ANEC Comments on the EC Green Paper “Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values”

August 2013

ANEC-ICT-2013-G-031final
ANEC Position Paper
ANEC Comments on the EC Green Paper “Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values”

Introduction

ANEC is pleased to be able to submit our comments to the European Commission public consultation on “Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values”.1

Our comments are focused only on the questions in the EC Green Paper that we consider as relevant to our activities. Accessibility, along with interoperability, is a key issue for consumers. Hence, in this paper we respond to the questions asked in Chapter 3.5 Accessibility for persons with disabilities.

As a membership based association, our views reflect the feedback we have received from our members following their consultation.


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Raising standards for consumers
ANEC-ICT-2013-G-031final – August 2013
General Comments

There is a need for manufacturers to ensure that needs of disabled people have been taken into account from the earliest stages of design and development. There is also a lack of interoperability between content providers, between platforms and across borders when it comes to access services such as audio description and subtitling. In addition, there is a market failure in ensuring that connectivity features in products are suitable for use with external accessibility solutions and a failure to provide third party assistive technology developers access to these interfaces.

3.5. Accessibility for persons with disabilities

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

All consumers should be able to participate in the Information Society and reap its benefits. ANEC believes that standards can be successfully used to make products and services accessible to as many consumers as possible, irrespective of their age or abilities. European Standards, if based on the principles of Design for all and used, can play an essential role in making Europe accessible. Due to the enormous impact of the Information Society on a consumer’s everyday life, it is vital for Electronic Communications to be accessible by all. Design for All means designing products and services for as many consumers as possible as a very large number of people have requirements which can be easily addressed by relative small changes in product design and service provision. ANEC believes that accessibility, and namely the Design for All principle, should be taken into account in a systematic matter in the standardisation system\(^2\). This is in line with Mandate 473 objectives, “to include a Design for all perspective in mainstream standards”\(^3\).

We welcomed the proposal by the European Commission for mandatory provisions on web-accessibility of public sector bodies’ websites as it took into account many of our suggestions about the use of standards and monitoring of implementation.\(^4\) Binding legislation and standards should be seen as complementary instruments with legislation should set accessibility requirements and standards setting specific technical requirements. Web-accessibility standards should continue to be developed.

In our opinion, standardisation of audio description is needed: this is important to provide access to TV and digital cinema content when they are initially produced, but importantly there is a need to ensure that any audio described content is compatible

\(^2\) ANEC position on European Commission standardisation mandate 473 to CEN, CENELEC and ETSI to include “Design for All” in relevant standardisation initiatives, Feb 2011 (ANEC-DFA-2011-G-003final)
\(^3\) Mandate 473, Standardisation Mandate to CEN, CENELEC and ETSI to include “Design for All” in Relevant Standardisation Initiatives, Ref.Ares(2010)578264 – 10/09/2010
\(^4\) ANEC position on standardisation and other aspects of the European Commission Proposal for a Directive on Accessibility of Public Sector Bodies’ Websites, March 2013 (ANEC-DFA-2013-G-001final)
and therefore accessible in ‘on demand’ format going forward. It is often the case that initially audio described programmes are no longer so when broadcast on demand over the Internet at a later date. With regard to connectivity and APIs there is a clear need for standardisation in order to ensure that specialised accessibility solutions can be developed using these connectivity provisions (and to ensure that the protocols cover the required set of functions that such accessibility solutions must be able to access). However, the technical means to deliver audiovisual access services (e.g. audio description, subtitling) and the standards needed for implementation already exist. The problem therefore is not so much one of gaps in standardisation, but one of fragmentation and lack of focus in terms of the technologies used.

With regard to products, interoperability is another important issue linked to accessibility. From a consumer point of view, as different devices follow different operating philosophies, it is difficult to adapt and to learn how to use the different products/services. Not to mention that for a specific category of consumers, visually impaired persons, interfaces, especially if web-based, need to be designed in an accessible manner, according to recognised web accessibility standards.

The challenges of ICT informal standardisation are that it poses a problem in terms of consumers’ participation and transparency of the systems. For consumers it is vital that European ICT standardisation is open, transparent and a consensus-driven process, which allows all stakeholders to participate and to safeguard their interests. It could also help to provide further training and develop relevant tools for societal stakeholders' in general so that they can better understand how to get involved in standardisation. CEN and CENELEC are currently looking into developing through their Societal Stakeholders' Group Task Forces 1 and 2, of which ANEC is a member, a “Toolbox” and an “eLearning tool”. These could be promoted largely, and synergies could be foreseen so as to encourage their use.

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

- Harmonisation of legislation would act as an incentive as it would create a level playing field and bring economic and social benefits for Europe. With respect of public procurement, the legal requirements coupled with functional accessibility requirements (in accordance with Mandate 376) could provide businesses with an incentive to develop accessible goods and services and stimulate innovation given the market importance of public procurement.

- The market potential of Design for All could be emphasised. Disabled and older consumers often have to obtain 'special' accessible goods which usually cost more,

yet often such accessible goods, if marketed for all, would be more usable by many people who would not consider themselves to be a disabled person. Similarly, many multiple-use devices can be personalized with new software and applications to increase their accessibility and consumers’ demand.

- The introduction of accessibility in engineering and technical training curricula (architects, designers, ICT professionals, etc.) could be used as an important measure to help build on growing interest in the development of accessible goods and services.

- The use of instruments in support of the European Accessibility Act, e.g. EU research policy, could encourage innovation in accessible products and services.
About ANEC

ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and conformity assessment, as well as related legislation and public policies.

ANEC was established in 1995 as an international non-profit association under Belgian law and is open to the representation of national consumer organisations in 33 countries.

ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.

Raising standards for consumers

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GREEN PAPER PREPARING FOR A FULLY CONVERGED AUDIOVISUAL WORLD

BEUC RESPONSE

Contact: Kostas Rossoglou – digital@beuc.eu

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Summary

The European Consumer Organisation (BEUC) regrets the absence of a coherent EU audiovisual policy and the significant delay in the establishment of a Single Market for Audiovisual content.

BEUC has identified the following as the main bottlenecks:

- **lack of consumer-friendly legal offers** for audiovisual content that respond to consumers’ expectations;
- **complexity of licensing systems**, particularly in terms of legal uncertainty as regards the scope and the rights that need to be cleared;
- **absolute territorial exclusivity** and market fragmentation is irreconcilable with the Treaty, as confirmed by the European Court of Justice in the recent Premier League case;
- **national chronological and territorial release** windows make no sense in the online environment;
- **outdated copyright exceptions and limitations** fail to establish a balance between the rights of creators and the rights of the general public.

With regards to policy initiatives that need to be undertaken, BEUC:

- believes that all service providers, be they linear or non-linear should be bound by the same obligations to comply with consumer protection and data protection rules for as long as the provider has **responsibility for the choice** of the content;
- stresses the need for providers of audiovisual media **services from countries outside the EU** to be subject to EU legislation when they target their services to consumers within the EU;
- notes that data protection concerns should be addressed early in the development of connected devices (privacy by design) and be respected by the default settings (privacy by default);
- calls for legislative action with regards to **net neutrality** to ensure the open and non-discriminatory access to information and content for all citizens;
- supports the revision of the current system of **copyright exceptions and limitations** with the aim of restoring the balance between the exclusive rights of right holders and the right of consumers and society as a whole.
The European Consumer Organisation (BEUC) welcomes the launch of a consultation on media convergence in the audiovisual environment. Media convergence has fundamentally changed the traditional model when broadcasters controlled what consumers watched and when. Media convergence provides consumers with new services to enjoy the content of their choice at anytime, anywhere and on any type of device.

However, the everyday online experience of consumers is different; currently, consumers experience geo-blocking and territorial restrictions when they try to have access to legal services for audiovisual content online. Access to legal services for audiovisual content remains restricted alongside national borders, thus depriving consumers of effective choice and creators of the opportunity to reach new audiences.

Audience demand drives the supply of high quality and engaging content and incentivises suppliers throughout the value chain to devise innovative business models. In return, substantial provision of attractive legitimate sources of content can help to counter illegitimate content sources.

BEUC therefore supports the ambition of the European Commission to ensure the widest possible access to European diversified content for all Europeans.

**Market considerations**

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

The digital environment offers new possibilities and opportunities for both creators and consumers. EU consumers have an unprecedented cultural sector on their doorstep, but the barriers preventing them from accessing content are overwhelming. For consumers to benefit from the economies of scale offered by the Digital Single Market¹, concrete policy actions are needed to overcome the remaining barriers.

The Single Market for European audiovisual content is, so far, a distant dream. The patchwork of different audiovisual markets in Europe is mainly the result of varying technological, economic and regulatory circumstances across the EU.

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¹ Green Paper on the online distribution of audiovisual works in the European Union: opportunities and challenges towards a digital single market.
Europe’s audiovisual industry is highly fragmented and consists primarily of micro-businesses and SMEs who produce two to three films a year on average. Large Hollywood studios face little competition from individual European film. It is because of this structural weakness and the strength of major Hollywood studios that European rights holders have difficulty accessing markets beyond the country of production and co-production. Cross-border circulation of audiovisual works in Europe remains weak.

It is also important to stress that there is currently significant uncertainty as to whether EU legislation applies to US companies. For instance the obligations of the Audiovisual Media Services Directive do not apply to US companies, thus distorting competition to the detriment of EU companies.

**Consumer demand**

Despite the existence of diverging consumer preferences, the objective of a coherent EU audiovisual policy should be to build consumer demand for audiovisual works, both European and international, and to increase the works available online. The main problem remains the lack of satisfactory legal offers for audiovisual works which respond to consumers’ expectations.

The situation is even worse when it comes to European works; consumers are provided with hardly any choice regarding European works; the majority of works available are Hollywood productions which tend to dominate the European market. The same applies to TV programmes and sports events to which consumers are refused access when trying to watch from another EU Member State.

Consumers are increasingly willing to pay for legal content, including for films, TV shows and sporting events. It is only by providing valuable services to the consumer that unauthorised copyright infringement will be reduced. According to a recent survey, 71% of consumers say online content of any kind will have to be considerably better than what is currently free before they will pay for it.

**Copyright related bottlenecks**

An additional bottleneck relates to the inefficiency of current licensing schemes for audiovisual content. Commercial users are confronted with divergent rules and rights when trying to establish multi-territory and pan-European legal offers for audiovisual content. In most countries, the rights to a film are transferred by the authors and performers to the film producer who then holds the rights and can licence the work. However, the contracts by which rights are transferred to the producer do not always cover new means of exploitation, thus necessitating renegotiation of the contract and additional licensing costs.

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4 The Nielsen Company, February 2010, changing models: global perspectives on paying for content online.
5 Idem.
In addition, the EU copyright framework remains technology specific. For instance, the current definition of broadcasting does not appear appropriate in an environment in which the means of transmission are converging and becoming increasingly interchangeable. In addition, a number of key notions, such as the notion of the “public”\(^6\), and what constitutes “on demand” distribution are not clearly defined in EU copyright law, resulting in legal uncertainty as to the rights needing to be cleared.

**Net Neutrality**

BEUC shares the analysis by the European Commission that platforms for distribution of content could favour certain companies or their own services in the case of vertically integrated companies.

Such practices put at risk the internet model based on non-discrimination i.e. any content, application or service could be put online without needing to ask operators or anyone else for permission. This model has allowed innovative content and applications to be developed and disseminated across the internet, thereby also opening a whole new world of possibilities for SMEs and consumers. This virtuous cycle of online innovation has in turn generated constant consumer demand for more and better internet access services.

Altering these fundamentals will have serious negative consequences. Any new model which breaks this virtuous cycle will hamper innovation and dissuade the millions of content and application providers who innovate every day thanks to the possibilities offered by the open internet.

Unless the European Commission undertakes urgent action to safeguard net neutrality, the creation of a ‘fast lane’ on the internet would allow the few biggest and wealthiest content providers, to dominate the internet. In such a scenario, the impact on cultural diversity would be dramatic.

The current framework, which is based on transparency and ex post intervention of competition rules, is inadequate to protect net neutrality. While these are necessary mechanisms to construct a healthy market, they do not effectively enable citizens to exercise their fundamental rights and enjoy their freedom of expression by being able to access an open and neutral internet. Users, not network providers, should be able to decide on their own what they want to do with their internet connection. BEUC has issued a Call for Action together with the citizens’ organisation European Digital Rights (EDRI) to restore and protect net neutrality\(^7\).

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\(^6\) It is an open question how many persons are necessary to constitute a public and to what extent the persons must have personal relationships in order not be regarded as a public. Defining the terms public is left to national law and to the courts of EU Member States.

\(^7\) Call for Action: Time to truly protect Net Neutrality in Europe
Financing models

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

The Audiovisual Media Services Directive\(^8\) (Article 3i) explicitly requires Member States to ensure that not only television broadcasters, but also on-demand audiovisual media services promote European works. However, this provision is implemented differently by EU Member States, with the majority of them not including specific quotas or detailed provisions\(^9\). It is crucial the European Commission closely monitors the implementation of the AVMSD and provides guidelines to Member States regarding the specificities of Article 3i.

(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 current models of film financing and distribution, based on staggered platform and territorial release windows, are no longer relevant in the context of online audiovisual services.

Although national chronological release windows allow distributors to maximise their revenues, they also result in a fragmentation of the market along national borders and hamper the development of new digital distribution platforms. The traditional hierarchy with cinema as the first window followed by DVD, pay-TV, free-to-air TV and Video on Demand no longer makes sense with the emergence of new distribution channels. Banning the digital distribution of a film on VOD for four months and up to 3 years after the cinema release, as is the case in France, fails to reflect the reality of the 21\(^{st}\) century.

Similarly, territorial release windows within the European Union and even between neighbouring countries with the same cultural background cannot be justified. For example, the European film *Océans* was released in Belgium on 27 January 2010 and in Sweden only 10 months later on 1 October 2010; the European film *Potiche* was released in France and Belgium on 10 November 2010 and in Germany 5 months later (March 2011)\(^{10}\).

The current system of territorial and chronological release windows is highly detrimental to small, low-budget works with limited access to theatres and means of promotion; having to wait months before making the film available online does not make any sense at all.

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\(^8\) Directive 2010/13/ of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).


\(^{10}\) [http://www.imdb.com/](http://www.imdb.com/).
Reverse windowing, where films become available on VOD shortly before their release in cinemas with the aim of building a fan base, has been successful so far.

As regards current funding schemes, BEUC is concerned with the practice followed in most EU Member States which subjects public support for film production to specific release windows. Similar funding schemes are out of date and efforts should be undertaken to increase funding for innovative distribution methods.

State or public funding for film production should seek to leverage the benefits and extended audience provided by online distribution and a Digital Single Market. Such public funding should not discriminate against specific platforms nor include territorial restrictions.

**Interoperability of Connected TV**

(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?

Convergence of devices is becoming more and more of an everyday reality with connected TV models and cloud computing. Consumers are provided with the possibility to access content by using different devices (internet-enabled TV sets, PCs, smartphones and tablets).

Consumers expect to be able to use Information Society products and services securely and without undue technical restrictions. However, the real consumer experience is often different\(^\text{11}\). It may happen that a connected device bought in one Member State does not allow modification of its settings to receive services from other Member States.

BEUC supports EU action to overcome fragmentation and ensure interoperability across borders.

**Regulatory framework**

(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?

(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?

(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?

\(^{11}\) ANEC position paper on interoperability and the role of standards
(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?

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

The Audiovisual Media Services Directive has been successful in combining the right to provide audiovisual services with the right to freedom of expression and information and the protection of important public interest objectives. However, media convergence and the emergence of connected devices, marks a major challenge to the regulatory framework. The boundaries between linear and non-linear services are blurring.

Within the AVMSD, the relaxed rules for non-linear services and the stricter rules for linear services apply to content on one screen. For example, linear TV news must not be interrupted by commercials. However with Connected TV, the commercials could appear on the same screen at the same time as a news show.

Evidently, this may lead to unequal competitive conditions and unacceptable discrepancies in the protection of users. Such hybrid receiving systems allow users to browse indiscriminately between TV channels and the internet, including websites which illegally offer audiovisual content.

Aspects that warrant regulation (as per the regulation objectives of the Directive), include protecting children, ensuring diversity of opinion and of the media, accessibility for the visually and hearing impaired, safeguarding fair competition, quality and content based regulation of advertising.

BEUC believes that all service providers, be they linear or non-linear, should be bound by the same obligations to comply with consumer protection and data protection rules for as long the provider has responsibility for the choice of the content and determines the manners in which it is organised.

Compliance with data protection rules is even more necessary when considering the possibility for the provision of personalised content services to consumers. Data protection concerns should be addressed early in the development of connected devices (‘privacy by design’) and be respected by the default settings (‘privacy by default’).

It is equally important to ensure that providers of audiovisual media services from countries outside the EU are subject to EU legislation when they target their services to consumers within the EU, including ‘free services’ which are based on monetising the secondary use of consumers’ data.

With regards to the interaction with the e-Commerce Directive BEUC would be opposed to any revision of the “temporary” derogations to the country of origin principle which can be justified on the grounds of public health, public order or consumer protection. A possible revision of Article 3.4 of the e-Commerce
Directive\textsuperscript{12} might result in consumers being exposed to abuses and unfair practices from providers in other Member States. In addition, the risk of forum shopping, where service providers establish themselves in the Member State with the most advantageous legislation, is considerable and cannot be ignored.

Lastly, BEUC would have a more cautious approach to the self and co-regulation with regards to internet issues. Digital technologies, although beneficial to consumers, also raise challenges for the protection of fundamental rights. In those cases, self and co-regulation cannot be considered appropriate solutions. On the contrary, there are a number of conditions which need to be met for self and co-regulation to deliver benefit to consumers, including effective monitoring, adequate redress, strong enforcement, the definition of clear objectives, robust standards and a strong independence governance.

Mediation and pluralism

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

(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’?

BEUC shares the analysis of the European Commission regarding the role of search platforms in defining consumers’ access to content.

Millions of consumers use search engines on a daily basis to source the information most relevant to them and to access content of their choice. The fact that search engines select and rank results according to perceived relevance is, in general, of tremendous benefit to consumers. Consumers trust that search results are impartial and based solely on relevance to their query, without any manipulation of the order of results. It is important that the European Commission exercises its powers to sanction dominant companies who abuse their position to the detriment of consumer welfare.

A competitive media market is essential for pluralism of media. European and national competition authorities should take into account the specific value of media pluralism in the enforcement of competition rules. They should also take into account the increasing merging of different channels of communication and media access in the definition of the relevant markets.

The dominant position held by some network access providers or internet information providers should not be allowed to restrict media freedom and pluralism. An open and non-discriminatory access to information by all citizens must be protected by enriching the principle of net neutrality in law and by ensuring its

\textsuperscript{12} Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market
effective enforcement. A regulation of net neutrality would avoid certain industry players becoming gatekeepers of media organisations and EU citizens’ communications and their right to freedom of expression and to impart and receive information. Consumers’ right to access information and freedom of expression must be protected.

Commercial communications

(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?

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

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

BEUC believes the rules on commercial communications in the Audiovisual Media Services Directive are still relevant. There should be further assessment as to whether linear and non-linear services targeted to consumers in the EU should be subject to the same rules.

An essential element of media convergence is the provision of personalised content offers to the consumer. Despite the potential benefits in terms of convenience and consumer choice, such personalisation raises serious data protection concerns. Any personalisation or individualisation of services usually requires the collection and cross-linking of personal data. Full respect for consumer privacy and compliance with the data protection rules are essential conditions to enhance consumers’ trust in new innovative media services.

The European Union has legislation in place governing the main aspects related to the collection of information about users though cookies and other tracking technologies, as well as rules which apply where this information is considered personal data. A proposal for a Data Protection Regulation was adopted in January 2012 and is currently being debated in the European Parliament and the Council. Although the outcome of the institutional negotiations is hard to predict, the draft proposal as adopted by the European Commission has sought to clarify a number of key issues in light of technological developments.

Self and co-regulation could potentially play a role in the area of online advertising. However, the recent initiative on Online Behavioural Advertising launched by the Interactive Advertising Bureau (IAB) in order to implement the new provisions of the amended e-privacy Directive on the storing and accessing of cookies, has failed to respond to the concerns raised by consumer associations.

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14 Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
BEUC has been largely critical of the initiative for multiple reasons. First, it is not a solution to online tracking as it does not stop tracking. Second, the initiative has not received the endorsement of the whole industry. Third, it comes with complex compliance and enforcement mechanisms without the participation of third parties and namely consumer. Finally, the information presented to users is misleading and the choice mechanism confusing.

Furthermore, it is also highly questionable whether an icon-based system can actually enhance consumer empowerment. A recent TRUSTe study in the US with a comparable logo, showed that out of approximately 20 million consumers (7 million unique visitors), it was accessed 56,000 times with 44,000 unique views. If calculations are made just on the unique visitors and unique views, this means that only 0.6% of consumers clicked through to the ad info page. This, in no way, signifies informed consent.

With regards to industry standardisation initiatives, the ongoing discussions within the World-Wide-Web Consortium (W3C) with regards to the development Do Not Track standard (DNT) which could allow users to choose whether or not they want to be tracked while they navigate the internet have highlighted the difficulty of an industry-led solution.

Protection of minors

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

(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?

Accessibility for persons with disabilities

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

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

Article 30 of the United Nations Convention on the Rights of People with Disabilities recognises the right to “enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats”.

It is estimated that over 81 million adults in Europe have hearing defects and 30 million people serious sight impairment. These people are unable to interact with digital content unless the content is made accessible. The main problems are obvious and relate to the lack of interpretative services such as audio description, subtitling and captioning to name a few. However, these problems are not only relevant to disabled people, but are also crucial components of a coherent strategy to increase the availability of audiovisual content across Europe.
Disabled people should be able to access all the services available to others and therefore a fundamental right should be recognised in EU law.

The EU should support the development of technologies and their integration with digital content. Technology makes it possible to eliminate barriers to communication and to access information. Technologies allowing for automatic subtitling of videos and live events transmitted online, the development of mobile applications allowing subtitling and language selection, automatic generation of voices for audio description, automatic translation have already been developed. Therefore, the focus should be on their widespread integration into digital technologies.

END
CARE response to EU Commission Green Paper: Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values

CARE (Christian, Action, Research and Education) is a UK based social policy charity concerned among other issues for the safety of children and young people and their life online. We represent the views of roughly 60,000 supporters who give financially towards our work and support us in other ways.

We work in the UK at Westminster, amongst the devolved institutions, and are represented at the EU by CARE for Europe. As our primary concern is with the protection of children and young people our response to the Commission Green Paper on Convergence in the Audiovisual world will be primarily focused on that section of the paper. However, before we get to those important questions we will raise some points under the sections relating to the general regulatory framework and around commercial communications.

Introduction

We will answer a number of questions posed by the Green Paper more specifically, but we would first like to put our answers within a specific context. We want to emphasise that our work in relation to online child safety focuses on children's access to legal content that is generally deemed inappropriate for children and young adults below the age of 18. Usually, but this is not exclusively so, such content is either pornographic in nature, or depicts images or sounds of violence that are simply not appropriate for a developing brain and the development of the moral and ethical core of a person in our culture. We have not in the past campaigned on illegal content, as there is much good work already happening in this regard: for example the work of CEOP in the UK. However, fairly little has been done to date at national level to actually curb the ease of access to legal pornographic or violent websites by under 18s (although commitments were made in July), whether they visit these websites on purpose or by accident. It is usually argued that the responsibility to protect children from content that they should not have access to sits squarely with parents. Often this is argued on the grounds of censorship. However, this is clearly not the case terrestrially where guidelines exist that lay out in law what sort of DVDs, computer games or magazines children and young people are allowed to buy. Providing online protections no more supplants the role of parents than has the provision of offline protections for children. Both protections are tools that help parents to parent and it is very evident in the UK that better on-line regulation is what parents want. So we argue very simply that what happens offline should also happen online. This is all technologically possible and is already in place in some countries.

Furthermore we recognize that these are not the only issues families face when thinking about online safety. We readily admit that bullying, sexting and other perils of social media are highly problematic and need looking into. However, we have decided to focus on content provision of the 18+ nature and believe that the Audio Visual Media Service Directive and its follow up is precisely the right place to do so at the EU level.

What follows are our answers to some of the specific questions posed in the Green Paper.

Q and A
**Question: (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?

CARE believes that while the current definition of AVMS providers is a good one it is not as clear as it could be in relation to content accessed via the web (irrespective of the device used) where an online source might provide for the hosting of materials, allowing people to access streamed video content, but where it claims not to take responsibility for the content they say is uploaded by a third party. The most common example of such content might be You Tube. We mention You Tube as an example not to complain about this particular website, which has fairly responsible guidelines and self regulatory mechanisms in place to ensure content You Tube hosts is for the most part content which would not be contrary to domestic regulation. However, there are many websites that work under the same or similar principles that host pornographic and violent content. Such websites may be hosted outside of the EU, but there are websites like these that end in the “.eu” suffix or are hosted in an EU member state.

Such web 2.0 websites often violate copyright, but more problematically for our cause they offer content which is age sensitive without appropriate age verification mechanisms in place. Such websites even provide content that would be considered illegal if not subject to--for example in the UK-- a BBFC age certification. Indeed, there is also content that is available which would not be granted a certification under the BBFC guidelines because it violates certain ethical standards. While such content is illegal in the UK, it might not be illegal in another member state, or in another jurisdiction outside of the EU. This, however, does not mean that such content should be readily accessible by under 18s without any form of robust age verification.

Therefore we believe common standards with regards to web 2.0 content (such content as is uploaded by a 3rd party) and the responsibilities that providers of such hosting sites should have is a must for any future revision of the AV media directive. At the very least access to such websites should only be granted to people who can prove beyond reasonable doubt that they are 18 years old or older. The capability to do so exists. We do it for remote gambling websites in the UK. It could be done for pornographic websites as well.

We also believe traditional websites that offer paid for content should be treated as broadcasters, with the same age verification requirements foreseen under the directive.

Finally, what is commonly called the ‘watershed’ hour is becoming increasingly less useful as content which would usually only be broadcast at night is accessible by on demand content. While this is an obvious problem raised by convergence, it should not lead to abandoning the watershed hour which, although not as useful as was once the case, is still valuable.

**Question (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?

This would be a very welcome development as it would provide for citizens of Member States to decide through their Governments and at the EU level, what sort of content should and should not be readily available online, how and who may access such content, and how regulation is policed. It is clear that a majority of people in the UK believe child abuse images should not be available. These are illegal. Apart
from ensuring that illegal content is not accessed, however, the key challenge is how to protect children and young people from age inappropriate material that is not illegal. We argue that all such content should be placed behind robust age verification so that it can be accessed by adults while protecting children and young people. Given that it will be harder for one Member State on its own to regulate online content, EU regulation on age verification would be very welcome.

Moreover, we would also argue that if regulations that currently exist or regulations that could exist in the future are placed on content providers based in the EU then they should also be placed on content providers wishing to access the EU market, whether or not they require payment for their services.

Furthermore, we argue that payment for service provision should not be the only criteria for whether or not such a service should or should not be regulated at the point of consumption. This is because a shift has taken place online in which free content is provided by a host, but the host makes the business profitable by selling advertising space. Each time a page is viewed, a small advertising fee can be paid to the owner or host of the website, making websites that have high click through rates financially lucrative. This sort of business model disincentivises appropriate age verification. This brings us to the next section:

**Commercial communications**

**Question (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?

As we have previously stated, commercial communications can be a driver for free content. Where such free content is made available using age sensitive content, such as streamed pornographic films or clips, the side bar on the browser can fill up with advertising which creates a business model that disincentivises age verification. The more people that click through to different sites the more the business is viable. Therefore it becomes an important subject for national or EU level regulatory intervention. Self-regulation will simply not provide the right sort of protection for those under the age of 18.

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

In the above example we do not believe that self regulation would work. While steps might be made by responsible website owners based in the EU, this is not going to be the case for all websites around the world. Therefore we recommend that common standards at EU level are developed that can be transcribed into member state law to ensure children are protected through appropriate age verification mechanisms and that internet service providers deliver a service to their clients which would allow clients to decide what sort of content they want to access in their home. We strongly recommend the provision of an opt-in system so that internet users are provided with a porn/violence free internet service but with the option of opting in to access adult content should they wish to access this content subject to a brief age-verification procedure, protecting those who are under age. This gains clear expression through Baroness Howe of Idlicote's seminal Online Safety Bill.¹

¹ [http://services.parliament.uk/bills/2013-14/onlinesafety.html](http://services.parliament.uk/bills/2013-14/onlinesafety.html)
Sanctions should be placed on such websites that refuse to comply with the requirement to robustly age verify, up unto and including the blacklisting and blocking of those websites, and the imposition of financial transaction blocking to and from such websites, those that sell advertising space to those websites and their subsidiaries in member states and their international trade partners.

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

We do not take a strong position on this question other than to argue that while content does exist which lies at the margin of what is considered to be acceptable violence or nudity for under 18s to see, it is clear that there is freely available content online which goes well beyond this line. Advertising regulators at member state level should have the capacity and knowledge to work with regulators to discern were revenue streams exist which link to and from websites on which the driving force for web traffic is age sensitive contents.

Protection of minors

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

We believe the answer to this question is a resounding no. We have outlined above a number of problems with the current regulatory framework which simply have to be addressed if we are to help parents protect their children online. While it is the case that it is the primary responsibility of parents to protect their children online, it is also the case that responsibility lies all along the supply chain and above at Government level to help parents protect their children. This means that while it is appropriate for parents to ensure they have appropriate filtering software installed and other useful age appropriate rules in place to protect their children, it is also the case that ISPs, websites, content providers, advertisers and ultimately Governments have the responsibility to ensure that proper age verification is in place for websites that offer age sensitive content. Moreover, where such age verification is not in place, ISPs and other sectors of industry have the responsibility to help parents by offering them a filtered online experience by default, where age sensitive content is not available unless explicitly asked for, by the contract holder who has to be older than 18 and whose age has been verified by the ISP.

Question (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?

We have proposed in the UK that Internet Service Provers and Mobile Phone Operators make available at the point of sale and for the duration of the contract information for customers on how to properly help protect children online. This should include information that goes beyond the issue we are most concerned with (18+ content) and should include information about bullying, sexting and were to get more professional help if things go wrong. We also believe that the extension of the European Safer Internet day to include full sized advertisements in traditional media in conjunction with online advertisements to drive awareness would go a long way to increase take up and demand for better quality parental controls.
Question (22) What measures would be appropriate for the effective age verification of users of online audiovisual content?

Websites that offer gambling services in the UK are required to age verify users wishing to open accounts in order to gamble on their websites. This is done via credit checks, cross checking addresses with bank account details etc. Some member states have a unique citizens number which includes the date of birth. This number could be used to age verify online. Third party services could be provided either commercially or by nation states, in order to keep information confidential. This list is not exhaustive.

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

Yes. We are strong believers in the importance of parental controls as we have made clear in previous answers. However to make parental controls reliable it is important to have good content rating and content classification. Moreover to safeguard the freedom of speech and online neutrality, it is important that false positives be minimised and that any web site blocked inappropriately (those which may contain nudity or violence but not such content which would garner an 18+ certificate) should be protected through a rapid and transparent appeals process. We do not have a view as to how to organize content rating or classification, however, we believe it must happen at some level in order to ensure that parental controls work effectively.

Strengthening parents capacity to help bring up their children safely is of paramount importance.

Question (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?

In the UK there is a website entitled ParentPort, which aggregates information and allows people to contact the relevant regulatory body. While this is a step in the right direction, it does not go far enough as the website is just that. We believe that behind such a website should exist at the very least an ombudsman who represents the interests of parents and has the right to engage investigations and call for action at nation state level when and if regulators, and self regulatory mechanisms, are not providing the highest level of help to parents and protection to children.

On the other hand we reiterate that in order to protect freedom of speech and expression it is paramount that on the other side there should be a transparent and speedy complaints procedure in place for websites or other content that has been affected by a false positive diagnosis.

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Green Paper: Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values

DECO- Portuguese Association for Consumer Protection considers inevitable the path to convergence in the audiovisual world and, therefore, agrees with the reflection model followed in the Green Paper.

However, we would prefer an approach based not only on competition criteria but also on consumer protection or other values such as freedom of expression or the free and unconditional access to information and knowledge due to the fact that audiovisual services are not just an economic good but also a cultural one.

DECO defends the digital inclusion of all citizens, and therefore considers that action should be taken that, primarily, ensure accessibility of consumers to the digital world and, secondly, promote digital literacy and continuous life-learning of new skills adapted to the transformations that continuously occur.

Thus, our analysis of the Green Paper is that it should be offered to consumers several rights such as:

a) freedom of access to an essential value of participatory democracy and citizenship, i.e. information, and, thus, qualify access to information as an essential public service (utility);

b) the right to privacy and data protection;

c) and, in general, the protection of consumer’ economic interests.

DECO can not address this Green Paper without integrating their interpretation and analysis in the broader background of consumer access to the digital market, in this case the digital market of telecommunications, by adding or combining it, however, with the specific concerns of the audiovisual in particular those relating to the values that are inherent to this topic such as the freedom of expression and media pluralism.
The Green Paper raises us the following questions:

a) How does the European legislator aims to ensure consumer rights in the converged audiovisual world?

b) Which changes intends the European legislator introduce in the current audiovisual and digital market' legislative framework that encompasses legislation as diverse as the AVMSD (on which the Green Paper is built), the E-Commerce Directive, the Directive of Distant Selling and all legislation relating to electronic communications?

To the questions raised in the public consultation, DECO will respond only to those that most directly relate to consumer rights.

1) Market considerations:

1) What are the factors that enable U.S. companies to establish a successful presence in the fragmented E.U. market despite language and cultural barriers, while many E.U. companies struggle? What are the factors hindering E.U. companies?

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?

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

The AVMSD only applies to companies operating in Europe: this means that U.S. companies have on the European market a market completely open and deregulated for them and that they operate without the requirements that are mandatory to European companies to act. This is likely to distort competition in a market where the boundaries are difficult to delineate.

As regards access to content and platforms, Portuguese legislation qualifies electronic communications as an essential public service (utilities/service of general interest). It means that the tool by which the audiovisual reaches consumers is now considered an essential service (utility) to consumers.
The concept of service of general interest (utility) is an evolving concept in the sense that accompanies the economic, cultural and social needs and changes of a particular Member-State.

DECO believes that access to content and platforms and hence their availability to consumers (for the access to information as an essential good), should have the same rules that already have the remaining public services (utilities), particularly deserves the qualification/nature of universal service: accessible throughout; accessible to all, for the majority of citizens and for vulnerable ones (disabled, minors, the elderly, i.e. economic, social, physical or cultural vulnerability).

Regarding accessibility, DECO, as already noted, considers important the classification of access to information as a fundamental right, consequently, we defend the classification of audiovisual services and web sites as services of general interest.

2) Financing models:

4) Do the current AVMSD requirements provide the best way to promote the creation, distribution, availability and market appeal of European works?
5) How will convergence and changing consumer behavior influence the current system of content financing? How are different actors in the new value chain contributing to financing?

DECO considers that financing model should promote innovation, creativity and diversity. In this regard, DECO defends the existence of a audiovisual public service able to ensure media pluralism, promote the culture of each State or Region, ensure the freedom of expression and pluralism and correspond to the public interest service.

3) Interoperability of connected TV

6) Is there a need for E.U. 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?
With regard interoperability, it must be ensured by promoting competition among all content and services providers ensuring the freedom of consumers to access a diversified offer.

4) Infrastructure and spectrum

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

DECO believes that management of infrastructures and spectrum must be competitive in order to ensure that consumer access to audiovisual services is not hampered by a lack of competition.

5) Values

5.1. Regulatory framework

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?

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?

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

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

It is necessary that the European legislator bear in mind, as a measure for its own action, the concept of "high level of consumer protection" established by the Treaty, and, thus, presents the measures he intends to take to fulfill this concept by applying it to the audiovisual sector. However, it is not only this aspect that it is necessary to mention here: it is also necessary that the legislator identify which Regulations and Directives finds it necessary to create or modify.

In general, DECO is against self-regulation in this sector since it does not produce positive effects either for businesses or consumers.

We think there is a need to adapt the definition of provider and to modify the scope of the AVMSD in order to encompass providers from outside the EU.

DECO is very much in favor of media-literacy and capacity building throughout life, so we defend a very pragmatic approach to media literacy, with consumer’s oriented education and close/direct contact with digital tools and reality.

5.2) Media freedom and pluralism

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

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”?

DECO believes that freedom of expression and media pluralism are structural elements of citizenship and democracy. DECO emphasizes again the need for the existence of a media public service needed to ensure cultural diversity.
5.3) Commercial communications

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?

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

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

The rules of the AVMSD must be changed in order to keep up with new forms of communication. It may even be necessary a horizontal legislation that establishes principles and prevent abuses. It is especially important to work on the enforcement of legislation giving more powers to the regulators and to the inspection bodies. It is also necessary to establish administrative penalties (fines) and civil penalties allowing compensations to consumers in the event of damage.

Again in this matter, DECO rather wants regulation (and not self-regulation or co-regulation).

The message on the screen could only be possible if the consumer agrees and expressly authorized that it appears on the screen. The final say belongs to consumers as an expression of the right to privacy.

5.4) Protection of minors

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

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?

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

23) Should the AVMSD be modified to address, in particular, content rating, content classification and parental control across transmission channels?
24) Should users be better informed and empowered as to where and how they can comment or complaint concerning different types of content? Are current complaints handling mechanisms appropriate?

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?

The current rules of the AVMSD are not appropriate to address the challenges of protecting minors in a converging media world.

The AVMSD should be modified in order to address, in particular, content rating, content classification and parental control across transmission channels.

Consumers should be better informed and empowered as to where and how they can comment or complaint concerning different types of content. Current complaints handling mechanisms are not appropriate and are not consumer friendly.

The issue of protection of minors and vulnerable consumers is one in which DECO intends to hold up a little more, since it always advocated the need of protection of minors and vulnerable consumers’ approach to the media in the digital environment (Internet, social networks, etc.), in aspects such as the right to privacy, data protection, the protection of economic interests, protection of image and other fundamental rights established by the Charter of Fundamental Rights.

Regarding to minors it is necessary to ensure a selective access, control the advertising addressed to them and establish a system of age qualification to restrict access to certain content harmful to children's development.

Consumer protection is based in two concepts: consumer protection and consumer empowerment, thus, DECO considers necessary to promote media literacy among children in order to help them to analyze and understand advertising and access to the digital world.
5.5. Accessibility for persons with disabilities

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

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

There is a need to adopt new standards in this field. People with disabilities represent a huge market niche so they must be seen as consumers. Fiscal and economic incentives must be considered.
Response to

Green Paper
Preparing for a Fully Converged Audiovisual World:
Growth, Creation and Values

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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?

In many cases, TVs include American connected TV providers in their system. For example, Samsung has a Smart TV application called Internet@TV included in its TVs and provides access to Yahoo! Smart TV, Google Smart TV and Netflix smart TV. Another example is Amazon VoD which is automatically included in LG Smart TV along with Google TV. This creates important questions regarding market definition and competition. It is worth considering the lessons that can be learned from the analysis of similar issues in the context of default browser choices in the Microsoft case.

There is a broad movement away from broadly open access to content – via portals and search engines – towards the “desktops” of Smart TVs, mobile phones, etc, where the visible screen area becomes “prime real estate” with extremely limited space being allocated – either automatically or via customer choice – to a small number of apps or services. This development needs to be very carefully monitored, as it will almost certainly lead to severe market entry problems.

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?

In many cases, premium content is available on smart TVs when content providers enter into partnerships with platform operators. For instance, LG entered into an agreement to offer premium content on its Smart TV platform. These kinds of partnership can hinder competition as some companies will have the exclusivity for some content. As a consequence, consumer’s access to content will be limited and entry to the market for new players will be difficult, particularly in conjunction with the “real estate” issue described above.

Some regulation may be required in order to restore and/or nurture competition in the market, this being highly beneficial for consumer’s access to content and to diversified offers.

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

Access to content is often geographically limited. In order to permit Europe’s citizens to fully benefit from Europe’s cultural diversity, it would be valuable to remove such restrictions. It appears certain that there will be significant market access problems in this area. It is remarkable that the EU both facilitates legislation which places obligations on

1 See http://www.abu.org.my/Latest_News-@-Yahoo_and_Samsung_in_Smart_TV_partnership.aspx
2 See http://www.theverge.com/2012/12/21/3793418/amazon-instant-video-app-finally-available-for-lg-google-tv
3 See http://trade.connectedhometechnology.com/article/lg-introduces-smart-tv-premium-content-partnerships
linear audiovisual providers to broadcast European content and, through incoherent and out of date licensing arrangements, permits rights owners to prevent access to European content on a geographic basis.

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

Chapter IV, Article 13 of the AVMSD states:

“Member States shall ensure that **on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works.** Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.”

This article is reinforced by article 14, which obliges Member States to take measures on non-linear audiovisual media services actions in favour of European works. This obligation to promote European works is significant in linear audiovisual media services as they have a minimum standard to fulfil. On-demand audiovisual media services have to promote European works “where practicable” and have no minimum standard. The underlying problem is not the increasingly untenable distinction between linear and non-linear services, but the fact that licensing of content in Europe is exceptionally difficult, complex and expensive. This creates a disadvantage for European content which cannot be solved by non-market solutions such as the current AVMSD obligations to support certain types of material.

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?**

This question addresses the wrong issue. Certain actors – such as payment service providers – can provide essential elements in a value chain while doing nothing directly to finance content. It is very important that new related markets are not distorted or destroyed by efforts to increase the funding base for content. The dangers can be seen in the ancillary copyright debate – efforts to ensure that search engines contribute to the financing of the news media will almost certainly lead to levels of cost and bureaucracy that create barriers to enter a market that is currently almost completely controlled by non-European service providers, while also failing to achieve the intended goal of the legislation.

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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?

The EU should try to overcome the current fragmentation in order to ensure interoperability as it would be beneficial for consumers. Connected TV devices bought in a Member State should work in any other Member State and not only in the country where the sale took place, as it is often the case today. The EU should facilitate the development of a harmonised standard for connected TV. This will foster the entry of new players in the single market and will allow existing national player to extend their market, improving the completion and consumers’ welfare.

More importantly, in order to protect privacy, it is often necessary to use encryption and free software operating systems. Audiovisual media convergence implies that the separation between the device that is used to write correspondence, the device that is used for audio conversations and the device that is used to view “premium” video content is getting blurred, and it may eventually totally disappear. If “premium” video content requires digital rights management (DRM) software, and the DRM mechanism is not made available for free software operating systems, this might lead to a situation where people are effectively forced to choose between giving up their fundamental right to privacy and giving up their fundamental right to take part in cultural life.

Devices that include DRM mechanisms often prevent the full capacity of the technology being used and forbid uses that were entirely uncontroversial before technological “progress” gave parts of industry the chance to prohibit them (we see this in efforts to prevent the re-sale of e-books, for example). It is therefore particularly crucial to avoid digital restriction technologies disrupting the market and the relationship of trust between service providers and citizens. For further information and detailed examples on this topic, we recommend EDRi's booklet on DRM, available at http://www.edri.org/files/2012EDRiPapers/DRM.pdf.

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?

Securing the open and neutral Internet will ensure that such differences are minimised through technological and service innovation. Network neutrality, i.e. the core principle of the Internet whereby anyone can connect with anyone, maximises the size of the available market for audiovisual services, thereby maximising incentives to ensure a seamless customer experience across different platforms. Net neutrality allows individuals and companies alike to create content and provide new services due to the open architecture of the internet - which therefore contributes to innovation and economic growth. Therefore, the importance of net neutrality must be safeguarded as a priority in this policy area. For further information, we recommend to read our previous position papers, responses to public consultations⁵ and recent letter to the European Commission, available at http://www.edri.org/node/3281.

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?

It is a misconception that spectrum is a commodity on the verge of depletion or that is is a commodity to which access needs to be reserved to only a few licensed operators. In reality, spectrum scarcity is mainly due to its partitioning and the arbitrary allocation of frequencies than to growing usage of spectrum. We believe that shared and unlicensed access to the spectrum should therefore be supported to the extent technically possible. We therefore recommend the authorisation of shared access to new bands of frequencies, and in particular to those located between the bands allocated to audiovisual broadcasters. These so-called white spaces can give rise to a new generation of wireless broadband and long-range networks. There must be solid, scientific justifications for any white space that is not being allocated and legacy operators, TV broadcasters in particular, must not be allowed to retain any spectrum on the basis of simple assumptions of possible future needs. All licensed spectrum must be used as efficiently as possible.

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

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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?

Linear and non-linear services do not offer the same content. Connected TV offers a wider but different range of services than “traditional” TV. The regulatory differentiation resulting from this distinction does not appear to cause market distortion. There is a lack of competition between Connected TV platforms. However, this does not result from the regulatory differentiation between linear and non-linear services. See also our response to Question 11, below.

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?

There is a grave risk that the regulatory approach to this issue will be restricted to questions of how much the existing linear regulation can be extended to the non-linear environment. This would be disastrous for the development of new services, availability of European content and the ability of European innovators to compete with non-European services – as we already see in other online markets.
The solution lies neither in self nor co-regulation but in European and national policymakers cooperating with European companies to create the conditions for the achievement of the public policy goals in question in a targeted, efficient and evidence-based manner. It is not a question of “regulating” but creating an environment that enables crucial public policy targets to be achieved.

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?

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?

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

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

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’?

This question mixes several different issues. From the perspective of non-linear services, legislation is certainly necessary in order to ensure net neutrality and careful analysis is needed with regard to search neutrality. As a general principle, it is important for both networks and services to provide neutral access to online content – ensuring maximum choice, competition and innovation.

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?

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

It would be helpful, when asking such questions, for the Commission to be more specific. What does it mean by “address”? What problems would be “addressed”? What public policy
goal would be pursued?

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

Since SmartTV enables companies to use customer data for advertisement purposes, questions regarding data protection and consumer protection need to be addressed. In the recent study „HbbTV – I know what you are watching“\(^6\), researchers of the TU Darmstadt showed that TV channels can engage in targeted tracking activities, estimate in real time how many people tune in to a programme and then choose and display personalised advertisement. Contents are downloaded on an automated basis via HbbTV without the knowledge of the users as soon as they have activated data services. As a general principle, users should remain in control and be given the choice whether or not they wish to receive targeted and personalised advertisement. That is also a requirement of European data protection law in relation to other marketing use of personal data (see Article 14(1) of the main data protection directive, Directive 95/46/EC).

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

This question is wrongly based on the premise that the rules in the AVMSD are the only ones which are available to protect children in a converged media world. The question is also entirely unclear regarding the challenges that it is referring to. We are not aware of any new concerns being raised regarding the protection of minors in the traditional linear environment. With regard to non-linear services, there are absolutely no grounds to believe that there are problems that have been identified, which could be addressed – let alone effectively or proportionality – by the AVMSD.

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?**

The European Commission should base policy development on evidence rather than launching consultations on what “appears” to be the case regarding unspecified tools of unspecified effectiveness/usefulness to address unspecified problems. There was already an extensive discussion within the context of the “CEO Coalition” about the development and use of parental controls – duplicating these discussions in an evidence vacuum in the context of the AVMSD appears somewhat unwise.

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

The measures that would be appropriate (i.e. proportionate) would depend on the problems that they would be seeking to solve – it is pointless to ask this question in isolation. This is a very complex issue, which raises issues of data protection, freedom of communication, the

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\(^6\) Marco Ghiglieri, Florian Oswald, Erik Tews, *HbbTV – I know what you are watching* [https://s3-eu-west-1.amazonaws.com/media.cased.de/files/2013_CASED_HbbTV.pdf](https://s3-eu-west-1.amazonaws.com/media.cased.de/files/2013_CASED_HbbTV.pdf)
right to anonymous communication, etc. It is a subject which has already been discussed in
great detail in the context of Safer Internet Action Plan and related initiatives. It is neither
appropriate nor helpful to re-hash those discussions, particularly in the absence of any
specific context.

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

Content rating and content classification can be useful, but there is most certainly no need to
impose – especially at this stage – regulatory obligations.

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? and

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?

This question is already comprehensively addressed in the context of the Safer Internet
programme of DG CONNECT. There is nothing to be gained from duplicating this work in
this context.

26. Do you think that additional standardisation efforts are needed in this field
(Accessibility for persons with disabilities)?

Article 7 of AVMSD states that “Members States shall encourage media service providers
under their jurisdiction to ensure that their services are gradually made accessible to people
with visual or hearing disability”.

As the European Commission Green Paper on Fully Converged Audiovisual World admits,
the implementation of the provision made in article 7 “varies considerably” from one
Member State to another. New technologies offer a wide range of new possibilities for
increased accessibility, some of which are already being rolled out. It would be valuable for
the European Commission to ensure that best practice is shared and that restrictive IPR on
new technologies (patents, in particular) do not serve as a barrier to their roll-out and use.

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

8 See Green Paper of the European Commission on Preparing for a Fully Converged Audiovisual World: Growth,
Grünbuch der Europäischen Kommission
über die Vorbereitung auf die vollständige Konvergenz
der audiovisuellen Welt: Wachstum, Schöpfung und Werte vom 24.04.2013
COM(2013)231 final

Kurzstellungnahme des Verbraucherzentrale Bundesverbandes zu Abschnitt 2.3 „Interoperabilität von Hybridfernsehen“ des Grünbuchs

Der Verbraucherzentrale Bundesverband bedankt sich bei der EU-Kommission für die Gelegenheit, zum Grünbuch der EU-Kommission „über die Vorbereitung auf die vollständige Konvergenz der audiovisuellen Welt: Wachstum, Schöpfung und Werte“ Stellung nehmen zu können. Kommentiert wird der Abschnitt 2.3 „Interoperabilität von Hybridfernsehen“.

Zu 2.3 Interoperabilität von Hybridfernsehen

Unsere Antwort auf die Frage 6 im Grünbuch:

„(6) Sind Maßnahmen der EU erforderlich, um die tatsächliche oder potentielle Fragmentierung zu beseitigen und grenzübergreifende Interoperabilität zu gewährleisten? Besteht auf den Markt ein Bedarf an neuen oder angepassten Normen?

lautet: Ja, solche Maßnahmen sind aus Sicht des Verbraucherzentrale Bundesverbands erforderlich und sinnvoll.

Begründung:


Durch die Einführung netzfähiger Hybrid-TV Geräte, Smartphones und Tablet PC verschärft sich diese Situation aus der Sicht des Nutzers noch. Zumindest in der linearen Fernsehwelt waren diese es bisher nicht gewohnt und sind auch weiterhin nicht gewillt, sich mit den Tücken des Einsatzes komplexer digitaler Kommunikations- und Informa-
tionsinfrastrukturen oder Endgeräte auseinander zu setzen. Sie werden aber durch die Marktentwicklung immer öfter dazu gezwungen, da infolge des Einsatzes proprietärer Systeme bei interaktiven Applikationen und durch eine zunehmende Verschlüsselung hochwertigen Contents die Interoperabilität der notwendigen Geräte, Systeme und Komponenten entweder gar nicht besteht oder weiter abnimmt.


Insofern erscheint es aus Sicht des Verbraucherzentrale Bundesverbands nicht nur mit Blick auf die Endverbraucher, sondern auch im Interesse der Programm- und Inhalteanbieter dringend erforderlich, die Grundlagen für eine weitreichende Interoperabilität auch und gerade von hybriden Empfangsgeräten für Rundfunk- und Multimediaprogramme und -inhalte zu schaffen, ohne dabei grundlegend in bestehende Geschäftsmodelle einzuzwingen.


Auf diese Kommentierung des „Aktionsbündnis“, in der die Ausgangssituation und die Motive für die gemeinsame Arbeit an dem Standardisierungsvorschlag ebenso beschrieben sind wie die Vorzüge eines austauschbaren CA/DRM-Systems für Rundfunkempfangsgeräte, sei hier verwiesen.
Grünbuch der Europäischen Kommission über die Vorbereitung auf die vollständige Konvergenz der audiovisuellen Welt: Wachstum, Schöpfung und Werte: Antworten der FSM

I. Einleitung
Die Freiwillige Selbstkontrolle Multimedia-Dienstanbieter (FSM e. V.) ist ein gemeinnütziger Verein, der sich mit Jugendmedienschutz in Onlinemedien befasst. Innerhalb des durch den Jugendmedienschutz-Staatsvertrag (JMStV) 2003 eingeführten Systems der regulierten Selbstregulierung ist die FSM anerkannte Selbstkontrolleinrichtung für den Bereich Telemedien in Deutschland.


II. Antworten auf einige Fragen des Grünbuchs

1) Frage 20: Sind die derzeitigen Bestimmungen der AVMD-Richtlinie geeignet, um den Herausforderungen im Bereich des Schutzes von Minderjährigen in einer konvergierenden Medienwelt zu begegnen?

Das Kriterium der Verbreitungsart

Die AVMD-Richtlinie unterscheidet hinsichtlich der Frage, welche Inhalte stets unzulässig sind und welche aus Gründen des Schutzes Minderjähriger ggf. nur unter Verwendung technischer oder sonstiger Schutzmaßnahmen verbreitet bzw. angeboten werden dürfen, ausschließlich zwischen Fernsehprogrammen einerseits (Art. 27) und audiovisuellen Medien- diensten auf Abruf andererseits (Art. 12).

Diese Differenzierung bildet immer weniger eine sich wandelnde Medienrealität ab, in der die Verbreitungstechnologie ebenso in den Hintergrund tritt wie die Art des für die Mediennut- zung verwendeten Endgeräts. Die Art der Technologie und der gewählte Verbreitungsweg sind für den Zuschauer bzw. Nutzer immer weniger relevant. Unterschiedliche Geräteklassen (Smart TVs, PCs, Tablets, Mobiltelefone, Spielkonsolen) werden schon heute für den Zu- gang sowohl zu linearen als auch zu nicht-linearen Diensten genutzt. Für den Medienkon- sumenten ist es zudem kaum nachvollziehbar, wenn er an ein und demselben Endgerät mit verschiedenen Regelungsregimes und abweichenden Schutzniveaus konfrontiert ist.

Für den Kinder- und Jugendmedienschutz sollte das ausschlaggebende Kriterium auf der Rechtsgrundseite kein technologisches (linear vs. nicht linear), sondern ein inhaltliches sein. Art der Verbreitung und Verbreitungstechnologie sollten keinen Einfluss darauf haben, welches Schutzniveau vom Gesetz verlangt wird. Ob die eine oder die andere Verbreitungsart gewisse technische Schutzmaßnahmen ermöglicht oder nicht, ist für das regulatorische Setzen von Mindeststandards nicht relevant. Es ist eine Frage der Realisierbarkeit, die derzeit einem ständigen technischen Wandel unterliegt: Je mehr eine konvergente Mediennutzung betrieben wird, desto mehr werden technische Schutzmöglichkeiten der einen Verbreitungsart auch für eine andere nutzbar. So wie etwa Jugendschutzsoftware auf einem PC eingesetzt werden kann, besteht die Möglichkeit technischer Schutzvorkehrungen je nach technischer Ausgestaltung in gewissen Formen zumindest potentiell auch bei Smart TVs und Set-Top-Boxen—hinsichtlich der darüber empfangenen Fernsehprogramme. Wenn perspektivisch auch bei Fernsehinhalten neben Sendezeitbegrenzungen auch andere technische Maßnahmen zur Verfügung stehen, um Minderjährige an der Wahrnehmung bestimmter Inhalte zuverlässig und nachweislich zu hindern, besteht nicht mehr das Erfordernis, wie bisher hinsichtlich der Art der Verbreitung zu differenzieren.

Die Begrenzung der Verbreitungszeit zumindest für eine Übergangszeit als Option zu belassen, wird gleichwohl als zweckmäßig angesehen, denn solange ein solcher technischer Schutz bei Rundfunkprogrammen aufgrund der noch nicht zur Verfügung stehenden Technologie nicht möglich ist, bleiben diese Inhalte auf die alternative Schutzmöglichkeit der Zeitbegrenzung beschränkt. Dies hindert aber nicht, die Möglichkeit eines technischen Schutzes bereits jetzt regulatorisch zu ermöglichen. Im Gegenteil: Aufgrund der rasanten technischen Entwicklung gerade im Fernsehbereich ist es sinnvoll, bereits jetzt eine einheitliche und damit zukunftsfähige Regelung zu etablieren.

Die FSM regt deshalb an, bei der künftigen Regulierung nicht auf den Verbreitungsweg bzw. die Art der Verbreitung, sondern nur noch auf das zu gewährleistende Schutzniveau, abhängig von der Schwere der potentiellen Beeinträchtigung, abzustellen: In Anlehnung an den bestehenden Art. 12 könnten somit alle Inhalte, die die körperliche, seelische und sittliche Entwicklung von Minderjährigen beeinträchtigen, unabhängig vom Verbreitungsweg bzw. der Art der Verbreitung dann angeboten oder verbreitet werden, wenn der jeweilige Anbieter die Gewähr dafür bietet, dass Minderjährige diese Inhalte üblicherweise nicht wahrnehmen können.
Damit würde für alle Verbreitungswege ein einheitliches Schutzniveau festgelegt, basierend auf einer gleichlautenden Regelung.

Abstufung nach der Schwere der möglichen Beeinträchtigung

Das Prinzip des abgestuften Schutzniveaus, das im den Art. 27 bereits anklingt, ist grund- sätzlich zu begrüßen. In Deutschland ist ein solches System bereits seit langem etabliert und hat in der Praxis zu einem breiten Spektrum an Schutzmechanismen geführt, vor allem im Bereich der Telemedien.

Das Maß der zu gewährleistenden Sicherheit sollte aus Sicht der FSM jedoch auch im Rah- men der Richtlinie stets mit der zu besorgenden Beeinträchtigung korrespondieren: Je ernst- hafter die Gefährdung von Minderjährigen, desto größere Anstrengungen sind vom Anbieter der Inhalte zu verlangen. Dies wird von den bisherigen Vorgaben der Richtlinie nur unzu- reichend gewährleistet: Sowohl in Art. 12, als auch in Art. 27 Abs. 2 wird der gleiche Wortlaut verwendet („üblicherweise nicht wahrnehmen“), obwohl Art. 12 die Verbreitung ernsthaft be- einträchtigender Inhalte (z.B. Pornografie) zulässt, Art. 27 Abs. 2 jedoch lediglich die von anderen (und eben nicht ernsthaft) beeinträchtigenden Inhalten (z.B. erotische oder be- stimmte, maßvolle Gewalt enthaltende Angebote). Die FSM regt deshalb an, hier die inhaltli- che Abstufung auch sprachlich zu berücksichtigen. Im Sinne eines gemeinsamen europäi- schen Standards regt die FSM an, sich auf der Ebene der Richtlinie insoweit am gegenwärti- gen Art. 12 zu orientieren, der ggf. auf nationalstaatlicher Ebene weiter ausgeformt werden kann.

Bestimmte Arten von Inhalten sind darüber hinaus absolut unzulässig und dürfen auch nicht Erwachsenen zugänglich gemacht werden (z.B. Inhalte, die den sexuellen Missbrauch von Minderjährigen zum Gegenstand haben, extreme Gewalt beinhalten oder volksverhetzend sind, § 4 Abs. 1 JMStV). Der Richtliniengeräteber mag erwägen, die bislang bestehenden Rege- lungen des Art. 6 entsprechend zu erweitern.

2) Frage 21: Obwohl zunehmend Tools verfügbar sind, die eine elterliche Kon- trolle auf Geräten und Plattformen ermöglichen, über die auf Inhalte zugegrif-
fen wird, werden diese bisher scheinbar kaum genutzt. Wie könnten Eltern gezielter auf diese Instrumente aufmerksam gemacht werden?


Wegen der Vielzahl der ggf. abzusichernden Endgeräte und des Variantenreichtums der technischen Lösungen darf die initiale Kommunikation zur Bewerbung entsprechender Tools zur elterlichen Kontrolle (in Deutschland: Jugendschutzprogramme) nicht zu detailliert ausfallen, sondern sollte sich auf简单的, grundsätzliche Kernbotschaften beschränken: (1) Es stehen technische Maßnahmen zur Verfügung, um Kinder und Jugendliche vor für sie ungeeigneten Inhalten im Internet zu schützen. (2) Eltern tragen die Verantwortung dafür mit, diese Maßnahmen selbstbestimmt einzusetzen.

Diesen Weg der grundsätzlichen Kernbotschaften hat die Initiative „sicher online gehen“¹, ein Zusammenschluss von Bund, Ländern und der Wirtschaft, in der jüngeren Vergangenheit erfolgreich beschritten.

In einem zweiten Schritt kann die Kommunikation auch Geräte-spezifisch sein und auf die Besonderheiten der einzelnen Infrastrukturen eingehen (z.B. Windows-PC: Download und Installation von Jugendschutzprogrammen; Mobiltelefone und Tablets: Beschränkung der App Stores bezüglich der erlaubten Alters-/Inhaltestufen sowie die Erstellung verschiedener Nutzerprofile; Smart TV: Aktivierung der Kindersicherung, Festlegen einer PIN).

Eine Kooperation von öffentlicher Hand, NGOs und Unternehmen bietet sich für eine breite und nachhaltige Kommunikation an, weil auf diesem Wege Know-how, Infrastrukturen und Kommunikationskanäle auf sinnvolle Weise verknüpft werden können. Dabei ist nach Wegen zu suchen, Eltern dort anzusprechen, wo sie für diese Informationen empfänglich sind, also auch außerhalb des Medienumfelds (z.B. im Einzelhandel, auch unabhängig von den Ver-  

¹ http://www.sicher-online-gehen.de/
triebsstrukturen der Unternehmen der Medienbranche; Elternbriefe; Informationen in den Schulen, Elternmultiplikatoren).

In der jüngeren Vergangenheit haben Mitglieder der FSM entsprechende Jugendschutzprogramme vorgelegt (Deutsche Telekom für Windows-PCs und iOS, Vodafone für Android-basierte Geräte), und auch das Jugendschutzprogramm des Vereins JusProg steht Endnutzern zur Verfügung. Die FSM kommuniziert diese Möglichkeiten nicht nur im Mitgliederkreis sondern auch im Rahmen von Multiplikatorenschulungen, vor allem im Bereich Schule und Eltern.

3) Frage 22: Welche Maßnahmen würden eine wirksame Altersüberprüfung bei Nutzern audiovisueller Online-Inhalte ermöglichen?

Bei der Beantwortung dieser Frage ist einerseits nach dem je nach Art der Inhalte erforderlichen Schutzniveau (ernsthaft beeinträchtigende Inhalte, sonstige beeinträchtigende Inhalte) und andererseits nach den in den jeweiligen Mitgliedsstaaten zur Verfügung stehenden Infrastrukturen (z.B. öffentliche Register, elektronische Ausweispapiere, andere übliche Identifizierungsmethoden) zu unterscheiden.


2 http://www.ane.de/elternbriefe.html
3 Zum Beispiel http://www.eltern-medien-trainer.de/
4 http://www.t-online.de/jugendschutz
5 http://www.t-online.de/service/redir/mobileapp-iOS-surfergarten.htm
6 http://www.vodafone.de/privat/apps-und-fun/childprotect.html
7 www.jugendschutzprogramm.de/

In der jüngeren Vergangenheit wurden Verfahren entwickelt und auch erfolgreich in der Praxis implementiert, die sowohl auf einen Medienbruch, als auch auf eine zeitliche Verzögerung verzichten können. Ein Beispiel dafür ist die Nutzung der Zugangsdaten des Online-Bankings, soweit sichergestellt und nachprüfbar ist, dass der Kontoinhaber volljährig ist, sowie die eID-Funktion des Personalausweises¹⁰.

Weil in den Mitgliedsstaaten zum Teil sehr unterschiedliche Möglichkeiten bestehen, die Identität und das Alter von Personen beispielsweise anhand von Melderegistereinträgen zu verifizieren, sollte der Richtliniengeber in diesem Zusammenhang nicht zu detaillierte Vorgaben machen.

Die Absicherung **sonstiger beeinträchtigender Inhalte** (außerhalb der Öffentlichkeit) sollte unter Berücksichtigung des Grundsatzes der Verhältnismäßigkeit eine echte, zuverlässige Altersprüfung nicht erfordern.

Hier kann es im Verantwortungsbereich der Eltern belassen werden, die erforderlichen Schutzmaßnahmen zu ergreifen, wenn die Informationen über den Grad der möglichen Beeinträchtigung (z.B. Freigabe ab einer bestimmten Altersstufe) in maschinenlesbarer Form durch den Anbieter mit dem Inhalt übermittelt werden und die Inhalte bestimmungsgemäß primär über Endgeräte abgerufen werden, die in der Lage sind, solche Informationen zu verarbeiten. Eine echte Altersüberprüfung ist aufgrund des geringeren Schutzniveaus, das hier zu gewährleisten ist, nicht erforderlich und wäre in den meisten Fällen zudem unwirtschaft-

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lich. Dies ist jedenfalls für professionelle bzw. im weiteren Sinne redaktionell erstellte oder betreute Inhalte bereits heute möglich. Die maschinenlesbare Kennzeichnung bestimmter beeinträchtigender Inhalte als alleiniger Schutzmechanismus wird in Deutschland bereits praktiziert und findet zunehmend größere Verbreitung.


4) Frage 24: Sollten durch eine Änderung der AVMD-Richtlinie insbesondere Fragen im Zusammenhang mit der Bewertung von Inhalten, der Klassifikation von Inhalten sowie mit Tools für die elterliche Kontrolle für alle Übertragungskanäle geregelt werden?

Grundsätzlich ist eine maschinenlesbare Kennzeichnung von Diensten und Inhalten zu begrüßen, soweit es sich um solche Angebote handelt, für die der Diensteanbieter selbst die unmittelbare Verantwortung trägt. Auf diesem Wege können vor allem Anbieter professioneller Inhalte Eltern und anderen Erziehenden die Möglichkeit eröffnen, mithilfe entsprechender Einstellungen den Zugang ihrer Kinder zu für diese ungeeigneten Inhalte zu unterbinden. Im Rahmen der Regulierung sollte eine individuelle Kennzeichnungspflicht für einzelne Inhalte gleichwohl vermieden werden, so dass es dem Anbieter überlassen bleibt, ob er mit ggf. ho-


und ggf. eine mehrfache Klassifizierung, um verschiedenen nationalen Systemen entsprechen zu können, entbehrlich machen.

Die Tools für die elterliche Kontrolle sind je nach Gerät bzw. Geräteklasse unterschiedlich und bislang überwiegend nicht in der Lage, plattformübergreifende Kennzeichen zu interpretieren.

Regulatorische Vorgaben sind in diesem Zusammenhang also deshalb schwierig, weil sowohl die Kennzeichnungsstandards, als auch die jeweils verwendeten Technologien sehr unterschiedlich sind (Beschränkung der Altersstufen auf Mobiltelefonen vs. Zugangssteuerung am Smart TV vs. Software für PCs). Zum jetzigen Zeitpunkt würden entsprechende verbindliche Vorgaben des Richtliniengesetzgebers zwingend nachteilige Wirkungen für Inhalteanbieter mit sich bringen, ohne für den Verbraucher ein breit gefächertes Informations- und Unterhaltungsangebot zu gewährleisten.

Eine aus der CEO Coalition to Make the Internet a Better Place for Children hervorgegangene Arbeitsgruppe entwickelt gegenwärtig die Grundlagen für eine interoperable und maschinenlesbare Kennzeichnung von Onlineinhalten, die nationale Systeme unangetastet lässt, aber einen Informationsaustausch durch eine gemeinsame Schnittstelle ermöglichen soll. Eine darauf basierende Technologie, die europaweit akzeptiert ist und die Nutzung von Alters- bzw. Inhalteklassifikationen unabhängig von ihrer nationalen Herkunft und dem originären Verbreitungsweg ermöglicht, könnte künftig als Basis für Vorgaben an die Diensteanbieter dienen.

5) Frage 24: Sollten Nutzer besser darüber informiert werden, wo und wie sie sich zu Inhalten äußern oder sich über sie beschweren können, und sollten sie besser darüber aufgeklärt werden, wie sie diese Möglichkeiten am besten nutzen können? Sind die derzeitigen Beschwerdemechanismen angemessen?

Hier ist zu unterscheiden zwischen Beschwerdemechanismen, die Anbieter zur Verfügung stellen, und sonstigen, öffentlichen Beschwerdemechanismen, die z.B. mit dem INHOPE-Netzwerk für Darstellung von Kindesmissbrauch existieren.

Die Beschwerdemechanismen bei Anbietern sind sehr unterschiedlich gestaltet und hängen zudem von den angebotenen Inhalten ab. Diese inhomogene Lage lässt eine grundsätzliche Beurteilung im Sinne der Fragestellung nicht zu. Wichtig ist in diesem Zusammenhang je-
doch, dass Nutzer entsprechende Beschwerdemechanismen möglichst nah an den entsprechenden Diensten bzw. in diese integriert vorfinden.


Hinsichtlich der öffentlichen Beschwerdemechanismen ist auf die professionelle und effiziente Arbeit im INHOPE-Netzwerk hinzuweisen, die zeigt, dass ein internationaler Austausch zumindest bezogen auf einen genau definierten Aufgabenbereich – in diesem Fall Kinderpornographie - funktionieren kann. Die dort gewonnenen Erfahrungen können helfen, Beschwerden von Zuschauern und Nutzern insbesondere dann schnell an die richtigen Ansprechpartner weiterzuleiten, wenn Beschwerdeführer und Diensteanbieter aus unterschiedlichen Ländern stammen.

6) Frage 25: Sind die Mittel, mit denen Beschwerden bearbeitet werden (finanzielle, rechtliche oder andere Mittel), angemessen, um ein adäquates Feedback auf Meldungen über schädliche oder illegale Inhalte zu gewährleisten, insbesondere wenn Kinder betroffen sind? Welche Aufgaben/Zuständigkeiten sollten den Behörden, nichtstaatlichen Organisationen und Anbietern von Produkten und Dienstleistungen übertragen werden, damit sichergestellt ist, dass Personen, die schädliche oder illegale Inhalte melden oder Beschwerden einreichen, in ordnungsgemäßer Weise adäquates Feedback erhalten?


Auch die rechtliche Absicherung der Beschwerdestellen bedarf der Verbesserung. In einigen Ländern, so auch in Deutschland, ist die rechtliche Situation für nichtstaatliche Stellen, die sich mit strafbarem Material beschäftigen, unklar. Dass diese Stellen inzwischen aber für die Bekämpfung kinderpornographischer Inhalte unabdingbar sind, zeigen bereits die hohen Zahlen an Fällen, die von diesen Stellen an die Polizei weitergegeben werden. Es ist deshalb notwendig, die Arbeit dieser Stellen klar und deutlich rechtlich zu legitimieren.
Response to questions (24) and (25) of the Green Paper ‘Preparing for a Fully Converged Audiovisual World’

Contribution by the Internet Watch Foundation

Q (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?

1. The answer to the first question is dependent on the country under consideration, the type of content under consideration and the complaints handling mechanism under consideration. The second question is not entirely clear as to whether it refers to complaints handling mechanism in general or rather the informing and empowering of users about where and how they can complain about different types of content. Equally, what is appropriate to one person might not be an appropriate level for somebody else.

2. Generally speaking, there is always room for improvement as regards informing and empowering users as to where and how to complain concerning different types of content. There might be scope for an international resource that could act as a directory where people can find the relevant body for the type of content they are trying to report in their country. However, given the differences between countries, types of content and complaint mechanisms this directory might have to be general and high-level as going into the details of different mechanisms and procedures might render it unmanageable, both for collecting the information as well as for citizens trying to retrieve the information. It would, however, be of the utmost importance that this directory is inclusive and it would need to coincide with a public campaign to raise awareness of the existence of the directory.

3. The following sections will look specifically into the example of reporting child sexual abuse content in the United Kingdom. The Internet Watch Foundation (IWF) is the UK hotline where the public can report child sexual abuse content hosted anywhere in the world, criminally obscene adult content hosted in the UK and non-photographic images of child sexual abuse hosted in the UK. We are a charity founded in 1996 by the UK internet industry and we are therefore independent from Government and law enforcement. In 2012, the IWF processed 39,211 reports and assisted with the removal of 9,696 URLs containing potentially child sexual abuse content.

a. IWF’s work regarding informing users where to report child sexual abuse content

As the UK hotline, it is of the utmost importance for us that internet users know how to find us and how to report to us. We try to raise awareness of our work and to direct people looking to report child sexual abuse content to us in the following ways:
• **Awareness raising initiatives:**
  
  o **Awareness raising campaigns:** We organise regular campaigns for different target audiences. Last year, for instance, an online campaign focused on raising awareness of the IWF among people aged 18 to 30 years old and included web banners, You Tube videos, social media engagement and bespoke online content on websites relevant to the target audience. The website banner had over 5,000,000 impressions, there were over 80,000 You Tube views and over 200,000 people were reached weekly on Facebook. This specific campaign resulted in a 30% increase in reports during the months that the campaign was running.

  o **Events:** We organise regular awareness raising events, such as our annual IWF Awareness Day in October, as well as specific conferences or networking events throughout the year. Our last event in Brussels took place on 11 April 2013 and included two panel discussions with speakers from the European Commission, the Council of Europe, the ITU, the CTO, the online industry, Europol and the South African Hotline.

  o **Media work:** We work hard to build and maintain our relationships with journalists by answering their questions, issuing press releases and by facilitating interviews and visits to our office.

  o **Social Media:** We use Facebook, Google+ and Twitter to engage with our audience. We currently have 2035 Twitter followers, 5226 Facebook likes and 180 Google+ followers.

  o **Presentations and briefings:** We try to meet and present our work to as many relevant stakeholders as possible. This includes law enforcement, teachers, politicians,… We currently have an IWF Champions programme for which 73 politicians have signed up as ‘IWF Champions’, thereby publically supporting our work.

  o **UK Safer Internet Centre:** We are part of the UK Safer Internet Centre and together we organise, for instance, the UK Safer Internet Day.

  o **Marketing material:** We have created a number of leaflets and other resources (for instance the IWF video available at [www.iwf.org.uk](http://www.iwf.org.uk)), that we are able to distribute at relevant events and conferences.

• **Directing users to our hotline:**

  The preferred way to report content to us is via our reporting tool on our website. We try to make it as easy as possible for people to find our website. This is done through our general awareness raising but also specifically through:

  o **Search engine optimisation:** By optimising our own website as well as through Google grants, our website comes up first in the UK when searching how to report child sexual abuse content.
o **Links from other websites**: Our website is mentioned on the website of relevant partners.

o **Linking with Law Enforcement to direct people to the hotline**: We raise awareness among law enforcement in order for them to be able to direct people who contact them trying to report child sexual abuse content to us.

o **Social media**: We engage with people trying to report content via social media in order for them to go to our website and reporting tool.

b. IWF's work regarding empowering users to report child sexual abuse content

When it comes to how to report content, the IWF mainly takes reports through its website, [www.iwf.org.uk](http://www.iwf.org.uk). The reporting button is easy to find on the homepage and it takes the person reporting content to an easy 5-stage process. This process can be completed within 2 minutes, only takes a couple of clicks and can be done completely anonymous. We are currently looking into upgrading the reporting page in order to make it as easy and straightforward as possible. In Annex, screenshots of the reporting process can be found.

4. Opinion polls show that even with the awareness raising initiatives, a relatively small (but increasing) proportion of UK citizens is aware of the IWF. However, we believe that people who want to report child sexual abuse content can find the IWF and report this content relatively easily. Progress can always be made and we remain committed to raising awareness and improving our reporting tool.

**Q (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 feedback is properly delivered to people reporting harmful or illegal content and complaints?**

1. It is important to specify which complaints mechanism is discussed as it is extremely difficult to draw general conclusions due to the different systems and mechanisms that exist. Reports can be made to, for instance, Internet Service Providers, Mobile operators, law enforcement or hotlines depending on the specific situation and every time procedures will be different. This answer is formulated based on the assumption that ‘feedback’ refers to feedback to the person who actually reported the content.

2. As regards the feedback by the IWF, people can report anonymously to the IWF if they choose to do so. No personal data is recorded and therefore no feedback is provided. When people provide contact details the IWF will send an acknowledgment that the report is received and ask if the person reporting wants follow-up feedback. If they request feedback, the IWF will inform the person of the outcome of the assessment of their report and the follow-up of the process.
About the Internet Watch Foundation

1. The UK has currently one of the most effective systems in the world for dealing with child sexual abuse content on the internet. This success is based on the efficiency and experience of the Internet Watch Foundation (IWF), the support it receives from the online industry and its close cooperation with law enforcement, in particular with CEOP, the UK’s Child Exploitation and Online Protection Centre.

2. **IWF Background:** The IWF is the UK hotline where the public can report child sexual abuse content, criminally obscene adult content and non-photographic images of child sexual abuse. The IWF is a charity founded in 1996 by the UK internet industry and it is therefore independent from Government and Law Enforcement. However, the IWF has very close working relationships law enforcement and its operations are covered by a Memorandum of Understanding with the Crown Prosecution Service and the Association of Chief Police Officers and a Service Level Agreement with the Association of Chief Police Officers.

3. The IWF is a membership organisation and is funded by over 100 global members, including internet service providers (ISPs), mobile operators, content providers, hosting providers, filtering companies, search providers, trade associations and the financial sector, as well as by the EU as part of the UK Safer Internet Centre together with Childnet International and South West Grid for Learning. As an independent body, transparency and accountability is of the utmost importance and the IWF is governed by an independent Board, the Hotline is independently audited by a highly qualified team every two years, the IWF operates a thorough complaints procedure and has commissioned an independent Human Rights Review.

4. **IWF processes:** When the IWF receives a report from the public, its analysts assess the content to confirm whether the content is within its remit and potentially in breach of UK legislation. If the content is considered to be potentially criminal, the IWF can take action against the child sexual abuse images and videos hosted anywhere in the world and against criminally obscene adult content and non-photographic child sexual abuse content hosted in the UK.

5. Depending on where the content is hosted, the process for dealing with potentially criminal images and videos differs. When child sexual abuse content is found to be hosted in the UK, the IWF will inform CEOP. After confirmation from CEOP that action can be taken, the IWF will notify the hosting provider who will remove the content from its servers, typically within 60 minutes after receiving the notification from the IWF. This process is commonly referred to as ‘Notice and Takedown’.

6. When child sexual abuse content is found to be hosted outside the UK, the IWF will inform its counterpart hotline in the hosting country through INHOPE, the international association of hotlines or link in directly with local law enforcement. As other countries take significantly longer to remove child sexual abuse content – 50% of the content the IWF passes on internationally is still available after 10 days – the IWF adds the links (URLs) to the content to its URL list (or blocking list) which IWF members can use to voluntarily block access to these URLs to protect their customers from stumbling upon the images and videos. The URLs on the list are as targeted as possible, often
comprising a single image or video. This is done in order to prevent the blocking of anything outside the criminal images or videos.

7. In addition to ‘Notice and Takedown’ and the URL list, the IWF also compiles a keyword list of terms that specifically refer to child sexual abuse content. This list is used, for instance, by search engines to prevent people from finding images and videos of child sexual abuse content. The keywords are very specific – or very specific combinations of words – that carry no meaning besides the specific reference to child sexual abuse content. This means the keywords will not prevent access to, for instance, academic research into the area of child sexual abuse or websites aimed to help or inform people in relation to child sexual abuse.

8. Finally, the IWF also monitors newsgroups and can issue notices for removal of individual postings where child sexual abuse content is identified.

9. **IWF achievements:** In 2012, the IWF processed 39,211 reports and assisted with the removal of 9,696 URLs containing potentially child sexual abuse content. A URL can refer to a single image or potentially a website containing thousands of images. A huge majority of victims (81%) appeared to be 10 years old or younger (with 4% 2 years old or under) and 53% of the images and videos depicted sexual activity between adults and children, including rape and sexual torture. Over the past 17 years, the IWF has assessed over 400,000 web pages and assisted with the removal of 100,000 URLs containing potentially child sexual abuse content. By sharing intelligence with police, the IWF aided with the identification and rescue of 12 children in the past two years.

10. **IWF success:** In the past decade, the UK has become the world leader for dealing with child sexual abuse content and the IWF is considered as one of the most successful hotlines in the world. Both the amount of reports received/processed by the IWF and the speed with which action can be taken is among the best within Europe and beyond. As a result, the share of child sexual abuse content that is hosted in the UK is less than 1% of the total amount of known content, down from 18% in 1996 when the IWF first started. This means that - because of the efficiency of the current system - the UK has become an extremely hostile territory to host child sexual abuse content.

11. The success of the IWF is foremost due to its very clear and specific remit. Because of the strong focus on child sexual abuse content, the IWF has accumulated a very thorough and extensive knowledge on how to deal with this content most effectively. On the one hand, this means IWF’s analysts have become experts in this area, often recognising images and even victims/perpetrators within the images. They can pass on this information to law enforcement to aid the investigation into the sexual abuse. On the other hand, the IWF has been able to develop a strong partnership network both within the UK as well as internationally to fight the availability of child sexual abuse content. This multi-stakeholder approach is crucial for successfully dealing with child sexual abuse content and the IWF has built a very strong network, both with law enforcement, the online industry and international partners, for specifically dealing with child sexual abuse images. In addition, the success of the IWF is also a result of its self-regulatory model which allows the IWF to adapt quickly to new developments and the strong support it has received from the online industry over the past 17 years.
Welcome to the IWF reporting page

We are the UK Hotline for reporting criminal online content and work with the internet industry, police and international partners to get it removed. Reports to the IWF are confidential and can be submitted anonymously. Your report to the Hotline may help to trace and rescue a young victim from further abuse.

WHAT KIND OF ONLINE CONTENT ARE YOU REPORTING?

- Child sexual abuse images hosted anywhere in the world
- Non-photographic child sexual abuse images hosted in the UK
- Criminal obscenity adult content hosted in the UK

Note: If your report does not fall into any of these categories, you could visit [www.casop.police.uk/report-abuse](http://www.casop.police.uk/report-abuse) or see our useful links section.

WHERE DID YOU FIND IT?

- Spam Email (with link(s) to content)
- Website
- Usenet / Newsgroup
- Other

PROCEED TO NEXT STEP
WEBSITE DETAILS

In order for the IWF to investigate a website we need its address which is known as a URL e.g. http://www.iwf.org.uk, www.iwf.org.uk or iwf.org.uk.

If you have any information you think may assist the IWF such as a description of where the content you are reporting is located on a large website or username and password needed to gain access, please include it in the description box. Thank you.

Web Address: www.
Description:

PROCEED TO NEXT STEP

CHOOSE YOUR REPORTING METHOD

We will keep your contact details strictly confidential. If you prefer to remain completely anonymous you can do so, but if we need to contact you further about the reported content or you wish to be able to respond back to us with your unique reference number regarding your report then we need some contact details, including an email address.

OPTION 1: You would like to remain anonymous
Anonymous: ☑️

OPTION 2: You are happy to provide your contact details
First Name:
Last Name:
Email:
Organisation:
Country: United Kingdom

If you submit your details they will be recorded on the IWF database for 3 months in case we need to contact you for more information. They will then be deleted in accordance with the Data Protection Act. Your details will not be disclosed to third parties without your permission.

Security Code Tips
- Please enter the words you see in the box, in order and separated by a space. Doing so helps prevent automated programs from abusing this service.
- If you are not sure what the words are, either enter your best guess or click the refresh button below the box.
- Visually impaired users can click the audio button to hear a set of numbers that can be entered instead of the visual challenge.

PROCEED TO NEXT STEP

Thank you for your report

Thank you for submitting your report to the Internet Watch Foundation.
If you would like to see what happens to your report click here.
We’d be grateful if you could spare some time to fill out our website feedback form.
ΚΕΝΤΡΟ ΠΡΟΣΤΑΣΙΑΣ ΚΑΤΑΝΑΛΩΤΩΝ

Identification number in the register: 18939412904-80

Ο ευρωπαϊκός διάλογος για τη σύγκλιση των οπτικοακουστικών υπηρεσιών πρέπει να περιλαμβάνει μεταξύ των κεντρικών στόχων του την προβολή της καταλήκτικής τόπης τους, κληρονομιάς και την συνδεδεμένη με αυτήν προστασία των μέσων αυτών, ειδικότερα δε την προστασία των ανηλίκων και λοιπών ευπαθών ομάδων του κοινού.

Το μέσο που χρησιμοποιείται (πράσινη βίβλος) είναι όψιμο και στερείται φιλοδοξίας, ενώ η σειρά παρουσίασης των θεμάτων και ερωτημάτων στερείται προσανατολισμού, πράγμα που δημιουργεί αβεβαιότητα ως προς τις προθέσεις της Επιτροπής επί του θέματος.

Η Επιτροπή θα πρέπει να εγγυηθεί τη διαλειτουργικότητα των διαφόρων υπηρεσιών που διανέμονται στις υβριδικές πλατφόρμες προωθώντας ισότιμες συνθήκες ανταγωνισμού για όλους τους παρόχους περιεχομένου και υπηρεσιών και να εξασφαλίσει πως οι χρήστες θα διαθέτουν δυνατότητα ελεύθερης και χωρίς διακρίσεις επιλογής —ιδίως χωρίς γεωγραφικές διακρίσεις—, στο πλαίσιο ποιοτικής και διαφοροποιημένης προσφοράς.

Η Επιτροπή θα πρέπει να εξετάσει το ζήτημα του πεδίου εφαρμογής της οδηγίας και συγκεκριμένα τη δυνατότητα προσθήκης διατάξεων για τη διαφάνεια και τη συγκέντρωση ιδιοκτησίας των οπτικοακουστικών μέσων επικοινωνιάς, γραμμικών και μη, και το κεντρικό ζήτημα του ορισμού της «συντακτικής ευθύνης» στα οπτικοακουστικά μέσα επικοινωνιών. Θεμελιώδης αρχή της αναθεώρησης πρέπει να είναι η σεβασμός και η διασφάλιση των διακρίσεων αξιών, προστασία καταναλωτών, προστασία προσωπικών δεδομένων κ.λπ.)κατά τρόπο ομοιόμορφο, ανεξάρτητα από το μέσο πρόσβασης στα οπτικοακουστικά περιεχόμενα, και παρά της προσαρμογές που θα πρέπει να επέλθουν σε συνάρτηση με τις ιδιαιτερότητες των μέσων αυτών.

Παραμένουμε στη διάθεσή σας.

Με τιμή,

Για το Δ.Σ.

Νικόλαος Τσεμπερλίδης, Πρόεδρος ΚΕ.Π.ΚΑ., Μέλος της Εκτελεστικής Επιτροπής της Ο.Κ.Ε., και Αν.Μέλος της Ε.Ο.Κ.Ε.
Ευαγγελία Κεκελέκη, Γεν. Γραμματέας ΚΕ.Π.ΚΑ., Αντιπρόεδρος Παρατηρητηρίου Εσωτερικής Αγοράς, Μέλος Ε.Ο.Κ.Ε. και Μέλος Ε.Σ.Ο.Κ.

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Your ref. Our ref. Case nr: 13/1290-3 Date: 29.08.2013
Executive Officer: Helge Blyberg
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I refer to the abovementioned Green Paper, dated 24 April 2013, in which the Commission invites viewpoints on the issues raised with a deadline of 31 August 2013.

The Consumer Ombudsman supervises businesses’ marketing, commercial practices and contract terms and conditions to ensure that they conform to the Norwegian Marketing Control Act. In addition, I perform supervision in areas of the audiovisual media services act and regulation that have to do with the protection of children. The greater part of the rules and regulations concerning audiovisual media services lies outside of my scope of supervision.

Audiovisual media services nevertheless raise a number of important questions concerning consumer protection, including the areas in which I perform supervision. It may also in time prove necessary to take measures in other areas of the law to ensure that consumers can easily and safely navigate the market for audiovisual media services. In what follows I will point out some issues that are raised by the Green Paper, and which I believe should be more closely examined from a consumer perspective.

I. The freedom to choose the most suitable supplier
From a consumer perspective, convergence has the potential to create a broader and better range of services in the market for audiovisual media services. If consumers are to be able to navigate the market, however, it is crucial that all marketing of these services is correct, giving consumers the information they need to make an informed choice between providers.

Internet access as a prerequisite for consumers’ freedom to choose in the audiovisual media services market

The freedom to choose in the audiovisual media services market is contingent upon the consumer’s Internet access. With an ever-greater variety of TV, streaming and download services being offered via the Internet, some consumers may naturally consider whether

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such services can supplement or replace those of traditional TV providers. Essential prerequisites are a high-speed, high-capacity Internet connection with a high data allowance, but other factors are also of importance if consumers are to easily decide how to consume audiovisual media services.

A continued focus upon securing net neutrality may furthermore prove to be important in a market where more and more of the Internet traffic consists of the transfer of audiovisual media services. Consumers' freedom to choose will be adversely affected in this market if Internet connection speeds are limited for e.g. streaming services.

In the market for TV and Internet access, there are several actors that offer consumers both Internet access and TV services. Providers of Internet access may have a financial stake in influencing their customers' choice of TV provider. In the Norwegian market, I have seen traders that require a TV subscription from a distributor within the same company or corporation as a prerequisite to providing Internet access, or vice versa. Any questions under competition law such practices may raise is outside of my scope of supervision, but I have reason to question the fairness of such terms and conditions from a consumer perspective:

Some consumers may have reason to desire both TV services and Internet access from one provider, but that is not necessarily the case for all consumers. Some are not at all interested in TV services, others want the option of purchasing non-linear services on the Internet, and still others may find that a different provider's TV services better meet their needs. If a consumer is forced by his or her Internet service provider to subscribe to a certain TV service, it can become too costly to take advantage of other offers in addition to the one the consumer is bound to pay for through his or her contract with the Internet provider.

I would also point out that in some geographical areas, the infrastructure is not in place to offer consumers real alternatives should they desire Internet access with high speed and capacity without subscribing to TV services from the same provider. Other consumers live in residences where there are collective contracts with providers of Internet, TV and telephony with long binding periods. In such cases, the problematic aspects of contract bundling are amplified.

In connection with the future development of the market for audiovisual media services, I encourage a closer look at how bundling affects consumers' freedom to choose, including whether companies' right to employ bundling in their contracts should be limited.

**Binding periods and cancellation notice periods that limit consumer freedom of choice**

The use of long binding and cancellation notice periods can prevent consumers from switching providers if they find one that better suits their needs. From the practice of the Market Council and Consumer Ombudsman, it has been determined that consumers must be compensated financially to offset the disadvantage represented by binding clauses in contracts. For consumers, however, it is nevertheless difficult to anticipate future developments. Given the complex and constantly changing nature of the audiovisual media services market, I am concerned about consumers being locked into contracts that they are unable to leave should they find an offer that better meets their needs.

A long cancellation notice period can also unfairly prevent consumers from leaving contracts that no longer meet their needs. In my judgement, it is problematic if businesses are allowed to prevent consumers from changing providers for an unnecessarily long time by reason of the businesses' own desire for long term financial stability. Binding periods and cancellation notice periods that prevent consumers from switching promptly can also adversely impact competition between different providers of audiovisual media services.
Binding periods for e-com services are already regulated at the EU level, but I believe there is reason to consider a stricter regulation of binding periods in general; in the direction of Section 25 of Denmark’s Consumer Contracts Act, which sets a maximum of six months for binding periods in a range of consumer contracts, including contracts for TV services. I emphasise, however, that contracts with a shorter binding period must also be balanced, so that the binding period is still only justifiable if the consumer receives a real economic benefit as compensation for being tied to the contract.

II. Regulatory framework for audiovisual media services

The Green Paper raises the question of whether it is natural to maintain the regulatory distinction between linear and non-linear services.

The premise that consumers have greater freedom of choice when it comes to the content and time frame of non-linear services and that the societal effects of non-linear services are smaller than those of linear services, will not necessarily apply in the future. For one thing, consumers are using linear services more and more selectively, for instance through DVR devices, which are set to record TV programmes that are then viewed by the consumer at a time of his or her choosing. Such technical solutions, along with the increasing access to non-linear content, may change consumers’ range of choices and habits such that the extent to which distribution is based on simultaneous transmission or individual ordering is no longer of significance.

The Norwegian Media Authority supervises the greater part of the Norwegian audiovisual media services rules and regulations; my supervision is limited to specific rules concerning child protection in the Broadcasting Act, Section 3-1, second paragraph and the Broadcasting Regulations, Section 3-4, second paragraph and Section 3-6, which in part carry out and in part go further than the requirements of the AVMS Directive. In addition, my general supervision stems from the Marketing Control Act, which among other measures implements the Unfair Commercial Practices Directive and the Unfair Terms in Consumer Contracts Directive. I believe it is natural that the rules and regulations I enforce apply both to linear and non-linear services. I mention for your information that in 2013 I have intensified supervision of providers of both linear and non-linear services, in order to make it easier for consumers to navigate this market.

Others are more suited to comment on the other parts of the broadcasting rules and regulations than I am. However, it is my perception that from a consumer standpoint, it will be strange to uphold lighter regulation for non-linear services if the developments we are observing continue on into the future.

Commercial communication

In a situation with increased competition between non-linear and linear services, it is understandable if broadcasters fear competition from providers of non-linear services. In my judgement, it is crucial that the competition between these two audiovisual content distribution models does not become a race to the bottom when it comes to consumer protection regulations on commercial communication. Instead of a further liberalisation of the rules on advertising in broadcasting, it seems to me natural to consider whether the rules should be tightened for non-linear services.

In the future development of audiovisual media services, we should also be aware of the ways a converged user experience can lead to new advertising techniques that put pressure on important consumer protection principles, such as the separation principle and the ban on hidden advertising, or interactive advertising that can be used to create strong impressions on children.
The technological development may pave the way for means of distribution of advertising that fall outside the scope of narrowly worded existing regulations if they are not adjusted to the fact that the technology to distribute advertising is constantly changing. Audiovisual media have the potential to create strong impressions, and combined with the possibilities of convergence creates for two-way communication and customisation for the individual consumer, they can become not only an attractive channel for advertisement for businesses, but also a frustrating one for consumers in the absence of a clear framework that protects consumer interests.

In order to meet the challenges posed by new advertising techniques in audiovisual media services, it seems to me appropriate to consider how essential consumer protection principles can be established politically, preferably in general clauses that supervisory agencies can employ regardless of platform, transfer technology and distribution method. It will also be important to safeguard these principles from being hollowed out by exceptions, as I find the permission for product placement has done to a certain extent for the separation principle and the ban on hidden advertising.

III. Protection of minors

A positive development has been the minimum regulation for on-demand services with respect to children that was introduced with the AVMS Directive. With convergence, however, children may be exposed to stronger commercial pressure and more unsuitable content, due to new advertising techniques that are hard for children to identify, assess and resist, as well as because on-demand services are easily available to children on their handheld devices, without a “watershed rule” to protect children from on-demand content that may harm them (AVMS Directive, Art. 27, second paragraph). The latter concern is heightened by the fact that it is often more difficult for parents to control their children’s use of on-demand services. Traditionally, the television was placed in a shared room with a selection of channels the parents had ordered. On-demand services are available on a range of platforms that children can use themselves, opening up a world of possibilities—both good and bad.

I am constantly receiving word from parents whose children have purchased goods or services on the Internet, often through a mobile phone, despite the fact that these transactions lie outside of the minors’ legal capacities. It should be considered whether (and if so, how) an effective means of verifying age and blocking payment should be developed, both in order to protect children from harmful content in audiovisual media services, and in general to prevent children from entering contracts for which they lack the requisite legal capacity.

Best regards,

Gry Nergård
Consumer Ombudsman
RESPONSE BY THE
OPEN SOCIETY MEDIA PROGRAM
TO THE EUROPEAN COMMISSION

Green Paper on Preparing for a Fully Converged Audiovisual World
30 September 2013

INTRODUCTION

The Mapping Digital Media project (MDM), designed by the Media Program of the Open Society Foundations, has surveyed 17 EU Member States since 2011, examining a wide range of contexts in which the transition to digital media has impacted on news and journalism.¹

These reports have underlined certain common themes, many of which chime with recent findings from the High-Level Group on Media Freedom and Pluralism (HLG) and which are acutely relevant to convergence in the means of delivering and consuming audiovisual media.

One across-the-board finding is that television remains the dominant medium for news and information in all member states. In most countries, viewing time has increased in tandem with the spread of broadband internet. But the ways in which people view television is changing rapidly, and there is considerable variance between Member States. This has implications for the values promoted by the Open Society Media Program as well as the common values of the European Union: high-quality journalism, the need of citizens for reliable and abundant information, and the importance of such journalism and information for a healthy society and a robust democracy.

With this in mind, this submission focuses on questions from section three of the Green Paper (addressing ‘values’), after addressing questions in section two relating to content financing and platform distinctions, which have particular implications for journalism.

The submission also discusses a question of key importance that is not raised expressly in the Green Paper: namely, the part that technological convergence has played in depleting the space for high-quality journalism in most Member States. Given the importance of accurate, timely and relevant news supply for the health and vitality of European democracies, this problem raises critical public policy issues at both the Member State and European levels.

¹ These countries are Bulgaria, Czech Republic, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, and UK. (Croatia acceded to the EU after the MDM report on that country was published.) The reports are all available at http://www.opensocietyfoundations.org/projects/mapping-digital-media
RESPONSE TO KEY QUESTIONS

5) How will convergence and changing consumer behaviour influence the current system of content financing?

Technological convergence has impacted on traditional systems of content financing both directly and indirectly, with particular implications for news and current affairs programming. Many of the changes brought by convergence have merely intensified pressures that began with the emergence of the multi-channel era and competing modes of delivery between terrestrial, satellite and cable platforms. Internet Protocol television (IPTV) has been added to that mix and in some countries is now a major competitor to traditional platforms. In Slovenia, for instance, IPTV is now the main platform of television delivery in just under 40 percent of households. This has further squeezed the space for a competitive market in free-to-air digital terrestrial television (DTT).

At the same time, the convergence of media platforms has rendered the traditional license fee for public service broadcasting less effective as a means of financial support and, in some cases, obsolete. In Slovenia, a decision by the previous government to abandon the license fee altogether in 2013 has been shelved, and a mixture of advertising and license-fee funding currently prevails. Several other countries may abandon the traditional license fee in the medium term future, including countries as different as Sweden, where many politicians and public service executives believe the license-fee system needs to be radically rethought, and Poland, where license-fee funding of public service broadcasting has collapsed over the past decade.

In other countries, however, the license fee mechanism has proved adaptable to technological convergence and suffices to ensure that public service broadcasters can fulfil their mission. In the UK, the BBC’s income remains near-exclusively derived from the license fee and this has been relatively stable over recent years. Liability for the fee is now contingent on the use of any form of linear broadcasting within the household, regardless of platform.

Nevertheless, intensifying pressures on the funding mechanisms for both public and commercial broadcasters have led to greater dependence on state aid, with accompanying threats to independence. The moves to ban or limit advertising in public service broadcasting in Spain and France have been seen as attempts to make digital terrestrial television (DTT) markets more competitive. But they have also precipitated a dramatic increase in direct state funding. In countries where public broadcasters are increasingly reliant on direct state funding and the culture of editorial independence is not well established, this increases the threat of political interference. Another significant lever of political influence in several countries is official advertising. The transparency and fairness of official advertising spends has become all the more critical in light of the advertising crunch that followed the global financial crisis.

It is worth emphasising that where direct subsidies have not increased or have been cut in recent years, some public service broadcasters face mounting losses. In Poland, income from license fee payments fell each year by an average of 15 percent between 2008 and 2010 as a result of growing evasion. This in turn has led to the progressive commercialization of the public broadcaster, TVP.
Even where governments have stepped in to stem the losses from license fee income through direct funding, this has not necessarily restored financial stability. In Romania, for instance, the recent increase in state subsidies has not plugged a deficit hole attributed to poor management.

Processes of convergence have also been associated with declining investment in current affairs and long-form journalism by both commercial and public service broadcasters. Again, in this context convergence seems to have catalysed long-term trends rather than precipitated new ones. In particular, MDM reports highlight the increasing tabloidization and homogenisation of audiovisual news content as competitions for ratings and advertising intensify with the multiplication of platforms, content types and outlets.

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?

The launch of niche or thematic channels has been a key driver of success in digital television markets. But this has disproportionately favoured entertainment-based formats. Rolling news channels have met with mixed success and there have been several failed or stalled attempts to launch new services, including the recent closure of CNN+ in Spain and the ITV news channel in the UK. There is likewise concern that the values traditionally attached to public service goals (such as impartial and informative news, education and inclusionary programming) are losing ground to entertainment in the intensifying battle for ratings and advertisers.

The migration of news audiences away from the main channels has varied. In some cases, the decision to shift news programming away from the main channels has reduced audience exposure to high-quality news. Investment in niche news services raises particular issues for public service broadcasting (PSB) with its traditional mission to foster social cohesion and serve national communities, as opposed to targeted audiences.

Most PSBs have sought to exploit the emergence of new platforms in a bid to re-engage with minority and younger audiences. Niche programming and audience segmentation have not, however, reversed the aging demographic of PSB audiences across all Member States.

It seems clear that the primary means by which public service institutions can continue to engage meaningfully with younger audiences is via the internet. To this end, there has been a marked divergence in performance. While the BBC in the UK and RTVE in Spain have developed websites that consistently rank as the most popular nationally, their counterparts in central and eastern Europe rarely feature in the top 20. In most such countries, public broadcasters have done little to expand their internet presence, and their online engagement remains weak.

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?

The MDM reports found no evidence of market distortion as a result of the distinction between linear and non-linear services in the AVMSD. In most cases, consumption of linear services via the web is still negligible and non-linear services such as Video-on-Demand tend to be provided as supplements to scheduled broadcasting. There is little evidence to suggest that growth of non-linear consumption is occurring at the expense of
scheduled services and no evidence uncovered in our reports which suggests that particular broadcasters have been disadvantaged by the regulatory distinction.

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?

Although television remains the catch-all medium in all countries surveyed in the MDM reports, there are cases where newspaper publishers, as well as aggregators and ‘pure player’ news sites (i.e. with no offline edition), have established dominant positions in online news. As a result, they compete directly with television news services and many provide multimedia content including audiovisual services. There is a strong rationale for extending the scope of the AVMSD to cover audiovisual media provided by publishers online, as opposed to just broadcasters.

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

The possibility of pre-defining choice through filtering mechanisms carries the threat of new bottlenecks and gate-keeping power exercised by search engines and Internet Service Providers (ISPs) as they seek to direct users towards preferred content. This has implications for the principle of net neutrality, since ISPs can in theory discriminate between content on the basis of bandwidth allocation, ensuring that preferred providers are advantaged in terms of the speed and accessibility of their content. This may threaten in turn to introduce new market barriers and disrupt the level playing field that has hitherto defined access to content and services online.

The current EU framework for electronic communications places emphasis on transparency in the quality and speed of service provision but does not explicitly offer a guarantee for network neutrality. Several member states have passed laws that do provide such a guarantee, including France, Slovenia, Italy and the Netherlands. There is a strong case for this to be enshrined in EU law in order to ensure a level playing field for all EU citizens.

In regard to personalization, the MDM reports did not find this to be a major issue in digital news consumption. On the contrary, digital news consumption in most countries appears to be replicating concentration patterns established in the analog era. Established news brands are on the whole retaining, and in some senses extending their influence over the news agenda. While the advent of social media and the expansion of the blogosphere have posed a challenge to their gatekeeping power, the effects of aggregation have been to drive traffic predominantly to the ‘big players’ in news.
HIGH-QUALITY JOURNALISM IN CRISIS

Technological convergence has played into a confluence of factors that have served to limit and, in some senses, deplete the space for high-quality news provision. The central finding of the MDM reports in EU countries is that the sustainability of public interest journalism – defined as independent, contextual and accessible reporting to a universal public of issues relevant to the exercise of citizenship – is under threat. As discussed earlier, much of this is to do with the funding pressures on professional journalism as well as the crisis facing some public service broadcasters.

This threat is partly rooted in long-term structural decline facing newspaper industries, as well as the emergence of satellite and cable platforms that have increased ratings pressure and fragmented audiences. But it has been catalysed by the disruptive arrival of digital services and the migration of advertisers from traditional platforms to online search and social media. At the same time, processes of concentration and centralization in news services have been fuelled by platform convergence, providing new opportunities for resource rationalisation. Added to this is a developing culture of ephemeral and ‘cut-and-paste’ journalism in the online sphere that has spilled into traditional newsrooms.

Apart from a few exceptional cases, new entrants in the digital news domain lack the funds and expertise to engage in original newsgathering, let alone resource-intensive investigative journalism. The opportunities engendered by the abundance of data and sources in digital media have created new resource pressures at least as much as they have alleviated old ones.

Above all, the speed of real-time, round-the-clock news cycles has favoured sound-bite journalism and inhibited the pursuit of long-form and in-depth reporting. This is occurring at a time when critical public interest issues – such as the crisis in the Eurozone – demand the kind of journalism that promotes context and understanding of complex problems in accessible formats. In many countries, vehicles for high-quality journalism of this kind remain in place. But there is a need and a role for the EU to ensure that such output is not limited to a minority of elite or privileged audiences.

To date, EU policy in respect of the provision of public interest news has been limited to exceptions in the state aid framework granted for public service broadcasters. This engagement is inadequate in the context of the new media landscape where public broadcasters in many countries have lost substantial audiences, funding and legitimacy. Given the importance of public interest news to the health and vitality of European democracies, it should be incumbent on Member States to ensure the place of public interest news within the new media ecology through funding mechanisms that are sustainable and which guarantee independence.²

30 September 2013

² In this context, recommendation 14 of the High-Level Group on Media Freedom and Pluralism is pertinent: There should be streamlining and coordination of support and funding for quality journalism, as already exists in several EU countries. Europe-wide awards should be made available for talented journalists and those having made significant breakthroughs. An additional study should be commissioned on possible new forms of funding for quality and investigative journalism, including making use of new technologies such as crowdfunding.
Sehr geehrte Damen und Herren,

hiermit übermitteln wir Ihnen den Input des Österreichischen Instituts für angewandte Telekommunikation (ÖIAT) zum Grünbuch AVM. Wir begrüßen den Diskussionsprozess und die Initiative der Kommission diesbezüglich. Unsere Empfehlungen:

Frage 14:
Mit den Safer Internet Centres (SIC) in allen Mitgliedsländern (Safer Internet Programme) bestehen bereits effektive Infrastrukturen zur koordinierten Erhöhung der Medienkompetenzen. Da die Weiterführung dieser bewährten Instrumente aus heutiger Sicht durch die EU-Kommission nicht mehr gewährleistet ist (keine dezentrale nationalen SIC-Finanzierung im CEF/Better Internet for Kids Programm) ist eine Weiterführung notwendig.

Frage 20:
Die derzeitigen Bestimmungen sind aus unserer Sicht nicht ausreichend um den Schutz von Minderjährigen zu gewährleisten.

Da viele marktführende AV-Dienste außereuropäische Dienste und Unternehmen sind (Youtube, Facebook....), müssen diese unbedingt berücksichtigt werden und Sanktionen für Verstöße vorgesehen werden. Empfohlen wird, dass jedes außereuropäische marktführende Unternehmen je Mitgliedsland einen Ansprechpartner für Jugendschutz und Datenschutz nennen muss und europäische gesetzliche Vorgaben einhalten muss und bei Verstößen Sanktionen bis zum Lizenzentzug in Europa vorgesehen werden.

Frage 21:

Frage 22:
Mögliche neue Ansätze zur Altersverifizierung sind der Einsatz der digitalen Signatur auf Mobiltelefonen.
Wünschenswert wäre eine Klassifikation bestehend auf erfolgreichen Ansätzen wie z.B. PEGI und Möglichkeit von Standardeinstellungen und der individuellen Vornahme von Einstellungen durch Eltern.

Frage 24:

Bestehende Beschwerdemechanismen müssen in allen Medien besser sichtbar gemacht werden, z.B. Veröffentlichungspflicht über Beschwerdemechanismus und auch von öffentlichen Stellen stärker beworben werden.

Frage 25:

Derzeit gibt es zahlreiche Beschwerdemechanismen und Beschwerdestellen. Wichtig ist eine bessere Vernetzung und Koordination durch die zunehmende Medienkonvergenz. Weiters ist eine Unterstützung der bestehenden Beschwerdestellen (z.B. Hotlines und Helplines der nationalen Safer Internet Centres) wichtig.

Empfohlen wird, dass jedes, auch außereuropäische, marktführende Unternehmen je Mitgliedsland Beschwerdemechanismen einrichten muss und Ansprechpartner für Jugendschutz und Datenschutz nennen muss und sich dezidiert verpflichtet europäische gesetzliche Vorgaben einzuhalten und bei Verstößen Sanktionen bis zum Lizenzentzug vorgesehen werden.
RESPONSE BY VOICE OF THE LISTENER & VIEWER (UK) TO THE EUROPEAN COMMISSION'S GREEN PAPER

PREPARING FOR A FULLY CONVERGED AUDIOVISUAL WORLD: GROWTH, CREATION AND VALUES

Voice of the Listener & Viewer (VLV) is an independent, non-profit-making association, free from political, commercial and sectarian affiliations, working for quality and diversity in British broadcasting. VLV represents the interests of listeners and viewers as citizens and consumers across the full range of broadcasting issues. VLV is concerned with the structures, regulation, funding and institutions that underpin the British broadcasting system. VLV is a charitable company limited by guarantee.

August 2013
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INTRODUCTION: VLV'S PRINCIPLES AND AIMS

VLV welcomes the opportunity to comment on the Commission’s Green Paper. We understand that at this stage the aim is to explore the need (or not) for new legislation with the details for legislation to be worked out in the medium term.

Our view - reflecting what we see as the concerns of consumers and citizens - is that the need exists and that it is urgent. We think that - without advocating an unnecessarily meddlesome 'top down' approach - detailed work should start soon, lest rapid market or technological developments render subsequent regulatory responses outdated or inadequate.

There is intensified and increasingly complex commercial competition in the UK marketplace, notably between BSkyB and other consortia such as YouView and Freeview - where BT and other telecommunications players are embarking on content provision through alliances with the BBC and other major broadcasters. These media groupings can produce attractive content and service packages but they carry also the risk of confusing consumers or locking them into the technological system of one competitor or another. This may take place at the platform level, at the broadband level or within the technology of the new generation of connected-TV sets.

Developments in the UK - for both linear and non-linear audiovisual services - presage the likely subservience of consumer choice over accessing individual services to higher level decisions taken by vertically integrated telecommunication companies as to which services they are prepared to carry on their broadband distribution platforms.

Unregulated competition will not deliver the protection we seek for ordinary users. This demonstrates the ongoing need for the EU to preserve genuine choice to access public service programmes and premium content. Key issues are the future of the 'must carry' provisions for the BBC and other public service channels, along with the scope for a range of (mainly) smaller commercial companies to retail their interactive and other supplementary services via the main platforms.

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1 The differences between Freeview (set up in 2002) and YouView (2010) graphically illustrate market developments over a decade. Freeview is a grouping of four major broadcasters (including the BBC and BSkyB) and a transmitter company focused on providing consumers with a cheaply-priced offer of up to 50 television channels. YouView is an Internet-based TV service driven by major telecoms companies allied with major broadcasters (NOT including BSkyB) which aspires ultimately to absorb the Freeview service and to compete with BSkyB as a multi-media multi-platform provider.

2 The current Ofcom consultation on BSkyB’s control access obligations, and BSkyB’s recent launch of a new set-top-box for Freeview users to access sports and movies over the Internet demonstrates the cutting edge nature and complexity of the debate.

3 See below pp. 3, 7, 12, and 17.
Against this competitive market we see the current public consultation by the EU and potential subsequent legislative response as an opportunity to confirm and reinforce core principles, notably those of media pluralism and freedom of expression, quality and diversity in audiovisual content, and easy convenient access for Europe’s public at large.

✔ Notwithstanding the recent Ofcom research, indicating that a combination of connected TV sets and smart mobile devices may be bringing people back into the family living room⁴, VLV remains focused on the fact that the consumers we represent are primarily interested in guaranteed, affordable and easy access to good quality and diverse programming. Convergent technology and legal frameworks should therefore aim to facilitate such access. Consumers want an open European market in which they can access audiovisual programmes and services without obstacles arising from technological limitations and legal restrictions, in particular:
  o New proprietary technological systems,
  o Hybrid television systems which allow the overlay of third party content or commercial communications
  o Restrictions imposed by national copyright laws
  o Parental access and, where necessary, control over programmes with questionable content

✔ VLV’s view is that a potential revision of the AVMSD (which seems to be the primary focus of the Commission’s Green Paper) is a necessary but not sufficient answer to the issues that matter to users. We welcome the fact the Commission’s Green Paper addresses some of the fundamental principles including media freedom and pluralism, content diversity, protection of minors and vulnerable groups. In our view, the new media environment makes it more important to reinforce and underpin these fundamental principles.

Beyond this, there is a range of relevant issues involving network neutrality, consumer protection, competition law and copyright which need to be addressed. There are also two topics - data protection and tax harmonisation - which are not specifically covered in this Response.

✔ While appreciating the Commission’s readiness to take account of our views, via our responses to their questions, we are concerned that the questions reflect, not exclusively but predominantly, a market and technology influenced view rather than one for which content quality and choice is absolutely central as it is for citizen-user groups such as ours. A putative revision of the AVMS Directive cannot possibly address all issues surrounding connected TV and the information landscape linked to it.

✔ We endorse the idea expressed by the Council of Europe [Recommendations CM/Rec (2007)3 and CM/Rec (2012)1] the European Parliament Resolution of July 4, 2013 - sponsored by Euro MP Petra Kammerevert - on the need for, and importance, of public service media. This means that the principles and practices embraced by the Amsterdam Protocol on Public Service Broadcasting need to be extended from public service broadcasting to public service media, precisely to take account of convergence and related technological change across all platforms.

⁴ http://consumers.ofcom.org.uk/2013/07/the-reinvention-of-the-1950s-living-room/
EXECUTIVE SUMMARY

1. Consumer choice and access to quality content

✓ The AVMSD market should confirm and reinforce the core principles of media freedom and pluralism, content diversity, protection of minors and vulnerable groups. To this end, we call upon the Commission to develop proposals to revise the AVMSD and extend its scope, as soon as possible.

✓ Given the contribution made by public service and other broadcasters to meet popular demand by investing in original European content, and overall maintaining programme quality standards, we recommend on both cultural and economic grounds that the European Union ensures that its regulatory framework allows power public service broadcasters to continue to develop their roles across all platforms in the converged audiovisual world. (See our answers to questions 1 and 2).

✓ We think that public service broadcasters, operating with secure funding in a democratic context, - through the breadth of their creative remit and the range of available skills - make a distinctive contribution to sustaining media pluralism

✓ The Commission and national regulators should incentivize public service content through, for example, priority listing on EPGs and a flexible application of the state aid rules, where funds serve to promote public service purposes

✓ Furthermore, the EU should ensure, in line with points 1-3 of the Kammerevert Resolution of the European Parliament of 4th July 2013, that receiving devices will permit consumers to access a full range of third party (including public service) legally available content. (See our answer to question 3).

2. Interoperability and Ease of Access

✓ In the same spirit of easy and convenient access, VLV recommends that there should be open non-proprietary standards to facilitate interoperability between different devices (see our answers to question 6).

✓ We emphasise this because of the presence of ‘closed environments’ (including ‘walled gardens’) enabling manufacturers or suppliers to assume a gate-keeping role to the potential disadvantage of consumers. Indeed the public interest may well demand that an independent public regulator can require a platform operator to keep open the electronic gateway for content and service offers from rival companies.\(^5\)

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\(^5\) This issue is brought into sharp focus by the current dilemma facing the UK Regulator Ofcom in responding to BSkyB's request for removal of their long-standing obligation to provide their customers, via Sky set top boxes (STBs), access to various services retailed by other suppliers. Sky based its request on (i) the existence of alternative access capability, through massively expanded broadband in the home over the past decade and widespread...
Indeed the public interest may well demand that an independent public regulator can require a platform operator to keep open the electronic gateway for new content and service offers from rival companies.

✓ Where interoperability is lacking, we would request on consumers'citizens' behalf clear information about extraneous jurisdiction or product specification, simple and well-guided technical crossover, along with privacy protection in those situations where user details are genuinely necessary to access any external system or source.

✓ Must carry provisions should be extended for all public media services by guaranteeing consumers access to them, via a prominent position on all platforms. (See our answers to question 6 and 16).

3. Addressing the Fragmented EU Market (Financing Models)

The current regime only encourages private investment in the creation, distribution, availability and market appeal of European works. The Amsterdam Protocol, on the other hand, which covers state/public funds, permits investment in them for domestic consumption only.

✓ VLV recommends – given the free movement of people across the EU – that public service broadcasters should be authorised in principle to make co-financing arrangements with partners from other European countries, including providers of on-demand services, enabling them to respond to changing viewer behaviour.

4. Protection of minors  (see our answers to Questions 14 and 20-24)

VLV, whilst recognizing the reality of varying cultural standards and regulatory capacity across 28 Member States, proposes that the EU should progressively introduce a regime which will deliver:

✓ classification of online audiovisual content by its suitability for different age groups

✓ progressive harmonisation by member states of their respective age bands and classification criteria, in order to make acceptance of the country of origin principle easier

✓ clarity and transparency, for users, about content origin and jurisdiction

✓ a European Certificate of Media Literacy for parents and ‘relevant’ adults

availability of 'second screen' devices (smart phones, iPads, tablets etc) - operating either independently or in conjunction with a main TV set, (ii) the consequent reduction in demand from customers for APIs (Application Programme Interfaces) which require the Sky STB and (iii) the burdensome nature to SKY itself - of the Access Control Notice being continued. http://stakeholders.ofcom.org.uk/binaries/consultations/review-access-control/summary/review-sky-access-control.pdf
With regard to the effective verification of age, the responsibility should lie with the parent or relevant adults (e.g. teachers). We also consider that parents or responsible adults who take the proposed European Certificate of Media Literacy need to know both where and how they can comment or complain about different types of content, and how public authorities in individual member states can provide adequate feedback to each other about harmful or allegedly illegal content.

5. **Support for physically impaired users**  
   *(see answers to Questions 26 & 27)*

We see this as an area of growing need.

The multi-device nature of the Connected TV environment exposes users with any physical disability to increased risk of being left behind, unable to participate fully and comfortably in the benefits of modern European media.

At the same time the means to solve these problems reside in much of that same technology (as recent research work shows - *see our full response, below pp. 22-23*)

The issue will become more important as greater numbers of Europe's citizen survive into old age, able to enjoy life but still needing support to draw the full and varied benefits of the new media landscape. The EU institutions need to "raise their game" in this field.

- VLV would argue strongly for actions to accelerate the "gradually" improved access for physically impaired people which is envisaged in Article 7 of the AVMSD by replacing "gradually" by "progressively on the basis of suitable criteria ....reviewed on a biennial basis"
- We hope that pressure will brought on national regulators to bring a greater proportion of their broadcasters within the scope of precise access obligation (along the lines adopted by the UK's Ofcom).
- We expect that these obligations be applied not only to traditional appliances such as TV sets and platforms but also to the new devices now linked up with them; and in the video-on-demand field as well as to traditional television broadcasting.
- The Commission should engage with the latest European and global research - having in mind standardization and simplification - on digital codes in TV sets and other linked devices, the codes in EU-licensed services for sub-titling, captioning, audio-description and electronic programme guides.
- Since achievement of objectives in this area presupposes resources as well as regulation, we would favour incentives, by tax or other means, to business and research institutes exploring and developing technologies to meet the needs of the physically less able.
Furthermore the application of public money should become practical through support for these specific objectives being classified as permissible under the State Aid rules.

This approach makes economic as well as social sense. Many millions are handicapped by no more than the fact of not belonging to the digitally educated generation. Alternatively they may have specific but limited physical impairments; such that, those freed from them by innovative technical help, could not only enjoy the benefits of an open European media landscape but also contribute hugely more than would otherwise be the case.

In submitting these recommendations, we appreciate that, when the level and timing of access obligations are reviewed, there needs to be an awareness of possible risk to the rapid development of the single market.

6. Commercial communications

VLV has always been opposed to the introduction of product placement. We have consequently considered the relevant provisions [i.e. Article 11] of the AVMSD to be even more permissive and unsatisfactory than those in the E-Commerce directive [i.e., The Electronic Commerce Directive (00/31/EC) & The Electronic Commerce (EC Directive) Regulations 2002 (SI 2002 No. 2013)]

The argument that that AVSMD sets only minimum conditions, on which individual states may impose more stringent controls, carries little weight in a media environment where consumers may find themselves watching content segments from different jurisdictions interwoven seamlessly with each other.

Frank recognition of this situation offers a welcome opportunity to harmonise the consumer protection provisions of the two directives.

We contend that consumers must be informed about the presence of product placement in audiovisual media products, including those shown in secondary markets in which the programme in question has neither been produced nor commissioned by the media producer itself, or a company affiliated to the media service provider. (see our answer to Question 4)
DETAILED ANSWERS TO THE QUESTIONS FORMULATED BY THE COMMISSION

Market considerations

Question 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?

VLV recognizes that the competitive strength of US firms is underpinned by available economies of scale and the worldwide marketing appeal of English-language content. Nevertheless the evidence around American penetration of the EU market does not seem to justify as bleak a view as the Green paper's first question implies.

Europe's own television broadcasters, and especially public service broadcasters, continue to make a major contribution to Europe’s audiovisual landscape. In 2011, the latest year for which figures are available, the market amounted to 131,920 million Euros, of which 55% (73,134 million) went to broadcasters; 25.6% (33,738 million) was spent by consumers on AVMS distribution services (including taxes); and a further 5.7% (7,538 million) on DVDs and Blu-ray. Only 4.9% (6,431 million) of revenues came from the cinema box office.

Moreover, not only do broadcasters account for the largest share of the EU audiovisual market, but public broadcasters (including radio) received the largest share, namely 46% (33,650 million Euros), of broadcasters’ net revenues. Moreover, a close study of the market shares of the four leading television groups in each member states showed that, in half of the EU’s 28 member states, public broadcasting groups had captured the largest audience share. (Nine of the member states where they failed to do so were former communist countries.)

VLV believes, therefore, in light of the choice of programming offered by publicly-funded broadcasters, which espouse public service values, that our members and audiences overall have a major stake in ensuring that access to public service channels and related catch-up services is guaranteed on all platforms.

An in-depth analysis of TV programming policies, in fifteen European countries, showed that public service channels programmed 61% of EU-originated fictional programmes. It was the advertising channels, the pay-TV channels, and the

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6 European Audiovisual Observatory, 2012 Yearbook Vol. 2, Table 2.3
7 Ibid., Table 5.5 There are no data for Malta, and separate data for French and Flemish-speaking Belgium. Other member states where public broadcasters failed to capture the major market share were Spain, French-speaking Belgium, Luxembourg, Greece and Cyprus.
8 Ofcom in the UK, moreover, has noted: "...From a platform operator's perspective, .....recent developments .....have focussed on improving discoverability of TV content and providing access to it on multiple devices both inside and outside the home. There has been less noticeable development of the technologies to support enhanced TV and commercial services". Review of Sky's Access Control Services Regulation p.41.
thematic channels which relied most heavily on non-EU products. They also relied more heavily on non-domestic programmes - i.e. produced elsewhere in the EU - than did the public broadcasters.\(^9\)

\(\checkmark\) Again, the data clearly shows that public broadcasters offered their viewers a higher proportion of EU films than did the private channels. It also appears that the public broadcasters invested more heavily in domestic production.

Within the UK, for instance, the proportions of EU series and soaps programmed by BBC1, BBC2, BBC3 and BBC4 were 97%, 70%, 96% and 81% respectively. The corresponding proportions of EU television films programmed by the BBC were 67%, 35% and 91% for BBC1, BBC2 and BBC4 (there are no published data for BBC3). On the other hand the corresponding proportions of EU series and soaps programmed by the advertising-funded ITV, Channel 4 and Five were 81%, 23% and 2%; whilst those for television films were 67%, 49% and 8%.\(^{10}\)

It is clear therefore, that broadcast television not only offers EU consumers a choice of both EU and non-EU programmes, but that public service programming (which to a large extent is publicly-funded) plays a major role in airing EU-originated content, thereby promoting European culture and creativity. In summary public service broadcasters certainly make the largest financial investment in the EU audiovisual market, thereby promoting quality programming.

\(\checkmark\) VLV therefore considers that any analysis which focuses on the implications of TV being connected to the Internet should not divert or distract the EU from its long-standing objective; namely to sustain, on viewers' and consumers' behalf, the provision and distribution of a choice of EU programmes.

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\textbf{Question 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?

A range of factors affect the availability of premium content to viewers. As the data show, many TV companies, especially the advertising, pay-TV and thematic channels, offer their viewers or subscribers only a modest proportion of EU programmes. This may be because they find it easier and cheaper to broadcast non-EU films or TV series, many of which have already recouped all, or most, of their production costs in the North American market. Moreover, as can be seen from the growth of advertising-funded channels which rely on repeat programming, TV companies can still make money from advertisers by re-screening old programmes to their viewers.

\(^9\) Ibid., Table 6.2  
\(^{10}\) Ibid., Tables 6.6 and 6.7
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\end{figure}
A further factor, which affects both publicly-funded and commercially-funded broadcasters is the sheer volume of hours which most broadcasters now have to fill in a 24/7 world. Even public broadcasters, with a substantial record of investing in premium content, frequently have to programme non-EU films in order to fill up their extensive programme schedules. Moreover, the traditional patterns of channel loyalty are breaking down among consumers, who can switch between channels with ease, or catch up with a missed programme, either by using an on-line catch-up service, or by recording it on their personal video recorder.

At the same time, many commercial broadcasters are seeking to acquire premium content, either from the coverage of popular sports events or by acquiring the rights to premium product from the North American market, and then to restrict consumer choice in the audiovisual marketplace by only making their premium content programmes available on particular platforms, via specific broadband packages, or even linked to particular converged television sets. Their aim is to move the European audiovisual market from one of open access to all consumers, to a ‘vertically integrated chain’ of programme packaging, platform restriction, and broadband limitation.

Article 31 of the Universal Service Directive allows member states to impose reasonable ‘must carry’ obligations on electronic communications networks under their jurisdiction for the transmission of specified broadcast channels and services. ‘where a significant number of end users of such networks use them as their principal means to receive radio and television broadcasts.’ Article 31(2) also allows member states to determine the appropriate remuneration. In the UK, Ofcom, whose principal regulatory duties are:

• To further the interest of citizens in relation to communication matters; and
• To further the interest of consumers in relevant markets, where appropriate by promoting competition.

has extended ‘must carry’ obligations to all the UK’s public service channels, which comprise the BBC services, and Channels 3(ITV), 4 and 5.

On the other hand, in order to try to ensure a plurality of providers in the subscription marketplace, Ofcom has been forced to impose a ‘wholesale must offer’ obligation on BSkyB in order to allow viewers to access its premium sports channels through other providers of linear audiovisual media services, such as Virgin Media Inc. Although the UK’s Competition Appeal Tribunal supported Ofcom’s ruling, it also appears that many parties involved have obtained permission to appeal the ruling.11 The struggle between BSkyB and the regulator, Ofcom, appears to be an unfinished story therefore. Moreover, on 1 July 2013, BSkyB’s premium sports channels were removed from the digital terrestrial Freeview Platform. Furthermore, BSkyB only distributes its Sky Atlantic channel via the BSkyB satellite platform which is broadcast from the Luxembourg-registered Astra satellite, and is only available on-demand via the BSkyB broadband network.

Given, the tendencies towards vertical integration in the EU’s VoD marketplace,

- VLV submits that in order to develop a genuinely competitive EU internal market, the EU should seek to rebalance the relations between the right of an owner in the intellectual property right of an audiovisual work to authorise the distribution of the work in the European VoD market, and the right to receive equitable remuneration from the exploitation of that work.

- VLV suggests - in order to provide viewers with the maximum opportunity to view an individual work on any video-on-demand service - that, although the ability of a rights owner to authorize the distribution of an audiovisual work should continue for the full term of copyright, the right to authorize the distribution of the work in the European video-on-demand market should be drastically shortened.

The EU could, for example, follow the example of the Transfrontier Broadcasting Directive, which limited the right of authorisation to the first transfrontier satellite broadcast in the EU.\(^\text{12}\)

### Question 3
Are there obstacles on access to platforms which require remedial regulatory action?

If we now turn to the on-demand audiovisual market, once again television plays an important role. Over 35% of the on-demand audiovisual services in the European Union are ‘catch-up TV services’, which only target audiences in the country of origin, whereas only 23% are branded channels on open platforms, and a mere 14% show VOD films.\(^\text{13}\) As the VoD marketplace is dominated by catch-up TV services which only target the domestic audience, the possibility of building a unified EU-wide demand for VoD programmes seems remote. This conclusion is reinforced by the fact that nearly half of the of the EU’s 1305 film VOD services are directed at domestic audiences, while a further third, most of them established in Great Britain, Ireland and France, are directed at audiences living outside the EU. A mere 17.5% of VoD services are directed at audiences in other EU member states.\(^\text{14}\)

Given the growing internationalisation of the market in on-demand audio-visual services, and bearing in mind the reluctance of many EU member states to include audiovisual goods and services in the forthcoming US-EU trade negotiations,

- VLV considers the time has now surely come for the EU to remove the regulatory restrictions on state-aided public broadcasters, in order to allow them to compete, should they so wish, in non-domestic EU markets as well as their own domestic ones and also in video-on-demand markets outside the EU.

\(^\text{13}\) European Audiovisual Observatory, op. cit., Table 7.1
\(^\text{14}\) Ibid., Table 7.3
### Financing models

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

- As consumer representatives we must observe that the Audiovisual Media Services Directive (2010) was not primarily designed to promote the creation, distribution, availability, and market appeal of European works, as can be seen from a careful reading of the 68 recitals to the Directive. One of the principal purposes of the TV without Frontiers Directive, which preceded the Audiovisual Media Services Directive, was to protect viewers from surreptitious audiovisual commercial communication.

- Regrettably, the latter directive reduced these protections, both by allowing product placement and by removing the requirement to notify viewers of its presence, when the programme had neither been produced nor commissioned by the media provider itself, or by a company affiliated to the media service provider. Thus the AVMSD denied the viewer any guarantee of notification about product placement in any programme screened in a secondary video-on-demand market.

- We submit that viewers should always be notified about the presence of product placement in any European work, regardless of whether or not the programme had been produced or commissioned by the media provider itself, or by an affiliated company.

**Question 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 financing of European audiovisual works is highly complex. Commercial investment policies, both American and European, are intricately linked with subsidy provision and there is no consistent pattern across European countries.

### Interoperability of connected TV

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

Open standards and interoperability remain core priorities for users. Platforms and portals should be interoperable.
We note that there is already a significant proliferation of technical standards (both open and proprietary) within and across borders. We also note that - as with the analogue and digital media environments, so also in the hybrid television environment - technical solutions are closely linked to business models with, broadly speaking, commercial players showing a strong preference for closed proprietary systems.

We also note that device manufacturers and broadcasters do not always share the same requirements and thus do not necessarily support the same technical solutions. These differing views on the part of market players are likely to delay the introduction of common standards, fragment the market and confuse users.

Greater coordination amongst all players in the value chain over standardisation is therefore needed.

VLV’s position is:

- Users benefit from interoperability between devices, within and across borders, so the Commission should make every effort should be made to promote it.

- It is imperative that users have clear, easy to understand, timely and accurate information about interoperability and functionality limitations.\(^{15}\) This information should be readily available to users in order to help them reach an informed decision whether or not to take up a service and without the need to register any personal details unless this is absolutely necessary in order to get detailed and accurate information about the service offer, - in which case it should be clearly stated as such.

Interoperability limitations relate to the products and services users can access using a device. The set of services and content that one can access depends directly on the choice of platform (e.g. terrestrial, cable, satellite, and Internet) and device (e.g. television, set-top-box, connected TV, tablet, smartphone, game console).\(^{16}\)

- Particular attention should be paid to ‘closed environments’ which often rely on proprietary standards and in which the manufacturer assumes a ‘gate-keeping’ role and pre-approves content, services and applications which then become available to users (e.g. Apple Inc. devices, game consoles, and many connected TV and IPTV solutions).

- Precise transparency requirements should be enforced as it is often unclear to users who is the exact supplier of a service.\(^{17}\)


\(^{16}\) See our earlier reference (p. 3) to the considerations raised in Ofcom’s Review of Sky’s Access Control Services Regulation.

\(^{17}\) For instance, it is not sufficient to know that, say, Walt Disney is the provider of a service. This should be precise as, to continue with the same example, Walt Disney France.
This is crucial as over 52% of VoD offers available in EU member states have their legal establishment in another and 32% are established in the USA and so outside the EU.

Equally important and related are so-called *functionality limitations* (commonly known as Digital Rights Management) implemented through technical means and referring to restrictions in the use, copying, and sharing of content. In relation to these, in the consumers’ interest, we would request:-

- Firstly, information about associated tracking and monitoring methods used to implement such (notably functionality) limitations needs to be made clearly available in advance, since it directly relates to consumer and privacy rights.
- Secondly, users should have clear explanations about the need to have functional limitations, as these apparently run counter to the single market and user interests, in addition to adversely affecting accessibility and portability of content, creativity, and innovation and economic growth opportunities on the part of users.
- In particular, users should be shown evidence that such limitations improve investment in original content and promote content diversity, both of which are paramount issues for users.

In other words, the assumed benefits of interoperability and functionality limitations need to be assessed against potential costs with regard to lock-in effects, market entry barriers, privacy rights, pluralism and content diversity, accessibility and portability of content, creativity and innovation incentives.

**Infrastructure and spectrum**

**Question 7**
How relevant are the 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?

Very relevant!

VLV’s view is that free competition between platforms does not guarantee consumer access. The availability of general or niche public service content is patchy and unpredictable.

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The situation is aggravated by the ‘vertical integration’ between broadband services, platforms, AVMS channels, and programmes.

✓ VLV recommends that European and national regulators ensure that network management by broadband providers does not disadvantages ordinary consumers.

Questions 8 and 9
What frequency allocations 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?
What specific research needs with regard to spectrum have to be addressed to facilitate such development?

VLV in the UK has become aware of this issue primarily because of concerns that viewers of digital terrestrial television will have their TV reception interfered with by allocations (following auctions) to mobile operators in the 600/700 MHz band. We are aware that the UK, along with Spain and Italy, is one of the few countries where DTT access is a main ingredient of television reception capacity, and we are seeking action in the UK whereby the problems can be addressed without excessive cost to ordinary users who had been assured of non-problematic service after the analogue switch-off and the recently completed (2012) transition to digital.

**VLV in the UK has asked the consumer panel to:**
(i) seek assurances that the needs of UK viewers using DTT are protected, when the mobile technology companies buy more spectrum,
(ii) assist households financially in adapting their TV reception to coexist with the newly allocated mobile frequencies,
(iii) ask the government to make public its long-term strategy for spectrum use, and
(iv) to ensure that any lessons learnt from the impact of the current 800 MHz exercise are deployed in developing future spectrum plans.
*(see also our response to question 12 below)*

From our specialist contacts in the spectrum field we understand negotiations on a Euro-wide basis are well advanced for the 700MHz and possibly also the 600MHz bands being made co-primary for broadcasting and thereby meeting the reception needs of users across most audiovisual platforms.

✓ In so far as realization of this plan will lead to a reliable, consistent, predictable, uncomplicated and interoperable reception pattern, we support it. But the European Commission and relevant Member States must also ensure that the EU avoids any un-serviced areas, and any incompatibility issues which may arise
✓ We shall monitor developments in terms of their impact on the universal service obligation (USO) expected from public service broadcasters, and the implications for audiences and users of the convergence of broadcast networks and mobile networks, with the latter seemingly offering new and exciting scope to broadcast direct to standard television sets
We would expect the Commission to bear consumer concerns in mind when reviewing the spectrum scene on a Europe-wide basis, and to provide timely information about developments.

**Regulatory Framework**

**Question 10**

Given the 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?

- Yes. VLV advocates an extension of broadcast TV regulation to on-demand TV services. This must include both must-carry and must-offer content, in order to avoid market distortion at consumer level.
- Consumer choice is being adversely affected by decisions by national courts on competition grounds preventing state-aided public service broadcasters from offering so-called ‘press-like’ content on-line.

**Question 11**

How relevant are the 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?

Very relevant! Free competition does not guarantee consumer access. The availability of general or niche public service content is patchy and unpredictable. The problem is aggravated by ‘vertical integration’ between broadband services and platforms, AVMS channels, and programmes.

- VLV sees a need for (a) adequate capacity to guarantee consumer access to 'must carry' content and (b) a time-limit on copyright owners' authorization rights, which nevertheless preserves their entitlement to equitable remuneration.

**Question 12**

What frequency allocations 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?

This is a complex issue, many aspects of which can only be solved by national governments. However, as representatives of viewers, we perceive three interlocking aspects.
In some member states (including the UK), there is competing demand for electromagnetic frequencies between traditional television broadcasters and mobile phone operators. We submit, the EU needs to ensure that any TV viewers affected are given sufficient warning of any changes in TV broadcasting frequencies – we suggest at least seven years – before they are required to buy a new television set.

Second, the Commission needs to take steps to persuade individual member states to harmonise television and mobile downlinks in different countries in the 600MHz band.

And thirdly, in order to ensure more efficient use of the spectrum, the European Commission should encourage the development of standardised models whereby both television broadcasters (including public service broadcasters) and mobile phone operators can sub-lease spectrum.

Question 13
What specific research needs with regard to spectrum have to be addressed to facilitate such development?

VLV considers that national consumer panels should have a brief to review proposed spectrum usage; this may well involve authorities at the EU level, and possibly also the ITU in so far as wider factors, beyond the EU come into play.

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

VLV considers that there a strong arguments for introducing Certificate in European Media Literacy. This would be voluntary, but like the Advanced Driving test in the UK, it would both educate and empower parents to navigate their way through the increasingly complex world of the global on-line audiovisual marketplace.

Beyond that, we would like parallel European-wide arrangements. The elements of these would be:-

Firstly, a notification from the regulator in the country of origin about the classification of, and the recommended suitability for younger people of the programme.

Secondly, a progressive standardisation by member states of their domestic age classifications.

Thirdly, for content coming from outside the EU, a requirement for all internet access providers to offer consumers a choice, either to opt-in, or to opt-out, of all content which they may deem unsuitable for their children or their family.
Question 15
Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to intervention at EU level?

Yes. The issues here relate to data protection and privacy as well as visibility and findability of European content (see also our responses to Questions 6 and 16).

- While without a degree of filtering, it would be impossible to navigate the plethora of content and service offers available, personalisation needs to be balanced and fully transparent. Users need to know exactly what data are being collected, by who, who has access to them, and how these data are being used. Moreover, users should be able to specify the degree of personalisation they wish to get and they should also be able to opt-out of personalisation mechanisms. Finally users need to have access to an easy and accessible complaints procedure.
- Filtering and personalisation mechanisms should fully respect fair competition (for instance, providers shouldn’t favour and promote own services) and they should still allow users to easily find and access European (public service) content (see our response to Question 16).

Media Freedom and Pluralism

Question 16
Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to intervention at EU level?
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?

The converging media environment is characterised by a plethora of platforms. In addition, television is increasingly becoming an application which can be accessed on any Internet-enabled device.

- It is therefore essential that Article 31 USD (‘must carry’ rules for public service broadcast content) is extended explicitly to include access to all the main audiovisual platforms be they terrestrial, cable, satellite or Internet based.

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They should also be covered by regulations which guarantee a suitably prominent position on EPGs and network neutrality rules so that individual consumers are assured of adequate reception quality.

We welcome the recent expression of intent by European Commission Vice-President for Digital Agenda Neelie Kroes to legislate in support of network neutrality by spring 2014.\textsuperscript{21}

We think this is in the spirit of Recital 10 of the Access Directive and Articles 17(2) and 18 of the Framework Directive which cite the relevance of media pluralism, the free flow of information and cultural diversity.

In order to promote those values VLV calls for a regulated and cooperative relationship between proprietors of specific Application Programme Interfaces (APIs) and providers of digitally interactive television services, as advocated by the European Broadcasting Union (EBU).\textsuperscript{22}

Although it might make commercial sense for platform owners to carry public service and European content since these are still very popular in domestic markets, users should have the regulatory support enabling them to easily find such content and services.

Put differently, the ease with which viewers can find public service and European content will be even more important in the connected TV environment which is saturated with content and service offers. Due prominence of public service and European content remains relevant in the connected TV world and needs to be extended from Electronic Programme Guides to similar listing and navigation facilities, adequately monitored and enforced. Concrete action is required at European level (\textit{art. 6 Access Directive}).

As an example, the rules for Electronic Programme Guides in digital television whereby the main public service TV channels are required to be placed first in the listings should be extended to the connected TV landscape so that public service and European content/channels/services continue to be listed at the top of the relevant sections of the main application stores, platforms and so on.

This would facilitate users’ ability to find such content (which, as already pointed up in our Response), is the most popular) and it would also act as a strong incentive for content providers to increase investment in domestic content. This relates to the ‘must found’ principle expressed by the European Parliament’s Resolution of July 4\textsuperscript{th}, 2013.\textsuperscript{23}


20
VLV points up here an additional factor - the consumer's need for content integrity: this means that no overlay (e.g. Twitter feed) or scaling of content and services should take place without prior and explicit authorisation by the content provider in question or an explicit request from the user.

**Commercial communications**

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<th>Question 17</th>
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<td>Will the current rules of the AVMSD regarding commercial communication still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete examples?</td>
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It follows from our view of the increasing integration between the linear and non-linear audiovisual media services that VLV sees a need to broaden the remit and scope of the AVMS to inform all Europe’s consumers about the presence of commercial communications from any source.

Bearing in mind the advent of a seamless online audiovisual environment, and the increasing scope for disguised commercial communications, VLV recommends:

- A tightening and co-ordination at the EU level of the provisions to protect consumers within the e-commerce Directive, the Unfair Commercial Practices Directive as amended in 2009, and the Audiovisual Media Services Directive; and

- The restoration to consumers of the right to be informed about the presence of product placement in all audiovisual media programmes, including those programmes shown in secondary markets, in which the programme in question has neither been produced nor commissioned by the media producer itself, or a company affiliated to the media service provider.

- Beyond this, audiovisual media services now expose consumers to the risk of being transferred, by the click of a button, from an audiovisual programme which has originated in one member state, to a website which is regulated either in another EU member state, or indeed completely outside the EU. The AVMS Directive in its current forms takes no account of the fact that consumers can be transferred almost seamlessly from one jurisdiction to another.

- VLV urges a requirement on service providers to provide the user of a connected TV set with a full and proper on-screen and audio disclosure of any change of jurisdiction affecting their access to television programming including a video-on-demand service, or a link to the purchase of associated goods or services.

- In addition, any link to a commercial communication or pop-up located within a programme or an online game should only lead to advertisements appropriate to the classification of that particular programme.
Question 18
What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there scope for more effective self-regulation?

As indicated above, VLV considers that consumers should be told in advance of the presence of any commercial communication in a programme. We consider that the presence of commercial overlays or other innovative on-screen techniques should be banned unless they are specifically sanctioned by the programme maker.

✓ The potential for constructive and effective self-regulation is illustrated by the UK Advertising Standards Authority [ASA] which is funded entirely by, but crucially at arm's length from, the advertising industry through a levy on advertising space. It works almost exclusively through standards embodied in Codes of Advertising Practice accepted through mutual respect and peer group pressure within the advertising industry (although ASA can, for broadcast content only, call upon statutory reserve powers under the 2003 Communications Act resting with the media regulator Ofcom). The Authority's rulings are published [http://www.asa.org.uk/Rulings/Adjudications.aspx]

✓ We draw the Commission's attention to the fact of ASA's reputation being such that the extension of its role into online advertising came about quite naturally and un-controversially. One section of the ASA website lists some sixty traders who continue to make claims which fall foul of the Advertising Code, despite repeated requests to bring their sales material into compliance.

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

Failing appropriate action by the country of origin of the audiovisual media service, we consider that in order to protect consumers, the country of reception should have the authority to ban programmes which, surreptitiously or otherwise, include commercial communications of this nature, even though this contradicts the country of origin principle.

Protection of minors

Questions 20-24
(20) Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?
(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?
(22) What measures would be available for the effective age verification of users of online audiovisual content?
(23) Should the AVMSD be modified to address, in particular, content rating, content classification and parental control across transmission channels? Should user 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?

VLV considers that viewers and their families should be protected from material that is unsuitable for family viewing, and has become progressively more easily accessible through the advent both of a converged audiovisual market in general and of connected TV in particular.

These factors lend a new urgency to consider the continued fitness of Article 12 AVMSD, which addressed the regulation of material via the on-demand route.

✓ VLV considers that parents have the right to be informed adequately and in a timely manner, about factors which may affect a judgment about suitability for children of programmes or any programme content available on-demand, so that if necessary, they can take preventive action.

✓ VLV notes that this will involve a careful analysis of the pathway of the on-demand audiovisual programme, which may start from a programme service authorised in member state A, by way of a distribution system located in either the country of origin or the country of reception B (or both), via a connected TV receiver, or a computer or a mobile application, and into the receiver’s home.

✓ While recognising that that the protection of minors will inevitably be a shared responsibility - between programme makers, equipment manufacturers, network distributors and families – VLV would like to make a specific suggestion: that EU member states - with the aim of ensuring for viewers adequate pre-information about programmes within their national jurisdiction:

(a) guarantee that all programmes are accompanied by a clear identification of regulatory responsibility,
(b) develop a common set of (national) age divisions for classifying the programme – available before payment is required from a consumer to watch the programme. In this context, we are pleased to note that the British Board of Film Classification is working with the Dutch media regulator NICAM to create a “traffic light warning system”, in order to classify user-generated online material that might normally be unclassified, and which Mediaset, the Italian commercial broadcaster, has agreed to try out.24

✓ Alongside this, the European Union should develop a certificate of audiovisual media literacy which would equip parents and families to understand and appreciate the values and standards employed by classification boards in the principal – or indeed all - European member states.

Both of these measures would help to build a more mature approach the practical and cultural importance of media decision-making by consumers.

Questions 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?

In the UK, co-regulation – involving statutory elements and various industry associations - generally works quite well. Examples would be the BBFC (for films), ASA (for advertising), and public service television companies. In all these regimes, the findings which follow complaints hearings are made public. Dissatisfaction is sometimes voiced about the lack of proportionality between the publicity accorded to the original programme or content and the prominence given to either an apology or a regulatory judgment which issues a rebuke or a fine.

✓ All regulatory bodies should be expected to provide adequate feedback to people reporting harmful or illegal content and complaints within a fixed period of time (e.g. 3 months).

Accessibility for persons with disabilities

Questions 26 & 27
(26) Do you think that additional standardisation efforts are needed in this field? (27) What incentives could be offered to encourage investment in innovative services for people with disabilities?

VLV’s answer to Question 26 is "yes"

The impressive assertions of Recital 46 AVMSD\(^{25}\) are undercut by Article 7 AVMSD. The latter only requires “Member States to encourage media service providers under their jurisdiction that their services are gradually made available to people with a visual or hearing disability.” Although the words which we have highlighted may have some relevance for the regulation of television services, they are inappropriate for a converged world. The approach implicit in the Green Paper with their emphases on “additional standardisation” in Question 26 and “incentives” in Question 27 could easily deepen the problem.

We accept that Article 7 AVMSD has already been partially successful in achieving the aims of Recital 46 AVMSD. For example Ofcom, the UK media regulator, now requires that from 2014, 76 television channels, which currently account for 90% of the total UK audience share, will be required to make specialized access provision -

\(^{25}\)“The right of persons with a disability and of the elderly to participate and be integrated in the social and cultural life of the Union is inextricably linked to the provision of accessible audiovisual media services. The means to achieve accessibility should include, but need not be limited to, sign language, subtitling, audio-description and easily understandable menu navigation”
sub-titling, signing and audio description. So far, so good! But this development, it should be noted, will be a regulatory requirement, not an encouragement. More seriously, it does not cover television services, accessible to UK users but originating from other EU countries which can be accessed by disabled and elderly UK viewers. Nor, within in the UK itself, will it extend to non-linear video-on-demand services, apart from those which are catch-up TV services.

The crucial difference between linear and non-linear services is that when disabled and elderly viewers use the latter, they are interested in watching individual programmes, not just in receiving a service. Moreover, the problem will be global, and not just European. We have been advised, for instance, that none of the three biggest suppliers of on-line movies to UK audiences – Netflix, Lovefilm and Tesco’s Blinkbox – provide subtitles, or what is called captioning in some countries.

The global challenge of the online delivery of audiovisual programmes requires the European Union to raise its game, and to develop an international approach. For instance, the Federal Communications Commission (FCC) in the USA has proposed new rules which will require televisions and other devices to have talking on-screen menus. The International Telecommunications Union (ITU) Focus Group on Audiovisual Accessibility has gone further, and differentiated four areas for improvement:

- The access services accompanying programmes
- The prominence which electronic programme guides give to access services
- The refinements to television receivers themselves
- Modifications to connected devices, especially remote controls.

How will these affect the EU marketplace? As Recital 46 AVMSD correctly points out “The means to achieve accessibility should include, but not necessarily be limited to, sign language, audio-description, and easily understood menu navigation”. [VLV’s emphasis]

Similar requirements to those highlighted by the ITU Focus Group will obviously extend to those viewers wishing to exercise the parental/adult controls which we advocated in our answers to Questions 20-24. Furthermore, as facility with keyboards, keypads and remote control devices becomes increasingly indispensable, the EU will also need to ensure that their design does not raise serious problems for the visually impaired and those who have limited manual dexterity.

**In response to Question 26** therefore, in order to ensure accessibility for disabled and elderly viewers to programmes in video-on-demand services,

- the European Commission should pay close attention at a global level to the standardisation of
  - The digital codes included in connected television receivers and to linked devices, such as remote controls

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• The physical design of remote control devices
• The digital codes, which are used in EU-licensed services to access subtitling and audio-description services for all programmes from whatever source, including US programmes.
• The prominence given to access services in electronic programme guides in all EU non-linear audiovisual services

**In response to Question 27.**

We consider that incentives designed to encourage investment should be established at both EU and national levels.

- At an EU level, the Commission should establish global-wide discussions on standardisation, that both encourage investment in innovative services by EU programme producers in relation to programmes designed for export to Anglophone, francophone, hispanophone, and lusophone markets; and which simplify access by disabled and elderly viewers to audiovisual programmes and services coming into the EU from those markets.

- At a national level, the Commission should specifically include in a future Communication on State Aid for Public Service Media, the freedom for member states to allow (within permitted State Aid) investment by those service media providers in innovative services for people with disabilities. This could also include tax incentives for firms and research institutes investing in the four areas outlined above.

- The governing documents should be amended to support these steps. In Article 7 AVMSD the word “gradually” should be replaced by the words “progressively, on the basis of suitable criteria”, which are used (for other objectives) in article 16 and 17 AVMSD; to which should be added the words “such criteria shall be laid down and reviewed on biennial basis.”

August 2013