

Open letter to

Mr. Kevin Tsujihara

Chairman and Chief Executive Officer,
Warner Bros..
USA

Society for the Promotion of Film
Culture
c/o Werner Schramm
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Dear Mr. Tsujihara,

We are contacting you again to inform you that the letter sent to us by Herr Volker Modenbach, the Sales Director of Warner Bros. Germany (addressed to Werner Schramm of the „Verein Förderung der Filmkultur e.V., Höchstadt, one of the undersigned to this letter) is completely unacceptable. We place our trust in you, that under your guidance, the prediction made by Steven some time ago in San Francisco will not prove to be true.

“There are fewer and fewer executives who are in the business because they love movies,” Soderbergh said. “There are fewer and fewer executives that know movies. So [meetings] can become a very strange situation. I mean, I know how to drive a car, but I wouldn’t presume to sit in a meeting with an engineer and tell him how to build one, and that’s kind of what you feel like when you’re in these meetings. You’ve got people who don’t know movies and don’t watch movies for pleasure deciding what movie you’re going to be allowed to make. That’s one reason studio movies aren’t better than they are, and that’s one reason that cinema, as I’m defining it, is shrinking.”

Cinemas which are compatible with DCI also show full-fledged films

Herr Modenbach emphasised quite emphatically in his letter the entrepreneurial freedom in the marketing and distribution strategy of Warner Bros., which also applies for the supplying of films to cinemas. Of course you have the freedom to exclude cinemas from film supply. We have certainly never alleged that „there is discrimination by Warner Bros. in the supply of films from Warner Bros. based on a participation on DCI“.

It should be understood that we cinema operators and signatories to the letter we sent you dated 1st Nov. 2014 have also modernised our projection equipment to be digitalised in conformity with DCI. In this matter Herr Modenbach’s account is not true to fact. Furthermore, as explained in the following, we have a very satisfactory working relationship with German distributors such as Constantin based on the DCI compatible equipment mentioned in our letter. Why would you and your colleagues choose to be the odd one out?

It appears that Warner Bros. Germany is ignorant of the European custom of solidarity in such matters, a custom which is founded on diverse streams of traditions. Registered societies, i.e. those legally registered by the responsible district court, do not have economic goals, i.e. such societies’ aims are not materialistic. They are legal entities, subject to legally binding rights and duties. They can appear before a court either as complainant or as accused. A society is represented externally by its officers.

Herr Modenbach ought not to have been surprised that the signatories to the letter included operators of cinemas which have already installed equipment compatible to DCI. Incidentally, we have never claimed that there is a problem distributing digital copies of films to these cinemas, as the German Sales Manager implied.

Even if it does not suit US companies, in Germany the German rule of law applies and is also binding for the major film companies.

Our criticism is that the so-called major film companies, to which Warner Bros. belongs, have violated the principle of equal treatment.

Warner Bros. are doing business in Germany. As such, you ought to be operating here with some respect for the spirit of our legal traditions. Are the current business practices of the major film companies, which do not seem to be seeking a cooperative solution, to be seen as a warning of

what may be expected under a TTIP free trade agreement between the USA and the European Union? That would certainly be an additional reason for the non-governmental civil society to reject TTIP.

We wrote –

‘The A-cinema and AdMovie systems are based on a codec developed by the Fraunhofer Institute and the associated DCP-player. The German Fraunhofer Institute was involved in the development of the JPEG2000 file format and its application in accordance with American specification. Although the German institute played a significant role in the development of the file format JPEG2000¹, cinemas are being excluded from film delivery if they do not have equipment conforming to the American DCI standard.

The conversion to projection equipment which is exclusively DCI conform, based on American specifications, is restrictive to further application possibilities

Briefly stated, the letter from Warner Bros. German Sales Manager, Herr Modenbach indicates an extremely simplistic premise, namely „all facilities which have introduced DCI compatible equipment are cinemas; non conforming facilities are alternative forms of entertainment.“

Systems compatible to DCI are safe sustainable high quality systems

We are unable to comprehend why the so-called major film studios, including Warner Bros., continue to deny distribution of their film DCPs to us and other DCI compatible cinemas. In his letter of 11th February this year, Warner Bros. German Sales Director wrote:

„Unter anderem sollte es die umfassende Einführung einer digitalen Kinoausstattung fördern, die kompatibel ist und strenge ‚content‘-Sicherheit bietet.“ (Among other reasons, it ought to foster the comprehensive introduction of digital cinema equipment which is compatible and guaranteeing stringent security of the content“.

That is amazing! Precisely the version of the cinema playlist on the basis of the Fraunhofer-Player as used by us, but not only us, is compatible with DCI. This program was developed by the Leipzig Cinemathèque in cooperation with the Fraunhofer Institute.

This program receives its own server certificate, synchronised with the KDM-key, so that a film can be specifically converted into a coded format for the cinema playlist. The EASYDCP Player cannot open the DCP making an export of the films on the playlist impossible.

Tapping into the HDMI signals ist not worth the effort. In today’s world most of the mainstream blockbuster films are to be found in the internet, the picture material is frequently there before the release of the film in the cinemas; only the soundtrack is added punctually with the film’s release.

What should actually be demanded, is that the German Federal Ministry for Culture and Media cease its promotion of DCI. (especially in view of its obvious advantage for internet piracy).

Clearly stated, with A-cinema copying is not possible; it is not our goal to either allow that or to make it easier.

„With a digital film master the studios are able to produce as many copies as they wish with no loss of quality. Unfortunately for the rightful owner of the film, it also eases the illegal distribution through internet sharing networks. Music and copies of DVD films are particularly prevelant in these peer-to-peer exchange services.“¹

Warner Bros. Germany wrote:

¹ “The moving image technology department of the Fraunhofer Institute developed the test plan for the digital cinema, commissioned by the six major studios DCI, Hollywood. For the implementation and supervision of the digital Roll-outs in Germany, we work under contract to the “Filmförderanstalt” and in cooperation with the French “Commission Supérieure Technique de l’Image et du Son CST. The Fraunhofer IIS is a partner of and technology supplier to the Distribution platform for digital cinema DCP-Germany”

(<http://www.iis.fraunhofer.de/de/bf/bsy/fue/dcinema.html>)

³ http://de.wikipedia.org/wiki/Digitales_Kino#Datenformat

„Der Zweck der Entwicklung von DCI-Spezifikationen war und ist eine einheitliche, qualitativ hochwertige und zuverlässige digitale Kinoumgebung, die Lieferung und Vorführkonsistenz bietet.“ (The aim of developing DCI specifications was, and still is, to establish a standard, high quality and reliable cinema environment, as well as consistent supply and projection.)

Consistent projection quality and reliability are also an aspect of DCI compatible player systems, as good and reliable as the servers are. Who has forgotten the teething problems faced with the initial introduction of the technology? Even today, a server must occasionally be rebooted – technical problems that we didn't have with the introduction of 35 mm.

Optimal quality of projection and the associated investment in superior but affordable technology remains one of our aims. However that alone doesn't bring the patrons to our cinemas. Most important are good films, which the distributors must deliver.

However, we do need to face the question of the sustainability of today's DCI standard? There are numerous cinemas which, with subsidies from enormous schemes financed from taxpayers' money, have installed 2K DCI projection equipment. What will happen in 3-5 years time when the technology, standards, film production systems and player systems have developed further?

(e.g. 8K films which are already being made and 11.2 sound). The old systems may not have amortised, the subsidy programmes may have been terminated. Will these cinemas then be left out in the cold? Our system, in contrast, is secure and above all, flexible enough to be augmented, which, in light of the rapid developments expected in the IT area, is highly likely.

Perhaps an even higher projection quality than that of the DCI standard is also feasible in the foreseeable future.

The DCPs that support the DCI standard, are a subset of the formats that the A-cinema can show.

In the light of the rapid changes in the film world, we believe that a system is required which is flexible and capable of adapting to the various formats and demands made upon it. (director is present via skype, conferences, etc.). We do not believe DCI will satisfy these demands. The A-cinema which we use is already superior in this respect and can develop its lead.

Notable German distributors supply DCI-compatible systems without problems

Furthermore, we would like to quote from a c't article (22/2014) about Homecinema (that has many common features with A-cinema) that "heretically" states its qualitative superiority in comparison to movie technology – and this process will continue. This was predicted from our side at the beginning of A-cinema development – you don't have to be a prophet to do so. By the way we get films from NFP film distribution or e.g. "Wir sind die Neuen" without any problems from X-film distribution. So why not "Honig im Kopf" (Warner Bros.) as well? That is why your distribution policy and the partial insistence on so-called "security standards" is not comprehensible.

Commenting our letter to you Warner Bros. Germany further says: "Your letter does not only refer to Warner Bros. films. Especially you name a Universal film. We would like to ask you to note that Warner Bros. only comments its own position and its own films.

That is also astonishing. In November 2014 we wrote: DCI is an arbitrary regulation of US-American studios. Because according to the FFA "DCI-compliant cinema (implies) being up to the DCI system specifications (DCI-2008) and passing the DCI Compliance Test Plan (DCI-CTP-2007) with your equipment to be able to present Hollywood productions in cinema."

The European Union made clear in a statement where the alleged DCI-Standard comes from: "In 2002 the six most important US-Studios (US-Majors) started the so-called Digital Cinema Initiative (DCI) to determine the technological specifications for digital film distribution. These specifications were published in July 2005 and transformed into standards by the Society of Motion Picture and Television Engineers SMPTE. This implied a resolution of 2048 x 1080, known as 2k (4096 x 2160 or 4k for screens with more than 15m), and JPEG 2000 as compression format that was supposed to give digital cinemas the possibility to provide to the audience a better movie experience via forthcoming technologies (HDTV-release, Blu-Ray, and Video-on-Demand). These specifications also comprise security parameter (an important expense factor concerning the equipment). The ISO in Geneva is considering to adopt those as voluntary international norms."

As can be seen in the letter of the European Commission the digitalization of European cinemas has been enforced in connection with the six US-Majors. So it seems plausible to classify Warner Bros. into the context of the other Majors. We repeat: Incomprehensibly, those US-Majors exclude cinemas from supply that can show films DCI-compatible, even – as shown in our letter to Universal – from licensing of a Blu-Ray version.

The DCI-compatible system of the A-cinema has become a standard in Germany

It has to be stated that DCI has come into this position by the promotion of the German BKM (Government agent for culture and media) and the market position of six Hollywood enterprises. Moreover, DCI is only standard for a certain segment of the market, namely “blockbusters” created in Hollywood. As already stated, German distributors generally do not insist on that “standard”. The German federation of communal cinemas even recommends A-Cinema.

Apparently that information hasn't come through yet: A-Cinema has reached marketability in Germany and is being used in wide parts of cinema business, especially in smaller cinemas (Programmkinos) that can't afford DCI-conform facilities.

Already in 2012 one could read: “Already today in Rheinland-Pfalz (Rhineland-Palatinate), where I come from, and in East Germany there are regions where in the vicinity of 50 kilometres no cinema can be found. If there are no other solutions than the DCI-Standard we will soon get large blank areas on the “cinema map”. A-Cinema from Leipzig is offering such a solution and is efficient. Written for Windows 7 with 64 Bit the software can decode a JPEG2000-Film with up to 250Mbit/sec.

The Sales Manager Germany insinuates: “...is it wrong to maintain that cinemas had to be closed because of DCI-specification or by collective behaviour of studios like Warner Bros.” We have never claimed that, but we wrote in a differentiated way:

“Especially in rural areas cinemas had to close that could not afford a DCI-conform facility. In addition to that sponsorship guidelines could not be reached by smaller institutions often run on a voluntary basis. The dying of cinemas on a wide scale is terrifying.”

The A-cinema and the AdMovie Server are an important alternative. The distribution modalities are arranged with various German distributors without any problems, also with contract. Thus the discrimination by the US-American studios that we experience at the moment seems for us to be a violation of principles of equal treatment (misuse of a dominant market position). Those studios supplied us without any problems in 35mm-times.

The letter of the German Sales Manager seems to follow a simple logic: all cinemas that have adapted to DCI are “cinemas”, all those that have not are “alternative places that show films (alternative Spielstätten). That is one way of arranging reality. As it sounds rather strange to write: “Many of the other cinema operators listed in your letter, like Gesellschaft zu Förderung der Filmkultur (Höchstadt), Steinhaus (Bautzen)...or Kommunales Kino (Weimar) are no conventional cinemas.”

Come back to our traditional trustworthy mode of business relationships

In „good old Europe“ we have a long tradition of state social welfare. This intermeshes with a well established system of societies and associations which may apply for legal recognition as non-profit organisations working for and dedicated to the general wellbeing of the community. This principle applies to the municipal cinemas set up by local authorities for their citizens. We can understand that this principle clashes somewhat with the American economic philosophy of free trade without any form of state control. In Germany the concept of solidarity is welded in the Federal Constitution – Article 14.2 „Property entails obligations. Its use shall also serve the public good.“ This principle is enhanced by the ideas entailed in cooperative organisations and direct democracy. We Europeans insist upon our right to nurture our culture, even in the situation where it appears uneconomical to do so. That is the reason our economy on Germany is based not on free competition but on the tradition of „social market economy“.

You will appreciate, that in this framework, the following standpoint expressed in the letter we received from the Warner organisation, is completely alien to our basic purpose. „... *you show films in a non commercial area, of interest to particular fans and communities. We understand that such cinema operators are not interested in investing in digital technology*“.

It ought not to be necessary to remind Warner Bros. Germany that the commercially run cinema „Kino in der Schauburg“ in Zella-Mehlis, on the basis of four Admovie-units using Fraunhofer-player, was given approval for an upgrade recognition by Warner Bros. – for the films ranging from „Schutzengel“ to „Hangover 3“. Herr Modenbach ought also to be aware that Admovie equipment is compatible with the DCI system.

The film „Traumfrauen“ was converted by the Hellinger / Doll Filmproduktion GmbH with Warner Bros. as coproducer and distributor. The project was subsidised with 500,000 € by the Medienboard Berlin-Brandenburg, the film promotion board of the states of Berlin and Brandenburg. The executive director of the Medienboard, Frau Kirsten Niehuus, was also the deputy director of the German Federal Film Board (FFA) as well as the German representative on the European Film Promotion Fund Eurimages (Film Promotion Fund of the European Council). „This non-profit organisation is also often active in promoting the distribution of European cinema films abroad, provided the MEDIA programme of the European Union does not exercise its primacy“.

Frau Kirsten Niehuus „is a member in numerous committees, among others the ZDF-Television Council, the Advisory Board to the German Film Promotion Fund (DFFF), the shareholders board of German Films and is on the Board of Trustees of the Berlin Film University (dffb).“ As such, it is not surprising that public funds are channeled into private enterprise. Again it is to be noted that cinemas which are not prepared to take the financially devastating risk involved in acquiring systems compatible with DCI are being excluded from the delivery of films, including those which have been subsidised with public funds. This stands in contradiction to the statement made at the Berlinale by the EU Commissioner Günther Oettinger *„To a European digital society belong European content, films, music, videogames, i.e. European historical and cultural values, which can transcend borders very easily using digital distribution [...] We must take the responsibility to see that the content, i.e. films, TV programmes [...] actually reach the European public and are available in the whole of Europe“*.

So we appeal to you, as a representative of the so-called majors, to release your productions for systems compatible to DCI.

Finally we would welcome a cooperation with the so-called majors to foster a traditional element of the US culture, viz. the compromise.

We would like to add that we have a sense of injustice when we see a cinema such as „Schauburg“ showing films with DCI compatible equipment, while other cinemas with Admovie are denied delivery. Warner Bros. claims, as does Universal too, that the technology is obsolete, and refuse to deliver to the small cinemas which cannot afford the upgrade of equipment. A refusal which also encompasses films sponsored with public monies.

In contrast to America we have in Germany constitutional legislation which guarantees the principle of nondiscrimination. We are considering the use of this right to press a charge under the antitrust law against the so-called major film studios. It is unlikely that the court will accept a plea from Warner Bros. that their distribution practise is independent of the other majors. The majors have jointly presented the European Union with a specification of a so-called „standard“, comprising a simple computer with software and hardware components, designed to inhibit the playing of a film. This form of security is already available elsewhere.

There are still many distributors in Germany who neither demand this form of security nor in fact make any use of encryption. As in the era of 35mm film it remains a matter of business ethics and mutual respect and trust. This form of business ethic, developed and nurtured over decades, was unilaterally dismantled by the majors and without necessity. Why will you not reconsider. A general distribution of films starting six weeks after their initial release would be sensible, possible, and bring additional revenues from the small cinemas.

We are not prepared to accept the end of film culture in Europe. Should you not be prepared to change your current attitude, then we will continue to work, but without showing films distributed by the American studios. That will leave us free from the constraints of a costly and

rigidly fixed system, as specified in the DCI standard, and allow us to operate with a freely configurable system such as the A-cinema.

Sincerely yours

Werner Schramm

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