

The following is a response by Professor Robert Beveridge of the University of Sassari, Sardinia to the questions raised in the EU Green Paper COM (2013) 231 - Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values

#### 1 and. 4US penetration and AVSMD

The factors which enable US companies to establish a successful presence are to do with the global importance and penetration of English as a dominant but also a second language for many, especially in business and via cultural products. This is built upon decades of consumption of music and film by consumers in and across Europe.

One solution would be for the dubbing of EU media products into the English language. In the UK, for example, there remains resistance to watching television programmes with sub titles, both for cultural and technological reasons. Despite the larger sizes of televisions, the sub titles are not so easy to read as in the cinema per se.

Therefore the EU should, in its next media programme, facilitate the expansion of the 'dubbing' industry. There will be political and cultural resistance to this. Understandably so. Why devote scarce resources to dubbing into English when minority languages such as Gaelic would benefit even more from investment into making their media products more available. There is also the question of further enhancing the dominance of English as a language.

However, if we go beyond this to the business case and also the policy objective to enable the culture and perspectives of other countries to be communicated, we see that a little might be better than being entirely purist.

If a television programme from Estonia or Portugal can be more widely viewed - albeit dubbed into English and losing some but far from all of the perspective, and moreover seen in , Italy or Poland - then there are cultural, economic and democratic gains to be secured.

#### 2 and 4

##### Premium Content and AVSMD

It is vital that the Listed Events system is renewed and strengthened. Of course this is but one sector of premium content but it is clear that legal and other challenges from such as News Corporation will chip away at the viability and legitimacy of the need for Listed Events. Moreover, as UK experience demonstrates - for example in the sport of Rugby, the sports authorities themselves can take a financial rather than social or cultural or public service view of their responsibilities.

For example, the English Rugby Union sold the rights to games at Twickenham to BSkyB leading to a position where, as a Scot, I have to buy a subscription to SKY tv if I want to watch my country competing against England in London. If the match is in Edinburgh, I can watch on free to air terrestrial television.

The same problem obtains in football but even worse as the games can be in Scotland.

The UK government commissioned the Davies Report which did recommend that games involving the national team should be on the Listed Events system but the UK government has shelved this report. The EU should take a lead in strengthening the framework and support for Listed Events and subsidiarity notwithstanding, should ensure that events involving national teams are designated as cultural rather than commodities.

3

News Corporation should not be allowed to remove channels from its satellite platforms without full regulatory approval which takes into account the public interest. Similarly, given the extent to which viewers watch PSB channels such as the BBC via their platform and thus form part of the value of bundles sold to subscribers, they should pay these broadcasters a fair fee in return for being allowed to carry these channels.

4

AVMSD

See above

There also needs to be clear legal and political and regulatory support for public broadcasters per se as well as the values of public service broadcasting as a whole

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Although it is clear that new entrants such as Netflix with House of Cards will contribute to landmark and other zeitgeist style content, the next decade or so will see a continuation of the current patterns of some dominance by established players in linear broadcasting of day to day programmes with an emphasis on evening prime time. Fragmentation will continue with the long tail of digital channels or Internet TV having many offerings and comparatively small audiences.

Given the global size of Disney etc, it is important that the EU helps co-productions across Europe and/or within national boundaries to enable partnerships to achieve some economies of scale in cultural production

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Yes

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Each new communication technology requires the negotiation of a new settlements and business rules between a variety of stakeholders who will often have conflicting interests. What is vital is that the values and strengths of the history of public service broadcasting are renewed and applied to the new communication technologies. It is invidious if an economic and cultural playing field is not level but we need not to level down but to level up in terms of maintaining media regulation in the public and economic interest despite the calls by such as James and Rupert Murdoch for neo-liberal non or de-regulation.

8

Preserve some allocations of spectrum for public service broadcasters which are as important to the democratic and cultural health of a society as the security services which also have designate allocations. Do not adopt what may be the UK/OFCOM approach and choose to auction all spectrum apart from military etc and take money away from investment in content

Remember to maintain analogue spectrum for FM radio which remains viable for the foreseeable future. Switch off for analagie radio seems to be against the public interest

9

No comment

10

Apply existing and renewed PSB criteria and obligations to non - linear services. As Alexander Orlov would say simple(s)

11

Yes

But co regulation can be a euphemism for light touch or no regulation at all. The EU and Media regulators in and across the EU need to have more confidence in their right to regulate in the public interest.

12

If we stay with the media service providers principle and approach, then that should be sufficient to address the country of origin issue given moves towards harmony of media regulation across the EU.

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> There will always be a tension between those who see the media as commrce and those who value the cultural, social and democratic aspects. The EU needs to deal with each issue on a case by case basis.

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More conferences and co- ordination of media literacy and education initiatives. The creation of an EU course in media literacy would help as well as targeting investment into teacher training and career opportunities and advancement in media education in and across the EU and national education systems

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Yes

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Yes

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What is vital is that the principle of ensuring that the EU upholds the rights of the viewer or listener to know the agenda of the source/ communicator at the time of consenting to the communication. Warning labels stating that the following contain commercial messages or advertising/ marketing are the minimum we should adopt.

18

The example of the UK Advertising Standards Authority co-regulating or on behalf of OFCOM seems to be a successful model for this form of media regulation

19

The viewer or listener or consumer

20

No more needed and revised and applied with more rigour

21

Marketing and also installing in all new computers/ software with a default position which means owner has to switch off rather than switch on

22

Difficult - but where relevant, require pin numbers associated with identity or other cards.documentation eg driving licences etc

23

Yes and soon

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Yes and current complaints mechanisms vary from country to country and platform to platform. EU to sponsor research into models of best practice. I myself would be interested in bidding for this.

25

See answer to 24 above

26

Yes

27

Financial support/ PR reputation via an annual award for the best initiatives.

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## **Consultation Response**

### **Preparing for a Fully Converged Audio Visual World: Growth, Creation, and Values**

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Dear DG Connect,

The questions posed in the green paper with which you launched this consultation clearly outline the significant policy challenges that stem from convergence. Many of these arise from the very basic issue of how to define and delineate - if at all - the markets that should be regulated. Broadband companies are competing with broadcasters in the market for premium content, newspapers are producing and distributing online content akin to broadcasters, while other internet based companies are competing with both. As the green paper acknowledges, though in various ways markets are converging, the European market for audiovisual media services is hardly a single and common one, particularly in terms of the production and consumption of content. This has posed a serious challenge to one of the aims of EU policy in this sector since the 1989 TWF Directive: to compete more effectively against the US production and distribution industries.

My concern is primarily for the preservation and ideally growth of European content production because of the important role audiovisual content plays in the lives of Europe's citizens – as space for political discourse or the negotiation of social and cultural norms and values, as well as for the development of national and European identity. My response therefore focuses on those questions that I find relevant to this concern and I draw particularly on research I have done in media systems in small states.

#### ***1. What are the factors that enable US companies to establish a successful presence in the fragmented EU market despite language and cultural barriers, while many EU companies struggle? What are the factors hindering EU companies?***

There have a several notable successes in terms of European works crossing outside their original national borders and sometimes even across the Atlantic in the past several years. We all know the bunch of popular entertainment formats that came out of the UK or what used to be the Netherlands' Endemol. We can list the Scandinavian crime series, *The Killing* and *The Bridge* and RAI's *Il Commisario Montalbano*, ITV's *Downton Abbey*, the BBC's *New Sherlock Holmes*, and a few others, including several Spanish made series popular across the Atlantic. However the fact that it is pretty easy to come up with the list of these successes is a sign of the fundamental barrier that European producers face in competition with the Americans: size.

The population of the EU is more than twice that of the US, so why is it that all put together into the single market can production in Europe not compete with that of the

US? Essentially it is because for audiovisual media the market is not put together, nor in the interest of national identity and cultural diversity would anyone want it to be. Most European companies still focus their production on national markets, a lot of which is not transferable easily into other national contexts. News magazines, morning programmes, talk shows with politicians or local elites and celebrities from Portugal are not going to be interesting to audiences in Slovakia. The kind of content that crosses borders is the big budget, relatively high production value dramas or soap operas and occasionally documentary programmes. (The exception to this is the entertainment formats, which I will return to below.) National audiences do watch the nationally specific and not so exportable content, so producers – many of which are also broadcasters – are going to continue producing this. This kind of production is necessary at the national level and is the bread and butter of each national industry, forming the base of income and brand establishment that allows for investment in more transferable types of content. In many European countries the base on which the content production sector stands is very small, and therefore the amount they have to offer beyond their borders is small. The base to transferable content ratio may be similar in the US, but in the US the size of the national market is so large that there is a massive amount of transferable content produced, from high quality premium content drama to cheap sit-coms.

Advertising budgets are spent based on audience data measured nationally. Advertising dependent broadcasters, which include some PSBs at least partially, must prioritise their national markets. Slovakian or Slovenian, Finnish or Flemish broadcasters have to first serve and appeal to their national audiences and be popular in the national ratings upon which their advertising budgets depend. The chances that the broadcasters in these small countries with unique languages will have the capacity to produce much content of the level of quality and generalizability to cross borders are slim.

A few things can be learned however both from the US and from the handful of successes that European producers have had.

Investment in content by networks and non-advertising dependent providers – In the US some of the most prominent investors in premium content that is exported to Europe are cable networks that started out by offering re-broadcast specialized content and generate income from subscription. In Europe this kind of investment has been slow. These same channels that come from the US are also re-broadcast and have subscribers in Europe, but Europe also has some of its own who should be encouraged to invest in content, perhaps even in collaboration with broadcasters. As more and more content is provided on various platforms, network operators, those who traditionally fall into the telecommunications sector, can be encouraged or at least not stopped from investing in content. This will likely require re-assessment of how markets are defined for competition purposes and serious consideration of how public interest obligations might be allocated in light of these new definitions.

Investment by and collaboration among PSBs – In many of the examples in which European content has been successful across Europe or even in other countries, public service broadcasters have played a significant or sole role in producing or commissioning. In most countries they remain the main providers of audiovisual content, and PSB is the most important resource that Europe has to draw upon for

content creation. Most of them do not have the capacity of the BBC or even RAI. The successful Scandinavian crime series are excellent examples of cross-border PSB co-operation. This kind of co-operation should be encouraged. Digital technologies make offering content in multiple languages much easier, so such co-operation does not have to be limited to areas of linguistic similarity. Because of the increasing number of channels and options for consuming content on various platforms advertising-dependent producers will be increasingly squeezed financially. As the UK House of Lords Select Committee on Communications found in [its report on convergence](#), in the converged environment PSB will become more important, especially in producing quality content. PSBs could also be encouraged to foster partnerships with network providers and others providing on-demand or mobile services, if major operators in those markets have public service obligations as well based on position or market share. A more versatile role for PSB in terms of entering into innovative partnerships and ways of supporting and distributing content should be allowed in the context of competition rules. In the past the Commission's approach has been to reign in PSBs that want to invest in new media and online content and this approach should be changed. In most cases PSBs should not be charged for carriage by network operators and instead should be encouraged to work with operators on innovative ways to invest in and distribute quality European content.

Spreading inexpensive replicable formats – The phenomena of entertainment formats has been well studied and has been said by some to represent a trend towards globalisation and commercialisation of content (see the work of Andrea Esser, for example). Celador's *Who wants to be a millionaire* and Endemol's *Big Brother* were some early examples and there are now a glut of cheap to produce, easy to localise, and relatively culturally generic formats that have spread both directions across the Atlantic and around the world. Whether or not these are really "European" productions can be debated, and they may not have the cultural and social value of French art cinema or high-end documentaries. However they do make money for European producers that can then be used to strengthen the industry. A challenge for EU assistance programmes such as the MEDIA programme, might be to identify and support ways to use the 'format formula' of creating cheap and easy to localise formats that also fulfils some public interest or offers some European value and quality.

In general most European content producers will not be able to compete globally with those in the US or even in India and Latin America in terms of quantity. There will probably always be an imbalance in the content flowing into Europe from across the Atlantic, especially in light of convergence. European policy should focus less on protection from other content and more on supporting the creation and production of content within Europe. Broadcasters and others providing on-demand content will continue to need a mix of high quality programmes that boost their brands' standings and potentially be hits as well as some cheap to produce or procure, rating-getters that will bring them easy advertising income. To fill both these needs European policy should focus on encouraging more collaboration among content producers, and investment from those in the audiovisual media sector that have revenue streams from other sources and may not yet be investing much in content.

***4. Do the current AVMSD requirements provide the best way to promote the creation, distribution, availability and market appeal of European works?***

No. The quotas are not achieving their aims and they are difficult to implement and enforce, even in traditional linear broadcasting. A serious re-evaluation of these quotas is needed in the process of revising AVMSD.

Encouraging cheap national content – As the green paper points out European works quotas are mostly filled by national content and therefore are not promoting the distribution of European works. I have done research on the implementation of content quotas in some of Europe's small states. I found that European quotas and those for national content seem to encourage the presence of the national languages to be broadcast, which, for example, was in the Republic of Slovenia a primary concern because high levels of fluency in English and Yugoslav past mean English language channels and content from its larger neighbour Croatia are very popular. This is a legitimate concern, but does not promote the distribution of works within the European single market, because it has detrimental consequences for quality. Policy makers and regulators in Ljubljana expressed concern that the 50% works quotas were difficult for their broadcasters to achieve, however those who I interviewed from broadcasters said that it was not too much of a challenge because Slovenian content counted and that could be produced pretty cheaply. One station manager admitted that in order to fulfil the independent production quota, he simply traded programming with another broadcaster, rather than pay to an independent production company. In the Republic of Macedonia, which although it is not an EU member as a candidate country has had EU works quotas in place since 2005, I conducted a content analysis on quota compliant content and found an abundance of studio-based talk shows, a significant portion of which was political. One person I interviewed within the regulator explained that “fulfilling the quota is easy: you and me sit in a studio for an hour and chat.” This is not the kind of content that will be transferable to other European countries (see answer to previous question). Nevertheless producers in one of the national broadcasters admitted that they usually fulfilled the requirements for national content (30%), but probably did not often manage the European 50%.

Implementation and enforcement are problematic – In both Slovenia and Macedonia it is hard to tell the extent to which broadcasters actually comply with the European quotas because reporting is sporadic. In both cases those in the regulatory authorities explained that it was difficult to get the stations to fill in the extensive forms required to report on annually broadcast content and that it represented significant burden on their limited resources to calculate the quotas for the year and check these reports. Even national and regional stations in these countries are relatively small operations, with the exception of CME-owned ProPlus in Slovenia. One television manager in Slovenia complained that he had to dedicate one staff person for at least an entire week to do the reporting, which for the size of his operation was problematic. In both cases the national quotas that were based on daily percentages were described as easier to monitor and enforce, primarily because the regulator could do so without depending on the broadcasters. They simply recorded 24 hours of a channel's output and calculated it themselves. For broadcaster and regulators in these small countries the European quotas presented a problem for implementation at least partly because they are annual quotas.



Despite these findings I do not suggest doing away with quotas entirely. They do seem to at least encourage domestic languages to be present on air, which for many of Europe's smaller countries can be an important policy goal. I recommend lowering the quota and setting some more precise criteria for the kinds of content that qualify for the quota. I also suggest making it daily or weekly, a period that can easily be measured by regulators alone without having to rely on reporting from broadcasters.

In small markets such as these and many others in Europe what is needed to increase the production, availability and marketability of their productions is increased capacity. The current AVMSD give the option of the independent production quota being implemented as 10% of annual broadcast programming or 10% of annual programme budgets. The first option is easy for broadcasters to circumvent, particularly if the country has been a bit vague in its application of the definition of "producers independent from broadcasters". The Commission should consider allowing only the option of 10% of production budgets and should give clearer guidance as to defining both independent production and production budgets. Because in the converged world the budgets of advertising dependent audiovisual media services, mainly traditional linear broadcasters will be increasingly stretched, obligation to invest in independent production could be applied also to those supplying on-demand content and other services – perhaps as a percentage of content procurement budgets. States could also be encouraged to offer incentives for media service providers that exceed quotas. Such measure may help to develop the independent production sectors in small countries particularly the new member states.

The EU's MEDIA programme provides a very small amount of support, much of which goes to subsidise productions in the larger European states. According to those interviewed in Slovenia the programme's requirements make it very difficult for independent producers in small countries to apply. As I mentioned above, the EU's focus should not be on trying to compete with the US, but on boosting European production and distribution of quality content. This means helping to increase the capacity in smaller countries and support them to produce content for their national markets and ideally for export. The MEDIA programme should be expanded. Efforts should be made not just to support potential hits from large producers in large countries that can go head to head with US premium content, because that battle will not be won. Instead it should aim to increase capacity and production in Europe across the board.

***5. How will convergence and changing consumer behaviour influence the current system of content financing? How are different actors in the new value chain contributing to financing?***

The first part of this question is very difficult to answer beyond citing some trends that seem already evident in the current environment. Advertising markets are fragmenting and although linear television is far from dead, evidence suggests that it will become less dominant as younger generations already show less inclination to watch it than older ones. Consumers are quite happy to pay for subscription services, whether its cable television or Netflix and Spotify. Paying directly for individual programmes or music downloads is also common. This creates a very complicated situation that I hope others responding will approach more thoroughly. I will just

point out two issues that I think should be addressed in terms of contribution to financing content.

As the penetration of subscription services through IPTV and cable expand rapidly, in Slovenia more than 80% in 2012 according to the SEE DigiTV project, broadcasters will be in an increasingly disadvantaged position vis a vis these operators. Must-carry obligations are currently allowed by EU rules, but content is value and subscription-based services offering packages that include the programmes of linear broadcasters, especially PSBs, should not charge broadcasters for re-transmission. This will take precious resources away from investment in production. Some basic principles should be set down and co-ordinated with competition rules to ensure that this relationship does not end up taking money away from production, and instead perhaps even encourages subscription service providers to contribute to production of content.

On-demand or other services that rely on the economics of “the long tail” and increasingly fragmented markets of diverse consumer tastes operate on very small margins, generally with little money flowing back in a manner that could finance production. Netflix’s recent investment in its own production is welcome. Having established an audience base through its use of a massive archive made available to a massive audience at low prices, it might be able to capitalise on this and turn it into the kind of mass audience and collective viewing experience that premium content from major broadcasters enjoy. Whether or not it can generate enough revenues to invest in further high quality content is yet to be seen, however it is a model that is worth paying attention to. This does not have to be left to commercial enterprises from the US. Collaborative efforts by the EBU or ACT to make use of their content archives in similar ways might also generate revenues that could go back into content production.

**European Commission**  
**Directorate- General for Communications Networks, Content and  
Technology**  
**Unit G1**  
**Office BU25 05/181**  
**B- 1049 -Brussels**

*Lo scrivente Fulvio Fiorentini, Segretario Amministrativo della Sez. Prov.le di Viterbo di Italia Nostra Onlus (leg. ric. DPR 1111/58; ric. dal Min. Ambiente L. 349/86), residente e domiciliato a Civita Castellana (VT)-ITALY, disoccupato dal 2008 e contribuente/abbonato al servizio radiotelevisivo pubblico RAI,*

**RICHIESTE/PROPONE**

*di approvare una direttiva europea che preveda l'assenza di rappresentanti politici ai vertici delle reti pubbliche radio-televisive, al fine di rendere ai cittadini un servizio libero, apolitico, apartitico, tecnico, oggettivo, di qualità.*

*Quindi, al posto dei membri rappresentanti politici ai vari Consigli di Amministrazione e Direttivi, occorre prevedere la composizione dei suddetti di rappresentanze degli uffici tecnici dei rispettivi Ministeri e delle varie istituzioni ed associazioni nazionali di tutela degli utenti/consumatori, culturali e di protezione ambientale (legalmente riconosciute).*

*Ciò razionalizzerebbe maggiormente le spese e gli investimenti delle reti radio-televisive pubbliche, facendo aumentare i risparmi e contemporaneamente offrendo una migliore qualità dei servizi/programmi.*

*Cordiali saluti.*

*Civita Castellana, 06.05.2013*

*In fede: Fulvio Fiorentini*

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Dear Sir/Madam,

With respect to the paper 'Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values' I have a couple of comments that I would be most grateful if you could seriously consider.

The first of these concerns Question 20: Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?

I am aware that what is predominantly referred to here pertains to the nature of content and the control of that content for minors. However I would like to suggest that as an initial question, we should first be asking whether audio visual content aimed at minors is appropriate at all, via wireless devices, especially mobile phones. Given the growing amount of research which clearly shows that EMF has a potentially devastating effect on children after chronic long term exposure (e.g. in children who have been exposed to EMF such as wifi, mobile phones and base stations throughout their childhood and into early adulthood) surely this is a question which should be being considered seriously by the EU as part of the Precautionary Principle. More and more scientists and doctors (for example the International Doctor's Appeal. <http://freiburger-appell-2012.info/en/home.php?lang=EN>) are calling for a precautionary approach and for detailed, objective and independent research into the potential damage that can be brought about by long term chronic exposure to EMF's, especially to children (such as wifi in homes and schools or more recently exposure to the particularly aggressive TETRA system of masts for example). As we know, children's skulls are thinner and softer than adult's meaning that far more harm can potentially be caused. Also the fact that cell division is still taking place at a great rate leave far more room for genetic mutation to occur. Amongst others, I would point you to the collective work of the Bioinitiative Report 2012 - particularly section 12, The report 'How Susceptible are Genes to Mobile Phone Radiation' by F Adlkofer, Igor Belyaev Karl Richter and Vladislav M Shiroff, The Hyland Report, and The World Health Organisation who classify research into children's exposure to EMF as High Priority (<http://www.who.int/peh-emf/research/children/en/index.html>). Since there has not been time yet to assess exactly what (increasing) chronic exposure to EMF will do to children growing into adulthood over the time period of 10 to 20 years, this should absolutely be a case for the precautionary principle. So in answer to the question 'are minors being protected by the EU in a converging media world?' I would suggest that the answer currently is 'not at all sufficiently'.

26: Do you think that additional standardisation efforts are needed in this field?

As an over-arching set of standards pertaining to this area, if they are to continue to be used as the prevailing standard, the ICNIRP standards which only deal with short term, thermal effects of EMF should be urgently updated to include chronic, long term effects and non thermal effects, especially in the case of children's exposure to EMF. Ideally new, more relevant standards would be devised. Additionally the precautionary principle should be adhered to in the case of exposure of minors to EMF. This is critical not only to safeguard today's children from short term effects such as learning difficulties and sleeping problems etc but to protect against the potentially very damaging situation of a sick generation in 20 years from now (and of course the associated potential costs for the EU).

I do understand that this feedback is slightly more high-level than perhaps might be expected in response to this particular green paper, however I believe that these over-arching preliminary

questions must be addressed, and urgently, if the current generation of children are to be protected in any kind of meaningful way. It is interesting that the title of your paper contains the word 'values' and this is exactly what I think should be addressed by the EU as a matter of high priority. What are the values that the EU wishes to endorse with respect to the safety of children in this instance?

Thank you for considering this feedback.

Kind regards,

Catherine Pennington-Meyer, MA, Msc

## Graham Smith – Response to European Commission “Fully Converged World” Green Paper

“15 years ago, in December 1997, we at the Commission published a Convergence Green Paper. We said:

“... the Commission's Communication on electronic commerce ... proposed the principle of 'no regulation for regulation's sake'. This principle applies equally to all areas of convergence.”

We tentatively suggested five key regulatory principles that should govern our activity in the field of convergence. They included:

“Regulation should be limited to what is strictly necessary to achieve clearly identified objectives.”

Of those five regulatory principles that we suggested in 1997, this remains the most important. We observed then that:

“public authorities must avoid approaches which lead to over-regulation, or which simply seek to extend existing rules in the telecommunications and media sectors to areas and activities which are largely unregulated today.”

The Commission recognises that the pursuit by government of general policy goals – such as media pluralism, cultural diversity, protection of consumers and minors, media literacy – carries with it the potential for unintended consequences and regulatory failure and to undo the general good that comes from freedom of private action. The Commission appreciates that government failure is a more significant risk than market failure.

Adhering to the principle of strict necessity, the Commission's goal now must be to clear away all regulatory and legislative obstacles to future innovation in the audiovisual sphere. The only permissible exception can be regulation that is conclusively demonstrated, by the most stringent criteria, to be both necessary and effective for the achievement of a generally agreed legitimate public policy objective; which carries a demonstrably minimal risk of unintended or damaging negative consequences, risk of regulatory capture or other regulatory failure; and which does not disproportionately interfere in fundamental human rights, in particular the right of freedom of speech.

The Commission recognises that the internet has brought forth the greatest flowering of individual communication and access to knowledge since the dawn of mankind. Speech on the internet is a delicate flower which must not be damaged. The Commission applauds the comments in the Joint Dissenting Opinion in the recent *Animal Defenders* case in the European Court of Human Rights:

“there seems to be an inherent contradiction in a viable democracy safeguarded by broadcasting restrictions. ... A robust democracy is not helped by well-intentioned paternalism.”

Stated simply, the Commission’s role is now to clear the field of regulation and move out of the way. This will enable the peoples of Europe to make their own viewing and listening choices at all levels: international, nation, group, community and individual. If some people prefer Disney to Hugo, that is an expression of their individual autonomy and right to cultural self-determination. As such it is outside the legitimate sphere of action of the Commission.

Each person in Europe must be free to choose and pursue their own personal goals. It is not for the Commission to formulate policy goals and then to expect private actors, economic or otherwise, to pursue objectives that we set for them. The Commission does not know what form any future innovation will take, or what the pace of innovation will be. Nor can it ever know. It is not the Commission’s place to attempt predictions, still less to formulate interventions based upon them.

The Commission does not believe that it should set concrete targets to be achieved by some arbitrary future date. We at the Commission shiver with embarrassment at the memory of the programme to ‘Complete the European Single Market by 31 December 1992’ - for all the world like some Soviet era tractor production plan.

The Commission recognises that innovation brings change. It is no part of the Commission’s role to save legacy actors from the consequences of change, nor to try to influence future change in a particular direction. The Commission recognises that any adverse consequences of change for particular sectoral and vested interests are outside the Commission’s legitimate sphere of action. The Commission strongly believes that the European taxpayer should not to be compelled to subsidise historic industries in the name of cultural diversity.

Turning specifically to the audio-visual sector, in the 1997 Green Paper the Commission said:

“... convergence may lead to less regulation in telecommunications and media sectors, and should not lead to more regulation in areas such as IT.”

And

“Convergence may challenge current regulatory approaches, particularly, with regard to licensing of networks and allocation of resources, where such approaches reflect a perceived scarcity of both radio-frequency and of content.”

“...in a fully digital environment, scarcity may over time become a less significant issue, calling for current regulatory approaches to be reassessed.”



Since scarcity has now all but disappeared, other than where artificially created by regulation, the time has come to reassess current regulatory approaches.

Ideally the Commission would propose to sweep away the archaic structures of broadcast regulation, which have their roots in the government spectrum grabs of the mid 20<sup>th</sup> century. However we recognise that most Member States will continue to cling to these regulatory models like the man with the red flag in front of the early motor car.

Pragmatically, broadcast regulation is likely to wither as it becomes less and less relevant. It is however imperative, as articulated in the 1997 Green Paper, to prevent outdated broadcast regulatory models from spreading any further, especially to the internet. We now realise that it was a serious error in the AVMS Directive to extend regulation to so-called 'TV-like' on-demand services. We will roll that back at the earliest opportunity.

The cross-border aspect of the internet is becoming increasingly significant. The AVMS Directive does not apply to services originating outside the EU. The Commission recognises that the people of Europe are readily able to understand that incoming foreign services are created under different sets of legal standards and to appreciate those services in that context.

In the spirit of international cultural diversity the Commission believes that the fewest possible obstacles should be put in the way of incoming non-EU services, including where they are targeted at the EU. The Commission would regard it as an act of unwarranted arrogance for the EU to seek to apply its content laws to services originating in non-EU countries and regions.

The choice of European citizens to access and be informed about non-EU services that may not adhere to European content laws or standards should therefore not be denied or hindered by any Member State. The Commission especially welcomes the opportunity for European citizens to share in the rich and diverse cultural heritage of the USA.”