This Green Paper, running from April to September 2013, invited stakeholders to share their views on the changing media landscape in an increasingly digital world.

This document does not set out the position of the European Commission, but merely summarises the 236 responses received. It is accompanied by a more detailed Feedback Paper; full responses are also published where there is consent to do so.

Below, key parts of the Green Paper itself are summarised in italics. These often relate to the Audiovisual Media Services Directive (AVMSD). Further information is on DG CONNECT’s website.

**Market considerations**

*The EU audiovisual market is developing, and now includes 368 million internet users. Success depends on competing for attention, and negotiating a fragmented market.*

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?

Features cited about the US market include: homogeneity, strong financial resources, network effects, business friendliness, vertical integration, cooperation, personal data use, ease of recouping investment, copyright clearance, and merger and antitrust rules.

In contrast, others cite a fragmented EU market; US companies can establish wherever has the most favourable regulatory, fiscal and legal environment (including as concerns the AVMSD). Some claim US companies avoid EU rules, for example data protection.

2. What are the factors affecting the availability of premium content? Are there currently practices relating to premium content at wholesale level which affect market access and sustainable business operations? If so, what is the impact on consumers? Is there a need for regulatory intervention beyond the application of existing competition rules?

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3. Directive 2010/13/EU of the European Parliament and the 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.
Public bodies\(^5\), digital companies and telecom operators mention exclusivity and holdback clauses\(^6\), exploitation windows, imbalances between international and national players, and competition concerns as holding back premium content.

Different respondents advocate ex ante regulation, multi-territorial licensing, price regulation or "must-offer" obligations.

In contrast, some Member States, most commercial broadcasters and sport associations do not see problems with access to premium content. They point to new competition from over-the-top players, the risk that pan-European licensing favours big players, and the need for "windows" to finance production.

**Access to platforms**

*The Green Paper looks at the platforms allowing content providers to reach audiences. It highlights that such platforms could choose to favour certain companies or their own services.*

(3) Are there obstacles which require regulatory action on access to platforms?

Some public bodies call on the Commission to widen the scope of regulation here. One suggests a "dominance test" for content providers and distributors. Some broadcasters favour access obligations for all delivery platforms. However others - including some public bodies, manufacturers, producers, broadcasters, telecom operators, and sports organisations - see no need to expand access regulation.

**Content: between promoting public policy objectives and enhanced competition**

*Amongst other goals, the AVMSD aims to promote cultural diversity. Member States have various options to achieve this, including financial contributions to production and rights acquisition of European works; or rules guaranteeing share and/or prominence of European works in linear or non-linear services.*

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

Many question whether the AVMSD "toolbox" is indeed adequate in an online world. Some public bodies, broadcasters and producers consider current rules sufficient. Some suggest they contribute to cultural diversity and cross-border activity. But others see them as no longer fit for purpose: detrimental to quality, commercial attractiveness, cross-border character, editorial or entrepreneurial freedom.

Some (notably some public bodies) favour financial contributions; others feel such rules should not extend to new players.

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\(^5\) This term comprises government Institutions, parliamentary bodies at national level, and regulatory bodies.

\(^6\) Contractual arrangements between broadcasters and right holders allowing premium content to be held back while it is being shown on TV.
Some consumer organisations and network operators feel that rules on promoting EU works in non-linear services (Article 13 AVMSD) are implemented unevenly. Others favour flexibility for Member States.

(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?

Many see decreasing traditional sources of finance as not yet being replaced by online alternatives; but others consider funding models will not change drastically.

Proposed measures include extending financing mechanisms to new players. One regulator suggests a device-independent levy to support public service broadcasting.

Many private sector stakeholders feel that current public interest financing mechanisms, such as film support schemes, should extend to online service providers. Some telecom operators note that they invest in networks and contribute to public financing through taxes; they feel "over-the-top" players should contribute to network costs.

Others question the traditional "windowing" system (rules or practices determining when particular content can be shown in a particular format). Some network operators and the digital sector argue instead for simultaneous release on multiple channels, to give consumers quicker access; they prefer market flexibility to regulation. One consumer organisation feels that traditional "windowing" hampers new digital distribution platforms and is detrimental to low-budget works.

Some public bodies see public intervention as premature. Some producers and distributors favour the current system of exploitation windows and exclusive licensing.

The need for more EU action regarding interoperability

Connected TVs and their services depend on a variety of standards in the broadcasting, IT and telecom sectors. Convergence reopens the question of standardisation.

(6) Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market?

Some favour EU action, in particular for Hybrid Broadcast Broadband TV.

Others (some public bodies, manufacturers, network operators and one representative from the broadcasting sector) do not see the need for EU intervention, either to impose or promote a European standard. Some favour industry dialogue, perhaps facilitated by the EU.

Frequency allocation and spectrum: which models and which research needs?

(7) How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations?
Many believe different platforms offer different consumer experiences: for example regarding availability, infrastructure, customer contracts, choice of channels, portability and mobility.

Some note the impact of different platforms on blind or partially sighted people, or those in rural areas. Others see a link to public service obligations. One regulator proposes defining media and public service at European level.

(8) What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?

Several respondents – including a number of public bodies and telecom operators – are in favour of a new digital dividend in the 700 MHz band. However, they argue there is no need for EU intervention as CEPT is already involved.

In general, public bodies, telecom operators, digital companies, consumer groups and broadcasters support better use of spectrum.

However, others suggest a more cautious approach to releasing new spectrum, given concerns over co-existence and interference. Some favour more spectrums for Wi-Fi.

(9) What specific research needs with regard to spectrum have to be addressed to facilitate such development?

Many public bodies ask for research into the coexistence of broadcast and broadband services, including on interoperability between LTE-4G and DVB-T, image compression, and new business opportunities from convergence. Some wish for market analysis on demand for mobile services, and/or the networks' capability to deliver them.

Is the graduated approach still appropriate?

AVMSD distinguishes linear (broadcast) from non-linear (on-demand) services. Services with greater viewer control are more lightly regulated ("graduated approach").

(10) Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?

A number of public bodies wish to revise AVMSD’s graduated regulation. Some favour liberalising linear services ("levelling down", e.g. removing quantitative advertising rules); one favours "levelling up" non-linear services (e.g. by raising child protection standards).

Other public bodies support the current distinction, seeing no evidence of a market distortion. Others argue that linear and non-linear services belong to separate markets and do not compete; stricter rules for "on-demand" may cause competitive disadvantage.

Private sector views are mixed, but with a tendency to support the current distinction.

Some stakeholders call for the stricter regulation of linear content to apply only to a few “services of general (public) interest”: such as news, or those with a significant audience.
Some consumer organisations feel all service providers should be bound by consumer protection rules, insofar as the provider can choose the content and how it is organised.

**The scope of the AVMSD: still valid in times of convergence?**

*The AVMSD covers TV broadcasts and on-demand services. Convergence opens new ways to watch and new business opportunities.*

(11) Is there a need to adapt the definition of AVMS providers and/or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?

Most acknowledge media convergence as an ongoing reality. Some would like a broader scope for the AVMSD; others feel that would impede innovation.

The main argument for extending the scope is fair competition, insofar as those currently not covered by AVMSD rules compete against who are.

Some highlight the case of providers that fall outside EU jurisdiction; one regulator proposes the concept of "virtual establishment" as a solution.

Some are concerned about those who facilitate access to platforms or applications. (This may result from a misunderstanding about the AVMSD's current scope). Some regulators propose covering all Internet video platforms; others see that as premature.

Some private sector stakeholders feel the AVMSD has not been around long enough to allow evaluation; or that expanding the scope might run counter to technology neutrality.

A number of respondents (particularly from the digital sector) feel further extending the scope could prejudice innovation; indeed they call for (if anything) removing regulations, to boost competitiveness.

**Relevance of the country of origin principle**

*The country of origin principle means audiovisual providers can easily operate in other Member States, while only complying with rules from the Member State under whose jurisdiction they fall.*

(12) What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?

Several public bodies fully support this principle. Nearly all from industry find it valuable and fundamental to the single market: ensuring a common legal order across the EU, legal certainty, cross border trade, consumer confidence, choice and economic growth.

However, some regulators favour a debate on the principle and its effectiveness.

Some public bodies and other respondents (particularly from France) support moving to a country of destination principle. Others favour departing from "country of origin" only in specific cases, for example to promote European works, or when services originate outside the EU - an issue also considered by consumer organisations.
The relation with the E-Commerce Directive

One question concerns the relation of AVMSD with the E-Commerce Directive.  

(13) Does increased convergence in the audio-visual landscape test the relationship between the provisions of the AVMSD and the E-Commerce Directive in new ways and in which areas? Could you provide practical examples of that?

Several public bodies agree this relationship is being tested. A major concern is how to determine which law applies to a given service. For example, in some countries, videos on newspaper websites are treated as on-demand audiovisual media; in others as subject only to the E-Commerce Directive.

Some see difficulties with new marketing techniques - such as when third party online advertising is overlaid onto broadcast content. These are covered by separate Directives, and there may be no contractual relationship between broadcaster and overlay provider. Broadcasters are concerned about what they perceive as "free-riding".

Consumer groups are concerned if these difficulties mean less consumer protection. However, others see no sign of an emerging strain between Directives; the industry feels that the relationship (and the distinctions between different actors) remains appropriate.

Views on self and co-regulation

Several public bodies and private sector stakeholders see self-and co-regulation as alternatives/complements to legislation. Some public bodies prefer co-regulation.

In particular, many public bodies, broadcasters, network operators, producers, distributors, and publishers think that convergence makes it necessary to examine whether self- and co-regulatory models would be a more appropriate way of regulating audiovisual media services not covered by the AVMSD.

Some consumer groups and individuals feel self-regulation is not effective (e.g. for alcohol advertising). In contrast, others including network operators and public bodies see self- and co-regulation as useful e.g. for child protection, advertising, or accessibility.

Some private stakeholders consider legislation should be limited to basic rules, with details left to self- and co-regulation. For some (mostly network operators), certain rules are no longer needed; removing them would ensure an adaptable and fair framework.

The relevance of media literacy

(14) What initiatives at European level could contribute to improve the level of media literacy across Europe?

Respondents broadly agree on the need to increase media literacy throughout the EU. But views differ on how to do it, and on the EU's role.

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Pre-defining choice and filtering mechanisms

(15) Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to public intervention at EU level?

Some public bodies argue for the possibility of public intervention; others find the current legal framework sufficient. Some favour promoting transparency.

A number of public bodies highlight different cultural approaches. Some see such action as a potential threat to media freedom and pluralism, or suggest these issues should be for the technical community and market to address.

A need to ensure the visibility of certain content

Under the Universal Service Directive, Member States can in some circumstances oblige network operators to transmit specific channels ("must-carry"). Under the Access Directive, they can also set rules on programme guides, listings and navigation.

These requirements become relevant as more and more content becomes available.

(16) What should be the scope of existing regulation on access (Art. 6 Access Directive) and universal service (Art. 31 Universal Service Directive) in view of increasing convergence of linear and non-linear services on common platforms? In a convergent broadcast/broadband environment, are there specific needs to ensure the accessibility and the convenience to find and enjoy 'general interest content'?

Some ask to revise Article 6 Access Directive to cover any convergent media service.

Some stakeholders believe must-carry obligations are no longer legitimate. However several public bodies propose to widen it to include non-linear services of general interest, or complement it with "must-offer" obligations (perhaps as an optional choice for national regulators). Some public service broadcasters, and accessibility and viewers' organisations, support a maximal widening of scope. Several public bodies believe that the current rules are sufficient.

Many public bodies support, to different degrees, rules to make content of general interest easier to find. Others call for further examination in all these areas.

Changes regarding rules for commercial communication (advertising)

Qualitative rules governing commercial communications apply to all AVM services. Quantitative rules such as limits on advertising times apply only to linear broadcasters.

(17) Will the current rules of the AVMSD regarding commercial communications still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete example?

Many consider that the qualitative AVMSD rules should continue, though some public bodies feel rules on product placement and sponsorship are difficult to apply.

One public body suggests that qualitative rules extend to all audiovisual platforms; others advocate basic principles that could apply to all.
Many highlight the principle of separation between editorial and advertising content. In contrast, many believe that quantitative rules should be softer or more flexible. Some favour a flexible self-regulatory framework. One regulator suggests more flexibility in certain areas coupled with new rules for on-demand and online services. Some wish to tighten advertising rules for non-linear players. Others, especially from the private sector, do not currently see a need for changes.

(18) What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there more scope for self/co-regulation?

Self- and co-regulation is widely favoured, though public bodies' views are mixed on which is the best. Some even favour de-regulation. However, consumer organisations criticise self- and co-regulation tools, especially for protecting children.

(19) Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?

Broadly, broadcasters and content providers feel they should have "the final say"; consumer organisations and the cable sector believe users should, either always or under certain conditions; others suggest producers or authors should. Public bodies give mixed views on this point. Some see the case for regulation or self-regulation; others (especially from the private sector) – feel unduly prescriptive regulation may stifle innovation.

Are the rules still appropriate to ensure protection of minors?

The system of graduated regulation is also applied to child protection. Again, the less control a viewer has and the more harmful the content, the more restrictions apply.

(20) Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?

Many respondents are not satisfied with the status quo but there are different views on whether AVMSD rules need to change. Some - including public bodies, broadcasters, advertisers, network operators, distributors, and consumer and child protection groups - consider the AVMSD not fit for purpose. Some favour revising the AVMSD. Others propose a common regulatory framework for culture, video-on-demand and computer games. Some public bodies advocate self- or co-regulation, although one notes this would not provide the same protection or certainty.

(21) Although being increasingly available on devices and platforms used to access content, take-up of parental control tools appears limited so far. Which mechanisms would be desirable to make parents aware of such tools?

Child protection groups feel such tools need to be affordable and easy to use; respondents differ as to whether or not they are. Some call for harmonisation across platforms or devices. There is a general call for more media literacy, awareness, and information.
Some in the industry consider self-regulation as faster, more flexible and more efficient. Some (including some public bodies) do not favour parental control tools, as no tool could replace the expertise of parents.

(22) What measures would be appropriate for the effective age verification of users of online audiovisual content?

For some public bodies and broadcasters, age verification should take place through technical security measures (e.g. PIN codes, credit cards, digital passports).

Child protection groups highlight the importance of age verification. For some, simple self-declarations are insufficient; for others, technical measures will never work with complete certainty. Other issues raised include access to adult content, media literacy, parental responsibility, and privacy.

(23) Should the AVMSD be modified to address, in particular, content rating, content classification and parental control across transmission channels?

In general, responses favour greater consumer awareness and information. Some (including public bodies) are against addressing these topics in the AVMSD.

Some favour addressing the issues nationally, given (for instance) cultural differences. Several stakeholders favour co-regulation and self-regulation.

Consumer and child protection groups and private individuals are particularly in favour of modifying AVMSD, for example to increase transparency for consumers.

(24) Should users be better informed and empowered as to where and how they can comment or complain concerning different types of content? Are current complaints handling mechanisms appropriate?

Generally, stakeholders feel current arrangements work well; many service providers already have mechanisms for complaining or reporting (e.g. abusive or offensive content). Some public bodies would like websites to more clearly indicate complaint procedures. One child protection group highlights procedures for reporting inappropriate material to sites or internet providers; such reports must be acted on quickly.

(25) Are the means by which complaints are handled (funding, regulatory or other means) appropriate to provide adequate feedback following reports about harmful or illegal content, in particular involving children? What should be the respective roles/responsibilities of public authorities, NGO's and providers of products and services in making sure that adequate feed-back is properly delivered to people reporting harmful or illegal content and complaints?

Some wish to develop such complaint handling; others find arrangements adequate.

Is there a need for more EU action on accessibility?

The AVMSD encourages making services more accessible to people with disabilities.
(26) Do you think that additional standardisation efforts are needed in this field?

Respondents from the private sector (and also public bodies) felt additional standardisation is not currently needed; standards, technical means and market incentives already exist.

However, consumer and accessibility organisations would welcome new standardisation in particular areas, such as interfaces, subtitling formats, etc.

(27) What incentives could be offered to encourage investment in innovative services for people with disabilities?

Many, especially public bodies, suggest national subsidies or tax incentives.

Broadcasters call for industry-led initiatives. Some accessibility groups and broadcasters would like the EU to co-finance projects to incentivise investment in such new services. Some stress that accessibility services are not just for people with disabilities.