Accelerating the impact of Option 1 	<ul style="list-style-type: none"> ▪ Possible protection through strengthening of the cinema or funding system ▪ Improved basis for cooperation with VOD providers on mandatory share for cinema productions
TV/VOD NATIONAL	<ul style="list-style-type: none"> ▪ Free competition ▪ Investment decisions according to market, own content and quality criteria 	<ul style="list-style-type: none"> ▪ Restriction of free competition ▪ General cost increases for productions ▪ Possible IO contracting to subsidiaries 	<ul style="list-style-type: none"> ▪ Restriction of free competition ▪ General cost increases for productions ▪ More diverse content and production partners ▪ Possible protection against imbalance in favour of international suppliers
VOD INTERNATIONAL	<ul style="list-style-type: none"> ▪ Free competition ▪ Investment decisions according to market, content and quality criteria 	<ul style="list-style-type: none"> ▪ Restriction of free competition ▪ Increase in investments ▪ General cost increases for productions ▪ Possible IO contracting to subsidiaries 	<ul style="list-style-type: none"> ▪ Restriction of free competition ▪ Increase in investments ▪ General cost increases for productions ▪ Improved participation in the cinematic ecosystem

Market segment	Option 1: No IO	Option 2: IO without control	Option 3: IO with Control
			<ul style="list-style-type: none"> ▪ Improved acceptance and cooperation opportunities ▪ Possible loss of quality due to quota fulfilment ▪ Possible emigration of high-quality productions
AUDIENCE	<ul style="list-style-type: none"> ▪ Further growth of the S-VOD offering ▪ Further increasing genre diversity ▪ Declining cultural and cinema diversity 	<ul style="list-style-type: none"> ▪ Accelerating the impact of Option 1 	<ul style="list-style-type: none"> ▪ Further increasing genre diversity ▪ Safeguarding cultural content diversity ▪ Securing an attractive cinema landscape

Source: Goldmedia analysis (2021)

3.4.1 Implications for producers

Option 1: The developments outlined in Chap. 2.3 continue to progress. According to this, declining licence shares in new works, increasing concentration movements and transparency problems as well as a further increase in competitive pressure for resources and skilled workers through the expansion of internal creative teams at streaming platforms are to be expected. These pursue the goal of the best possible, efficient control of production processes, rights, data and content in the competition for international users.

For producers, this is accompanied by a loss of entrepreneurial and creative autonomy. Flexible, lean creative structures made possible by current income, which many independent producers value, would increasingly be replaced by the servicing of predefined programming requirements in order to ensure short-term economic survival. Large production companies would also have to increasingly serve these requirements in order to utilise their capacities.

Option 2: An investment obligation without control would mean a further improvement in the order situation for producers. However, this could change in the medium term due to increased establishment and commissioning of sub-

sidiaries. In addition, the relevance of international streaming platforms as clients in local competition would be further increased without counteracting the aforementioned developments.

Option 3: Control of the obligatory investments can include, for example, minimum quotas for national and European works, the awarding of contracts to independent producers, distribution of rights or transparent profit-sharing. In this way, an obligation as a regulatory "lever" can contribute to protecting the independence and diversity of the German production landscape.

Initially, a further expected worsening of the bottlenecks in production capacities and skilled labour or a further price increase would have a negative impact. However, the dimensions of the increase are limited (cf. Chap. 3.3.2) and can be compensated for in the medium term by promoting young talent.

3.4.2 Implications for creatives and crew

Option 1: Increasing demand continues to bring benefits to creatives and organisational and technical professionals in the form of higher fees, lower barriers to entry and the negotiation of better working conditions. Serial productions also offer longer-term security compared to shorter TV film projects. The same is true for permanent positions with VOD providers versus project-based jobs.

On the other hand, there is a possible loss of creative freedom through integration into team structures to serve commercial global interests. The lack of revenue sharing for creatives, which is common in films, also reduces the financial and thus creative scope.

Option 2: The above impacts are further accelerated.

Option 3: Protecting the independent production and cinema landscape allows greater professional and financial freedom for creative professionals. This supports their independence allowing for more diverse content to emerge – also in terms of representing national and European culture. At the same time, the positive effects of high demand (see above) remain.

Controlling the obligatory investments can also benefit the promotion of young talent, for example by obliging streaming providers to engage in academic or professional training structures. The industry as a whole could benefit from the strengthening of these structures and the prospects for young talent.

3.4.3 Implications for the cinema industry

Option 1: The influence of streaming platforms on the cinema industry (cf. Chap. 2.3.10) will continue to expand, especially due to the platform strategies of the

U.S. studios. The shift of production budgets at the expense of cinema films will continue to increase. The cinema will remain relevant as a place of experience and revenue generator for major or prestigious titles, but the financing and commercialisation of German and European productions will become increasingly challenging.

For film distributors, the economic situation continues to worsen. Revenues from licence sales to S-VOD providers go hand in hand with declining TV licence sales and cannot compensate for the losses from the cinema and transactional video business. Especially smaller, culturally oriented distributors are coming under increasing pressure. The possible consequence is a loss of supplier diversity in the rental market and an increased dependence of cinema operations on a few large content providers.

The purely digital international platform providers will use the cinema as a marketing platform, taking advantage of their disproportionately stronger negotiating position, but will hardly enter into the production of regular cinema films with longer release windows.

Option 2: The obligatory investments for VOD providers will hardly flow into the production of films as internationally scalable exclusive content is of greater value for their platforms.

Option 3: Investment steering offers the possibility to encourage national and international platform providers to invest directly in cinema films. This strengthens the cinema system as a whole financially and in terms of content and expands the possibilities for cooperation between cinemas, distributors and VOD providers. At the same time, the protection of the contractual partners against structural inequalities in contract negotiations, e.g. in the determination of release windows and revenue distribution, can be improved.

3.4.4 Implications for national VOD and/or TV providers

Option 1: On the one hand, national VOD or TV providers are positively influenced as the production bottlenecks in the competition for attractive content do not intensify and their own productions do not become more expensive. They can use their own company structures and locally developed competitive advantages more freely and award contracts to their own producers at their own discretion. On the other hand, they remain in intense competition with far more financially powerful global providers.

Option 2: Due to their already high local investments in relation to the revenue of their platforms, national VOD or TV providers are not affected by a purely

monetary obligation.²³⁵ The increased, cost-intensive competition for content and users would further drive the strategic orientation towards VOD. Circumvention of the independent production industry still seems possible.

Option 3: By steering the obligatory investments, national providers would have to align a minimum share of their expenditure with the corresponding regulations. This would limit their market leeway. The orientation towards the fulfilment of regulatory requirements for content and contractors, as opposed to the orientation towards user demand, could possibly lead to a loss of quality. In addition, possible ways of circumventing this, such as meeting investment requirements by simply purchasing licences, should be considered.

These risks are offset by the relevance of high-quality commissioned productions for VOD platforms. VOD and TV providers also benefit as clients and broadcasters from the preservation of an independent production landscape and the protection against a market imbalance in favour of international providers.

3.4.5 Implications for international VOD providers

Option 1: International VOD platforms would benefit from a waiver of regulatory measures as they could further commercialise their competitive advantages based on global business models and adapt their activities to local markets as they see fit. Investments could increasingly flow into internal production structures or the spin-off of subsidiaries if necessary.²³⁶

Option 2: An uncontrolled investment obligation can noticeably increase the spending of many international suppliers in local productions. As a result, their investments will better reflect the revenue-related importance of the German market. This restricts their entrepreneurial freedom in global competition, but the effects would be small in view of the high relevance of local content and the considerable financial leeway of the providers. Circumvention of the independent production economy is still possible.

²³⁵ This is different for the local telecommunication providers with VOD offerings: In view of significant VOD revenues (depending on the type of calculation) and low investments so far, they would have to increase their expenses considerably (depending on the amount of the obligation).

²³⁶ The acquisition or construction of own production facilities (studios) for commissioned work is also conceivable as Netflix has done in Shepperton (UK) and Madrid (cf. Yossman (2021): Netflix Extends Shepperton Studios Deal as Site Is Set to Be Expanded). According to experts, this is mainly done to secure scarce production capacities and leads to an increased vertical integration of the VOD providers along the lines of the U.S. media groups. Germany, however, has so far been less important than the above-mentioned locations for the systematic servicing of international target groups (UK: U.S. and EU or Spain for Latin America).

Option 3: The market scope of international providers would be more clearly restricted. In addition to possible losses in quality and scope for circumvention (cf. Chap. 3.2.2), a relocation of high-quality production to other, less regulatory countries is conceivable.

However, many experts consider these risks to be low given the relevance of high-quality local content and the lucrative German market. They also argue that listed U.S. providers are generally very cooperative in implementing local rules to achieve their growth targets.

Maintaining an independent production landscape that produces diverse and attractive content also benefits international providers. Greater integration into the local ecosystem also improves the acceptance of streaming platforms in the industry and enables diverse collaborations.

3.4.6 Implications for the audience

Option 1: The growing dominance of the VOD market initially provides viewers with a growing selection of digitally available, high-quality serial content in previously underrepresented genres. However, the diversity of content may decrease in the medium term as the creative independence of producers is declining (see above) and increasingly has to meet certain aesthetic or commercial demands of clients. A diverse selection of culturally significant content cannot be guaranteed. The diversity of cinema films is likely to decrease (see above).

Option 2: The choice of providers and content of German series productions is further increased without addressing the associated problematic aspects.

Option 3: Controlling investment makes it possible to maintain a range of culturally diverse content for viewers in addition to genre diversity. The reason is to strengthen the independence of producers, which supports the development of such content.

4 Overview: Investment obligation in Europe

As outlined in Chapters 2 and 3, an investment obligation for VOD providers is associated with multiple market developments and a complex set of needs. In this section, international perspectives and case studies are used to present and classify the possible options and scope associated with such regulation.

4.1 Status of the implementation of levies and investment obligations in Europe

In most European countries, financial obligations for television broadcasters to promote the national or European independent production landscape have been existing for some time. Different systems of obligations are applied:

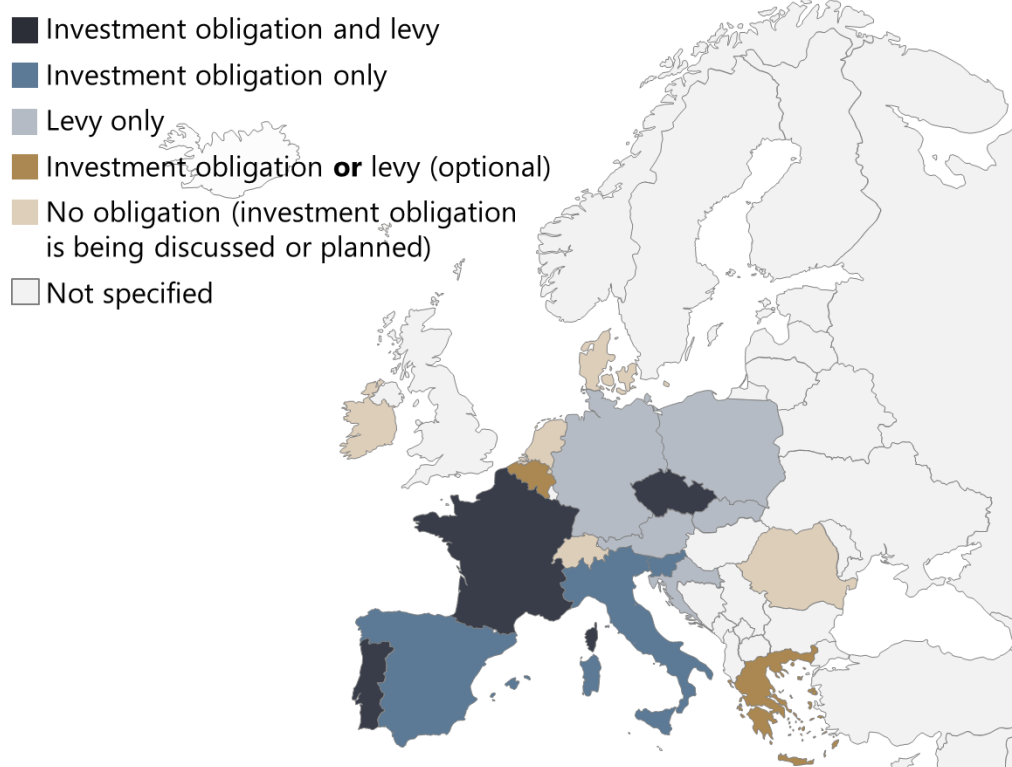
- investment obligations (e.g. Italy, Spain, Portugal, Denmark, Netherlands, Greece, Czech Republic, Iceland, Finland, Sweden)
- contributions to national film subsidies (e.g. Germany and Croatia) and
- mixed forms of these two financial obligation schemes (e.g. France, Poland, Austria, Slovakia, Hungary and Belgium)²³⁷

In some EU countries, there are also already investment obligations for VOD platforms. These oblige VOD providers to invest part of their revenues in national and European audiovisual production in different ways.

Comparable to the obligations imposed on broadcasters, a distinction can be made between financial obligations in the form of direct investment and indirect levy systems (cf. figure below). In the case of direct investment obligations, VOD platforms are required to invest in the production, co-production or licence purchase of content in order to support the national and European development of audiovisual works. Levies, on the other hand, are payable to the respective national film or audiovisual institutions.

²³⁷ cf. Schweizer Bundesamt für Kultur (BAK) (2020b, p. 9): Additional Report WBK-N Film Law Revision.

Fig. 48: Already implemented financial obligations of VOD platforms and ongoing revisions in Europe, 2022



Sources: Goldmedia analysis according to Iordache et al. (2022), Komorowski et al. (2021), Swiss Federal Office of Culture (BAK) (2021), Member State legislation

Note: The possibilities of the AVMSD are the subject of discussion in many territories. At this point, only those are considered that have a significant political or media perception or are already in concrete political discussions or planning.

Investment obligations for VOD platforms already apply within the EU in France, Spain, Italy, Portugal, the Czech Republic and Slovenia.²³⁸ In other countries, such as the Netherlands, Ireland and Romania, an introduction is being planned or discussed.

Examples of countries that have so far exclusively obliged providers to pay a levy are, in addition to Germany, Poland, Austria,²³⁹ Croatia and Slovakia. In February 2022, Denmark announced that it would also introduce a levy for international VOD platforms.²⁴⁰

²³⁸ In the Czech Republic and Slovenia, VOD providers can choose between investing in European productions or licences and a minimum quota of European works in their catalogues. In addition, an obligatory levy to the national film fund (CZ) or a revenue-based registration fee to the state communication agency (SL) has to be paid (cf. Komorowski et al. (2021, p. 22): Investment obligations for VOD providers to contribute financially to the production of European works, a 2021 update).

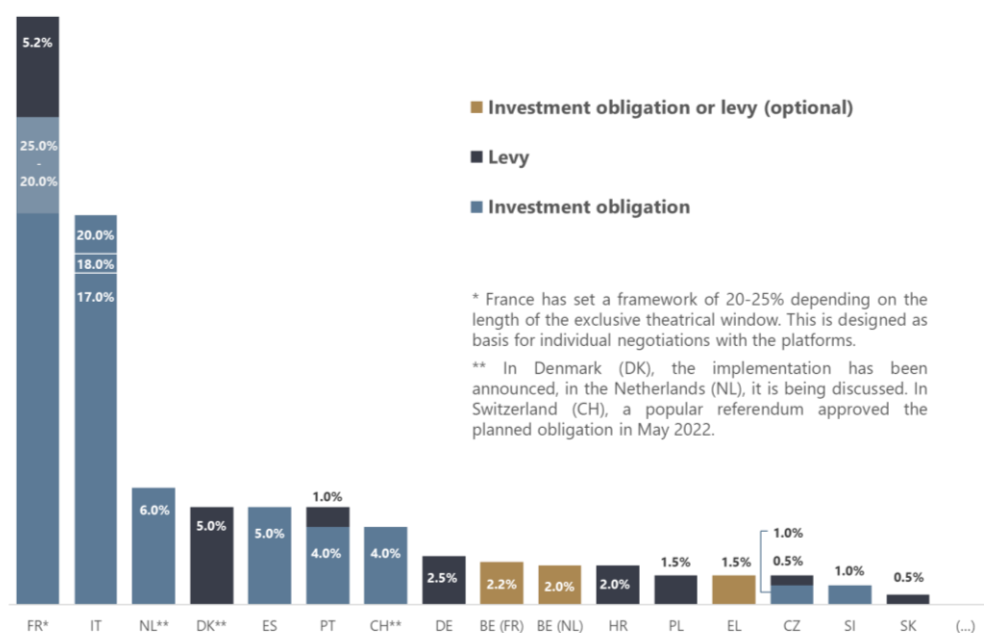
²³⁹ In Austria, the levy to the funding and regulatory institution RTR is calculated on the basis of RTR's financial needs as well as the providers' revenues and market shares (cf. RTR, 2021; Komorowski et al., 2021, p. 22).

²⁴⁰ cf. Clover (2022): Danish 'Netflix tax' to fund local production.

In Belgium and Greece, VOD providers have the possibility to choose between giving direct and indirect contributions themselves. Thus, the decision between the obligation to invest in new productions or the payment of a direct levy is up to the providers.

Depending on the country, investment obligations only apply to domestic VOD platforms or also include foreign providers. In addition, the amount of the current financial obligations to be paid differs in part significantly between the individual countries (cf. figure below).

Fig. 49: Financial obligations of VOD platforms in Europe: Investment obligations and direct levies based on revenues generated in the respective countries, 2022, in per cent



Sources: Goldmedia analysis according to lordache et al. (2022), Komorowski et al. (2021), Schweizer Bundesamt für Kultur (BAK) (2021), Member State legislation

France has by far the highest investment and tax obligations in Europe. Here, national and international providers must invest up to 25 per cent of their revenues generated in France in European or local film productions as well as pay direct levies (cf. Chap. 4.1.1). Italy is also gradually introducing high obligations of 20 per cent (cf. Chap. 4.1.2).

Spain, Portugal, Denmark and Switzerland are at a lower level of four to five per cent. The financial obligations of VOD platforms in EU states such as Poland, Greece, the Czech Republic, Slovenia and Slovakia are below two per cent.

In Belgium, separate regulations exist between the Flemish- and the French-speaking regions. VOD platforms within the Flemish-speaking community

(BE/NL) have an investment obligation of two per cent to finance the (co-)production of Flemish TV series or to make a direct financial contribution to the Flemish audiovisual fund.

Within the French-speaking community in Belgium (BE/FR), VOD providers must invest a maximum of 2.2 per cent of their revenue in the previous financial year (if revenue exceeds EUR 20 million) or pay it as a direct levy to the Centre for Film and Audiovisual Media.

Switzerland has decided to implement a four per cent investment obligation. If providers do not meet this obligation, they must pay four per cent of their revenue generated in Switzerland directly to the Swiss Federal Office of Culture (BAK).²⁴¹ A popular referendum approved these plans in May 2022 (cf. Chap. 4.1.5).

Denmark plans a levy on international VOD platforms of up to five per cent of revenue to support local productions. In addition, the platforms will be obliged to disclose their algorithms.²⁴²

Many countries, such as Spain, France and Italy, have regulations to protect independent producers. They have regulations that require online platforms to invest specifically in supporting independent productions.²⁴³

In order to implement the investment obligations resulting from the amendment of the AVMSD, a large number of European countries are planning to revise their investment obligations for online platforms²⁴⁴ and are currently discussing the level and design of future investment obligations for VOD platforms targeting audiences in these countries. The success of VOD platforms as a result of the COVID 19 pandemic has accelerated the process of implementing such investment obligations.

In all cases, the financial contributions from the investment obligation or direct levies benefit the respective national film industry. For example, in 2020 in Poland, the VOD levies imposed on providers were able to generate almost EUR two million. In order to support the Polish film industry, the levy was introduced in July 2020 as an anti-crisis measure at a level of 1.5 per cent of revenues from

²⁴¹ cf. Schweizer Bundesamt für Kultur (BAK) (2020b): Additional Report WBK-N Film Law Revision.

²⁴² cf. Clover (2022): Danish 'Netflix tax' to fund local production.

²⁴³ cf. European Audiovisual Observatory (EAO) (2019): The promotion of independent audiovisual production in Europe, p. 31.

²⁴⁴ cf. *ibid.*, S. 6.

user fees or net advertising revenues (whichever is higher), payable quarterly to the Polish Film Institute.²⁴⁵

Outside Europe, regulatory measures including investment obligations are being planned in Canada²⁴⁶ and Australia,²⁴⁷ among others.

In the following, we look in detail at some of the investment obligations made by providers to implement the AVMSD policy change.

4.1.1 France

France has a long tradition of regulating the audiovisual market to protect the independence and diversity of local cultural life. French film in particular is considered a high cultural asset worthy of protection. A central role is played by the CNC ("Centre national du cinéma et de l'image animée"), which is subordinate to the Ministry of Culture but independently financed by a film tax and has comparatively far-reaching legislative influence.

France already had the most extensive investment obligations for online platforms in the EU before the AVMSD change. Furthermore, in addition to the general film tax, VOD platforms are subject to a special tax that was increased to 5.15 per cent of the previous year's revenue at the beginning of 2021.

With Decree 2021-793, issued on 22 June 2021, the investment obligations for online platforms were further tightened. The declared goal is to integrate the international platforms as far as possible into the local film ecosystem in order to develop a balance that is profitable for all market players as well as adequate framework conditions for a strong domestic and European film industry.

VOD services are now required to allocate part of their previous year's net revenue to expenditure contributing to the development of the production of European or original French-language cinematographic and audiovisual works. This applies to S-VOD services as well as to A-VOD and EST-/T-VOD services as the investment can go towards a variety of expenses (see below).

The amount of the investment obligation is linked to the exclusive release window for feature films: It is 25 per cent of the previous year's net sales for suppliers offering one or more feature films per year within a period of less than twelve

²⁴⁵ cf. Grynienko (2021): Poland's VOD Levy Yields Almost 2m EUR in 2020.

²⁴⁶ cf. McCulloch (2022): Riding the wave of SVOD investment obligations: consultation open on Australia's proposed Streaming Services Reporting and Investment Scheme.

²⁴⁷ cf. Zitzerman/Barrett (2022): Déjà Vu: Canada Reintroduces Legislation To Regulate Online Streaming Services.

months after the cinema release in France. For a cinema window of twelve months or more, it is 20 per cent.²⁴⁸

In principle, however, the regulation is not to be seen as a rigid construct but as a framework and basis for negotiations with the respective platforms in which the details are determined individually.

For example, the decree stipulates that a separate agreement between the platform and the "Conseil supérieur de l'audiovisuel" (CSA) will determine which share of the investment sum is to be used for the cinema sector and which for other audiovisual formats such as series, television films and documentaries, with the minimum share in each case being 20 per cent of the total investment sum.²⁴⁹ At least every three years, a review of the CSA takes place to see whether the fixed distribution needs to be changed.²⁵⁰

The decree also regulates the reinvestment possibilities within the framework of the obligation.²⁵¹ French legislation recognises as investments expenditure that contributes to the development of the production of European or original French-language cinematographic and audiovisual works. These include in particular:

- the acquisition of commercialisation rights
- Investments in producer shares
- the financing of script and development work
- the adaptation of audiovisual works for the deaf or hard of hearing and for the blind or visually impaired
- the dubbing and subtitling of works (max. 2.5 per cent of the total amount of the obligation)
- financing the training of authors (max. 2.5 per cent of the total amount of the obligation)
- investment in the safeguarding, restoration or enhancement of the original French-language cinematographic and audiovisual heritage
- expenses for advertising and promotion of works (max. 2.5 to five per cent of the total amount of the obligation)

²⁴⁸ cf. Ministère de la culture (2021): Décret no 2021-793 du 22 juin 2021 relatif aux services de médias audiovisuels à la demande. Article 14, para.

²⁴⁹ The allocation of the use of the investment amount by sector (i.e. cinematographic or other audiovisual works) is determined by the share of these two categories of works in downloading or viewing, the share in the catalogue and the extent to which a service provider promotes these two categories of works.

²⁵⁰ cf. Ministère de la culture (2021): Décret no 2021-793 du 22 juin 2021 relatif aux services de médias audio-visuels à la demande. Article 14, para. II.

²⁵¹ cf. *ibid.* article 12, para. I.

In the case of hybrid platforms such as Amazon Prime, negotiations with the providers determine what proportion of the revenue is to be used for the calculation of the investment obligation. If no solution is found, the total revenue of the platform serves as the basis.

In order to specifically support independent film producers, the French decree stipulates that at least three quarters of the compulsory investment expenditure in the cinema sector and two thirds of other audiovisual productions must be invested in the production of independent European works. A production is considered independent if:

- the duration of the contracted rights of use in each territory where these rights have been acquired does not exceed 72 months;²⁵² (prevention of buy-out contracts)
- a media service provider does not directly or indirectly hold any production interest or revenue rights in the work and does not personally or jointly and severally take the initiative and the financial, technical and artistic responsibility for the production of the work and does not guarantee its successful completion
- a media service provider does not directly or indirectly hold marketing mandates or secondary rights²⁵³

The agreements and specifications of the decree also aim to guarantee the diversity of French film and audiovisual works. For this purpose, agreements are again foreseen between the platforms and the CSA in which the share to be used for the development of independent productions of audiovisual works is defined.²⁵⁴

The further design of the agreements, obligations and instruments within the framework of regulation on the basis of the AVMSD are the subject of ongoing discussions and negotiations.

In December 2021, the CSA announced an agreement with Netflix, Prime Video, Disney+ and AppleTV+ based on the new decree. According to this agreement, these providers will reinvest 20 per cent of their previous year's net revenues in French and European audiovisual productions. Of this, 80 per cent is earmarked for audiovisual productions and 20 per cent for feature films. As a result, the CSA expects annual investments of EUR 250-300 million of which about EUR 200

²⁵² or 36 months if acquired on an exclusive basis.

²⁵³ cf. Ministère de la culture (2021): Décret no 2021-793 du 22 juin 2021 relatif aux services de médias audio-visuels à la demande. Articles 21 and 22.

²⁵⁴ cf. *ibid.* article 22.

million is expected to come from Netflix.²⁵⁵ With Prime Video, 30 per cent of total revenues from Prime subscription fees have been negotiated as a basis for calculation as well as a minimum investment of EUR 40 million.²⁵⁶ Agreements with other providers are not yet known.

Shortly before, the French provider Canal+ had agreed with the film institutes on an extension of the existing investment obligation. According to the agreement, Canal+ will invest a total of EUR 600 million in French and European feature films by 2024. In return, the provider can commercialise these films on its pay TV and VOD services as early as six months after their cinema release.²⁵⁷

4.1.2 Italy

Similar to France, film promotion and regulation in Italy is centrally organised. In contrast to the independently financed CNC, however, responsibility lies directly with the responsible directorate of the Ministry of Culture. According to an expert, the aim is to promote creative content with a national and European identity. To this end, independent producers are considered an important asset that is particularly worthy of protection in view of the business models of international VOD providers.²⁵⁸

Therefore, since 2018, VOD providers in Italy are obliged to invest in European audiovisual works through licence purchase, production or co-production. This applies to domestic and foreign VOD providers that have an editorial responsibility²⁵⁹ for the content provided and are targeted at audiences in Italy. In addition, they must offer a thematic programme that enables investment in the works mentioned.

Due to legislative changes in the course of the implementation of the AVMSD in November 2021, the investment obligation will initially be 17 per cent of the annual net revenue achieved in Italy in the previous year from the end of 2022. This level will increase to 18 per cent in 2023 and finally to 20 per cent in 2024.

²⁵⁵ cf. Keslassy (2021b): Netflix, Amazon, Disney Plus, Apple TV Plus to Invest as Much as \$330 Million in French Content Annually; cf. CSA (2021): Le régulateur intègre les principaux SMAD internationaux au système français de financement de la création.

²⁵⁶ cf. Cassini/Piquard (2021): Netflix, Amazon, Apple et Disney devront investir 250 millions à 300 millions d'euros par an en France.

²⁵⁷ The agreement also includes a diversity clause that directs a minimum share of investments to film productions with a budget of less than EUR 4.3 million (cf. Keslassy, 2021a: Canal Plus to Invest \$680 Million in French, European Films Through 2024).

²⁵⁸ As in many territories, the activity of VOD providers leads to a good order situation and high capacity utilisation, but a threat to the independence of the producers (cf. Chap. 2.3).

²⁵⁹ By citing editorial responsibility, platforms such as YouTube and Facebook, which are primarily based on the advertising-financed distribution and marketing of user-generated content, are exempted from the investment obligation.

This gradual increase (ramp-up) is intended to allow both the production market and VOD providers a transitional period to adapt to the new regulations.

The investments in question must go entirely to European productions by independent producers. 50 per cent is earmarked for so-called works of original Italian expression,²⁶⁰ which, in addition to the language, also concerns the nationality of the producers and includes, for example, works produced abroad in primarily Italian. At least one fifth of the sum must be invested in feature films.

Further arrangements, e.g. on take-up thresholds and on the distribution of rights²⁶¹ or the definition of independence,²⁶² are the subject of ongoing negotiations. These are also being conducted in working groups with representatives of the film, TV and VOD industries.

The responsibility for enforcing the investment obligations lies with the Italian media regulator AGCOM. Online platforms must provide the required documentation showing their net annual revenue in Italy, the investments made to comply with the legislation and the required documentation on exemptions or changes to the investment amount. For example, contributions due may be deducted if the minimum annual investment was exceeded in the previous year. The rules for submitting this information and the penalties for non-compliance are set out in the Audiovisual and Radio Media Services Act (*Testo unico dei servizi di media audiovisivi e radiofonici*).

4.1.3 Spain

Besides France, Italy and Germany, Spain is another major EU production location and market for audiovisual content. Here, too, an investment obligation has been introduced, albeit at a significantly lower level than in France and Italy. An extension to international providers is planned by draft law as of February 2022.

Accordingly, VOD providers with more than EUR 50 million in net sales in the previous year must use five per cent of their revenue to finance European audiovisual works or pay into the Spanish film protection fund. Of the investments, 70 per cent must be used for works by independent producers and 40 per cent

²⁶⁰ cf. Komorowski et al. (2021, p. 54).

²⁶¹ Film funding in Italy already includes rules on the distribution of rights. From 2017 to 2022, the volume of film funding will be increased from EUR 400 to 700 million. International VOD providers can access this via local producers, but in return they have to cede a share of the licensing rights to them that corresponds to the budget share financed by the subsidy. In this way, the state funding investments are intended to benefit the independent production landscape.

²⁶² Here, the independence of the producers stands above all in contrast to the role of purely executive producers without creative freedom (cf. Chap. 2.3.6).

for independently produced cinematographic works in one of the official Spanish languages.

VOD providers with less than EUR 50 million in net sales in the previous year are exempt from the language quota and have the additional option of meeting the investment obligation by acquiring licensing rights to independently produced European works.

VOD providers with net sales of less than EUR 10 million in the previous year are exempt from the investment obligation.²⁶³

4.1.4 Portugal

Due to the comparatively small domestic market, the Portuguese production landscape has so far been dominated by producers who often focus on arthouse films. With the presence of international streaming providers and the introduction of an investment obligation, it is expected that local producers will not only receive more orders but will also devote more time to more commercial mainstream productions.

The level of investment obligations for VOD services in the country is set by the amended Cinema Law ("Lei da arte cinematográfica e do audiovisual"). In this, VOD providers are obliged to invest in the development, production and promotion of European and Portuguese works in addition to a direct contribution to the ICA (Portuguese Institute of Cinema and Audiovisual).

The direct levy to the Film Fund is assessed at one per cent of the previous year's net income of VOD providers if this exceeds EUR 200,000 and the share in the respective market segment is more than one per cent. If the amount of the relevant income cannot be determined, the annual direct levy is one million EUR.

This levy is also payable by A-VOD platforms such as YouTube and Facebook, which are thus put on an equal footing with TV providers.

The investment obligations of the VOD services are also based on the previous year's net income, which differs according to the type of service (S-VOD, EST/T-VOD, A-VOD) and ranges from 0.5 to four per cent. A pick-up threshold of EUR 200,000 annual revenue or more than one per cent market share applies. If the amount of relevant revenue cannot be determined, the annual investment obligation is EUR four million.

²⁶³ cf. Komorowski et al. (2021): Investment obligations for VOD providers to financially contribute to the production of European works, a 2021 update.

In order to give the production market and the VOD providers more flexibility in the initial period, the necessary investments can be spread over two years, if necessary. For example, an obligation of four per cent can be transferred to the following year so that eight per cent must then be invested.²⁶⁴ The scope is further increased by the fact that providers can also choose to pay the investment amount as a direct levy to the ICA.

The investment must go into feature films, series and documentaries, 30 per cent of which must be in Portuguese.

The financial obligations apply to both domestic and foreign VOD services, including services under the jurisdiction of other EU Member States, if they target a Portuguese audience, are located on Portuguese territory, generate an income in Portugal and offer certain formats such as long, short or TV movies. However, VOD services with pornographic content are excluded.

The institutions responsible for collecting, verifying and enforcing financial obligations are the Portuguese Regulatory Authority for the Media (ERC), the Institute of Cinema and Audiovisual (ICA), the Inspectorate General for Cultural Activities (IGAC) and the National Communications Authority (ANACOM).

The ICA certifies which VOD services meet the criteria for investment obligations. The legislative decrees specify how and when VOD services must report their sales to the ICA and how investment obligations are assessed, controlled and monitored.

4.1.5 Switzerland

Switzerland is not bound by EU directives but according to the Expert talks, it sees itself committed to the European goals of independence and diversity.²⁶⁵ Therefore, an investment obligation for domestic and foreign VOD platforms with Swiss target groups was decided. The Federal Office of Culture (BAK), which is responsible for this, hopes that this will stimulate the Swiss production market with new innovative strength through new providers.²⁶⁶

Similar to TV broadcasters in Switzerland, who since 2007 have had to invest four per cent of their gross revenues for Swiss filmmaking, online platforms are also obliged to invest four per cent either for the acquisition of film rights or for

²⁶⁴ This approach is seen as a "test run" that will be up for review in 2024.

²⁶⁵ For this reason, Switzerland is striving, among other things, to become a member of the Creative Europe cultural and creative programme.

²⁶⁶ Due to the great market dominance of Netflix, the investment obligation is also referred to as the "Lex Netflix". More than half of Swiss consumers use the streaming service, which according to experts generates a large part of the revenues in the Swiss S-VOD market (cf. Blum (2021): Study on streaming services).

the production or co-production of Swiss content. If a VOD company does not comply with this investment obligation, the four per cent is paid to the Federal Office of Culture (FOC) as a substitute levy with the strict condition that the four per cent is invested for a specific purpose in film promotion in Switzerland.

The investment obligation applies to companies domiciled in Switzerland and abroad that are aimed at the Swiss audience but not to the public service SRG SSR. The amount of four per cent is based on the company's gross revenue generated by subscriptions (for S-VOD providers), sales and rentals (for EST-/T-VOD providers) or other revenue from rights of use. Foreign advertising windows must also invest the same amount.

It is forecast that such an obligation will generate around EUR eight million, which will be invested in film production in Switzerland.²⁶⁷ At the same time, the EU's mandatory minimum quota of 30 per cent for European content on VOD platforms was introduced.

The revised Film Law including the investment obligation was passed by the Swiss National Council in September 2021. In May 2022, a referendum (popular vote) approved the revision.²⁶⁸ An implementation is to be expected in 2023.

4.2 Discussion of international implementations

The revision of the AVMSD offers EU member states the opportunity to adapt the overarching goals of an independent and diverse cultural landscape to local circumstances. For example, the quota of 30 per cent European content on VOD platforms is mandatory as an overarching minimum standard while the design of levies and investment obligations is left to the individual countries.

There are several aspects to consider regarding the implementation in other countries: On the one hand, there are individual cultural and economic structures in the media landscape in each country. In France, for example, the status of cinema as a cultural asset worthy of protection with international claims is more pronounced than in many other territories, which goes hand in hand with historically grown, extensive regulation.

On the other hand, the countries are confronted with comparable changes in viewing habits and market structures in the course of the digital transformation.

²⁶⁷ cf. Schweizer Bundesamt für Kultur (BAK) (2020a): Annex WBK-S of Additional Report WBK-N Film Law Revision.

²⁶⁸ cf. Revill (2022): Swiss voters approve 'Lex Netflix' TV streaming funding law.

In addition, the member states are interconnected in many economic and political ways.

Although the implementations and possible effects of measures in different countries are therefore not fully comparable, they can nevertheless serve as orientation and enable a European comparison of the respective regulatory provisions.

According to international experts, there is basically very little resistance to the objectives of the AVMSD and the possible implementations.²⁶⁹ Therefore, many countries in Europe have already introduced levies or investment obligations for VOD providers.

The level of investment obligation is often related to the relevance or strength of the territories as user markets. For example, France and Italy, as populous and potentially lucrative markets, oblige VOD providers to make high investments of 20 to 25 per cent, which is facilitated by centralised political processes and the great decision-making leeway of film institutions. Smaller countries such as Portugal or Slovenia, on the other hand, set lower levy or investment levels.

This is also due to the limited local production capacities, which can benefit from even small increases. Another factor is the political pressure exerted by platform representatives as observed by international experts: They have threatened to withdraw production capacities and funds – which are particularly important for small countries – if regulatory measures are implemented.

A special case is Spain, which despite its size only introduces an obligation of five per cent. The possible background here is the already high investment in own studio capacities by Netflix for which Spain is an important production location for the Latin American markets.²⁷⁰

An uncontrolled, purely monetary investment obligation was not implemented in any of the countries.

Although the concrete designs differ in detail, clear overlaps and commonalities can be identified. These include:

- a **steering effect in favour of independent producers**
 - by requiring that at least a substantial share (e.g. France) or even the entire investment (e.g. Italy, Portugal, Switzerland) accrues to them

²⁶⁹ According to an expert, countries with a regulatory tradition such as France have argued for a mandatory implementation of all measures (quota, levy, investment obligation). Few states – including Germany – on the other hand, had argued for voluntary implementation.

²⁷⁰ cf. the acquisition of a production studio near Madrid (see above). However, some experts see a connection between Netflix's local political influence and the amount of the investment obligation.

- by guaranteeing them a **share in the commercialisation rights** (e.g. France, under discussion in Italy)
- a **steering effect in favour of European productions** with a sub-quota for national productions and/or languages
- a **take-up threshold** according to the amount of the previous year's net revenue, which varies according to the size of the territory (e.g. EUR 10 million in Spain)
- a **minimum annual sum** that usually has to be paid to the national film institutions, especially if no own investments are made in independent productions
- a **transition period** until the obligations are introduced in full, e.g. through a gradual annual increase (Italy) or a flexible implementation of the total investments in the first years (e.g. Portugal, Switzerland)
- the inclusion of advertising-financed **A-VOD providers** in the levies (e.g. Portugal) through a percentage levy on net advertising revenues or through a variety of investment options including the purchase of licences (e.g. France)
- the additional inclusion of transactional **EST/T-VOD providers** in the same way (e.g. France, Switzerland)

These control mechanisms represent a decisive advantage of investment obligations over purely financial levies on national film institutes or funding systems. While a levy as an indirect contribution only increases the general financial budget of the funding systems, an investment obligation as a direct contribution flows into the production and commercialisation cycle.

The potential impact of national decisions to implement an investment obligation in an international context is controversial among experts.

Critics of an investment obligation emphasised in the expert discussions that the EU states should not allow themselves to be played off against each other by VOD providers. In principle, harmonised framework conditions make sense, but there should be no "arms race". Rather, the focus should be on the respective local conditions to which the regulation based on the AVMSD must adapt – and not vice versa.

The non-implementation of a controlled investment obligation by a territorial country like Germany is likely to entail some risks: Since surrounding states oblige international VOD providers to invest in independent European produc-

tions, this content could possibly also flow into German (co-)productions. However, larger shares of the obligations in other EU states are often tied to the local language, which again limits the scope.

However, locating or producing content in countries where there is no investment obligation is also dependent on the incentive systems there. In the opinion of many experts, the German production location is already at a disadvantage due to incentives and funding instruments that are difficult to plan.²⁷¹ A regulatory gap compared to countries with an investment obligation could therefore only be compensated to a limited extent by improving the incentive models.

It is true that VOD providers are likely to invest more in German productions in the medium term due to the relevance of local content and the size of the German-speaking market (cf. Chap. 2.2.6). But, this is not assured in the long term as the demand for aesthetically homogeneous series content can also be met by other production markets.

Another possible disadvantage of the location is the lack of protection for the independent production landscape. If VOD providers in other countries are obliged to cooperate with independent producers, but not in Germany, this would weaken the German production landscape in international competition in the medium term. The reason for this is that the attractiveness and diversity of high-quality content are based on the financial and creative independence of the producers (cf. Chap. 2.3.6).

Basically, the uneven situation in the European states (see above) has meant that comparable framework conditions – especially in territorial countries – are highly relevant for effective support of the independent production landscape throughout Europe. These are, therefore, particularly important for the objectives of the AVMSD and the harmonisation of market conditions in the EU member states.

4.3 Overview of international developments

Based on the international implementations of an investment obligation for VOD providers, it becomes clear that:

- regulatory activities in many different EU territories are considered **necessary and useful**

²⁷¹ The core of the criticism is, on the one hand, the lack of a direct tax advantage as is granted in Great Britain, Italy or Spain, for example, as well as the capping of funding by the German Federal Film Fund (DFFF) or GMPF (cf. Chap. 2.2.7). Since the funding pots are often exhausted quickly, planning uncertainty arises, which makes the location of international productions less attractive.

- an investment obligation is only considered effective in conjunction with a concrete **design or control system**
- the **independent production landscape** at a European and national level is particularly promoted with this design
- market participants are given various options for individual and **gradual adaptation** to the measures

This opens up a wide range of options for adapting an investment obligation to the realities of the audiovisual production market in Germany. With a balanced implementation, the independence and diversity of producers can be balanced with the positive diversity aspects of VOD growth, and the cinematic ecosystem can be strengthened in the digital age.

At the same time, it has become clear that some international VOD platforms are already investing significantly in German productions due to the high demand for attractive new content and are also coming close here to the economic dimensions of a possible investment obligation of their own accord.

5 Summary and conclusion

Through the various steps of the report, supported by well-founded analyses, numerous expert discussions and solid economic modelling and forecasts, it was possible to develop a consistent picture of whether and how an investment obligation can be sensibly implemented in Germany and what effects can be expected on the German film market as a whole as well as on the production landscape and platforms.

The **AVMS Directive** (Chap. 1) is a Europe-wide legal framework that enables individual EU member states to oblige national and international media service providers to make a financial contribution to the production of European works. A number of EU states (e.g. France, Italy, Spain, Portugal, Belgium, Czech Republic, Slovenia) have already made use of this regulation; in other countries, it is being planned or discussed. The possibility of an investment obligation in audiovisual productions in Germany based on the AVMS Directive represents the legal background to this report.

The **market review** (Chap. 2) shows that the platform economy and the growing market dominance of international VOD providers are having a considerable and lasting impact on the German production industry. A positive development in the order situation for serial productions is contrasted by increased competitive pressure. This leads to a shortage of skilled workers as well as new opportunities for young talent. More diverse genre productions for global commercialisation are emerging, but they often hardly represent the cultural diversity of European and local content. The lack of participation in licensing rights for VOD commissioned productions also causes a loss of financial and creative independence for producers.

Additional pressure is being exerted by increased concentration and vertical integration movements, which are putting pressure on smaller producers and film distributors in particular, and which have greatly changed established commercialisation chains since the coronavirus pandemic. For the cinema industry, this means a further factor of uncertainty in addition to the severely restricted screening schedule and correspondingly low revenues from ticket sales. At the same time, the financing of German cinema films is at risk as TV stations are strongly reducing their budgets for cinema co-productions. The reason is a strategic focus on high-quality series productions to strengthen their own VOD platforms against international providers.

These developments are increasingly widening the sphere of influence of VOD platforms compared to local producers. At the same time, the platforms are only

marginally integrated into the established structures of the film industry and film funding. This poses major creative and economic challenges for the independent production landscape as well as for the film and cinema industry as a whole. The cultural diversity of the content produced is therefore under pressure.

The **needs analysis** (Chap. 3) on the necessity of an investment obligation shows that the positions of the market players diverge strongly in the assessment of a structural competitive asymmetry in favour of the VOD providers – and thus the basis for regulatory intervention. National and international TV and VOD providers dispute the necessity of an obligation and emphasise the risks of an additional shortage and increase in the cost of skilled workers and production capacities. Cinema operators and distributors demand that a possible investment obligation should not only protect and promote producers but also the cinema industry. Producers and creative professionals are calling for an obligation pointing to the threat to their independence, the loss of cultural and creative diversity and the lack of integration of international providers into local structures.

The consideration of various regulatory needs perspectives shows the existence of market asymmetries to the detriment of the local film and production industry. To preserve the existing film ecosystem in Germany, regulatory measures are therefore generally recommended. An investment obligation has the advantage over other instruments – e.g. industry agreements, funding guidelines or incentive systems – that it operates within the overall European legal framework and thus contributes to the harmonisation of the film funding situation in the EU.

For this report, two **model calculations** (Chap. 3.2.3 and 3.3.2) were carried out to examine the need and the expected effects of an investment obligation. In these model calculations, it could be clearly shown that:

- 1) the level of investment by international VOD providers has so far been low compared to the importance of the German market in terms of revenue, and
- 2) although an investment obligation can lead to a noticeable increase in production expenditure by international VOD providers, only moderate increases can be expected in relation to the overall level of investment in audiovisual productions (VOD, TV, cinema) in Germany.

The effects of a possible investment obligation depend on various options for action: Refraining from implementing the investment obligation would allow the existing market asymmetries to continue unhindered. A purely monetary investment obligation without a steering effect would further accelerate these market

developments. By contrast, a more concrete design of an obligation allows for a steering effect so that investments can flow specifically to the independent European and German production landscape.

The **overview of the situation in Europe** (Chap. 4) shows that numerous European states have already implemented an investment obligation or are preparing an implementation – also in addition to already existing levies. In addition to S-VOD providers, A-VOD and EST-/T-VOD providers are also partly taken into account. This is interesting because the A-VOD market is becoming increasingly relevant for film and series productions and significant increases in revenue can be observed.

In all countries, the obligations are structured in such a way that at least a majority of the investments flow to independent European and national producers or productions. A variety of supplementary instruments are used, which include, for example, the distribution of rights, the possibility of investing in licences or the promotion of young talent. The market participants are often given options for gradual or flexible introduction and adaptation.

Against the backdrop of EU-wide developments, the renunciation of an investment obligation would weaken the German production landscape in international competition in the medium term.

This report **concludes** that an investment obligation for video-on-demand providers in Germany based on the European AVMSD is a suitable and appropriate instrument to protect and promote the independence and diversity of the production landscape in Germany – as well as the entire film and cinema industry – against the background of the growing importance of video-on-demand providers.

The effectiveness and steering function of such an instrument is subject to the decisions of policy-makers on the concrete design of an investment obligation. The AVMS Directive offers numerous design options for this.

With best regards



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ANNEX

On the concept of platforms

The term "platforms" basically covers digital business models that do not focus on the management of a value chain but on the linking of market players.²⁷²

Important features of such platforms are the emergence of so-called network effects and the use of data to increase productivity by the platforms.²⁷³ Network effects are generally understood as the fact that each additional user increases the attractiveness of the overall network or platform and thus there is an inherent tendency for successful platforms to form monopolies. In most cases, digital platforms are so-called two-sided markets, whereby the platform mediates either between providers and customers (e.g. Amazon, Ebay) or between users (Facebook, YouTube) thereby saving transaction costs for all participants and providing the marketplace itself.

When using the term *platform economy* in the context of this report, it must be taken into account that especially the U.S. S-VOD providers Netflix or Disney+ are not digital platforms in the classical sense as there are no network effects and both platforms do not produce two-sided markets. Rather, they are large providers of audiovisual content that can be distributed and used via digital channels. With Prime Video or Apple+, this distinction becomes more complex as the video services can be seen as co-products: Amazon has linked its Prime delivery service to its video offering, among other things, while Apple offers its video service primarily for its own end devices.

However, the disruptive, market-changing role of global digital platforms and their growing market power in the audiovisual market cannot be dismissed out of hand. Platform expert Holger Schmidt, who explicitly names Netflix in his platform index, warns against underestimating the power of such providers: "The classic linear business models are increasingly being replaced by platform models. Moreover, digitalisation is contributing to the fact that more and more data-driven services are being added to the traditional product business and are replacing it in part."²⁷⁴

²⁷² cf. Maier (2017): What are platforms?

²⁷³ cf. Wikipedia (2021): Platform companies.

²⁷⁴ cf. BVIK (n.d.): Platform economy B2B.

Overview of Video-on-Demand Business Models

Paid-VOD

Paid-VOD describes business models that are fully or partially financed by paid video offers. These can be subdivided into S-VOD and EST or T-VOD.

S-VOD

Subscription video-on-demand (S-VOD) is a business model in which users take out a subscription with the respective VOD platform and can access the platform's content via streaming for a monthly or annual payment. Depending on the platform, the content can include fictional films and series, documentaries and entertainment programmes or even sporting events.

EST/T-VOD

Electronic sell-through (EST) and transactional video-on-demand (T-VOD) allow individual content to be purchased on VOD platforms without having to take out a subscription. T-VOD refers to the digital rental business in which time-limited access to individual content is purchased for a fee, whereas with EST the content can be purchased and downloaded permanently for a higher fee.

New titles, especially feature film productions, are often first offered exclusively as EST for a limited time window before the cheaper T-VOD rental option is added.

A-VOD

In contrast to Paid-VOD models, advertising video-on-demand (A-VOD) is financed by advertising placed on the streaming platforms. A-VOD services thus offer users free access to their content, in exchange for which they have to accept advertising before ("pre-roll"), during ("mid-roll") and/or after watching the content ("post-roll").

Profile of S-VOD platforms

Netflix

Netflix is a pure S-VOD service that offers subscriptions at different price levels. The different subscription prices are mainly made up of different usage and quality options.²⁷⁵ In other countries, the company is testing further subscription models that, for example, allow a shorter duration or exclusively mobile use of the streaming offer. Since 2020, Netflix has also made some selected content available free of charge worldwide instead of a trial month. The company has so far excluded the marketing of advertising.

Prime Video

Amazon's VOD platform Prime Video also offers a subscription service, but Amazon integrates it into its overarching Prime service that offers, among other things, free package shipping and access to the music streaming service Prime Music as well as cloud storage for photos. Furthermore, Prime Video differs from Netflix in its mix of business models, so that in addition to S-VOD content, individual films, episodes or series seasons can also be rented for a limited period of time independently of a subscription (T-VOD) or also purchased digitally (EST).

Disney+

While Netflix and Amazon have already been active in the German market since 2014, there is a new provider, Disney+, which was able to establish itself as the third largest VOD service at the beginning of 2021, one year after market entry in Germany.²⁷⁶ Disney+ is also a pure S-VOD platform whose unique selling point is its numerous in-house productions that are only available exclusively via Disney+. In addition, the platform offers a large portfolio of attractive content franchises such as Star Wars and Marvel Studios as well as titles from established production companies (20th Century Fox, Pixar, ABC Studios).

With Star, Disney+ launched an additional section of its video service in February 2021 that is primarily aimed at young people and adults. In addition to a broad library of series and films, it includes a number of productions that were produced for the U.S. streaming service Hulu or the pay-TV channel FX and have not yet been shown in Germany.

²⁷⁵ The basic Netflix subscription offers access for one user with lower video quality (SD), while the standard subscription allows two users or devices in parallel with high video quality (HD) and the premium subscription allows up to four users with very high resolution (Ultra HD) (cf. Netflix Help Centre (n.d.): Subscriptions and prices).

²⁷⁶ cf. Goldmedia VoD Ratings (2021).

Sky Go / Sky Ticket

With its Sky Go and Sky Ticket offerings, Sky Deutschland – a subsidiary of the U.S. Comcast Corporation since 2018 – is the fourth largest provider on the German Paid-VOD market. Sky Go initially started as a streaming service of Sky's linear pay-TV programme and can only be booked in conjunction with a classic pay-TV subscription. In the meantime, series and films are also available on demand. Sky Ticket represents a monthly cancellable S-VOD offer that is also available independently of Sky's pay-TV use. Certain packages for series, films and sport are offered via Sky Ticket. Individual VOD content can also be purchased or rented via the Sky Store.

Joyn Plus+

Among the S-VOD providers in Germany is the streaming service Joyn with its Joyn Plus+ offer. Joyn was launched in 2019 by ProSiebenSat.1 as a joint venture with Discovery and gradually replaced its own EST/T-VOD provider maxdome, which has since been sold to videociety GmbH. In addition to exclusive content, live TV content can also be viewed in HD quality on Joyn Plus+ and accessed after broadcast.

RTL+ Premium

RTL also provides exclusive online content and a TV media library of the channel group's content for viewing. Since autumn 2021, the service previously known as TVNow, including premium packages, has been marketed as RTL+ in the course of a rebranding.²⁷⁷ For this purpose, the platform will be expanded into the Bertelsmann Group's central multimedia offering, which will include podcasts, music, e-books and e-magazines in addition to TV content, films and series.²⁷⁸

In addition to these fee-based S-VOD services of the RTL and ProSiebenSat.1 broadcasting groups, RTL+ and Joyn are each also active as A-VOD services (see below).

MagentaTV

As a telecommunications provider, Deutsche Telekom has also become a relevant S-VOD provider on the German market with its VOD platform MagentaTV. Telecommunications providers often offer VOD services bundled with internet or mobile products to increase added value and customer loyalty. MagentaTV, for example, was initially launched as a bundle offer exclusively for Telekom In-

²⁷⁷ cf. Lücknerath (2021b): Focusing on the core brand: TVNow becomes RTL+; cf. RTL+ (2021): Our packages.
²⁷⁸ cf. Roxborough (2021): How Germany's RTL+ Aims to Compete With Netflix.

ternet customers. Since 2019, however, the service can also be booked independently of a Telekom Internet contract as a basic variant that can be cancelled monthly or in combination with RTL+ Premium. With the Videoload offer, Deutsche Telekom is also active in the T-VOD and EST market.

Apple TV+

As a market maker at the time, Apple has been present in the T-VOD and EST market in Germany via iTunes since 2008. With the launch of AppleTV+ at the end of 2019, Apple is also present on the German market with its own S-VOD offering. The offer so far only includes in-house productions and therefore offers a significantly smaller catalogue than the competition with around 50 titles (as of Jan. 2021). The subscription is correspondingly cheaper in comparison.

Similar to the telecommunication providers, Apple additionally makes its service available in a bundle or in the course of purchasing Apple products such as iPhones, iPads or MacBooks. By offering the service free of charge for one year with the purchase of an Apple device, Apple is accelerating the spread of its S-VOD offer. However, the share of paying customers is likely to be comparatively low.

Other Paid-VOD Providers

Other VOD providers such as Vodafone with Giga TV, Sony with PlayStation Video, Google or Microsoft are also active on the German VOD market. In the sports sector, DAZN, Eurosport Player and Magenta Sport have also established themselves. DAZN in particular is very popular in Germany due to its large catalogue of rights, such as the UEFA Champions League and the Friday and Sunday matches of the 1st Bundesliga.²⁷⁹

Smaller platforms, such as Chili, Flimmit, alleskino, realeyz, PANTAFILIX or kividoo, which mostly serve special target groups with selected content, complement the market.

In the near future, with Peacock from NBC Universal and Paramount+ from Viacom CBS, further new platforms from U.S. media groups are expected to enter the German Paid-VOD market.²⁸⁰

²⁷⁹ cf. Spiller (2020): The Generation Stream.

²⁸⁰ cf. Leistikow/Michelsen (2021): Peacock: Start, prices and packages of the streaming service; cf. Tabatabaei (2021): Paramount+: U.S. streaming service comes to Germany in 2022.

Profile of A-VOD platforms

YouTube

The U.S. video platform YouTube offers an immense amount of user-generated content as well as a wide variety of professional content. In addition to the advertising-based access, there is also a subscription-financed VOD service, "YouTube Premium", which allows the use of all content without advertising. However, the production of exclusive content for YouTube Premium was discontinued after a short time.

RTL+/ Joyn

The platforms Joyn of the ProSiebenSat.1 Group and RTL+ of the RTL Group offer live broadcasting of the linear TV programme (Joyn only) as well as a media library of the broadcaster's own TV programme and in-house productions and exclusive licensed content.²⁸¹ The marketing of in-stream advertising generates a significant share of the revenues of both platforms. Advertising-free and exclusive content as well as other usage options are only available in the subscription offers of the two platforms. Since its relaunch in autumn 2021, RTL+ also offers multimedia content from other Bertelsmann subsidiaries.

Other A-VOD platforms: Facebook, Twitch, TikTok

Since 2018, the social media platform Facebook has been active on the German market with its VOD service Facebook Watch. The platform offers content from professional creators as well as user-generated content, some of which is also broadcast live. In addition, Facebook Watch offers a few of its own shows, called Facebook Originals, which are only available in English with German subtitles for German users.²⁸²

Facebook also owns the social network **Instagram**, which offers various video formats or services within the app. On the one hand, there is IGTV, which allows the upload and retrieval of up to ten-minute videos as well as the much shorter Reels with a length of up to 15 seconds. To access video content from both Facebook and Instagram, an account with the respective platform is required.²⁸³

The A-VOD market also includes smaller providers, some of which focus on specific communities and serve them with selected functions and content. For example, Twitch and TikTok so far have only a small share of the A-VOD market but have great growth potential.

²⁸¹ cf. Joyn (n.d.). Welcome to Joyn.

²⁸² cf. Facebook (n.d.). Facebook Originals.

²⁸³ cf. Kinchin (2021): Instagram Reels vs IGTV: What's the difference?.

Twitch is mainly used for live broadcasting of e-sports and gaming content.²⁸⁴ Since the video streaming platform was founded in 2011, it has seen a strong increase in usage figures.²⁸⁵ Both streaming content and producing your own streams is free on Twitch. However, it is possible to support other users/streamers with a paid subscription (from a minimum of EUR 4.99 up to EUR 24.99 per month). A subscription to Amazon Prime is linked to the option of Prime Gaming on Twitch as Twitch is a subsidiary of Amazon. Prime Gaming offers, among other things, a freely selectable free channel subscription per month.²⁸⁶

The platform **TikTok** is known for short video clips (maximum three minutes) that can generate large reach in a very short time.²⁸⁷ After the merger of the apps Musical.ly and Douyin, TikTok was launched worldwide in 2018. Like Twitch, TikTok is characterised by rapid global growth and in 2021 was the 7th largest social network by users worldwide and 8th in Germany.²⁸⁸ In 2020, two years after its market launch, the platform already had more than 700 million monthly active users, including around 11 million people in Germany.²⁸⁹

Pluto TV is a free streaming service from the USA that has been part of the ViacomCBS media group since the beginning of 2019. Since 2019, the leading free streaming TV service in the USA has also been present on the European and German markets. In addition to the possibility of tuning into the current TV programme of major U.S. TV channels, Pluto TV offers a selection of series and films that can be watched on demand. The content is available free of charge as the provider finances itself through advertising.²⁹⁰

²⁸⁴ cf. ingame (2021): Twitch: Gaming, e-sports and live events – everything about the streaming platform.

²⁸⁵ cf. Gittleson (2014): Amazon buys video-game streaming site Twitch; twitch advertising (2021): Audience.

²⁸⁶ cf. Twitch Creator Camp (n.d.): Bits and Subscriptions.

²⁸⁷ cf. Tilman (2021): With TikTok, anyone can now create three-minute videos instead of 60 seconds.

²⁸⁸ cf. Hootsuite (2021): Digital Trends Report 2021; cf. Faktenkontor (2021): Social-Media-Atlas 2021.

²⁸⁹ cf. Sherman (2020): TikTok reveals detailed user numbers for the first time. CNBC; cf. Schasche (2020): Previously unpublished figures: This is how many users Tiktok has in Germany.

²⁹⁰ cf. Pluto TV (n.d.): About Pluto TV.