



*A contribution from Video Networks Limited to the public consultation on the revision
of the TVWF Directive and the Issue Paper on
**Cultural Diversity and the Promotion of European and Independent
Audiovisual Production***

1. Introduction

Video Networks Limited (“**VNL**”) welcomes the opportunity to comment on the TVWF Issue Paper on Cultural Diversity and the Promotion of European and Independent Audiovisual Production (the “**Paper**”) and the proposed review of the Television Without Frontiers Directive (the “**Directive**”).

VNL is a broadband platform operator, which supplies a new DSL-Cable service banded ‘Homechoice’. Homechoice offers a combination of digital television, broadband Internet access and voice telephony services. Its digital television service includes over 80 free and pay, live, replay and on demand television channels. The on demand channels provide access to feature films, television programmes, music videos and public information services.

Homechoice is supplied to customers via Digital Subscriber Line technology using unbundled local loops on BT’s Public Switched Telephony Network. To date, VNL has received inward investment of over £200 million to support the development of its technology, service and network to produce a truly innovative product offering. VNL launched its services in May 2004 in the Greater London area and is now available to approximately 2.5m homes across Greater London. VNL intends to expand its footprint to other regions in the United Kingdom in the months ahead.

VNL is a member of the Association for Television on Demand (“**ATVOD**”), the self-regulatory body for television on demand services in the UK. As an ATVOD member, VNL has signed up to the ATVOD Code of Practice, which is based on two core principles: first, that members must assist consumers with their efforts to protect children and young people from unsuitable content; second, that members must provide adequate information and guidance to consumers to enable informed selections of content and commercial services. VNL reflects those core principles by providing a range of access control mechanisms - including personal identification number (PIN code) protection and, where appropriate, content watershed rules and other point of sale limitations - that enable its customers to restrict the access of minors to harmful or unsuitable content.

2. Comments on Issues Paper: Commercial Communications

Issue 1: Non-linear services

Consistent with its view on Material and Territorial Compliance (articulated in its response to the relevant Issues paper), VNL does not believe the case has been made for an extension of the Directive's regulatory burden to 'non-linear' services (to use the Paper's terminology).

VNL agrees with the Commission's Impact Study conclusion: "that non-linear services are increasingly offering audio visual content with high potential as to market shares and profits". However, the non-linear market for television and film production has yet to achieve significant economic scale in any European nation.

The Paper discusses the possibility of the new services making a 'contribution' to the promotion of European works, possibly in the form of indirect taxes as production investment or in the form of content quotas.

Unfortunately, the Paper does not discuss or acknowledge the important phenomenon of the non-linear environment that is known as 'long-tail' marketing. This is where significant sales are achieved from lesser-known material which, inevitably, includes works that would not normally get air-time on linear television networks. The long tail approach is only possible because the commercial, technical and operating architecture of the non-linear environment is one which is no longer limited by its 'shelf-space' and can thereby profitably offer a much more diverse range of content.

Furthermore, the architecture of content-on-demand services facilitates a less imperfect operation of free market economics than has been possible with linear broadcast channels. Content-on-demand service providers are better able to make available niche content to consumers, and are likely to do so where consumers demonstrate a demand for such content. In the absence of such a demand, content mandates such as quotas will artificially inflate the market for European content rather than reward its producers for their successes in producing compelling content.

VNL believes that the imposition of constraints on the trading structure of the non-linear market would therefore be counter-productive because:

1. It is premature to consider such measures at a point when the non-linear content industry has yet to take a tangible or stable form.
2. It would risk stalling market development of the non-linear content industry when a growth in distribution formats and market reach will be the most helpful outcome for the European production community. This will allow new routes to market around the large incumbent distributors.
3. It would apply artificial stimulants to the production community when it ought to be focusing on understanding the true nature of the new environment.
4. It could introduce a business critical burden to the new industry in Europe which would allow non-EU competitors to operate at a significant advantage and thereby appreciably reduce the attractions of operating services within a legitimate environment such as that offered by ATVOD.

Issues 2, 3 and 4: Encourage the production and distribution of European co-productions

VNL does not wish to comment on Issues 2, 3 or 4.

3. Conclusions

VNL is concerned that the creation of a greater centralised regulatory burden will, in fact, be counter-productive and will destabilise the environmental conditions for growth that have now been established. Service providers and their investors require flexibility to respond dynamically to the uncertainties they face. VNL believes that the proposals contained in the Paper, and the review of the Directive more generally, might restrict the ability of such service providers to adapt swiftly to secure their futures.

VNL asks the Commission to re-examine the merits of its proposed review of the Directive. It suggests that there is no current need for an extension of the regulatory burden to nascent content-on-demand services and believes that, to the extent such services operate within a regulatory vacuum, that vacuum is increasingly being filled by self-regulatory organisations propagating rational, proportionate and bespoke regulation.

To the extent that the Commission maintains its interest in extending the Directive to 'non-linear services', VNL urges the Commission to carry out a thorough impact assessment of the effects such a regulatory regime would have on all affected industries, including the content-on-demand industry in particular. VNL requests that such an assessment is carried out before the publication of a draft revision to the Directive and postulates that such an assessment will identify the likelihood that an increase in the regulatory burden proposed by the Commission will have a chilling effect on service evolution and deployment, disadvantaging business and the consumer alike.

VNL is looking forward to constructive dialogue with the Commission on its proposals for the Directive, particularly in relation to content-on-demand services.

Video Networks Limited
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