Preparing for a Fully Converged Audiovisual World

Response from the Association of Commercial Television (ACT)

Executive Summary

- Our sector is in good shape and confident about the future. Viewing of linear television continues to increase. Advertising and subscription revenues for broadcasting, while not immune from recession and the macro-economic cycle, provide a solid basis for diversification and innovation. Specifically, new forms of distribution (OTT etc) are an opportunity rather than a threat and ACT member companies are enthusiastically launching new services (among the 3000 VoD services now available in Europe);

- We remain committed to a high level of investment in content, which underpins our growing popularity with viewers. To date we have established a virtuous circle relying on operators’ contractual freedom to invest in, commission and produce the best content and to negotiate appropriate distribution deals, whether exclusive or not, across platforms, time periods and geographies. Broadcasters’ investment in new or existing services, is only possible if there is a thriving market in the production and acquisition of content underpinned by strong intellectual property rights.

- The sustainability of current financing models for content production, rather than regulation per se, should be at the heart of the Commission’s thinking. EU media policy should be measured against whether or not it increases the range and choice of content on our consumers’ screens and the financial viability of those involved in bringing content to the screen;

- Media convergence is a reality but its long-term implications are as yet unclear. In the words of a recent report for OFCOM; “the impact of innovation is currently nascent and a sudden single transformation (a ‘Kindle’ or i-Tunes’ moment) is unlikely. Instead there will be a messy but exciting period of innovation in technology and services whose cumulative disruptive impact will be significant”

- Turning to the future of regulation at EU level, the current AVMS regime has important strengths (country of origin regime, platform neutral) which must be preserved;

- As a first step, any evaluation as to the future framework of content regulation at EU level should be based on a rigorous and detailed exercise of scenario planning. An important additional complexity which must be taken into account in this scenario planning is that European media markets are heterogeneous and will experience the phenomenon of media convergence in different ways and at different speeds. To name
but two of the factors, broadband speeds and the strength of local content production markets vary widely across the EU. This may mean that different EU media markets are experiencing different scenarios at the same time, a further challenge to detailed regulation at the EU level – put simply, the challenges facing media content policymakers in Estonia are likely to differ from those in Germany;

- The two-tier (linear/non-linear) AVMS regime made sense when the text was negotiated in 2006 – and may continue to do so - but may be challenged and become unsustainable in a future when consumers will be enjoying linear and non-linear content interchangeably, sometimes on the same screen, as well as video content delivered from the open internet subject to no content regulation.

- As the European Audiovisual Observatory recently noted, “the vagueness of the [AVMS] provisions has forced member states to find individual solutions to many unsolved questions when transposing AVMS into national laws”. This is not necessarily a criticism – as the EAO report continues, “the vagueness of the notion of TV-likeness offers regulators a tool to include or exclude a whole bunch of services for pragmatic reasons”. In the medium term, there is much to be said for retaining the “TV like” concept and its pragmatism. But the concept may need to be developed and updated as new business models emerge and some Member States confronted with new or borderline cases may welcome interpretative guidance from the EC, on request. This should however not be binding on other markets who may be developing their own solutions.

- The scenarios to be examined by the EC should include, as a minimum:
  - A “status quo plus” model in which the core of the AVMS-D remains valid also into the foreseeable future and issues of interpretation around “TV-like services” can be dealt with by requesting assistance from the EC;
  - A scenario in which there is a fundamental shift in advertising markets, calling into question broadcasters’ ability to sustain current levels of expenditure in content;
  - A scenario in which competition is predominantly from global or unlicensed players including competition with the same content from different sources. In such a scenario, where consumers spend a substantial part of their time on services which are not licensed in the EU/EAA, the utility of policy goals which can only be applied to EU-based services must be questionable, and in particular detailed quantitative advertising rules imposed on linear players would give rise to a distortion of competition;
  - A scenario in which co-regulation or self-regulation by operators can deliver the policy goals sought by AVMS-D

- There should also be separate work – although without any regulatory outcomes - examining the likely future shape of and challenges for the production of content;

- Any rethink of EU-level content regulation should be much more based on principles than on micro-management and should also examine whether policy goals are better
delivered via self-regulation. If regulation is needed, other instruments rather than, or in improved co-ordination with AVMS (i.e., E-commerce, Data Protection, Electronic Comms framework, etc) may already provide the solution;

- Signal integrity will become a key issue (without which the concept of editorial responsibility becomes impossible to sustain);

- Commercial overlays and other novel techniques should not be possible without the prior consent of the broadcaster. This is an important extension of the principle of editorial responsibility: the entity which holds the NRA licence must be in a position to make a prior assessment as to whether a particular overlay should be permitted or not.

- Other key principles include a high level of protection of minors, the retention of clear and unambiguous COO regime, the principle of editorial responsibility and ethical (qualitative) rules on commercial communication;

- These principles should prove capable of being read across to all current and future platforms, whether by statutory licence or self/co-regulation. Self and co-regulation will necessarily play a greater role in future, there are positive examples from some European markets;

- Regardless of whether or not a one-size-fits all must-be-found provision may be introduced in a future rethink of European content regulation, we would call on the Commission to ensure that, in the event that findability does become an issue in some markets, publicly-funded broadcasters do not benefit from preferential treatment;

- On protection of minors and disabled access, there is a commercial imperative which drives players in our sector to position ourselves as best in class;

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Our response will cover many of the detailed questions in the Commission Green Paper. But before so doing, we will consider:

(1) The current strengths of EU audiovisual markers, in particular our response to convergence and the state of the content business;
(2) Future challenges, including the changing nature of value chains and challenges to current arrangements for financing content;
(3) Regulation of our sector to date;
(4) Preconditions for a successful revision of the current framework
Part One: the State of European audiovisual markets: Strengths

(a) Commercial Broadcasters and Convergence

The European Commission Green Paper (“GP”) rightly notes that broadcasters are moving online. This has happened at a startling pace, with over 3000 video on demand services now available in Europe. Despite this phenomenal growth, to date, the broadcasting sector regards online as an important platform but one which will complement rather than substitute the existing platforms of cable, satellite and terrestrial. This is because of consumer demand (linear broadcast viewing is still increasing, with the average European consumer watching scheduled linear television for 235 minutes per day\(^1\), with on-demand and OTT viewing also increasing but not cannibalising TV). It is also a matter of commercial efficiency: according to research from Screen Digest, broadcast distribution is cheaper than online for distribution to more than 8000 households viewing the same content\(^2\).

To put the impact of the internet on TV in context, for every minute spent on You Tube by European consumers, an hour is spent watching linear television, which still accounts in major EU markets for 95% of overall TV content consumption\(^3\);

The popularity of broadcast television with viewers is also, broadly, translated into commercial sustainability. Commercial broadcasters’ revenues are holding up though with regional variations linked to the macro-economic performance of the broadcaster’s country of establishment: the European Audiovisual Observatory recoded an average 2.1% increase in commercial TV year-on-year in 2012. In markets where revenue is stable or growing, this provides a solid basis for diversification, allowing innovative new business models to be introduced alongside the more mature revenue streams of advertising and, in some markets, subscription. An illustrative list of new ventures launched by ACT member companies during the consultation period on this Green Paper is attached as an Appendix to our response as evidence of the enthusiasm with which broadcasters are exploiting new technologies to roll out new services and grow consumer choice.

This new environment creates significant opportunities for players coming from the broadcast world. To date, the broadcasting sector has been able to absorb technological change into its ‘bloodstream’, driving rather than reacting to media convergence as a means to grow the number, quality and variety of content services offered to our consumers. Many of these already well-known changes have their origin in the development of broadband internet to a stage where it is a serviceable platform for distribution of video content, and are flagged in the GP:

- increased second-screen usage;
- changing viewing behaviour leading to an increase in non-live viewing for some genres of content and, potentially, to more ad-skipping\(^4\);
- a rather incremental increase in global on-demand TV revenue, predicted to rise from $4.2bn to $6bn between 2012 and 2018;\(^5\)

\(^1\) Mediametrie research, see www.mediametrie.com, press release of 21 March 2013
\(^2\) See presentation at www.privatetelevisio.eu
\(^3\) See press release by ACT, EGTA et al, 23 September 2013
\(^4\) Analysis by Thinkbox in the UK suggests however that at least 80% of advertisements are watched at normal speed in PVR homes, and that there is no significant difference in live/PVR viewing as between commercial channels and the advertising-free pubcaster, BBC.
\(^5\) Digital TV Research, 19 August 2013
• cloud-based storage enabling consumers to build up large personal libraries of video content;
• the – possible - arrival of “binge-viewing”, though it is noticeable that, for all the hype, pure OTT players do not disclose viewing figures so the actual extent of this phenomenon is unclear;

As an example of the opportunities posed by convergence, broadcasters are already keen to exploit the second screen as a way to increase overall viewing inter alia through:

• out-of-home consumption (e.g., tablet and smart phone viewing on public transport or during a break in the working day);
• diversification of revenue base, i.e., pay-TV operators offering OTT content and FTA broadcasters devising pay strategies;
• added value consumption (e.g., supplementary content being made available via the interactive menu on a TV screen);
• social media interaction building viewer loyalty and engagement.

The scale, timing and consequences of disruption in our sector is – obviously - impossible to predict. As stated in a recent research report for OFCOM, the UK regulator,

“the impact of innovation is currently nascent and a sudden single transformation (a ‘Kindle’ or i-Tunes’ moment) is unlikely. Instead there will be a messy but exciting period of innovation in technology and services whose cumulative disruptive impact will be significant”.

At this stage, we would agree with this conclusion and only add that, in a European context, the 28 national broadcasting markets will experience different forms of disruption, to varying degrees, at different times. Some of the regulatory tools needed to respond to this “nascent, messy but exciting” period of change will also vary from market to market and from time to time. The policy objectives and the interventions necessary for, say, the Estonian-language content market can be expected to differ from the English-language or German-language markets. As such, there is no need for these tools to be harmonised at EU level, given the heterogeneity of EU markets, though the EU should ensure that policies are compliant with the EU framework.

The challenge of rethinking business models while retaining the best of what has been developed over the past decades could, if one were so minded, be compared to the challenges facing those who regulate the audiovisual media. Just as broadcasters will build on, develop and diversify from successful business models, so regulators may wish to retain many of the features of broadcast regulation.

The particular challenge for business, and for regulators is that action may be needed at short notice – if commercial television were to experience a “kindle or i-tunes moment”, would broadcasters be able to react appropriately? Or would regulatory issues prevent this?

Attempting to second-guess whether television will experience such a moment, and if so what

6 According to http://www.nielsen.com/us/en/newswire/2013/new-study-confirms-correlation-between-twitter-and-tv-ratings.html, 32 million unique individual US citizens tweeted about TV programmes in 2012, with increased Twitter traffic being mirrored in increased ratings. See ACT Newsletters (available via our website) for examples of innovative social media services from Dutch and Turkish member companies.

7 Future of Commercial Communications on TV and TV-Like Services, published in August 2013
will be the catalyst and when it will happen, would be futile. The concern here is that by the
time the symptoms of a decline were to become visible, it would be too late for regulators to
design the appropriate framework for the changed circumstances. This particularly applies at
EU level, where law-making procedures are necessarily longer than at national level. Hence
our call to DG CONNECT is not to “revise the AVMS directive”, but rather to commission in-
depth research and modelling to ensure that EU regulation can adapt, quickly if necessary, to a
range of possible future scenarios.

(b) The Virtuous Circle: Investment in Content

In general, the ACT believes that the sustainability of current financing models for content
production, rather than regulatory notions, should be at the heart of our discussions. Indeed, we
suggest that the fil rouge for the Commission’s consideration of responses to this GP should be:

- does EU policy (actual or proposed) help increase the range and choice of
  content on our consumers’ screens and the financial sustainability of those
  involved in bringing content to the screen?

Consistent with our responses to the Audiovisual Green Paper, to Licences for Europe, and to
numerous other consultations, the optimum way to do this is by relying on operators’
contractual freedom to invest in, commission and produce the best content and to negotiate
appropriate distribution deals, whether exclusive or not, across platforms, time periods and
geographies. Existing contractual arrangements, which may include windowing deals, are not
only an expression of contractual freedom, they are also an opportunity for new players to enter
the market by using new content, or new windows, to tap into new consumer demand. In this
way, the content business has been able to retain value while extending consumer choice
including at lower price points.

Broadcasters’ investment in new services is, like our investment in existing services, only
possible if there is a thriving market in the production and acquisition of content underpinned
by strong intellectual property rights and by operators’ freedom to compete for the right to
acquire these rights on the appropriate contractual basis. To date, the European media markets
fulfil these conditions and certainly the “Market Considerations” section of the GP contains
some negative assumptions about European content which we do not share.

Q1 asks why US content companies are successful in the EU market ‘while many EU
companies struggle’. In television broadcasting or production, the opposite is the case: national
commercial and public channels head the ratings in every EU market. Local content is more
popular than US series in almost every EU market, and EU companies such as CME, MTG or
RTL Group operate in many EU markets. US operators are generally strong players in certain
genre-specific channels (factual, entertainment, music) rather than competing for the mass
audience. So we can only assume the question is based on theatrical distribution rather than
broadcasting. While it is undeniable that US companies have a strong position in theatrical
distribution of films, this is not currently translated into television broadcasting or distribution. In
the broadcasting market, according to the European Audiovisual Observatory; the highest
audience share of the seven big international groups is 4.7 per cent, recorded by Viacom
channels in German-speaking Switzerland. Nor is US content dominant in the programme

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8 For example, in relation to the supply of Hollywood movies on pay TV, the UK Competition Commission has
recognised that in the current UK market environment, movies are no longer the drivers of pay TV subscriptions
that they once were
market, where national content (usually fiction or entertainment shows) and sport dominate the lists of most-watched programmes in almost every European territory. To illustrate the point; the table below summarises the top twenty TV shows in selected European markets:

<table>
<thead>
<tr>
<th>Country</th>
<th>Domestic</th>
<th>Sport</th>
<th>US</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Croatia</td>
<td>4</td>
<td>15</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>20</td>
<td></td>
<td></td>
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<tr>
<td>Denmark</td>
<td>13</td>
<td>6</td>
<td>-</td>
<td>1</td>
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<tr>
<td>Flanders</td>
<td>18</td>
<td>1</td>
<td>-</td>
<td>1</td>
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<tr>
<td>France</td>
<td>8</td>
<td>2</td>
<td>11</td>
<td></td>
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<td>Germany</td>
<td>11</td>
<td>5</td>
<td>5</td>
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<tr>
<td>Greece</td>
<td>9</td>
<td>10</td>
<td>-</td>
<td>1</td>
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<tr>
<td>Italy</td>
<td>9</td>
<td>9</td>
<td>2</td>
<td></td>
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<tr>
<td>Netherlands</td>
<td>17</td>
<td>3</td>
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<td></td>
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<tr>
<td>Poland</td>
<td>11</td>
<td>7</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Portugal</td>
<td>6</td>
<td>14</td>
<td>-</td>
<td></td>
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<tr>
<td>Spain</td>
<td>1</td>
<td>19</td>
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<td>Sweden</td>
<td>15</td>
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<td>1</td>
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<tr>
<td>UK</td>
<td>20</td>
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</tbody>
</table>

From this we would conclude that US broadcasting groups are – successfully – targeting niche audiences with largely thematic channels rather than challenging EU commercial and public broadcasters for the mass audience, and that US series and movies, while an essential part of any commercial broadcaster’s schedule, do not generally attract the audiences of local content or sport.

For whatever reason, it appears that European consumers enjoy watching US movies in the cinema, but prefer to watch locally-produced TV shows at home.

This does not mean that Europe can be complacent, or that US content is not important to our viewers. Consumer tastes are constantly evolving. Today, entertainment shows are a European success story - "homegrown" formats like X-Factor, Voice, Got Talent, Dancing with the Stars etc are, outside a big football tournament, European viewers’ most watched programmes, with many formats having been sold to the US. But the US has arguably established an advantage.

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9 Data taken from RTL+IP Television Key Facts; numbers do not always add up to 20 because of some national/US coproduction; data deliberately taken from a year without FIFA World Cup or UEFA European Championships. ‘Other’ includes content from third countries or sui generis programming such as the Eurovision Song Contest.
over Europe in producing large-scale series along the lines of “Game of Thrones” – in passing, an interesting example of content which works equally well on linear and on-demand platforms, with over 1m on-demand views on Sky Deutschland alone. There are encouraging signs that European producers are now competing with the US, with an increasing (if still niche) demand for series from other European markets, led by the boom in Nordic drama (The Killing; Borgen etc).

We will develop this point further at Q5 below.

For Q2, there is no case for any ex ante regulatory intervention on so-called “access to premium content”. The television marketplace has proved itself to be very open to new entrants, with European TV channels growing from 47 to 10000 in the past twenty years. One consequence of media convergence will be that the number of new entrants is likely to continue to increase and that this will include operators from outside the media market and from outside the EU. The evidence to date suggests that players such as Belgacom, BT Sport, Al Jazeera/BE in Sport do not in practice require regulatory intervention to acquire rights to key content.

Negotiation with rightsholders, rather than regulatory arbitrage, is the optimum way for new entrants to compete with existing players and thereby to grow the sector as a whole.

The GP rightly notes, at page 7, that the UK has, via its NRA OFCOM, assessed the need for regulatory intervention in sport and first-run Hollywood movies, though it would have been helpful for the GP to have also noted that in neither case were any new regulatory measures imposed. For the sake of completeness, the GP should also have made reference to the findings of the Competition Appeal Tribunal, which overturned Ofcom’s original ruling that BSkyB had acted in a way that was prejudicial to fair and effective competition in relation to the distribution of its main sports channels and concluded:

“Ofcom's core competition concern is unfounded. [...] "The tribunal is of the view that Ofcom has, to a significant extent, misinterpreted the evidence of these negotiations, which does not support Ofcom's conclusion. We have found a significant number of Ofcom's pivotal findings of fact in the statement to be inconsistent with the evidence”

There are two points here of wider interest to the European debate: first, the CAT found that Ofcom had failed to recognise the “regulatory gaming” of Sky’s competitors. The examples we quote above of recent new entrants into content markets suggest that the European content sector would be better served by businesses investing and innovating on the content market rather than seeking regulatory advantage. Secondly, we have already referred at footnote 9 above to the fact that, in relation to the supply of Hollywood movies on pay TV, the Competition Commission concluded that no intervention is required. It may be relevant to the EC’s deliberations on convergence that this conclusion is based inter alia on an acknowledgement of the rapid change in the audiovisual sector, particularly with the growth of the ability to deliver audio-visual services to consumers via the internet.

**Part Two: the State of European audiovisual markets: Challenges**

(a) Changing Nature of the Value Chains

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10 See [www.catribunal.org.uk](http://www.catribunal.org.uk); case reference 1158/8/3/10
Convergence may also call for a rethink in terms of how operators in the sector define ourselves. Structurally, players in the media sector have historically been defined by their medium of distribution and their sources of finance. So players have been categorised as TV or print media, as commercial or publicly-financed, or as pay or free-to-air TV. Some of these distinctions may still be relevant in the future. But in the medium term, the key distinction may rather be between aggregators and publishers. It is those in the latter category – including broadcasters\(^{11}\) and other media businesses who have historically taken the risk of investing in content (while, in the case of commercial broadcasters, also being the most strictly regulated media business). The possible threat here of a commoditisation of content – presupposing a scenario when value shifts from content production to its distribution – was noted in the recent Lescure Report in France which commented that in such an event, this “disruption of the value chain would constitute a major competitive challenge for Europe”\(^{12}\).

**(b) Sustainability of the current ‘virtuous circle’ in content financing**

The GP also asks how far new actors are investing in content production. Here, the putative publisher/aggregator distinction we refer to above may become relevant. As always in the messy but exciting period of convergence, this is not a black and white divide and there is evidence that new actors who would be categorised as “publishers” are investing – Netflix invests around 10% of its $2bn global content spend on original productions, including, interestingly for the EU debate, in co-productions with European players (‘Lilyhammer’ was co-produced with Nordic public TV) and is on record as aiming to increase their investment in original content. This evolution over time from pure distributor of third-party content towards the higher-risk strategy of investing in exclusive rights is consistent with the experience of commercial FTA and pay operators – many ACT member companies quickly moved, from the mid-1980s onwards, beyond the “start-up” model of schedules of largely acquired material to create the virtuous circle of higher revenues being reinvested in more expensive content, once the revenue streams from advertising and subscription were sufficient to recoup the additional costs.

Pure OTT aggregators, by contrast, appear less interested in investing in content. Whether this is a market failure which becomes a structural concern for European media markets will depend on the viability of the publishing model – only if the economic conditions are such that existing and new publishers can continue or increase our current level of investment in news, sport, drama, factual and entertainment content, can the current high-value, choice-rich content environment be preserved.

**Part Three: EU Regulation of the sector to date**

**a. Encouraging transfrontier distribution: the country of origin rule**

The original raison d’être of EU-level regulation of broadcast content was of course the need to establish clarity as to jurisdiction over transfrontier broadcasters (clarity which was delivered via the country of origin principle).

This aspect of the directive, and its predecessor TVWF, has worked well in allowing broadcasters a degree of clarity and simplicity and by resisting attempts of more protectionist

\(^{11}\) Publicly-financed broadcasters are also of course significant investors in content, albeit without incurring the same financial risk as private companies

\(^{12}\) Lescure, (unofficial translation)
Member States to introduce ‘double jeopardy’ jurisdiction and penalise transfrontier operators. The interests of the broadcasting industry in retaining this relatively clear rule are clear. We assume that the EU institutions, which are keen to boost the proportion of European content which flows across frontiers, would also favour a retention of this model – indeed, any move to further increase the powers of the countries of reception would be a bizarre result for a directive aimed at encouraging pan-European television.

Other stakeholders are also affected. Advertisers should have the right to use a range of media, not just those favoured by the state. And platform operators, whether cable, satellite or broadband, should have the right to offer to European consumers channels from around the EU.

b. **Exclusivity in Content, and contractual freedom**

The GP refers, without a specific question, to transfrontier distribution of content (the Polish Erasmus student). The ACT and our member companies have been very active participants in discussions around this subject in Licences for Europe, and have prepared detailed presentations to that exercise which have illustrated that transfrontier circulation, including portability of content can be delivered by the market under the current copyright framework. Many examples from ACT member companies and other stakeholders – e.g., in the area of EST of independent movies - support our view that further regulatory intervention is not needed in this area.

In view of the importance of this discussion for our sector, we would like to restate the key points we have made to date in Licences for Europe:

- Broadcasters are one part of a **complex series of value chains**, each stage of which has its own business rationale and investment decisions to underpin strategies on distribution;

- In today’s multi-platform, multi-window world, territorial distribution is frequently the optimum way, via **exclusivity and price differentiation**, of maximising revenues. Crucially, this revenue then flows back into new **investment in content**. Around 40% of the €85bn broadcaster turnover in Europe is reinvested in new content production annually;

- Not only do national language, tastes and interests vary, but **programme genres** are key factors in determining value across markets. Sport – which viewers wish to watch live – raises different issues from a drama series or classic movie. Even within genres, different commercial factors will inform the distribution strategies of niche sports (ice-hockey, rugby, etc) from those with global appeal. Distribution strategy will often be decided on a programme-by-programme basis. So innovative initiatives for increasing portability, e.g., for EST of independent movies on pay-VoD platforms, will not necessarily work for other genres and business models of content distribution. Other initiatives such as ‘download and play’ or one-day subscription packages for sports channels are being trialled;

- **Consumer demand** is uneven. The Plum study recently carried out for DG MARKT is good evidence of this point. Plum estimates the total demand for transfrontier audiovisual services at €760m annually (0.7% of the EU television market). But demand
is uneven across the 702 markets\textsuperscript{13} analysed. In over 200 such markets, the value is below €10,000 p.a. In others, where the demand is commercially interesting – e.g., Romanian language services in Spain or Italy are valued at over €40m p.a. - commercial broadcasters often already provide services for many such expatriate groups;

- An EU AV market without territorial exclusivity risks homogenised (Anglophone?) content and monopolies all along the value chain with adverse impact on non-economic goals of media regulation such as media pluralism and linguistic diversity

\textbf{c. EU regulation and non-linear services}

The very structure of retaining very different frameworks for linear and non-linear content may be thought appropriate for now but may produce market distortions as the two forms of distribution converge, and, as the GP itself notes, services “increasingly compete on the same screen, sometimes even offering over two delivery channels the same content for the attention of the same audience”. Not only are the rules more onerous on linear players, but the regulations themselves may impact on corporate culture and discourage precisely the sort of innovation which the EC is keen to encourage. To put it simply, a broadcaster’s sales house with a new method of selling TV airtime or sponsorship has to check whether the idea is compliant with the rules imposed by the national regulator, by the AVMS directive and the jurisprudence of the Court of Justice of the European Union (and; potentially, with various interpretative communications). That sales house’s online competitor, by contrast, has to ask themselves one question only: “will this new method deliver more revenue”?

This hyper-regulation of one part of the media value chain, broadcasting, creates a significant risk that innovation may be thwarted – also damaging the European audiovisual content sector.

The dual structure of linear/non-linear does not of course mean that non-linear content is unregulated, though this regulation may be based on notification rather than ex-ante licensing, and be carried out via co-regulation rather than statutory regulation (e.g., ATVOD in the UK). AVMS also allows Member States who so wish to impose obligations on non-linear players to invest in content.

This two-tier regime made sense when AVMS was negotiated in 2006 and may remain appropriate but will be challenged and may become unsustainable in a future when consumers are increasingly enjoying linear and non-linear content on the same screen, as well as video content delivered from the open internet subject to no content regulation at all. At present, AVMS requires seven cumulative criteria to be met for an audiovisual media service:

\begin{itemize}
  \item A service as defined by Article 56/57 TEU;
  \item Under the editorial responsibility of a media service provider:
  \item The principal purpose of which is;
  \item The provision of programmes
  \item In order to inform, entertain or educate
  \item To the general public
\end{itemize}

\textsuperscript{13} Plum analysed demand for the intra-EU migrant population in each of the then 27 Member States, i.e., 26 migrant groups per Member State, see TNS/Plum, Study on the economic potential of cross-border pay-to-view audiovisual media services, January 2012
Via electronic communications networks

In such a scenario, each of the seven criteria (in reality, eight as one should also consider recital 28 which states that electronic versions of print media products are not covered) would need to be re-examined to see if they are still valid and how far they assist in guaranteeing a market which is characterised not just by fair competition but also by a high degree of investment in content and by expanding consumer choice.

The relationship with the E-commerce directive is also an issue which needs further consideration. This relationship is explained – without any recommendation as to any revision of this directive – by the Lescure report.

Part Four: Preconditions for a successful revision of the current framework

The AVMS directive (and its predecessor) have delivered an important benefit in creating clarity over jurisdiction for transfrontier operators. Against this background of legal certainty in jurisdiction, and with a high level of protection of IP (delivered via different national, European and international instruments), media companies have felt able to make investment in content which has proved popular with viewers and with advertisers, thereby generating the revenues necessary for further investment. However, the current AVMS framework cannot be expected to last for ever and may increasingly come under pressure if media convergence facilitates the entry into the media market of global players from outside the current sector. At this stage, we believe it might be appropriate to set out what we believe could be the preconditions for a successful revision of AVMS, at whatever stage the Commission believes it politically prudent to do so.

a. The Policy Objective

Commissioner Kroes is on record as stating that convergence means “business as usual is not an option” for media companies. She is right. And ACT member companies are indeed re-examining every aspect of their business models. But regulation needs to converge as well as business. Given the timelines involved in drafting, negotiating, agreeing and implementing EU level regulation, the outcome of this discussion will be the regulatory framework which governs the converged media business between 2020 and 2030.

The EC should address the entire legislative apparatus with a view to achieving a framework whereby demand and supply substitution, and not different business models, defines the degree of regulation and determines the best possible consumer protection regime across all delivery platforms.

Objectives should increasingly become platform-neutral, just as viewers’ consumption of content is likely to do so. Hence the importance of retaining the platform-neutral architecture of AVMS. These objectives will also, necessarily, be expressed more by principles which can be read across to non-linear services and implemented there, probably with a higher degree of self-regulation than has been the case in the broadcast environment. We therefore welcome the fact that the GP has developed from a consideration of “Connected TV” into the wider issues of media convergence. “Connected” or “smart” TV is only one way in which the strengths of broadcast TV and online distribution will converge, and there is some evidence that other devices such as tablets, set-top boxes, games consoles or smart phones will for many consumers represent their preferred route to a converged media environment\(^\text{14}\).

\(^{14}\) BBC i-player data
In a context in which the specificity of broadcast distribution becomes less clear, it may be that the reliance placed in AVMS of a definition of “TV like services” may be increasingly difficult to sustain. While it is true that viewers today do retain different expectations of content delivered via television channels from that delivered online\textsuperscript{15}, it is possible that, as content categories continue to blur and services are increasingly consumed on multiple screens, a younger generation of consumers will not make this distinction.

The notion of TV-like services may already be coming under strain today, as was explored in detail in a recent report for the European Audiovisual Observatory, “What is an on-demand service?”\textsuperscript{16}. This report comments on the seven/eight criteria we set out above in the following terms: “the vagueness of the abovementioned provisions has forced member states to find individual solutions to many unsolved questions when transposing AVMS into national laws”. The EAO then goes on to itemise the solutions found for newspaper websites providing video, professional UGC channels, download to own and download to rent services. Specifically, the report then examines the notion of TV-like services, noting on the one hand that the concept “is not conducive to legal certainty” but on the other that “the vagueness of the notion of TV-likeness offers regulators a tool to include or exclude a whole bunch of services for pragmatic reasons”, noting in particular the contrast between the UK co-regulator ATVOD whose guidelines give significant prominence to the concept (now being developed by jurisprudence) and the Dutch regulator which considers the concept too vague to be taken into consideration.

The tension between legal certainty (which can be a double-edged sword in so far as legal certainty is easiest to deliver via detailed, prescriptive over-regulation) and a pragmatic, case-by-case approach is not new. In the medium term, i.e., at least for the rest of this decade, there is much to be said for retaining the “TV-like” concept. But it is clear that the concept needs to be developed and updated by regulators and co-regulators as new business models emerge (the examples studied by the EAO were not viable business models when AVMS was negotiated). Accordingly, we suggest that the EC could offer guidance, on request, to Member States who are confronted with new or borderline cases. This should however not be binding on other markets who may be developing their own solutions.

\textbf{b. Market Analysis and Scenario Modelling}

The EC will of course have to carry out full regulatory impact assessments in advance of any proposal to amend the regulatory framework. In particular, it will be important for the EC to commission research into the developments expected in media markets during the likely lifetime of whatever regulation replaces AVMS. A useful such modelling exercise was carried out before the revision of TVWF\textsuperscript{16} and a similar exercise must be undertaken in advance of any proposed revision to the audiovisual framework, on the understanding that European media markets are heterogeneous in structure, and that policy changes must be thought through in terms of how they impact on actual markets not on a (hypothetical) standard European market.

Our working assumption is that the pace of change will continue to accelerate, with more players offering more services to consumers on more devices. From the GP, it appears that the EC shares this assumption. And it is possible, if by no means inevitable, that this process will

\textsuperscript{15} See EC Application report on AVMS, CSA research etc
\textsuperscript{16} Outlook for the Development of Technologies and Markets for the European audiovisual sector to 2010, Andersen Consulting, June 2002
lead to increasing regulatory asymmetry between players offering comparable services, depending on whether they are classified as linear, non-linear or outside the scope altogether. But it would not be wise at this stage for the EC to base all its thinking on this scenario. A range of options should be modelled.

Specifically, the EC should also look into possible scenarios around the future markets for audiovisual content consumption and commercial communications – again, exactly as was done in the first part of the last decade at European level and is being done now at national level (notably in the OFCOM research we quoted earlier and in forthcoming French consultations).

While there will be many possible scenarios, there are four which we feel merit particular detailed study:

a) A “status quo plus” model in which the core of the AVMS-D remains valid also into the foreseeable future and the core positive values of AVMS – notably country of origin and platform neutrality – are read across also to the new environment. This is not a “do nothing” option, but would rather involve the EC studying how Member States are choosing to regulate, co-regulate - or, crucially, not to regulate – these new services. The EAO study is a good starting point here. Issues of interpretation around “TV-like services” can be dealt with by assistance from the EC;

b) A scenario in which advertising expenditure undergoes a fundamental shift, undermining broadcasters’ ability to sustain current levels of expenditure in content, instead driving broadcasters to adapt their business model by devising new forms of sponsorship or closer integration with programme content, which may require a rethink of the extremely detailed rules governing product placement which were negotiated in 2006/07.

c) A scenario in which competition is predominantly from global players, i.e. consumers spend a substantial part of their time on services which are not licensed in the EU/EAA. Here, the utility of policy goals which can only be applied to EU-based services must be questionable, in particular detailed rules on commercial communications imposed on linear players which could give rise to a distortion of competition;

d) A scenario in which self- or co-regulation can become the main ways in which detailed standards for TV-like content are delivered – see pp 18-19 below;

Our goal is neither to protect incumbent services and penalise new services, nor to protect linear services and penalise non-linear services. Our goal is a coherent framework that covers as much of the media consumption in the EU/EAA as possible – regardless of the type of service and regardless of who provides that service from whatever jurisdiction. There is an important additional complexity in this scenario planning, namely that European media markets are heterogeneous and will experience the phenomenon of media convergence in different ways and at different speeds. To name but two of the diverging factors, broadband speeds and the strength of local content production markets vary widely across the EU. This may mean that different EU media markets are experiencing different scenarios at the same time, a further challenge to detailed regulation at the EU level.

17 See EU Media Futures Forum, September 2012
c. AVMS in a wider context: regulatory instruments

AVMS is not an “all or nothing” protection against an unregulated Wild West. It is clear from the GP, which makes frequent references to other EU instruments, that the European Commission shares this view. Rather, AVMS forms part of a tapestry of global, European and national regulation and self-regulation. One of the changes in broadcasting since 1989 has been the emergence in 27 EU Member States of independent national regulatory authorities. NRAs were rather less developed in 1989, but now have typically at least two decades’ experience of regulation the daily operation of the broadcasting business. As such, they could now play a more clearly defined role in future EU media regulation.

In the GP itself, the EC hints at such a debate in places – notably at p4 where the GP rightly comments that convergence of the media will also impact on other instruments. We agree that AVMS cannot be seen in isolation but has important overlaps with E-Commerce, Data Protection, Unfair Commercial Practices, the Electronic Communications Framework, Copyright, etc. And while it may be difficult for the EC at present to organise a reflection across so many different directorates-general, this is precisely the sort of obstacle which needs to be overcome if we are to secure a logical regulatory framework for the converged world.

d. AVMS in a wider context: political objectives and debate

Initiatives such as this GP are helpful and necessary, but must not be seen as sufficient. If Europe is to realise the enormous growth potential of our TV content sector and continue to secure the citizen benefits which result from a vibrant media sector, we believe that some wider issues need to be addressed before the Commission considers revising AVMS. For example, European media has changed radically since 2007, when the AVMS directive was negotiated, and beyond all recognition since 1989 when the TVWF Directive was introduced. A debate is needed to reflect today’s reality: that a digital media business can be located as easily to the US or the Pacific as in Europe and European businesses will suffer if we legislate in isolation. How is the global nature of tomorrow’s media business taken into account in any policy process? Further, if global media convergence is already a reality, is it sustainable to continue with a regime of narrow market definitions which may inhibit the development of the scale required to compete on a global stage? There are no easy answers to these questions, and we certainly do not propose any solutions, but we suggest that an eventual revision of AVMS will be more constructive and durable if it also takes into account these wider issues.

e. Principles for a future regulatory framework

In this response, we will not enter into detail on some of the questions posed in the GP. At the current stage, we would prefer to see the EC focus on high-level principles, as the GP, in general, attempts to do.

Certainly today, a further incremental revision of the detail of AVMS would be an inappropriate policy response to the challenges faced by the media industry in the era of full media convergence – challenges which are well described in the Commission Green Paper. We do not wish to see another renegotiation of the micro-management of regulation of television and call on the EC to ensure that there is broad political consensus on this point among the Member States as a precondition to any future reshaping of EU-level regulation of content. There are some signs, notably in the recent European Parliament resolution on Connected TV, that MEPs are taking the necessary longer-term view but we would need to see evidence of a strong consensus being built around this point before being confident that a revision was timely.
Instead, what is needed is a forward-looking vision from the EU to establish which principles from the old world of broadcast regulation we wish to see carried forward into a fully converged world, in a regulatory framework which will endure until 2030?.

We believe that the five principles below should be enshrined in EU law, to be delivered by all operators offering audiovisual content to consumers:

a. **Maintain the current levels of provision for protection of minors**. Adults do not need media regulation to ‘protect’ them from content other than that which is already governed by the criminal law (hate speech, incitement, racial hatred, sexually abusive material). For children, by contrast, there is no dispute about the responsibility on operators to create an environment which, at least, does not completely undermine parents’ efforts to curate their children’s access to online content. Quite *how* we deliver the necessary protection is another matter, as is the appropriate division of labour between business, parents and regulators;

b. **Maintain current standards of ethics in commercial communication**, including transparency/labelling and rules around privacy (where these rules are dealt with elsewhere in EU legislation, there should be clear signposting and cross-referencing). Existing rules on advertising of tobacco, alcohol, pharmaceuticals etc should also be retained in a platform-neutral manner;

c. **Defend the principle of editorial responsibility** (without which, actual compliance with any EU or national rules becomes very difficult);

d. **Guarantee the signal integrity of broadcasters** as a quid pro quo for editorial responsibility (this responsibility cannot be guaranteed if third parties interfere with the broadcast signal) and introduce requirements currently absent from the AVMSD framework, but which belong in a modern regulatory framework for the media sector, e.g., a commitment to uphold intellectual property rights, with a view to reducing the current amount of illegally available media content.

e. **Retain the existing rules on jurisdiction for transfrontier operators**

This is dealt with at p 18 below

**Methodology**

We believe that our thinking is not far removed from the European Parliament which in its Resolution on Connected TV (Kammerevert report) of July 2013 called for:

“the Commission to provide a breakdown, on the basis of its consultation process entitled ‘Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values’, of which regulatory mechanisms are still necessary and useful against the background of convergence and which should perhaps be established in order to create a level playing field for all content and service providers, taking account of the following minimum requirements and maintaining the existing overarching regulatory objectives, so as to ensure fair competition among content providers”
Part Five: Detailed Responses to the Questions in the Commission Green Paper

The GP refers to the 2009 Communication on State Aid to Public Broadcasters, though it does not follow it up with a specific question. We regard this as an area which must be kept under review. The 2009 text was a useful compromise between the desire of publicly-funded broadcasters to launch new online services and the need to safeguard fair competition when these well-funded ventures compete with commercial broadcasters and print media publishers, but also new market entrants.

According to this communication, Member States have to ensure that public broadcasters have their proposed new digital activities evaluated by a neutral, independent body before launch. However, to date implementation has been patchy. While there has not yet been a pan-European analysis of implementation carried out by DG COMP, according to the ACT’s own information, ex ante control mechanisms to implement the 2009 Communication have only been introduced in around half of the EEA markets\(^\text{18}\). This may partly be due to the pressures on state budgets meaning that some state broadcasters were not in a position to launch new ventures. But additionally in some Member States where the Communication has been implemented, early experience shows that there are certain lacunae in the Communication, notably a lack of clarity in some definitions, which have led to sub-optimal implementation of the spirit of the Communication. Overall we are concerned that this lack of political will at national level is impeding a meaningful implementation of the 2009 Communication, which will logically result in an increased case load for the EU Commission, even if the commercial media sector had shared the initial objective of the Commission to move this scrutiny more to the level of independent national bodies rather than filing further cases in Brussels.

**Financing Models**

Q4 and 5 are about content production and distribution. The simplest way of course to promote local and European content is to allow broadcasters the editorial and contractual freedom to produce, commission and schedule the content which we believe our viewers wish to see. As we demonstrate above, this is overwhelmingly local content. In terms of how regulators can help, the bigger picture here should be encouraging MS to maintain media markets with three strong pillars of revenue: subscription, advertising and state funding - this is the optimum way to ensure a steady supply of finance to the content sector. Two more specific ideas which we would like to see taken up are:

- The European Parliament’s call in its July 2013 Resolution (Kammerevert report) for a clear statement that there will be no further bans or restrictions on television advertising introduced at European level. If this EP statement could also be endorsed by the Commission, this would be a helpful aid to continuing the current model of a high level of reinvestment of advertising revenue in original content;

- For the same reason – of encouraging the continuation of a virtuous circle of reinvestment of revenues into content production - the EC should put the

\(^{18}\) According to our sources, such tests had by December 2011 been introduced in Austria, Flanders, Croatia, Denmark, Finland, Germany, Ireland, Netherlands, Norway, Sweden and the UK and were under discussion in Estonia and Latvia.
protection of copyright and the fight against piracy at the heart of its media policy.

Q5 of the GP asks how changing consumer behaviour will influence the current system of content financing. This issue - adapting or sustaining commercial models for domestic content production - is perhaps the key strategic challenge for the EU in this debate. While regulatory intervention is not required here, further studies may be helpful to ensure that the EC has an accurate and up to date understanding of the challenges and objectives in this area as a follow up to this Green Paper.

Writing in September 2013, we can state that TV advertising remains a viable business model and, if the macro-economic outlook is not too negative, generates a dependable stream of revenue which broadcasters choose to reinvest in content. Whether this will still be the case in ten years’ time is impossible to predict. Research into this issue could also consider the impact of the boom in US series production. Recent academic work shows that US pay-TV providers (primarily HBO, FX and Showtime) commissioned 77 original dramas and 48 comedies in 2012, up from 28 and six respectively in 2002. Clearly not all of these will sell well internationally, but it is evidence of alternative sources of well-produced professional content which may become attractive if the returns on European first-run content become squeezed so that local advertising and subscription revenues were no longer able to sustain the business risk of investment in original content. Additionally, it could be argued that Europe’s current, nationally-focussed production markets may need to adapt if the current trend for large-scale series on the model pioneered by HBO is to continue. Our current market structure is, perhaps, better suited to delivering a local show rather than a series with the global appeal of a “Game of Thrones”. The budgets and risk involved in commissioning such series may make cross-border co-productions increasingly attractive. Broadcasters are already experimenting along these lines (e.g., the BSkyB/C+ co-production of the Tunnel) but there may be scope here for a greater role the EU, notably via the new Creative Europe programme.

**Interoperability**

The ACT’s default position here is that EU intervention would not be helpful and would run the risk of freezing innovation as new standards are developed. Certainly in the connected TV marketplace, the fact that there are three different standards under development, partly as a result of different legacy equipment, in the four largest markets (Italy and the UK each having their own standards, France and Germany working on a combined standard) suggests limited scope for a pan-European intervention. The EC will be aware that national and international bodies involved in profiling and defining the middleware standards, specifically the HbbTV Consortium and the DVB Project, are looking at HTML5, the markup language standard developed by W3C Consortium, as a potential future evolution of their respective middleware for the connectable TV devices.

The issues set out at p9 of the GP – notably that a connected TV device bought in one Member State may not work in another one – are more a matter for manufacturers than for content providers. We would encourage the EC to rule out regulatory intervention here and instead to focus on better dialogue among stakeholders. The Forum for Advanced Media in Europe (FAME) has already done some useful work here, notably on information sharing and aspects of organisational interoperability, and we would encourage the EC to continue to support and to give greater visibility to this work.

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19 Olivier Braet, I-Minds/SMIT at the Vrije Univiersiteit Brussel – see [www.privatetelevision.eu](http://www.privatetelevision.eu)
Spectrum

It is essential for broadcasters to have as many platforms as possible to distribute our content, to maximise the benefit for consumers. As mentioned above, there is no trade-off between TV and Internet (but rather synergies), so these distribution technologies are complementary to each other, not alternative; although to date, point to multi-point platforms (both satellite and DTT) are still the most efficient way to deliver broadcasting services (at a lower cost for consumers). We would therefore hope to see future research into, and decisions over allocation of spectrum based on a thorough “opportunity cost” analysis taking in consideration the impact on the audiovisual market (nation by nation) and on consumers’ welfare.

Regulatory Framework (regulatory imbalances, scope of AVMS and country of origin, self-regulation, E-commerce directive and media literacy)

The GP also asks what would be the consequences for a change – we would say a further change – from the country of origin rule for jurisdiction on transfrontier operators. Any such move would signal the death knell of any attempts at a harmonised EU audiovisual policy – what possible justification could there be for the harmonisation of national media policies if Member States can impose their own licensing obligations on broadcasters from neighbouring countries?

There will never be more than a limited pan-European single market in broadcasting for obvious reasons of language, regulation and market structure. But the EC, keen as it is to encourage transfrontier distribution of content (see Licences for Europe) should recognise that it is precisely the COO rule which has allowed the small but growing level of transfrontier distribution of content which we currently have in the EU market. This comment is largely made on the basis of our experience in linear broadcasting, where the COO has served the market well. As the GP rightly points out, more complex issues may arise in the potentially global marketplace for on-demand content distribution.

We welcome the emphasis on pp 11-12 of the GP on self and co-regulation and regard the increased reliance on these tools as an important scenario for the future. Consumers demand certain standards from media providers, standards which we are proud to meet. Our consumers expect constant innovation in technology and outstanding content, delivered to generally-accepted societal standards. In practice, all parts of the broadcast value chain (producers, channels, platforms) have a strong commercial imperative to meet expectations around audience protection by ensuring that the content of the programme is appropriate, that ethical standards around advertising are respected and that additional means of self-protection are offered to customers (e.g. PIN protection). Additionally, to date, the vast majority of content that is accessed on-demand has already appeared on linear services, and therefore has already been subject to the “broadcast” regulatory regime, so most of these standards are in practice easily transposed to an on-demand environment.

These clear business imperatives have driven broadcasters to earn our consumers’ trust, regardless of regulatory requirements and we agree with the GP (at Q 11) that media convergence is an opportunity for examining whether co-/self- regulatory models would be more appropriate ways of regulating standards of all TV-like content. Many of the regulatory obligations still imposed on platforms and channels were devised in a distant, pre-internet era when broadcasting was the unique means of distributing programmes, and channel scarcity meant that notions of consumer choice or competition were underdeveloped. In a hyper-competitive, consumer-driven cross-platform world, regulatory obligations could be steadily...
Media literacy: future work on media literacy should, we believe, also include a concerted effort on the part of public authorities, academia and the media industry to explain to young consumers the importance of respect for copyright and legal content. If respect for copyright is undermined by vague notions of ‘freedom’, then future generations will not enjoy the same level of investment in high-quality diverse content as we currently have in Europe.

**Media Freedom and Pluralism (discoverability)**

The issue of “discoverability” or of “must-be-found” is an example of the GP correctly identifying a potentially important issue. There is an important and perhaps challenging balance to be struck here between allowing consumers easily to access popular services and not enshrining in stone the privileged status of certain “incumbents”. Our first reaction here is that the Commission has identified the correct instruments in the GP (Universal Service Directive and Access Directive) and that this case-by-case, competition-law driven approach is preferable to the approach hinted at in the European Parliament resolution of granting, ex ante, privileged status in EU legislation to certain categories of service providers. The electronic communications framework already contains a provision on fair, reasonable and non-discriminatory access to platforms – preventing abuses by vertically-integrated operators.

This appears to be more flexible and future-proof than the request in the EP resolution that the Commission examine whether certain content providers could have privileges with regard to findability on “first-screen” devices. For the EC to do this would require a daunting exercise in defining what is a first-screen device (and, indeed, what is a platform) in a manner which will be meaningful across all European media markets for the next fifteen years or so. We would prefer the approach in the GP which stresses that Member States may, under existing EU law, specify those services to which access must be granted, and that NRAs may impose obligations on operators with regard to EPGs.

Specifically, the European Parliament’s emphasis on publicly-funded broadcasters as beneficiaries of this privileged status also raises issues of definition and of equal treatment. A more logical approach would be to leave this to the discretion of Member States, who may well decide that a commercially-funded news service is worthy of greater ‘findability’ than a publicly-financed entertainment channel. Smaller Member States may also take the view that services with a high proportion of content in their language is deserving of greater prominence … but, again, this will not be an issue in all EU markets and as such should be left to Member State/NRA discretion.

**Commercial Communications (incl. overlays)**

Given the primary role which television advertising plays in financing content, this section should more logically have been linked to QQ 4 and 5 on content production. We have already commented in that section on the need for the EC to make clear that further sector-specific advertising bans and restrictions are not on the policy agenda, and we agree with the analysis in the GP that privacy and data protection will become increasingly important in the converged era. Q 17 asks whether current AVMS rules on commercial communications will remain relevant in the converged environment. As we have already commented, we believe that the qualitative AVMS rules should form the basis for a platform-neutral guarantee of ethical advertising as one of the key principles of the future framework. Apart from these ethical
standards, we expect to see EU policy here move away from micro-management and towards greater operational flexibility.

Q 19 raises an issue which is of fundamental importance. It is essential for the future of the EU audiovisual market to ensure the integrity of high value, highly-regulated content. Commercial overlays and other novel techniques should therefore not be possible without the prior consent of the owner of the content in question. This is an important extension of the principle of editorial responsibility: at present, the extremely detailed level of audiovisual regulation at EU and national level is only sustainable because the NRA can hold a broadcaster responsible for all compliance-related issues (many of which, e.g., defamation, are not harmonised at EU level). Third-party overlays potentially threaten this regime - for example, if content which is otherwise compliant with e.g., requirements on protection of minor, then the broadcaster must have the ability to refuse consent for third-party applications which would otherwise render it non-compliant. The entity which holds the licence from the NRA must always be in a position to make a prior assessment as to whether a particular overlay should be permitted or not.

We would expect that, in line with the overall development of the market, some platforms may also wish to offer consumers a choice as to whether or not to view overlays. But this should be a secondary, commercial, decision, and a matter purely of competition between platforms. The ex ante, regulatory, obligation to ensure overlays are compliant should rest with the broadcaster/service provider – i.e., the person who is legally responsible for ensuring the regulatory obligations in the service licence are met.

**Protection of Minors**

Broadcasters accept that we have a responsibility to help ensure that parents are able to guide their children’s viewing. Indeed, there is a commercial self-interest in building a reputation as a responsible outlet which can be trusted by parents. But this must be a collaborative effort between media service providers, regulators, parents and schools – all we can do is play our part. The fact that different technologies will need different solutions was recognised as long ago in 1989, when the first Television without Frontiers directive, rightly, established different rules for protection of minors depending on whether or not the service was encrypted. In the convergent world, it will be essential for other players, notably content aggregators and technology companies, also to commit as mature and responsible players. If new players cannot come to terms with an equitable regulatory framework, there is a danger that technology will disrupt not only competition and business models – which is unobjectionable – but also will undermine the consumer trust which European families with children have placed in the content business.

Given the diversity of European content markets, it is inevitable that different solutions will be adopted by media companies in order to comply with the objectives of the AVMS-D and in many cases to go beyond them. We refer the European Commission to the submissions to this Green Paper from individual ACT member companies and their national associations for more detail on this point.

**Access for the Disabled**

While we recognise the political importance of this issue it may not be one which is easily harmonised at EU level. In larger European markets, there may be a commercial imperative for media service providers to extend their services to some disabled groups – this is illustrated by the initiatives of many of our member companies, e.g., BSkyB. But the commercial imperatives for a business with over 10m subscribers will never be matched by smaller platforms, especially
Isotherms in markets with lesser-spoken languages. So further harmonisation beyond what is already contained in AVMS may be unrealistic. Instead, the Commission might wish to convene discussions among stakeholders to see how far the technologies developed in larger markets – whether at the platform or the content level – can be exported also to smaller markets. Certainly for subtitling, sign language and audio description, there will be a need to develop the talent base in smaller languages, something which could perhaps be explored with the assistance of EU funding programmes.

**Conclusion**

Throughout this response we have called for a wide-ranging discussion which is focussed on principles. This is not a new request. Indeed the European Commission in the original “Convergence Green Paper” in 1997 called for

“A fundamental reassessment and reform of today’s regulatory environment […] promote flexibility, remove inconsistencies, avoid discrimination within and across sectors and ensure public interest objectives […] covering all sectors. This would require a broader definition of communication services to supersede those of telecoms and audiovisual within EU law”

The 1997 Green Paper went on to qualify this, stating that perhaps the time was not right for such a discussion. If such a debate is to start now, our starting point is that we do not call for public funding, nor to constrain new business models. Our sector does not require any ‘protection’ from new competitors. Our only precondition, which we believe is shared by the EU, is that any new framework creates the space for the development of a vibrant and rapidly growing European TV content sector, meeting the needs of citizens and consumers. A digital society in which news, sport, drama, films and entertainment are reduced to mere commodities is neither in our interest nor that of European citizens.

Association of Commercial Television
Brussels
30 September 2013

EU Transparency Register ID: 18574111503-28

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- **BSkyB** launched NOW TV box (£9.99) connecting internet to the most basic of TV displays. NOW TV provides access to Sky Movies and Sky Sports without a long term commitment and offers BBC iPlayer, Demand 5, the BBC News App and Sky News.
- **BSkyB**’s NOW TV launched on PlayStation 3.
- Content from the Canal+ VOD service Canalplay Infinity is made available on Apple TV in France.
- **ITV** launches new Player app with paid option for ad-free catch up TV.
- **Mediaset** launched TGCOM24, an innovative cross-platform news outlet.
- **Modern Times Group** (MTG) launched MTGx, a Group-wide initiative to drive innovative solutions, e.g. synchronized ads between TV and second screen app Like.TV.
- **MTV Media** in Finland is undergoing a major reform project with new on-demand and streaming services, e.g. renewed mtv3.fi and radionova.fi websites and the launch of the VOD service Filmnet.
- **Pro TV** (CME) in Romania introduced a free second screen app for the show Romanians have talent, onto their smartphones and tablets.
- **RTL Deutschland** will be making six of its channels available to German viewers via Magine, the new online-based TV delivery platform.
- **RTL Group** has acquired the leading OTT operator Broadband TV
- **RTL Deutschland**’s RTL Now is expanding to include formats by independent third-party broadcast providers that will be available for seven days following their broadcast on TV.
- **ProSiebenSat.1** launched HbbTV service with its female skewed channel Sixx, the fourth channel of the broadcaster with an interactive red button service;
- **Sky Italia** launched SkyTG24 HD, the first Italian all-news channel in high definition;
- **Irish TV3** rolls out a new hourly online video news service that will run alongside its on-air output
- **TV Nova** (CME group) Czech on-demand service Voyo extended its reach to subscribers using Android devices.
AER COMMENTS ON THE GREEN PAPER
PREPARING FOR A FULLY CONVERGED AUDIOVISUAL WORLD:
GROWTH, CREATION AND VALUE

The Association of European Radios (AER) is a Europe-wide trade body representing the interests of over 4500 commercially funded radio stations across the EU27 and in Switzerland.

AER is located at:

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AER’s EU Interest Representative Register ID Number is 6822083232-32.

AER's main objective is to develop and improve the most suitable framework for private and commercial radio activity. AER constantly follows EU actions in the fields of media, telecommunications and private radio transmission, in order to contribute, enrich and develop the radio sector.

AER will therefore comment the Green Paper “Preparing for a Fully Converged Audiovisual World: Growth, Creation and Value” (hereinafter AV Convergence Green Paper) from a commercial radio perspective. Although radios are not audiovisual, there are indeed some points in this Green Paper which are important for commercial radio – hence the fact that AER will only comment on certain points of the Green Paper.

I. Introduction

AER would first like to recall that, although audio only, radios are also broadcasters.

Radio connects people: it is everywhere, mobile, simple-to-use, interactive, cost-efficient and complimentary. For commercial radio, these features are all based on a very efficient model: terrestrial broadcasting of free-to-air programmes, funded (almost) 100% by advertising.

Radio is also the most intimate medium: its character is by nature local, regional or at the utmost national – and so is its audience: listeners are interested in their local news, their local service information, their local weather forecasts, their local traffic jams, the advertising of their local furniture shop, the comedy piece about a local politician, told in the local dialect of their local DJ. In case of manmade or natural disaster, listeners rely on radio as their most
The AV Convergence Green Paper points out that “Convergence can be understood as the progressive merger of traditional broadcast services and the internet”. AER agrees with this definition of convergence. The AV Convergence Green Paper however addresses convergence mainly from a TV or from a “moving images with or without sound” perspective.

For AER, this is a very important point: radios are local, regional or, at the most, national actors. With the development of new technology, radio must however increasingly integrate new platforms and develop new offers to reach its audience: programmes are being broadcast, streamed, webcast and offered on demand. However, even in an online environment, commercial radios are targeted at local, regional or national audience.

As shown in the AER comments, radios’ specificities are very different than audiovisual businesses’. This difference, illustrated in the content of this position paper, explains why radio is not in the scope of the Audiovisual Media Services Directive (AVMS Directive), and why this should remain the case in the future.

II. Comments on the AV Convergence Green Paper:

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

When considering the overall EU market, there are very few US or non-EU companies in the radio market. For radio, language and culture barriers are key factors. The strength of radio indeed lies in the well planned and produced mixture of talk, stories, entertainment, news, music and surprises (through sound only). The factors hindering EU radios are rather linked to decreasing advertising revenues, high authors’ and related rights’ fees, difficult competition or high investments necessary to integrate digital platforms, as shown in the rest of the comments in this position paper – depending on the country, some of these factors are more important than others.

**Short remarks regarding competition between public and private radios:**

Competition between private and public radios is indeed one of the factors affecting commercial radios across Europe the most. As this is addressed in the AV Convergence Green Paper, AER would like to take this opportunity to recall some important points:

First, AER reiterates its support to the European dual system based on a mix of publicly- and commercially-funded radio broadcasting. However, unfair competition may hinder this model.

EU Member States should show a strong political will and implement the rules put forward by the European Commission in the Broadcasting Communication in 2009. This should lead to the effective establishment of the following principles:

1. Clear and meaningful definition of the public service remit by a legal act
2. Market impact assessment prior to an extension of the remit
3. Transparency: separation of public and commercial activities as well as cost allocation to profit centres
4. Independent control mechanism for
   - ex-ante evaluation of activities as well as for
   - the supervision of entrustment and for
   - the evaluation of the financial behaviour
5. Sanctions for breach of competition rules

The rules set in the Broadcasting Communication are, in the best cases, partially applied by EU Member States, or, in the worst cases, merely ignored. They however constitute essential requirements to avoid distortions of competition in the various EU Member States. These rules were adopted in 2009 after a two-year consultation process, in which the EU Member States actively took part. However, one of the main new safeguards for competition is not implemented or applied in some Member States: there is no ex-ante test before creating new public broadcasting services in Italy or France and the definition of the public service remit is often too vague and too close to the private media’s activities.

**Question 3:** Are there obstacles which require regulatory actions on access to platforms?

**Preliminary remarks on copyrights:** radios are both right holders and rights users. At EU level, it is essential, in order to tackle the radio copyright problems in the online environment, that any new regulatory instrument not only addresses the right holders’ and the retailer’s needs, but also solves the difficulties of radios. The latter pay over €2.6 billion across Europe per year for content, mostly music rights, and payment for these rights is negotiated on a regular basis’.

AER is optimistic that these issues will be solved with
- the adoption of the currently discussed proposal of the European Commission for a directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal marketvi, and
- the Licences for Europe stakeholder dialogue initiated by the European Commissionvii

AER warmly welcomed both initiatives, which participate in a correct and necessary reform of an essential system for the sustainability of creativity and culture: copyrights. Please see answer to question 5 for complementary points on copyrights.

Apart from ensuring easier access to rights for online content explained above, AER sees one main issue in this field: as radio’s future platform will be a mix of broadcast (analogue and digital) and online transmission, it is essential to ensure the presence of chips enabling reception of terrestrial broadcast radio in any “techie” device so that radio remains an obvious and easy-to-access medium: e.g., car radios, personal radios, mobile phones, tablets and computers. Radio programmes must be available in app stores and must be found also in Electronic Programming Guides (EPGs). Bottlenecks and vertical integration have to be avoided. This could be done by an effective EU competition policy as well as by a review of the existing must carry rules.

It should also be underlined that the rules contained in the current version of the Telecom Package are very positive for radios. Indeed, as mentioned at article 5 of the Authorisation Directive in the Telecom Package: “Rights of use for radio frequencies […] shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures”.

Although not involving directly EU regulation, other very important points can be seen in the answer to question 8.
**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?

Changing consumer behaviours or convergence will not affect the key elements of commercial radio content financing, at least in the short to medium term: it is and will remain funded (almost) 100% by advertising, on both analogue and digital means. As shown by national figures, most of the revenues still come from advertising on analogue broadcasting for commercial radio across Europe. Therefore, while the specific approaches and solutions offered to advertisers and commercial brands may evolve (and will differ between radio operators) the fundamentals of the funding model will remain broadly the same.

Although most radios in the EU have been present online for the past 10 years, revenues from online advertising still form a relatively small part of their revenues. The main risk commercial radios are faced with is the reallocation of the (small) advertising budgets to other online operators. So, any advertising restriction will have a negative impact on commercial radio.

AER would however recall that the following issues are key for commercial radios’ presence online:

- **Radio is online as much as offline:** any framework should be technologically neutral and ensure blanket licences for all platforms – commercially funded radios’ business-model is still mainly based on free-to-air FM radio broadcasting. However, with the development of new technology, radio must increasingly integrate new platforms and develop new offers to reach its traditional audience: programmes are being broadcast, streamed, webcast and offered on demand. For each new technology, an additional layer of fee tends to appear, with additional administrative cost even if dealt with by the same body. To ensure clarity and fairness, online and offline fees should be carried out under a single blanket licence fee, in a transparent manner.

- **Radio needs country-of-origin principle-based solutions for online distribution:** – for radios, easy-to-handle licensing is seen as a very positive step towards a true EU internal market, via fair competition amongst collecting societies and legal certainty for radios in their online activities. Even in an online environment, commercially funded radios are targeted at local, regional or national audience. They would consequently make use only of one licence valid in all territories where their target audience can pick up the programmes (spill-over licensing). Compulsory multi-territorial licences do not reflect radio business models and would lead to additional unsustainable costs.

- **Radio needs collective management of rights:** – an important element for radio’s development on the internet is the ability to provide listeners with time-shifted / on-demand programmes and programme extracts. The music contained in programmes made available on-demand entails obtaining and clearance of exclusive related rights. The multiple rightholders have to be identified, asked for permission, and remunerated. This is a task that cannot practically be undertaken by radios. Collecting societies have the expertise to fulfill this task – they already do so in the offline and online world for linear uses. At least the licensing of such rights for on-demand programmes with only accessory parts of protected music (e.g. reports or interviews with some background music) should be enabled through mandatory collective management of rights.

- **Radio needs access to the global repertoire:** – For online uses, important parts of the global repertoire are being divided per publishers, and withdrawn from collecting societies’ offer across Europe, due to market movements. With this development, commercially funded radios are bound to address different entities in order to provide their audiences with a full
range of music styles. This entails higher costs, more complexity and, eventually, inability to play certain music. For radio, it is essential to ensure that all collecting societies are able to license access to the global repertoire, to ensure easy access for radios and fair competition amongst collecting societies.

- Management of all collecting societies should be streamlined, more efficient and more transparent, enabling fair competition on the part of the fees paid for the administration of the tariffs.

Finally, non-discriminatory access to platforms and infrastructure is crucial for radios.

**Question 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?

For radio, the main difference between content broadcast terrestrially and otherwise transmitted lies in the difference between content broadcast and content accessible online. The future of radio will more and more rely on an integration of both platforms, with broadcast remaining the main source complemented by online. Free-to-Air terrestrial broadcast indeed constitutes the only economically efficient one-to-many possibility to transmit radio services. However, consumers require online features to be available too. With the development of hybrid radio, integration of both aspects gets increasingly convenient.

Please see further points in answer to question 3 and in the remarks regarding competition between public and private radios.

**Question 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?

As explained in the answers to questions 7 and 3, radio’s main business model remains Free-to-Air terrestrial broadcasting of content, mainly on analogue radio (predominantly FM, but also AM in some cases) but increasingly on digital radio (including DAB, DAB+ or DMB).

Therefore radio still requires use of spectrum as a primary user. The scale and nature of terrestrial radio mean that one-to-many broadcasting will remain the most efficient method of reaching listeners for the foreseeable future. It would certainly be impractical and inefficient to try and migrate the bulk of terrestrial broadcasting and listening to the internet. For this reason online distribution is likely to remain an important complementary platform rather than a replacement.

Radio needs to be on every platform: radio’s future is a mix of broadcasting and internet transmissions – it is the most intimate and most trusted medium. Listeners need to rely on the ability to receive radio on these same terms in the future, by analogue and digital broadcasting as well as internet transmissions (Free-To-Air / Free-To-Access). Digital broadcasting will be done in Europe on bands III and / or band L, depending on the country. These means of transmission will all be part of the patchwork of transmission techniques for commercially funded radio in the future. However, as mentioned in the answer to question 7, online transmissions will only complement broadcasting. **Radio’s access to bands II, III and L is therefore paramount to ensure a healthy future for radio.**

Radio is local, regional or national: regulatory decisions should continue to be taken at the same level – spectrum for radio is currently efficiently managed by European States and this
should remain the case: national radio frequency landscapes and national radio broadcasting markets are different, with divergent plans for digitisation, diverse social, cultural and historical characteristics and with distinct market structures and needs. **Consequently, further coordination at EU level of spectrum management on the bands used by radio does not seem necessary, or appropriate.**

Radio needs guaranteed access to spectrum: in the bands described above, market-based approach management (such as service neutrality or secondary trading) cannot be enforced – As most of them are SMEs, commercially funded radios are in no position to compete for access to spectrum with other market players.

**No universal EU-wide switch-off date for analogue radio broadcasting services should be envisaged** – across the EU, plans to migrate from analogue technology (FM/AM) to digital broadcast technology are being actively discussed and tested. **Decisions on whether to proceed and the appropriate time-frame should be left to each national industry.**

**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?

For commercial radios the main issue where the EU regulatory differentiation between linear and non-linear services can create distortions relates to advertising: radio is already very tightly regulated at national level on all aspects with different rules in each country (formats, quotas in content, advertising, right of reply, basic identification, masthead, imprint requirements, etc.). Its regulation, and hence the many mandatory elements a radio has to fulfill in order to be authorised to broadcast content, is tailored to its audience: it needs to be decided at the same level.

Regarding advertising, a relaxation of certain rules, especially regarding mandatory messages in radio advertising, would be very helpful, without hampering these messages’ laudable political objective: inform consumers. Additional information in radio advertising is indeed bound to miss its aim: imposing information requirements in radio advertising does not appear to be an effective way to inform the consumer. Empirical data showed that warning messages were considered as “oppressive”, and lead listeners to “tune out” metaphorically, if not literally, in the worst case scenario.

Information requirements in advertising are particularly burdensome for radios – radio is a non-visual linear medium, which concretely means that, when detailed messages are to be communicated in an advertisement, these are to be broadcast in an added time-space to the latter. This increases the amount of time, hence the price, of the considered commercial message. In addition, needless to say, it lessens the commercial impact of the advertisement (a usual ad lasts for 15-40 seconds). These combined effects impact broadcast media, and radio in particular, and constitute factors that can deter advertisers away from using radio.

Information is perceived to be much more useful at a later stage than when advertising: through websites, in information brochures or at the point of sale – Information is more useful when the decision is taken to perform the purchase.

**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?**
AER would like to recall that radio’s audio character is by nature local, regional or at the utmost national – and so is its audience: listeners are interested in their local news, their local service information, their local weather forecasts, their local traffic jams, the advertising of their local furniture shop, the comedy piece about a local politician, told in the local dialect of their local DJ. In case of manmade or natural disaster, listeners rely on radio as their most immediate and most trusted source of information.

The values protected in the AVMS Directive are protected by the very tight regulations set through a diversity of instruments at national level (on formats, quotas in content, advertising, right of reply, basic identification, masthead requirements, etc.), in an adapted manner to the local landscape. Its regulation, and hence the many mandatory elements a radio has to fulfill in order to be authorised to broadcast content, is tailored to its audience: it needs to be decided at the same level. **Radio should therefore not be integrated in the scope of the AVMS Directive.**

**Short remarks on media freedom and pluralism:** commercial radio is a good example of successful media pluralism. Each country has its own media and radio landscape, depending on various local factors (which can be of historical, cultural, or political nature), but all countries in Europe have a range of stations with different owners offering a wide spectrum of content to the audience. Commercially funded radios evolve in highly competitive environments, not only with public broadcasters or community radios, but, first and foremost, with other privately owned and commercially funded radios. The extent of alternative sources of news and information across media has also increased fundamentally in recent years, particularly with the rapid growth of online media and internet penetration. As for the nature of their services, they adapt to their audiences’ needs and demands. So, commercially funded radios deliver comprehensive and varied radio content, from editorial and talk / debate to music formats.

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

AER supports the European Commission’s view regarding the pros and cons of personalised search. Search engines are important partners for radios as well as fierce competitors of AER Members. The dominant position of a market player must not result in a higher ranking or a preferential treatment of the services of this company. Competitors of search engines must be treated on a non-discriminatory and fair basis.

AER therefore welcomes that the European Commission opens competition procedures in cases of potential abuse of a dominant position.

**Question 16:** What should be the scope of existing regulation on access (art. 6 Access Directive) and universal service (art. 31 Universal Services 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”?

As mentioned previously, radio is still mainly a broadcast medium and will remain so for the foreseeable future – even in the case of hybrid radio, combining broadcast and online features, broadcasting is the backbone of the infrastructure, as it is very robust. Broadcasters on radio provide useful and crucial information: in the event of natural disasters, emergencies and extraordinary situations, broadcast radio is often the first tool to provide live information and advice direct to the public. It also enables to avoid overburdening mobile networks. It
would therefore be extremely important to ensure that as many “converged” devices as possible offer the possibility to receive broadcast radio. For instance, and as mentioned in the answer to question 3, it is essential to ensure the presence of chips enabling reception of terrestrial broadcast radio in any “techie” device so that radio remains an obvious and easy-to-access medium: e.g., car radios, personal radios, mobile phones, tablets and computers. This could be done by an effective EU competition policy as well as by a review of the existing must carry rules. In addition, it is essential that, when broadcast chips are present on a device, their use is enabled.

When radio is listened online, the quality of services provided should be at least equal to broadcasting on-air: uninterrupted transmission of programmes. However, commercially funded radios in Europe are, in their vast majority, SMEs: they are in no position to financially compete for access to the internet with other market players. So, it is crucial for radios that this understanding of net neutrality is applied. Finally, and equally essential, it must be easy to find radios in an online environment: a must-be-found principle could be applied for online radio.

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

AER believes that, as exemplified by the European Advertising Standards Alliance and the national Advertising self-regulatory bodies as well as by the online behavioural advertising regulatory environment, self-regulation can usefully address consumers concerns and needs online regarding advertising, and faster than regulation.

ENDS

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iv For example, and bearing in mind that the amount of radios in a given country depends of course on its size: Spain now has more than 2000 frequencies used across the country; similar FM overcrowded situations can be observed in France or Germany

v To give just examples, please see:
- the French AER Member, SIRTI: http://www.sirti.info/spip.php?page=adherents
- the UK AER Member, RadioCentre: http://www.radiocentre.org/membership/stations
1. Einleitung

Die ARD begrüßt die Möglichkeit, im Rahmen der Konsultation zum Grünbuch „Über die Vorbereitung auf die vollständige Konvergenz der audiovisuellen Welt: Wachstum, Schöpfung und Werte.“ ihre Überlegungen zu regulatorischen Herausforderungen der Konvergenzentwicklungen im Medienbereich an die Europäische Kommission zu übermitteln.

Die ARD begleitet den Prozess der Konvergenz seit jeher als aktiver Anbieter neuer Inhalteangebote, Impulsgeber für neue Technologien und aufmerksamer Beobachter neuer politischer und regulatorischer Entwicklungen.

Dabei setzt sie auf enge Zusammenarbeit mit ihrem Publikum und den Vertretern der Zivilgesellschaft, mit der sie nicht zuletzt über ihre unabhängigen Aufsichtsgremien in Rundfunk- und Verwaltungsräten in regem Dialog steht.

Die Gremienvorsitzendenkonferenz der ARD hat anlässlich ihres 4. GVK-Forums „Connected TV: Alle auf und unter einen Schirm“ Prämissen für die konvergente Medienwelt formuliert, die wir dieser Stellungnahme gerne in Auszügen voranstellen wollen, weil sie auch die Positionen der ARD im Hinblick auf die Konvergenzentwicklung auf den Punkt bringen.


2) Die spezifische Funktion des (öffentlich-rechtlichen) Rundfunks bedarf auch weiterhin einer entsprechend spezifischen Regelung. Adäquate Regulierung in Zeiten der Medienkonvergenz bedeutet nicht konvergente Regulierung über alle Medien oder Rechtsfelder hinweg. Die Herausforderung an die zukünftige Medienregulierung liegt gerade darin, dort wo besondere Gefährdungen für Meinungsfreiheit, Medienvielfalt oder Verbraucherschutz bestehen, positive Schutzvorkehrungen zu treffen, und dort, wo dies nicht der Fall ist, über Deregulierung oder Angleichung der Regulierungssysteme für gleiche
Wettbewerbsbedingungen zu sorgen. Auch Medienregulierung der Zukunft muss medienfunktions-spezifisch sein.

Aus diesen zwei Grundsätzen ergeben sich im Einzelnen folgende Anforderungen bzw. Regulierungsziele:

- Rundfunkveranstaltern ist der diskriminierungsfreie Zugang zu Infrastrukturen, Plattformen und Portalen zu gewährleisten.

- Die Auffindbarkeit der Rundfunkangebote z.B. über die Rangfolge in elektronischen Programmführern darf sich nicht alleine nach Reichweiten bemessen; vielmehr sind auch hier die meinungsbildende und vielfaltsfördernde Funktionen zu berücksichtigen (Must-be-found-Regelungen).

- Die Signale und Inhalte der Rundfunkanbieter sind auf allen Plattformen und Verbreitungswege vor Veränderungen oder Überlagerungen Dritter (z.B. durch Werbeeinblendungen) zu schützen.

- Gerätehersteller sind zu verpflichten, interoperable und offene Standards wie HbbTV in leicht zu aktivierender Form für jedes hybride Empfangsgerät vorzusehen.

- Jugendmedienschutz und Datenschutz sind absolute Regulierungsziele, die für alle Anbieter im Bereich der Medien und Kommunikation gleichermaßen Geltung haben sollten.

Zur Umsetzung dieser Regulierungsziele setzen die ARD und ihre Gremien sich dafür ein, dass bei dem auf europäischer Ebene stattfindenden Evaluierungsprozess der AVMD-Richtlinie vor allem darauf zu achten ist, dass der medienspezifische Regulierungsansatz nicht relativiert wird; die AVMD-Richtlinie bildet den Kern der EU-Medienregulierung und entfaltet als spezifische Regelung über ihren eigenen Regelungsgehalt hinaus Rechtfertigungswirkung für Privilegierungen des Rundfunks in anderen Rechtsbereichen (wie Telekommunikationsrecht, E-Commerce-Regelung, Datenschutz, Urheberrecht, Beihilferecht, WTO/GATS).

Die Regulierungsziele der AVMD-Richtlinie (vor allem Sicherung der Meinungs- und Medienvielfalt, Schutz der Menschenwürde, des Jugendschutzes und des Verbrauchers) sind beizubehalten.

Ob und inwieweit der Regulierungsrahmen modifiziert werden muss, bedarf einer differenzierten Auseinandersetzung mit dem Begriff des „audiovisuellen Mediendienstes“, insbesondere darüber, ob über die bisherigen Legaldefinitionen auch zukünftig alle Angebote erfasst werden, auf deren Schutz die Richtlinie abzielt, oder ob es langfristig eines stärker Inhalteorientierten Ansatzes bedarf (unter Berücksichtigung der redaktionellen Verantwortetheit der Inhalte).

Die abgestufte Regulierung hat sich – mit Blick auf die unterschiedliche Meinungsbildungsrelevanz der Mediendienste – grundsätzlich bewährt, ist aber im Einzelfall auf ihre Adäquanz in der konvergenten Medienwelt zu überprüfen.
2. Fragen

(1) Auf welche Faktoren ist es zurückzuführen, dass sich US-amerikanische Unternehmen trotz sprachlicher und kultureller Hürden erfolgreich auf dem fragmentierten EU-Markt etablieren können, während Unternehmen aus EU-Mitgliedstaaten sich diesbezüglich schwertun? Auf welche Hindernisse stoßen Unternehmen aus der EU?

US-amerikanischen Unternehmen ist es tatsächlich gelungen, sich in einem bestimmten Segment audiovisueller Inhaltemärkte sehr erfolgreich auf dem EU-Markt zu etablieren. Im Wesentlichen geht es hier um High-End-Produkte aus den Bereichen Film und TV-Serien, die ein globales Publikum und damit einen globalen Markt ansprechen. Dieses Marktsegment zeichnet sich durch folgende Faktoren aus:

- Produzenten der genannten Inhalte gehen regelmäßig ein hohes finanzielles Risiko ein. Sie investieren hohe Summen in eine Vielzahl von Projekten, von denen nur eine geringe Anzahl große Erfolge erzielt. Die Profite, die durch Erfolgsprodukte generiert werden sind aber in der Regel so hoch, dass sie die Verluste aus den übrigen Projekten ausgleichen.

- Mitverantwortlich für entsprechende Erfolge ist meist ein sehr hoher Marketingaufwand.

- Um in einem solchen Geschäftsfeld erfolgreich sein zu können, bedarf es eines hohen Kapitaleinsatzes, den nur wenige große Firmen aufbringen können. In Folge haben entsprechende Märkte oft Oligopolcharakter.


Für europäische Firmen sind die Möglichkeiten auf diesem Segment der High-End-Produkte nachhaltig und maßgeblich eine eigene Konkurrenz aufzubauen, realistischerweise gering (eventuell mit Ausnahme des britischen Filmsektors, der zumindest sprachlich und kulturell von großen Überschneidungen mit dem US-Markt profitiert und deshalb etwas bessere Ausgangsvoraussetzungen hat).

Beim europäischen Binnenmarkt, der hinsichtlich seiner Bevölkerung den us-amerikanischen deutlich übertrifft, handelt es sich um einen inhomogenen Markt mit vielen unterschiedlichen Sprachen, einer großen kulturellen Vielfalt und stark varierendem Publikumsgeschmack.


Die Kultur- und Kreativwirtschaft ist bezogen auf Umsatz und Beschäftigung einer der dynamischsten Wirtschaftszweige. In Europa hat sie rund 227 Milliarden Euro (2,4 Prozent) zum Bruttoinlandsprodukt der Europäischen Union beigetragen (2009). Ihr Beitrag zur volkwirtschaftlichen Gesamtleistung (Bruttowertschöpfung in Deutschland) betrug im Jahr 2011 schätzungsweise knapp 63 Milliarden Euro (2,4 Prozent). Damit ist sie vergleichbar mit den großen Industriesektoren Automobil, Maschinenbau und Chemie.¹


² S.o.
(German Federal Film Board) bei. Der Gesamtwert aller Auftrags- und Koproduktionen allein der WDR Fernsehdirektion betrug in 2012 85.656.158 Euro.\(^4\)

In Zeiten technischer, wirtschaftlicher und zunehmend kultureller Globalisierung ist es für Europa und seine Bürger von maßgeblicher Bedeutung, die eigene kulturelle, sprachliche und gesellschaftliche Identität zu erhalten und den audiovisuellen Sektor auch als wirtschaftlichen Wachstumsmarkt zu stärken.


Angesichts neuer Herausforderungen für Meinungsfreiheit, Medienvielfalt und Verbraucher, schutz bedarf es einer zukunftsgerichteten Regulierung, die weiterhin medienfunktionsspezifisch sein muss. Dabei steht folgendes im Vordergrund:

- Inhalteinbietern brauchen chancengleichen, diskriminierungsfreien Zugang zu Infrastrukturen, Endgeräten und Plattformen;
- Die Auffindbarkeit von Programmen darf sich nicht allein nach ihrer Reichweite oder der Finanzkraft der Inhalteinbbieterv bemessen. Meinungsbildende und vielfaltspoternde Aspekte sind hier angemessen zu berücksichtigen.
- Die Signale und Inhalte der Rundfunkinbbietere sind auf allen Plattformen und Verbreitungswegen vor Veränderungen oder Überlagerungen Dritter (beispielsweise durch Werbeeinblendungen) zu schützen.
- Eine technologieneutrale Fortentwicklung des europäischen Urheberrechts ist nötig, um eine umfassende Verfügbarkeit der Inhalte auf allen Plattformen für die Bürger sicherzustellen und so auch ein Ausweichen auf illegale Angebote zu verhindern.
- Der europäische Gesetzgeber steht gegenüber den Bürgern in der Verantwortung medienübergreifend ein angemessenes Schutzniveau für Meinungsvielfalt, Menschenwürde, Jugend- und Datenschutz und Zugang zu gesellschaftlich relevanten Inhalten zu gewährleisten.

In allen genannten Bereichen ist in absehbarer Zeit Anpassungsbedarf bestehender Regulierung zu erkennen. Dafür müssen sich die Europäische Union und ihre Mitgliedstaaten einen ausreichend flexiblen Handlungsspielraum erhalten.
Liberalisierungszugeständnisse in bi-, pluri- und multilateralen Handels- und Investitionsschutzabkommen dürfen künftige Regulierungsmöglichkeiten zum Schutz des Medienpluralismus und der kulturellen Vielfalt auf keinen Fall beschneiden.

Das entspricht der Logik der Verpflichtungen, die der Europäischen Union und die Europäischen Kommission als ihrer Verhandlungsführerin durch die Europäischen Verträge und den Beitritt der EU zum UNESCO-Übereinkommen über Schutz und Förderung der Vielfalt kultureller Ausdrucksformen auferlegt sind.


(2) Welche Faktoren stellen derzeit ein Hindernis für die Verfügbarkeit von Premiuminhalten dar? Gibt es gegenwärtig Praktiken im Zusammenhang mit Premiuminhalten auf der Großkundenebene, die sich negativ auf den Marktzugang und auf eine nachhaltige Geschäftstätigkeit auswirken? Wenn ja, wie wirkt sich dies auf die Verbraucher aus? Sind über die Anwendung des geltenden Wettbewerbsrechts hinausgehende Regulierungsmaßnahmen erforderlich?

So genannte Premiuminhalte (international erfolgreiche Film- und Serienproduktionen und die (Live-) Übertragung hochkarätiger Sportwettbewerbe) ziehen ein hohes Publikumsinteresse nach sich. Entsprechend intensiv ist der Wettbewerb um entsprechende Rechte.

Anbieter, die in einer entgeltlichen Kundenbeziehung zum Publikum stehen sind im Hinblick auf die Refinanzierung solcher Premiuminhalte klar im Vorteil. Sie können die Kosten des Inhalteerwerbs in Form von Abonnement- oder Abrufentgelten an ihre Kunden weitergeben. Hierzu gehören insbesondere Pay-TV-Anbieter, vermehrt aber auch Telekom- und Kabelnetzanbieter, die neben Telefon- und Internetdienstleistungen ihren Kunden auch audiovisuelle Inhalte zur stationären und mobilen Nutzung zur Verfügung stellen.


Es ist also im Interesse der gesamten Bevölkerung, die frei zugängliche Übertragung von Ereignissen von erheblicher gesellschaftlicher Bedeutung auch in einer konvergenten Medienwelt weiterhin sicherzustellen. Hierfür ist es erforderlich, die Regeln des Art. 14 Abs. 1 AVMD-Richtlinie technologieneutral auszulegen. Die freie Zugänglichkeit zu
entsprechenden Ereignissen von erheblicher gesellschaftlicher Bedeutung sollte für das Publikum über sämtliche Verbreitungsformen und auf allen stationären und mobilen Plattformen möglich sein.

1. Aktuelle Entwicklungen


Die Konvergenz ist in zweifacher Hinsicht zur Realität geworden: Zum einen werden lineare und nicht-lineare Medienangebote auf einem Gerät bzw. Übertragungsweg gebündelt, zum anderen treffen Medienangebote und sonstige elektronische Dienste auf demselben Bildschirm zusammen. Im zweiten Fall treffen zugleich völlig unterschiedliche Regulierungssysteme aufeinander.


Die technologischen Errungenschaften und die skizzierten Entwicklungen des Marktes müssen mit den gesellschaftspolitischen Zielstellungen des Erhalts der Meinungsvielfalt, der Medienpluralität und des Informationsbildungsprozess in Einklang gebracht werden. Wichtig ist deshalb, dass die Inhalte- und Diensteanbieter, denen gesellschaftspolitisch die Aufgabe übertragen wurde, einen wesentlichen Beitrag zur Meinungsbildung und Orientierung zu leisten, diese Aufgabe auch in Zukunft hinreichend erfüllen können.
Das Wettbewerbsrecht allein kann dieser Herausforderung nicht ausreichend begegnen. Seine spezifische Zielrichtung ist weder der Schutz von Inhalteanbietern, noch die Gewährleistung des Zugangs der Nutzer zu einer bestimmten Plattform oder einem Benutzerportal oder die Abwehr von Eingriffen in die Integrität der Inhalte und ihrer Darstellung auf den Endgeräten.

Hierfür die notwendigen Rahmenbedingungen zu erhalten oder zu schaffen, ist vielmehr Aufgabe der Medienregulierung. Diese muss sich klar am Regulierungsziel der Sicherung der Meinungsfreiheit, Medienvielfalt und Unabhängigkeit der Medien ausrichten. Zum Erhalt der spezifischen Funktion des Rundfunks bedarf es weiterhin einer spezifischen Regulierung.

2. Regulierungsbedarf

Gegenstand einer zukunftsgerichteten medienspezifischen Regulierung im Licht der Konvergenz sollte die Definition von Anforderungen an den Zugang zu Infrastrukturen, Plattformen und Portalen, an die Auffindbarkeit von Inhalten und den Schutz der Integrität der Inhalte und ihrer Darstellung auf den Endgeräten sein.


Die Auffindbarkeit von Inhalten, die ein besonderes öffentliches Interesse bedienen, sollte gewährleistet sein. Dies gilt insbesondere auch für die vielfaltssichernden, von der Gesellschaft finanzierten Angebote des öffentlich-rechtlichen Rundfunks, die unabhängig von der Verbreitungssystem bevorzugt auffindbar sein sollten. Auffindbarkeitsregeln (Must-carry/Must be found/due prominence-Regeln) für geschlossene Netze sollten sowohl für lineare als auch nicht-lineare audiovisuelle Rundfunkangebote gelten (siehe auch Antwort zu Frage 16).


Auch im offenen Netz können Internet Service Provider als Gatekeeper den Zugang von Inhalteanbietern und Nutzern zu Plattformen und damit den „free flow of information“ behindern. Transparenzregeln und verbesserte vertragliche Regelungen können dem Nutzer bei der Auswahl oder einem Wechsel des Internet Service Provider helfen. Der Erhalt eines funktionsfähigen, offenen Internets kann nur durch einen Ausbau des Best Effort-Bereichs gelingen. Die Anforderungen an die Leistungsfähigkeit eines dynamischen Best-Effort-Bereichs sollten definiert und deren Einhaltung überprüft werden. Managed Services und die
Einführung von Diensteklassen sind nur unter der Voraussetzung eines leistungsfähigen Best Effort-Bereichs zulässig. Weiterhin sind hierzu eine transparente Tarifierung und Evidenz-basierte/realitätsnahe Leistungsbeschreibung unabdingbar, damit der Nutzer eine informierte Entscheidung darüber treffen kann, in welcher Qualität er Dienste im offenen Internet nutzen will.

(4) Sind die derzeitigen Anforderungen der AVMD-Richtlinie die beste Möglichkeit, Herstellung, Distribution, Verfügbarkeit und Marktattraktivität europäischer Werke zu fördern?

Die ARD übererfüllt seit Beginn der Berichtspflicht die Quoten nach Artikeln 16 und 17 AVMD-Richtlinie. So lag für das gemeinschaftlich veranstaltete Programm DasErste die Quote europäischer Werke nach Art. 16 AVMD-Richtlinie bei der letzten Erhebung für 2010 bei über 90 Prozent (gefordert ist der Hauptteil der Sendezeit mit Ausnahme von Nachrichten, Sportereignissen, Spielsows und Werbung), die für Werke unabhängiger Produzenten gemäß § 17 AVMD-Richtlinie bei über 30 Prozent (vorgeschrieben sind hier 10 Prozent). In den nicht-linearen Angeboten der ARD, für die seit der letzten Überarbeitung der Richtlinie und der Einführung von Art. 13 AVMD-Richtlinie ebenfalls eine Berichtspflicht gilt, liegt der Anteil der europäischen Werke sogar annähernd bei 100 Prozent, weil in diesen Angeboten nach Rundfunkstaatsvertrag das Vorhalten von angekauften Spielfilmen und Fernsehserien, die keine Auftragsproduktionen sind, unzulässig ist.

Vor diesem Hintergrund bekräftigt die ARD ihre diesbezüglich bereits in der Vergangenheit geäußerte Position, derzufolge das mit der Quotenregelung verfolgte Ziel, die europäische Produktionswirtschaft im Film- und Fernsehbereich zu schützen und zu fördern, zu unterstützen ist. Dies gilt ganz besonders vor dem Hintergrund der unter Frage 1 geschilderten Markt situation und im Hinblick auf die laufenden Handelsgespräche der Europäischen Kommission im bi-, pluri- und multilateralen Umfeld.


Angesichts der mangelnden Kausalität zwischen Quotenregeln und der Förderung europäischer Werke und unabhängiger Produzenten durch eine auftragsgemäße Programmpolitik, begrüßt die ARD Überlegungen der Europäischen Kommission, verstärkt nach anderen Regelungsinstrumenten zur Umsetzung der oben genannten Ziele zu suchen.
In diesem Zusammenhang begrüßt die ARD die bestehenden Mechanismen des MEDIA-Programms, beispielsweise zur Unterstützung unabhängiger europäischer Fernsehproduzenten zur weiteren Verbreitung europäischer TV-Produktionen außerhalb ihres Ursprungslandes.

Maßnahmen der Europäischen Kommission, die sicherstellen, dass die Bürgerinnen und Bürger in Europa über die Empfangsgeräte ihrer Wahl Zugriff auf die Inhalte des öffentlich-rechtlichen Rundfunks haben, können ein Übriges tun, um den hinter der bisherigen Quotenregelung stehenden Zielen zur Verwirklichung zu verhelfen. Wir verweisen in diesem Zusammenhang zu unseren Ausführungen zu Zugang, Auffindbarkeit und Netzneutralität (siehe auch Antworten zu Fragen 1 und 3).

Konvergenz und ein sich wandelndes Verbraucherverhalten werden nichts daran ändern, dass der öffentlich-rechtliche Rundfunk eine der maßgeblichen Säulen des europäischen audiovisuellen Produktionssektors bildet.


Aus Sicht der ARD kann ein Regulierungsregime, dass nachhaltige Investitionen in die originäre Produktion europäischer Qualitätsinhalte fördert, einen entscheidenden Beitrag zur technologischen Innovation und neuen Diensten leisten. Denn der Erfolg neuer technischer

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6 Quelle: ABC der ARD | Stand: 23.11.2012
Empfangsgeräte und Übertragungsplattformen bestimmt sich zu einem erheblichen Maß an der Nutzerakzeptanz und -nachfrage. Qualitätsinhalte (insb. Nachrichten, politische Information, Dokumentation und Verbraucher sendungen) wie sie der öffentlich-rechtliche Rundfunk produziert und (mit-)finanziert sind hier ein wichtiger Faktor (siehe auch die Antwort zu Frage 1).

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

Wir möchten zunächst den zweiten Teil der Frage adressieren: Für die Interoperabilität von digita lem Fernsehen generell sind in Europa (sowie darüber hinaus in vielen Ländern) die europäischen DVB-Standards zu einer elementaren Grundlage geworden. Mit MHP hat DVB auch bereits frühzeitig einen Standard vorgelegt, der die Kombination von Broadcast und Broad band unterstützt. Mittlerweile haben sich jedoch im Web-Umfeld browserbasierte Technologien durchgesetzt und auf dieser Grundlage hat die Initiative „Hybrid Broadcast Broad band TV“ (HbbTV) eine Spezifikation entwickelt, die durch ETSI zu einem europäischen Standard wurde. Das Institut für Rundfunktechnik GmbH, eine zentrale Forschungsinstitut der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland, Österreichs und der Schweiz, hat hierzu einen maßgeblichen Beitrag geleistet.


Der erste Teil der Frage bezieht sich auf die aktuelle Marktsituation und dort auftretenden Defizite, deren regulatorische Adressierung durch die EU diskutiert werden sollte. Wie oben
beschrieben, ist im direkten Zusammenhang mit der Konvergenz von Rundfunk und Internet HbbTV ein Standard geworden, der in wichtigen Teilen der Märkte europaweit (und darüber hinaus) Interoperabilität bringt. In bestimmten Teilen der Märkte jedoch werden der Anwendung dieses Standards Hemmnisse entgegengestellt, die zu Fragmentierungseffekten führen:

- Kabelnetzbetreiber verweigern die Weitersendung der HbbTV-Signalisierung und blockieren dadurch den Zugang zu Inhalten.

Maßgeblich für dieses Verhalten ist nicht die Nicht-Verfügbarkeit oder Nicht-Anwendbarkeit von Standards wie HbbTV. Maßgeblich ist vielmehr die Optimierung individueller zumeist vertikaler Geschäftsmodelle mit dem Ziel, die Kontrolle über ein möglichst großes Marksegment zu erlangen, was eine Fragmentierung des Marktes zur Folge hat.

Gelegentlich und punktuell sind in letzter Zeit einige regulatorische Entscheidungen getroffen worden, die eine Marktöffnung und Nutzung von Standards fördern, wie beispielsweise die freie SD-Signalverfügbarkeit in Kabelnetzen bei Unitymedia in Deutschland oder ein explizites Must-Carry für die HbbTV-Signalisierung in den Niederlanden.

Wünschenswert wären daher auf EU-Ebene grundsätzliche Leitlinien zur Anwendung von Standards, Öffnung von Plattformen und einer Basis zur Gewährung von Zugangsoptionen, die einer Fragmentierung auf nationaler wie internationaler Ebene entgegenwirken (siehe hierzu auch die Antwort zu Frage 16).

(7) Wie groß sind die Unterschiede zwischen den einzelnen Plattformen über die die Inhalte angeboten werden (z. B. terrestrischer und satellitengestützter Rundfunk, leitungsgebundenes Breitband (einschließlich Kabelfernsehen), mobiles Breitband) für das Kundenerlebnis des Verbrauchers und im Hinblick auf Verpflichtungen zu Erbringung von Dienstleistungen im allgemeinen Interesse?

Das Portfolio der vom öffentlich-rechtlichen Rundfunk verbreiteten Inhalteangebote hat sich in den letzten Jahren, nicht zuletzt durch die Entwicklung des Internets, wesentlich erweitert. Neben traditionellen linearen Inhalteangeboten wie dem täglichen Programm inklusive
spezieller Live-Sendungen in TV und Radio offerieren Rundfunkanbieter auch verschiedenste Formen nicht-linearer Inhalte wie Mediatheken, Podcasts und spezielle programmassozierte Webseiten.

Als Trends kann man beobachten, dass die Nutzung linearer Inhalte auf hohem Niveau stabil ist, die Nutzung nichtlinerarer Rundfunkinhalte zunimmt und der portable und mobile Empfang von linearen und nicht-linearen Inhalten an Bedeutung gewinnt. Der Nutzer erwartet dabei vom öffentlich-rechtlichen Rundfunk in erster Linie professionelle Inhalte und professionelle Qualität.

Für den Kunden bieten sowohl der Satellit (DVB-S und DVB-S2) als auch die terrestrische Verbreitung (UKW, DAB, DVB-T) die Möglichkeit, die Inhalte von ARD und ZDF günstig, unkompliziert, frei und ohne Vertragsbeziehung zu empfangen. Diese Angebote sind universell und überall verfügbar. Die technische Qualität und die Auswahl der Dienste werden direkt vom Rundfunkanbieter und nicht durch eine zwischengeschaltete Plattform bestimmt.

Bei Kabel, IPTV und im offenen Internet haben die öffentlich-rechtlichen Rundfunkanbieter keinen direkten Zugang zum Kunden, sondern kooperieren mit Plattform- und/oder Infrastrukturbetreibern. Diese Dienstleister haben kommerzielle Geschäftsinteressen, was beispielsweise Auswirkungen auf die Auswahl von Inhalteangeboten, ihre Verschlüsselung oder die Videoqualität der Angebote oder auch den Schutz der Integrität der Inhalte und ihrer Darstellung auf den Endgeräten hat. Auch durch Volumenbegrenzungen lässt sich die Nutzungsdauer beeinflussen. Teilweise sind die Plattform- bzw. Infrastruktur-Anbieter selbst Inhalteanbieter. Die Präsenz der Inhalteangebote insbesondere der öffentlich-rechtlichen Rundfunkanbieter auf diesen Plattformen ist dabei nicht immer gesichert. Teilweise droht sogar ein „Plattformzwang“, so beispielsweise wenn nur wenige Plattformen sich mit hochwertigen „managed services“ im Internet etablieren sollten.

Die Infrastruktur des offenen Internets ist für die gesicherte und qualitativ hochwertige Verbreitung massenattraktiver, linearer Inhalte nicht geeignet. Zum einen drohen Engpässe und Nichtverfügbarkeiten bei (unerwartet) hohen Nutzerzahlen. Zum anderen sind für die Teilnehmer die Kosten schwer vorhersehbar (Flatrate mit Volumenbegrenzung). Den Rundfunkanbietern entstehen je nach Nachfrage extrem hohe Kosten für die Verbreitung ihrer Videoangebote und möglicherweise Extrakosten für „managed services“.

Während für die Rundfunknutzung innerhalb von Gebäuden mehrere Optionen zur Verfügung stehen (Satellit, Kabel, Terrestrik, IPTV), erfordern die portable und mobile Nutzung die Verwendung geeigneter Funktechnologien.


Die öffentlich-rechtlichen Sender in Deutschland (ARD, ZDF und Deutschlandradio) sind für die Weiterentwicklung und insbesondere zur Effizienzsteigerung der unverzichtbaren terrestrischen Verbreitungswegen hin zu DVB-T2 und DAB+ auf gesicherte Frequenzverfügbarkeiten angewiesen, da ansonsten die erforderliche Planungssicherheit nicht gegeben ist. Rundfunk wird mobil und portabel intensiv genutzt, daher ist Rundfunk nichts anderes als ein mobiler Breitbanddienst für massenattraktive Inhalte mittels

(8) Mithilfe welcher Modelle für die Frequenzzuweisung und gemeinsame Frequenznutzung kann die Entwicklung von Rundfunk, mobilem Breitband und anderen Anwendungen (wie Produktionsausrüstungen) innerhalb derselben Frequenzbänder vorangebracht werden?
Verbreitung in großzelligen Netzen. Zur Verbreitung solcher, von sehr vielen Teilnehmern zeitgleich nachgefragter Inhalte, eignen sich die bisher vom Mobilfunk genutzten kleinzelligen Netze nur bedingt, da deren Kapazität und Kostenstruktur für derartige Anwendungen ungünstig ist.


Eine Präjudizierung in Richtung kleinzellige Netze (und der damit zusammenhängenden Geschäftsmodelle) durch voreilige Frequenzvergabe des 700 MHz-Bereichs stellt für den Rundfunk ein ernstzunehmendes Hindernis für die Erfüllung seines gesellschaftlichen Auftrags dar und sollte im Sinne einer ganzheitlichen Betrachtung auf keinen Fall kurzfristig erfolgen. Aus Sicht des Rundfunks kann eine Umwidmung des 700 MHz Bereichs nicht vor 2020 erfolgen, will man alle legitimen Interessen berücksichtigen.

Eine effiziente und technisch sinnvolle gemeinsame Frequenznutzung setzt daher eine faire Berücksichtigung und Wertung der Vor- und Nachteile von Rundfunk- und Mobilfunknetzen (d.h. von Groß- und Kleinzellennetzen) voraus, welche keinesfalls auf kurzfristige wirtschaftliche Aspekte (Versteigerungserlöse aus Frequenzauktionen, mögliche Umsatzsteigerungen bei Mobilfunkunternehmen) abstellen sollte. Der kulturelle und soziale Wert des Rundfunks für die Gesellschaft ist hier einzubeziehen.


Die gemeinsame Nutzung von Frequenzen durch den Rundfunk und durch drahtlose Produktionseinrichtungen ist seit vielen Jahren etabliert, optimiert und extrem effizient, wohingegen eine gemeinsame Nutzung mit dem Mobilfunk nach einhelliger Fachmeinung nicht praktikabel ist. Daher plädieren wir für die Beibehaltung des kombiniert genutzten Frequenzspektrums für Rundfunk und drahtlose Produktionseinrichtungen im UHF-Band im bisherigen Umfang.
(9) Besteht ein spezifischer Forschungsbedarf im Hinblick auf das Frequenzspektrum, der berücksichtigt werden sollte, um eine solche Entwicklung zu unterstützen?


(10) Gibt es angesichts der Konvergenz der Medien bereits Anzeichen für Marktverzerrungen, die auf die Unterscheidung zwischen linearen und nichtlinearen Diensten im Rechtsrahmen zurückzuführen sind? Wenn ja, wie könnten diese Verzerrungen am besten behoben werden, ohne die dem EU-Rechtsrahmen für audiovisuelle Mediendienste zugrunde liegenden Werte zu verletzen?


Das Problem der Marktverzerrung dürfte künftig eher beim Zusammentreffen auf einer Plattform bzw. auf einem Bildschirm zwischen audiovisuellen Mediendiensten, die unter die Regelungen der AVMD-Richtlinie fallen, und solchen Diensten entstehen, die der Richtlinie nicht unterfallen und insofern weniger reguliert oder sogar unreguliert sind. Dies kann dann der Fall etwa bei Werbezeitenregeln sein, aber beispielsweise auch mit Blick auf den Schutz der Menschenwürde und beim Jugendschutz. Die europäischen Verbraucher sollten sich darauf verlassen können, dass im Hinblick auf eine sich aneutende Entwicklung bei gleichen bzw. ähnlichen Diensten, denen gleiche publizistische und gesellschaftliche Wirkung attestiert werden kann oder die auf gleicher Grundlage wirtschaftlich miteinander konkurrieren, auch ein einheitlicher Grundmaßstab in Sachen Schutz der Menschenwürde, Jugendschutz und Verbraucherschutz angewendet wird.

Ein „race to the bottom“ würde nach Ansicht der ARD die Akzeptanz neuer Angebote der konvergenten Medienwelt eher behindern. Bei solchen Diensten, die gegenwärtig weniger als audiovisuelle Mediendienste bzw. gar nicht reguliert sind, könnte, sofern ihnen eine

(11) Muss die Definition des Anbieters von audiovisuellen Medien und/oder der Geltungsbereich der AVMD-Richtlinie angepasst werden, um einen Teil der oder alle Verpflichtungen der AVMD auch für diejenigen einzuführen, die gegenwärtig nicht unter die Richtlinie fallen, oder können die Werte auf andere Weise geschützt werden? Welche Bereiche sollten schwerpunktmäßig der Selbst- bzw. Koregulierung unterliegen?

Es erscheint durchaus sinnvoll, über die Ausweitung des Geltungsbereichs der AVMD-Richtlinie im Lichte der Konvergenzentwicklung nachzudenken, wenn Anbieter, die der Richtlinie zur Zeit noch nicht unterfallen, zunehmende Bedeutung im Hinblick auf die individuelle und öffentliche Meinungsbildung, auf Medienpluralismus sowie sprachliche und kulturelle Vielfalt usw. erlangen.

Wenn eine solche Entwicklung auch aktuell noch nicht eingetreten ist, ist doch damit zu rechnen dass die Entwicklung in diese Richtung gehen wird. Die ARD begrüßt daher Initiativen auf Europäischer Ebene, die sich damit befassen, wie in einem medienspezifischen Regulierungsrahmen in Zukunft auch einer größeren Verantwortlichkeit von Anbietern, die bisher nicht unter den Regelungsrahmen der AVMD-Richtlinie fallen, Rechnung getragen werden kann.

Dafür müssten gegebenenfalls die entsprechenden Kriterien ergänzt werden. So könnte beispielsweise neben das Kriterium der redaktionellen Verantwortung das der Einflussnahme auf die Auswahl und Darbietung der angebotenen Dienste und Inhalte und damit auf die Nutzungsentscheidung des Konsumenten treten.

Grundsätzlich ist dabei zunächst einmal ordentlicher Gesetzgebung der Vorrang einzuräumen. Über die Einführung geeigneter Formen von Ko- bzw. Selbstregulierung sollte nachgedacht werden, allerdings nur unter der Voraussetzung, dass sie geeignet sind ein ausreichendes Schutzniveau effektiv sicherzustellen.

(12) Wie würden sich Veränderungen des Regulierungsansatzes im audiovisuellen Bereich auf das Herkunftslandprinzip und damit auf den Binnenmarkt auswirken?

Das Herkunftslandsprinzip als Kernbestandteil der europäischen Medienregulierung hat sich von Beginn an bewährt und maßgeblich dazu beigetragen einen freien Austausch audiovisueller Sendeinhalte im gesamten Europäischen Binnenmarkt sicherzustellen. Vor diesem Hintergrund setzt die ARD sich dafür ein, bei der Erarbeitung einer künftigen medienspezifischen Konvergenzregulierung an diesem Prinzip festzuhalten.
Sollte hier der Ansatz einer Ausweitung des Anwendungsbereichs auf Akteure erfolgen, die in journalistisch-redaktioneller Weise Verantwortung für audiovisuelle Inhalte auf unterschiedlichsten Übertragungswegen und Empfangsgeräten übernehmen, dann muss sicherlich darüber nachgedacht werden, welchen Anknüpfungspunkt man für den Herkunftsort des Angebotes wählt.

Für Anbieter deren Herkunftsland außerhalb der EU oder des Europäischen Wirtschaftsraums liegt, kann das Herkunftslandsprinzip natürlich nur gelten, wenn durch bindende zwischenstaatliche Vereinbarungen ein Schutzniveau entsprechend der europäischen Standards gewährleistet wird.

Darüber hinaus sollte geprüft werden, ob es ähnlich der aktuellen Regelung in Art. 2 Abs. 4 AVMD-Richtlinie, wo die Nutzung eines Satelliten-Uplinks oder die Nutzung von einem Mitgliedstaat zuzuordnende Übertragungskapazität eines Satelliten den Anknüpfungspunkt für die entsprechende Regelung begründet, Lösungen gibt, die eine mitgliedstaatliche Regelungshoheit von der Nutzung inländischer Serverkapazitäten abhängig machen.

(13) Auf welche neue Art und Weise und in welchen Bereichen wird das Verhältnis zwischen den Bestimmungen der AVMD-Richtlinie und denen der Richtlinie über den elektronischen Geschäftsverkehr durch die zunehmende Konvergenz auf die Probe gestellt? Bitte geben Sie konkrete Beispiele.

Durch die technische und inhaltliche Konvergenz und vor allem durch die Zunahme von Abrufdiensten über das Internet, gewinnt das künftige Verhältnis zwischen AVMD-Richtlinie und E-Commerce Richtlinie, zwischen audiovisuellen Medien­diensten und Diensten der Informationsgesellschaft, zunehmend an Bedeutung. In diesem Zusammenhang ist an die in Artikel 4 Absatz 8 der AVMD-Richtlinie enthaltende Kollisionsregel zu erinnern, die eine Überordnung der AVMD-Richtlinie über die E-Commerce-Richtlinie vorsieht.

(14) Welche Initiativen könnten auf europäischer Ebene zu einer verbesserten Medienkompetenz in ganz Europa beitragen?


Einen Gesamtüberblick über die Aktivitäten ist erhältlich unter folgendem link:


Mehr über die Netzwerke und Initiativen einzelner Landesrundfunkanstalten ist auf folgenden Web-Angeboten zu erfahren:

- [http://www.br.de/unternehmen/inhalt/bildungsprojekte/index.html](http://www.br.de/unternehmen/inhalt/bildungsprojekte/index.html)
- [http://www.br-online.de/jugend/izi/deutsch/ueber_uns.htm#](http://www.br-online.de/jugend/izi/deutsch/ueber_uns.htm#)
- [http://www.mkfs.de/](http://www.mkfs.de/)
- [http://www1.wdr.de/unternehmen/profil/bildung/schlauber102.html](http://www1.wdr.de/unternehmen/profil/bildung/schlauber102.html)

(15) Sollte die Möglichkeit der Festlegung von Auswahlmöglichkeiten durch Filtermechanismen, u. a. bei Suchfunktionen, durch öffentliches Eingreifen auf EU-Ebene geregelt werden?


Ist ihre gesellschaftliche Bedeutung hinlänglich groß, sollen sie angemessener Vorab-Regulierung unterstellt werden. Dies gilt sowohl für Suchmaschinen im Internet, für Internetdienste, die spezifisch audiovisuelle Inhalte anbieten, aber auch beispielsweise für Anbieter sozialer Netzwerke, die ihre Suchmöglichkeiten (auch für Medieninhalte) immer weiter ausbauen. Darüber hinaus müssen Such- und Filterfunktionen sowie die Festlegung von Auswahlmöglichkeiten durch Hersteller von Hardware, die gegebenenfalls mit spezifischer Software verbunden ist (beispielsweise Connected TV-Geräte, Tablets und Smartphones), und durch weitere Plattformanbieter in den Blick genommen werden. Daneben sollte die Rolle „klassischer“ EPGs nicht vernachlässigt werden.

ARD-Stellungnahme
im Rahmen der Konsultation zum Grünbuch Konvergenz
Brüssel, 10.09.2013


Die Zugangsrichtlinie kann nur eine beschränkte Rolle beim Thema Connected TV und konvergierende Medien spielen. Art. 5 (1b) und 6 der Zugangsrichtlinie befassen sich vor allem mit technischen Fragen des digitalen Rundfunks. Die spezifischen Fragen des Zugangs zu Infrastrukturen, Plattformen und Portalen sollten vor allem medienspezifisch reguliert werden (siehe hierzu auch Antwort auf Frage 3).


Schon heute können HbbTV Angebote über DVB-T durch internetfähige Smart TVs genutzt werden. Einzelne am Markt verfügbare Tablets mit integriertem DVB-T Empfänger (bzw. ergänzt um einen externen Empfänger) können bei geeigneter Software auf dem Gerät sowohl lineare wie auch nicht-lineare Rundfunkinhalte im Rahmen eines integrierten Angebots nutzen. Entsprechende Regeln in der Zugangsrichtlinie, die eine solche Empfangsmöglichkeit vorsehen, können für Rundfunkanbieter und Nutzer einen Mehrwert schaffen und zu einer Entlastung der Ausbauverpflichtung der Internet Service Provider im Best Effort-Internet führen (siehe auch Antwort zu Frage 6).

Art. 31 der Universaldienste-Richtlinie will gewährleisten, dass Mitgliedstaaten bestimmte Dienste von öffentlichem Interesse mit einem Must-Carry-Status versehen können, wenn dieser Ausnahmeregelung anerkannte politische und regulatorische Erwägungen zu Grunde liegen.
Art. 31 der Universaldienstrichtlinie sollte nicht nur auf lineare, sondern auch auf nicht-lineare Angebote anwendbar sein, um der Konvergenz im Bereich der Medien Rechnung zu tragen. Auffindbarkeitsregeln (Must carry/ Must be found-/ due prominence-Regeln) im Bereich der geschlossenen Netze sollten durch entsprechende Vorgaben zur Sicherung der Netzneutralität für die Verbreitung von Rundfunkinhalten im offenen Netz flankiert werden (siehe auch Antwort zu Frage 3).

(17) Werden die derzeitigen Bestimmungen der AVMD-Richtlinie über die kommerzielle Kommunikation nach wie vor angemessen sein, wenn die Konvergenz immer mehr zur Realität wird? Könnten sie einige konkrete Beispiele angeben?

Die Frage muss differenziert beantwortet werden.


Da die Unterschiede zwischen klassischen linearen audiovisuellen Inhalten und nicht-linearen Diensten aber auch auf absehbare Zeit Bestand haben werden, erscheint es aus


(18) Welche regulatorischen Instrumente würden sich als Reaktion auf die sich rasch wandelnden Werbetechniken am besten eignen? Gibt es noch mehr Spielraum für die Selbst-/Koregulierung?


Insbesondere, wenn es um die Regulierung der Schnittstellen zwischen nichtlinearen und linearen Medien geht, ist es sicherlich nicht einfach, geeignete Strukturen zu schaffen, die Regelungen ermöglichen, die für beide Seiten verbindlich sind. Da es hierbei vor allem um den Schutz der Integrität der Inhalte geht, muss darüber nachgedacht werden, die Anbieter der linearen Diensten mit den erforderlichen Rechten auszustatten, die es ihnen ermöglichen, ihre Inhalte gegen Einblendungen und Überblendungen zu schützen.

(19) Wer sollte letztlich bestimmen, ob kommerzielle Einblendungen oder andere neuartige Techniken am Bildschirm akzeptiert werden sollen?


Gerade im Hinblick auf neue Techniken der kommerziellen Kommunikation sehen wir die Integrität unserer Inhalte gefährdet. Insbesondere kommerzielle Einblendungen, sogenannte „Overlays“, sind im Lichte der Trennung von Werbung und redaktionellem Inhalt äußerst problematisch, nicht zuletzt vor dem Hintergrund der Möglichkeit, den nicht-linearen Kanal dazu zu verwenden, um eine auf den linearen Inhalt bezogene Form der kommerziellen Kommunikation einzusetzen.

Deshalb tritt die ARD dafür ein, dass Inhalteanbieter die Möglichkeit haben müssen, darüber zu entscheiden, ob „Overlays“ über ihre Programme zugelassen werden.

Dabei respektiert die ARD die Autonomie des Nutzers, zu entscheiden, welche Inhalte er in welcher Form und Darstellung auf seinem Endgerät sehen und nutzen will.
Die Überblendung unserer Inhalte durch vom Nutzer initiierte private Kommunikation, wie E-Mails oder soziale Netzwerke, Foren, Chats oder Skype, ist aus Sicht der ARD eine legitime Nutzung.

Eine Authorisierung durch den Nutzer kann hingegen nicht „parasitäre“ Nutzung unserer Programme durch Endgerätehersteller oder Dritte rechtfertigen. Das gilt für Werbe- “Overlays” Dritter über unsere Programme genau wie für Internetanwendungen Dritter, die sich unsere Programme zur Produktvermarktung nutzbar machen.

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


Im Lichte der in den Antworten zu Fragen 10 und 11 müssten dann speziell im Hinblick auf den Jugendmedienschutz über zukunftsfähige Regelungsansätze für den präventiven Jugendmedienschutz (Medienkompetenz) nachgedacht werden.

(21) Obwohl zunehmend Tools verfügbar sind, die eine elterliche Kontrolle auf Geräten und Plattformen ermöglichen, über die auf Inhalte zugegriffen wird, werden diese bisher scheinbar kaum genutzt. Wie könnten Eltern gezielter auf diese Instrumente aufmerksam gemacht werden?

Nach einer Studie des Hans-Bredow-Instituts für Medienforschung an der Universität Hamburg und der ZDF-Medienforschung (Mediaperspektiven 1/2012) sehen Eltern zwar bei sich selbst, aber auch bei Computerspieleherstellern, Fernsehveranstaltern und Internetanbietern sowie bei der Politik und bei Ministerien eine Mitverantwortung. Die Eltern,


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


Allerdings funktionieren bestimmte Jugendschutzprogramme bisher ausschließlich auf einigen Betriebssystemen, sie haben im Übrigen nur eine Anerkennung für Inhalte ab 18 Jahren erhalten. Um den Belangen des Jugendschutzes effizient gerecht zu werden, wird die ARD bis auf weiteres am bewährten System der Zeitsteuerung zum Jugendschutz festhalten.

(23) 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?

Auf der Grundlage der Vorgaben der AVMD-Richtlinie existieren in Deutschland über den Jugendmedienschutz-Staatsvertrag ausführliche Regelungen zur Bewertung von Inhalten und ihrer Klassifikation. Derartige Detailregelungen sollten auch künftig den Mitgliedstaaten überlassen bleiben.
(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?

Die Ausweitung von Informationspflichten über Beschwerdemöglichkeiten, soweit erforderlich, auf nicht-lineare Mediendienste und Dienste mit Meinungsbildungsrelevanz ist grundsätzlich zu begrüßen, sollte allerdings auf Ebene der Mitgliedstaaten erfolgen.

(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?


(26) Halten Sie zusätzliche Normungsbemühungen in diesem Bereich für erforderlich?

Aktuell sieht die ARD keinen Bedarf für zusätzliche Normierung in diesem Bereich.

(27) Welche Anreize könnten für Investitionen in innovative Dienste für Menschen mit Behinderungen geschaffen werden?

Die ARD leistet mit ihren linearen Programmen und den Online-Angeboten einen weitreichenden Service für Menschen mit Hör- und Sehbehinderung. Zudem nimmt sie ihre
Verantwortung für diese ZuschauerInnen, ZuhörerInnen und UserInnen auch wahr, indem sie sich im Programm mit deren besonderer Lebenssituation auseinandersetzt. Es werden regelmäßig Informations- und Ratgebersendungen sowie Online-Beiträge erstellt, die speziell die Probleme von Menschen mit Behinderung thematisieren oder auf deren Bedürfnisse eingehen.


Die ARD ist bestrebt, behinderten Menschen die größtmögliche Teilhabe an ihrem vielseitigen Informations- und Unterhaltungsangebot zu ermöglichen. Kontinuierlich wird daher daran gearbeitet, die Barrierefreiheit ihrer Onlineangebote weiter zu optimieren. Die ARD hat sich bereits 2004 im Maßnahmenkatalog zur Barrierefreiheit der ARD-Online-Angebote darauf verständigt, einen möglichst hohen Grad an Barrierefreiheit zu erreichen. Dies wird auch künftig der Fall sein. Mit einem entsprechenden Maßnahmenkatalog wird die ARD die neugefasste „Barrierefreie Informationstechnik Verordnung (BITV 2.0)“ sowie die
ARD-Verbindungsbüro Brüssel
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ARD-Stellungnahme
im Rahmen der Konsultation zum Grünbuch Konvergenz
Brüssel, 10.09.2013

WCAG 2.0 soweit möglich umsetzen und bei der Gestaltung und Realisierung neuer bzw. bei der Umstellung bestehender Online-Angebote berücksichtigen.

Im September 2011 hat die ARD einen umfangreichen Ausbau der barrierefreien Angebote beschlossen. Dabei setzt sie den Schwerpunkt im Fernsehen bei den reichweitenstarken Angeboten, also dem Ersten und den Dritten. Denn so werden möglichst viele Menschen von der Ausweitung der barrierefreien Angebote profitieren.


Der signifikante Ausbau der Untertitelung im Ersten wird über Wiederholungen die Untertitelquote in den Dritten und den Spartenprogrammen deutlich steigern. Darüber hinaus streben die LRA aber auch einen Ausbau der Untertitelung in den Dritten Programmen an.


BR: Das Bayerische Fernsehen bietet seit Jahresanfang eine Bayerische Serie am Freitagabend in einer Hörfilmfassung an und seit April auch die bayerische Daily Soap "Dahoam is Dahoam" sowie einzelne Fernseh- und Spielfilme.

MDR: Das MDR-Fernsehen verdoppelt 2013 die Anzahl der Hörfilmneuproduktionen auf 20 Filme pro Jahr und strebt mit Aufnahme der "selbstbestimmt"-Reportagen und Dokumentationen in die Hörfilmproduktion eine Genreerweiterung an. Außerdem soll das Hörfilmangebot im MDR-Fernsehen deutlich erhöht werden und auch in der Mediathek abrufbar sein.


Untertitelung und Audiodeskription verursachen einen hohen personellen und finanziellen Aufwand. Der Einsatz von Fördermitteln der Europäischen Union könnte zur Erhöhung barrierefreier Angebote beitragen.

Für Rücksprachen wenden Sie sich bitte an:

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München, den 3.9.13

Stellungnahme der ARD-Gremienvorsitzendenkonferenz zum „Grünbuch über die Vorbereitung auf die vollständige Konvergenz der audiovisuellen Welt“ vom 24.4.13

Sehr geehrte Damen und Herren,

die Rundfunk- und Verwaltungsräte der ARD befassen sich bereits seit längerem mit den Entwicklungen und Konsequenzen der Medienkonvergenz, gerade auch hinsichtlich notwendiger regulatorischer Maßnahmen auf nationaler, europäischer und internationaler Ebene.


Gerne nehmen wir die Gelegenheit war, nun auf die konkreten Fragen des Grünbuchs einzugehen, und insbes. aus dem Blickwinkel der Vertreter der Gesellschaft im Rundfunk in der öffentlichen Anhörung Stellung zu nehmen. Sie erhalten anbei die Stellungnahme der ARD-GVK (mit 2 Anlagen), dem Zusammenschluss aller Rundfunk- und Verwaltungsratsvorsitzenden der ARD und oberstem Aufsichtsorgan der ARD. Die Stellungnahmen der Gremien des NDR und WDR gehen Ihnen gesondert zu.

Für Rückfragen stehen wir jederzeit gerne zur Verfügung. Ansprechpartnerin ist die Geschäftsführerin der GVK, Dr. Susanne Pfab.

Mit freundlichen Grüßen

Uwe Grund

Anlagen: Stellungnahme der ARD-GVK vom 2.9.2013 mit
- Anlage 1: Pressemitteilung der Gremien von ARD, ZDF, ORF vom 22.6.13
- Anlage 2: Pressemitteilung der ARD-GVK vom 17.4.13
Stellungnahme der ARD-Gremienvorsitzendenkonferenz (GVK) zum
Grünbuch der EU-Kommission
über die Vorbereitung auf die vollständige Konvergenz der audiovisuellen Welt:
Wachstum, Schöpfung und Werte


Die GVK begrüßt die Initiative der EU-Kommission, die Auswirkungen der technologischen Entwicklungen im Bereich der audiovisuellen Medien näher zu untersuchen, den notwendigen Diskussionsprozess mittels eines Grünbuchs zu fördern und aus den Ergebnissen in engem Dialog mit den Mitgliedstaaten den adäquaten und zukunftsfähigen Rechtsrahmen für die konvergente Medienwelt zu eruieren. Die GVK erinnert in diesem Kontext daran, dass die Kultur- und Medienhoheit vornehmlich bei den Mitgliedstaaten liegt.


Auch ist darauf zu achten, dass die Regulierungsfähigkeit auf nationaler und europäischer Ebene nicht durch internationale Handelsabkommen wie TTIP unterlaufen wird. Eine Freigabe des Kultur- und Medienbereichs zum „freien Handel“ widerspricht den Verpflichtungen der EU, die sie selbst zur Förderung der kulturellen Vielfalt und Identität (wie z.B. über die UNESCO-Konvention) und gegenüber den Mitgliedstaaten zur Achtung deren Kulturhoheit eingegangen ist. Vor allem aber würden europäische kulturelle Errungenschaften und Entwicklungs-


4 vgl. z.B. Stellungnahme des Deutschen Kulturrats zum Freihandelsabkommen zwischen EU und USA vom 6.5.13 (http://kulturrat.de/detail.php?detail=2520&rubrik=)
5 vgl. gemeinsame Erklärung der Deutschen Content Allianz vom 13.4.11 (http://www.vpr.de/thema/meniorundnung/duale-meniorundnung/privater-rundfunk/content/deutsche-content-allianz-inititut%3c0%3c0)
7 z.B. PM WDR-Rundfunkrat vom 5.3.13 http://www.wdr.de/unternehmen/gremien/rundfunkrat/pressmitteilungen/pressemeldung_2013_03_05.jsp); PM der Gremienspitzen von ARD, ZDF und ORF zum EU/USA-Freihandelsabkommen v. 22.6.13 (http://www.ard.de/home/intern/Stellungnahme_der_Gremien_von_ARD__ZDF_und_ORF_zum_EU_USA_Freihandelsabkommen__Kultur_ist_keine_gewohnliche_Handelsware/216282/index.html)
Zu den notwendigen regulatorischen Rahmenbedingungen und zwingenden Regulierungszielen gehört nach Ansicht der GVK insbesondere (siehe hierzu auch anbei Pressemittellung der GVK vom 17.4.13 mit GVK-Positionspezialpapier „Prämisse für die konvergente Medienwelt“):


4. Jugendmedienschutz und Datenschutz sind absolute Regulierungsziele, die für alle Anbieter im Bereich der Medien und Kommunikation gleichermaßen Geltung haben müssen.

Erforderlich ist schließlich, zukunftsfähige Begrifflichkeiten im audiovisuellen Mediensektor zu prägen, die möglichst europaweit einheitlich Anwendung finden. Der technologieneutrale Ansatz der audiovisuellen Mediendienste-Richtlinie hat sich hier bereits bewährt; dieser müsste ggf. per Auslegung oder legislativer Anpassung auf sämtliche journalistisch-redaktionell gestaltete und verantwortete Medieninhalte konkretisiert werden, die allerdings einer unterschiedlichen Regulierung je nach Meinungsbildungsrelevanz unterliegen können und sollten (abgestuftes Regulierungssystem).
Die Gremienvorsitzendenkonferenz der ARD nimmt überdies gerne die Gelegenheit des Konsultations-
verfahrens wahr, um aus Sicht der Vertreter der Gesellschaft im Rundfunk zu den Fragen des
Grünbuchs, insbes. zum Abschnitt „3. Werte“, konkret Stellung zu nehmen:

zu Abschnitt 2.1: Marktüberlegungen:

1. Auf welche Faktoren ist es zurückzuführen, dass sich US-amerikanische
Unternehmen...erfolgreich auf dem fragmentierten EU-Markt etablieren können, während
Unternehmen aus EU-Mitgliedsstaaten sich diesbezüglich schwertun? Auf welche
Hindernisse stoßen Unternehmen in der EU?

Der US-amerikanische Markt ist wesentlich homogener als der europäische Markt. Hohen
Investitionen stehen von vorneherein ein weites Vermarktungsgebiet mit demselben
sprachlichen und rechtlichen Hintergrund gegenüber. Die Finanzierung von sog. High-End-
Produkten ist daher wesentlich einfacher und in der Regel bereits durch die Vermarktung im
eigenen Raum gedeckt.

US-amerikanische oder global agierende Firmen können überdies auf maßgebliche rechtliche
Vorteile gegenüber deutschen oder europäischen Firmen zurückgreifen. Während der US-
Medienmarkt gegenüber ausländischen Beteiligungen abgeschottet ist, können US-
amerikanische Investoren nicht nur nahezu nur unbeschränkt im europäischen Markt tätig
werden (z.B. Erwerb eines gesamten Fernsehkonzern oder Beteiligung an Infrastruktur-
anbietern), sondern sie können dies sogar mit erheblichen Vorteilen gegenüber europäischen
Investoren (z.B. Steuerrecht, Kartellrecht). Zwar wird durch die geringeren Markteintrittskosten
im digitalen Zeitalter der weltweite Handel von Medienprodukten und Dienstleistungen
befördert. Zugleich ist aber zu beobachten, dass sich verstärkt globale Monopole mit markt-
verdrängender Bedeutung herausbilden, wie derzeit im Bereich von Internetsuchmaschinen und
Social Media deutlich zu sehen ist (google, Facebook).

zu Abschnitt 2.4: Infrastruktur und Frequenzen:

8. Mithilfe welcher Modelle für die Frequenzzuweisung und gemeinsame Frequenznutzung
kann die Entwicklung von Rundfunk, mobilem Breitband und anderen Anwendungen
innerhalb derselben Frequenzbänder vorangebracht werden?

DVB-T2 bietet langfristig große Chancen für die gemeinsame Nutzung des 700 MHz-
Frequenzbandes durch Rundfunk und Mobilfunk, insbes. durch zukunftsträchtige hybride
mobile Geräte, die den Anbietern und Nutzern den größten Spielraum ermöglichen. Zwingend
erforderlich ist aber für die Entwicklung und Realisierung solcher innovativer hybrider
Lösungen, dass das 700MHz-Band nicht kurzfristig an den klassischen Mobilfunk abgegeben
wird. Darüber hinaus würde eine Räumung des 700-MHz-Bandes für den Rundfunk
umfangreiche und kostenintensive Umplanungs- und Umkoordinierungsaktivitäten sowie
technische Umkonfigurierungen der Sendernetze erforderlich machen, die auch für den
Verbraucher von erheblichem Nachteil sind und die Versorgungsdichte schwächen. Auf der
anderen Seite stünde aber kein angemessener Vorteil, da das 700Mhz-Band vom Mobilfunk nur
eingeschränkt nutzbar ist und der Mobilfunk allein die Lücke zwischen Stadt und Land in der
Breitbandversorgung nicht wird schließen können.
zu Abschnitt 3: Werte

10. Gibt es angesichts der Konvergenz der Medien bereits Anzeichen für Marktverzerrungen, die auf die Unterscheidung zwischen linearen und nichtlinearen Diensten im Rechtsrahmen zurückzuführen sind? Wenn ja, wie könnten diese Verzerrungen am besten behoben werden, ohne die dem EU-Rechtsrahmen für audiovisuelle Mediendienste zugrunde liegenden Werte zu verletzen?


11. Muss die Definition des Anbieters von audiovisuellen Medien und/oder der Geltungsbereich der AVMD-Richtlinie angepasst werden, um einen Teil der oder alle Verpflichtungen der AVMD auch für diejenigen einzuführen, die gegenwärtig nicht unter die Richtlinie fallen, oder können die Werte auf andere Weise geschützt werden? Welche Bereiche sollten schwerpunktmäßig der Selbst- bzw. Koregulierung unterliegen?

Wie bereits in der Einleitung dargelegt, erachtet die GVK die Sicherstellung eines diskriminierungsfreien Zugangs zu Plattformen und Übertragungswegen sowie einer funktionsgerechten Auffindbarkeit gesellschaftlich relevanter Inhalte als vorrangige Regulierungsziele im Rahmen der medialen Konvergenz. Es ist nach Ansicht der GVK daher zu eruieren, inwieweit Anbieter, die über ihre Plattformen oder technische Dienstleistungen maßgeblichen Einfluss auf den Zugang und die Auffindbarkeit von Inhalten haben oder in Zukunft erhalten werden, in den Geltungsbereich der AVMD-Richtlinie einbezogen werden sollten.
13. Auf welche neue Art und Weise und in welchen Bereichen wird das Verhältnis zwischen den Bestimmungen der AVMD-Richtlinie und denen der Richtlinie über den elektronischen Geschäftsverkehr durch die zunehmende Konvergenz auf die Probe gestellt?

Durch die fortschreitende Konvergenz in technischer und inhaltlicher Hinsicht wird das Verhältnis zwischen den Regelungsbereichen der AVMD-Richtlinie und der E-Commerce-Richtlinie weiter an Bedeutung gewinnen und eine klare Zuordnung audiovisueller Medien zum Regelungsbereich der AVMD-Richtlinie immer wichtiger, um die Aufrechterhaltung der darin enthaltenen gesellschaftlichen Ziele gewährleisten zu können. Die GVK verweist in diesem Zusammenhang auf Art. 4 Abs. 8 der AVMD-Richtlinie, der einen Vorrang der AVMD-Richtlinie vor den Regelungen der E-Commerce-Richtlinie vorsieht.

14. Welche Initiativen könnten auf europäischer Ebene zu einer verbesserten Medienkompetenz in ganz Europa beitragen?

Die Vermittlung von Medienkompetenz ist nach Ansicht der GVK nicht einzelnen Institutionen oder Einrichtungen zu überlassen, sondern als gesamtgesellschaftliche Aufgabe anzusehen, die aufgrund der zunehmenden Medienverfügbarkeit und -nutzung weiter an Bedeutung gewinnt. Schließlich ist die ausreichende Medienkompetenz von Kindern und Erwachsenen die erste und wichtige Voraussetzung für einen funktionierenden Jugendmedienschutz.

Dem öffentlich-rechtlichen Rundfunk kommt hier eine besondere Verantwortung zu, die für den Bereich der Telemedien durch die Verpflichtung, Orientierung im Internet zu leisten (§ 11d Abs. 3 RStV), auch gesetzlich festgeschrieben ist. Der öffentlich-rechtliche Rundfunk in Deutschland kommt dieser Verpflichtung sehr umfassend nach (vgl. Auflistung der Initiativen in der Stellungnahme der ARD) und wird dabei von den Aufsichtsgremien unterstützt und weiter gefordert.

15. Sollte die Möglichkeit der Festlegung von Auswahlmöglichkeiten durch Filtermechanismen, u. a. bei Suchfunktionen, durch öffentliches Eingreifen auf EU-Ebene geregelt werden?


17. Werden die derzeitigen Bestimmungen der AVMD-Richtlinie über die kommerzielle Kommunikation nach wie vor angemessen sein, wenn die Konvergenz immer mehr zur Realität wird? Könnten sie einige konkrete Beispiele angeben?


Die Regelungen zur kommerziellen Kommunikation sollten in jedem Fall die Integrität der Inhalte zum Gegenstand haben (vgl. auch Ausführungen in der Einleitung) und eine Überblendung ohne Zustimmung des Inhalteanbieters ausschließen.

19. Wer sollte letztlich bestimmen, ob kommerzielle Einblendungen oder andere neuartige Techniken am Bildschirm akzeptiert werden sollen?


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

Die Regelungen der AVMD-Richtlinie zum Schutz von Minderjährigen bilden ein sinnvolles und flexibles Fundament, sind aber allein nicht ausreichend, um den Herausforderungen der konvergenten Medienwelt sinnvoll zu begegnen. Insbesondere ist auf die Entwicklung einheitlicher Schutzstandards für lineare und nicht-lineare Dienste auf dem derzeit für nicht-lineare Dienste geltenden Niveau hinzuwirken.

22. Welche Maßnahmen würden eine wirksame Altersüberprüfung bei Nutzern audiovisueller Online-Inhalte ermöglichen?

Der öffentlich-rechtliche Rundfunk wendet sowohl in seinen linearen als auch nicht-linearen Angeboten das Prinzip der „Zeitsteuerung“ an, wodurch potentiell gefährdende Inhalte erst ab einer bestimmten Zeit abrufbar sind. Dieses Modell ist nach Ansicht der GVK sehr geeignet zum
Schutz Minderjähriger. Es ist daher erforderlich, dass auch zukünftige Regelungen die Möglichkeit zur Nutzung dieses Prinzips offen halten.

Zudem bietet der öffentlich-rechtliche Rundfunk in Deutschland im Internet eigene Kinderseiten an, die Verlinkungen auf externe Seiten nur nach ausgiebiger Prüfung auf deren potentielle Gefährdung vorsehen. So wird ein quasi geschlossener Schutzraum für Kinder geschaffen, innerhalb dessen sie sich geschützt bewegen können.

23. **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?**

Die AVMD-Richtlinie kann durch generelle Regelungen ein geeignetes Fundament für einen einheitlichen Schutzstandard innerhalb der EU festlegen. Die detaillierte Regelung konkreter Maßnahmen und Vorkehrungen sollte jedoch den Mitgliedstaaten überlassen werden.

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?**

Die Rundfunkräte der öffentlich-rechtlichen Rundfunkanstalten üben die unmittelbare Programmaufsicht über lineare und nicht-lineare Inhalte der Rundfunkanstalten aus und haben das Letztentscheidungsrecht bei Beschwerden der Rezipienten inne. Über die Möglichkeit der Programmbeschwerde informieren die Rundfunkanstalten und die Rundfunkräte auf ihren Internetseiten.

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?**


*München, den 2.9.13*  
gez. Uwe-Grund, Vorsitzender der ARD-GVK, Dr. Susanne Pfab, Geschäftsführerin der ARD-GVK

Anlage 1: Pressemitteilung der Gremien von ARD, ZDF, ORF vom 22.6.13  
Anlage 2: Pressemitteilung der ARD-GVK vom 17.4.13
Gremienvorsitzende der ARD fordern für die Medienregulierung der Zukunft: Auch in Zeiten der technischen Konvergenz nicht alle Medien über einen Kamm scheren

Die Vorsitzenden der Rundfunk- und Verwaltungsräte der ARD (GVK) haben in ihrer Sitzung am 15.4.13 in Berlin den Appell an die Politik gerichtet, auch in Zeiten der technischen Medienkonvergenz jeweils entsprechend der gesellschaftlichen Funktion des Mediums zu regulieren.


Maßgebliche Forderungen an die Medienregulierung sind:
- Zugang, Auffindbarkeit und Inhalte-Integrität entscheiden über die Existenz eines Angebots; die erforderlichen Schutzvorkehrungen sind zeitnah über eine Anpassung der nationalen Plattformregulierung umzusetzen.
- Der Begriff des Rundfunks bzw. des audiovisuellen Medien-dienstes ist technologieneutral zu konkretisieren; auf nationaler Ebene ist dies bisher nicht zukunftsfähig gelungen.
- Die Kernziele der bisherigen Medienregulierung, wie auf europäischer Ebene in der AVMD-Richtlinie formuliert, sind aufrecht zu erhalten und gegen Aushöhlung (z.B. internationale Handelsliberalisierungen) zu sichern.
- Evaluations- und Revisionsprozesse sind aktiv von der Medienpolitik mitzugestalten.

Die o.g. Forderungen sind im beigefügten GVK-Positionspapier „Prämisse für die konvergente Medienwelt“ näher dargestellt, das die Gremienvorsitzenden im Nachgang zum 4. GVK-Forum „Connected TV“ (siehe Pressemitteilung vom 22.2.13) verabschiedet haben.

Berlin, 17.4.13

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Prämissen für die konvergente Medienwelt

GVK-Positionspapier zur zukünftigen Medienregulierung
im Nachgang zum 4. GVK-Forum „Connected TV: Alle auf und unter einen Schirm?“


Die Konvergenz ist in zweifacher Hinsicht zur Realität geworden: zum einen die Bündelung linearer und non-linearer Medienangebote auf einem Gerät bzw. Übertragungsweg, zum anderen das Zusammentreffen von Medien und sonstigen elektronischen Diensten auf demselben „Schirm“. In zweitem Fall treffen zugleich völlig unterschiedliche Regulierungssysteme aufeinander.


Die technologischen Errungenschaften werden so zu einer bedeutsamen Frage für die Meinungsvielfalt, die Medienpluralität und den Informationsbildungsprozess in der Gesellschaft. Wichtig ist insofern vor allem, dass die Anbieter, denen in unserer gesellschaftspolitischen Ordnung die Aufgabe übertragen wurde, einen wesentlichen Beitrag zur Meinungsbildung und Orientierung zu leisten, diese Aufgabe auch in Zukunft hinreichend erfüllen können. Die notwendigen Rahmenbedingungen zu erhalten oder zu schaffen, ist Aufgabe der Medienregulierung. Diese muss sich klar am Regulierungsziel der Sicherung der Meinungsfreiheit, Medienvielfalt und Unabhängigkeit der Medien ausrichten.

Die Vorsitzenden der Gremien der ARD fordern daher als Vertreter der Gesellschaft und Aufsicht über den öffentlich-rechtlichen Rundfunk folgende Prämissen für die zukünftige Medienregulierung auf nationaler wie europäischer Ebene ein:

   Dieses Grundverständnis ist in den Erwägungsgründen der EU-Richtlinie für audiovisuelle Mediendienste festgehalten. Zwischenstaatlich (mit Geltung für die EU selbst) wird dies ergänzt durch die UNESCO-Konvention zum Schutz und zur Förderung der Vielfalt kultureller Ausdrucksformen, in welcher der öffentlich-rechtliche Rundfunk ausdrücklich erwähnt wird (Art. 6 h). Die besondere demokratische und gesellschaftliche Funktion des Rundfunks ist auch Grundlage der nationalen Rundfunkordnung, auf einfach-gesetzlicher (Präambel RStV, § 11 Abs. 1 RStV) wie verfassungsrechtlicher Ebene (Art. 5 I GG, ständige Rechtsprechung des Bundesverfassungsgerichts).

   Die Herausforderung an die zukünftige Medienregulierung liegt gerade darin, dort wo besondere Gefährdungen für Meinungsfreiheit, Medienvielfalt oder Verbraucherschutz bestehen, positive Schutzvorkehrungen zu treffen, und dort, wo dies nicht der Fall ist, über Deregulierung oder Angleichung der Regulierungssysteme für gleiche Wettbewerbsbedingungen zu sorgen. Auch Medienregulierung der Zukunft muss medienfunktions-spezifisch sein.
Aus diesen zwei Grundsätzen ergeben sich im Einzelnen folgende Anforderungen bzw. Regulierungsziele:

- Rundfunkveranstaltern ist der diskriminierungsfreie Zugang zu Infrastrukturen, Plattformen und Portalen zu gewährleisten.
- Die Auffindbarkeit der Rundfunkangebote z.B. über die Rangfolge in EPG´s darf sich nicht alleine nach (GfK-)Reichweiten bemessen; vielmehr sind auch hier die meinungsbildende und vielfaltsfördernde Funktion zu berücksichtigen (Must-be-found-Regelungen).
- Die Signale und Inhalte der Rundfunkanbieter sind auf allen Plattformen und Verbreitungswegen vor Veränderungen oder Überlagerungen Dritter (z.B. durch Werbeeinblendungen) zu schützen.
- Gerätehersteller sind zu verpflichten, HbbTV in leicht zu aktivierender Form für jedes hybride Empfangsgerät vorzusehen. Dieser neutrale und offene technische Standard bietet Gewähr für einen freien und ungehinderten Zugang zu den Online-Angeboten der Rundfunkanbieter.
- Jugendmedienschutz und Datenschutz sind absolute Regulierungsziele, die für alle Anbieter im Bereich der Medien und Kommunikation gleichermaßen Geltung haben müssen.

Zur Umsetzung der o.g Regulierungsziele sind zu empfehlen:

- Die nationale Plattformregulierung bietet für den dringenden Regulierungsbedarf zu Zugang, Auffindbarkeit und Inhalteintegrität gute Lösungsansätze über Anpassungen bzw. Konkretisierungen im Anwendungsbereich. Insbesondere sollte die Zugangsregelung des § 52 c RStV auf EPGs, Portale, App-Stores und Video-Suchmaschinen hybrider Geräte erweitert werden; im Ergebnis sollten jedenfalls alle Systeme erfasst werden, die die Auswahl von Fernsehprogrammen steuern und dabei auch das unmittelbare Einschalten ermöglichen; ergänzend könnten Selbstregulierungsansätze verfolgt werden, z.B. zur Verfügbarkeit von HbbTV.
- Bei dem auf europäischer Ebene stattfindenden Evaluierungsprozess der AVMD-Richtlinie ist vor allem darauf zu achten, dass der medienspezifische Regulierungsansatz nicht relativiert wird; die AVMD-Richtlinie bildet den Kern der EU-Medienregulierung und entfaltet als spezifische Regelung über ihren eigenen Regelungsgehalt hinaus Rechtfertigungswirkung für Privilegierungen des Rundfunks in anderen Rechtsbereichen (wie Telekommunikationsrecht, E-Commerce-Regelung, Datenschutz, Urheberrecht, Beihilferecht, WTO/GATS).

  - Ob und inwieweit der Regulierungsrahmen modifiziert werden muss, bedarf einer differenzierten Auseinandersetzung mit dem Begriff des „audiovisuellen Mediendienstes“, insbes. ob über die bisherigen Legaldefinitionen auch zukünftig alle Angebote erfasst werden, auf deren Schutz die Richtlinie abzielt, oder ob es langfristig eines stärker Inhalteorientierten Ansatzes bedarf (unter Berücksichtigung der redaktionellen Verantwortetheit der Inhalte).
  - Die abgestufte Regulierung ist – mit Blick auf die unterschiedliche Meinungsbildungsrelevanz der Mediendienste – grundsätzlich beizubehalten, ist aber im Einzelfall auf ihre Adäquanz in der konvergerten Medienwelt zu überprüfen (z.B. Benachteiligung der TV-Anbieter gegenüber Telemedienanbietern aufgrund der spezifisch für „Fernsehen“ geltenden Werbebeschränkungen).
Für den zeitlichen Rahmen der Regulierung ist zu beachten:

- Die für die Inhalteanbieter existenzielle Frage der Sicherstellung des Zugangs, der Auffindbarkeit und der Inhalteintegrität ist zeitnah über das nationale Recht zu regeln.

- Im Bereich des Jugendmedienschutzes sind über § 4 JMSchStV und Art. 9 h, 12, 27 AVMD-Richtlinie lineare wie non-lineare audiovisuelle Medien- und Kommunikationsdienste bereits einer vergleichbaren Regulierungstiefe unterworfen; allerdings ist sehr genau auf Anpassungsbedarf zu achten, d.h. im Interesse eines effektiven Schutzes Minderjähriger ist im Zweifel frühzeitig auf Fehlentwicklungen zu reagieren.

- Für die Revisions- und Anpassungsfragen auf der Ebene des europäischen Rechts ist es wichtig, langfristig zukunftsfähige Ansätze für den gesamten europäischen Raum zu finden. Die erst 3 Jahre alte AVMD-Richtlinie basiert bereits auf dem Grundsatz der Technologieneutralität und ist so formuliert worden, dass sie trotz Weiterentwicklung der Technologien anwendbar bleibt; zunächst sollte auf nationaler wie europäischer Ebene über den Begriff des Rundfunks bzw. audiovisuellen Mediendienstes Verständigung erzielt werden. Nach Ansicht der GVK ist die Umsetzung des Begriffs der „audiovisuellen Mediendienste“ in nationales Recht mittels Aufteilung in Rundfunk (als lineare Angebote von Hörfunk und Fernsehen), journalistisch-redaktionell gestaltete Telemedien und sonstige Telemedien nicht zukunftsfähig gelungen. Wichtig ist jedenfalls, dass sich Rundfunkanbieter und nationale Medienpolitik aktiv und frühzeitig in die Diskussionen einbringen, z.B. im Rahmen der Konsultation zum Grünbuch der EU-Kommission „Preparing for a Fully Converged Audiovisual World“.

Berlin, 15.4.13
Es handelt sich um eine private, der Öffentlichkeit dienende Regionale Projekt Initiative der ATV Aichfeld
Teil 2

DVB-T / IP Dienste

Programmverbreitung über digitale Terrestrik und Highspeed Internet sowie interaktive Zusatzdienste für den regionalen Raum Steiermark Mitte / Steiermark West

DVB-T / DVB-T2/HBB-TV/IP-TV, Internet

Nutzung neuer Medien für Fernsehzuseher und Kunden

(c) ATV Aichfeld / 8720 Knittelfeld, Sandgasse 1 / Tel.: 0043 3512 86339 48 – office@aichfeld-tv.at / www.aivtv.at
W.Winter / Th. Scheucher - 09.07.2013
Es handelt sich um eine private, der Öffentlichkeit dienende Regionale Projekt Initiative welche europäisiert die Vielfalt Europas in den Regionen darstellt.

Die Mission / Botschaft soll als Beitrag zur Stärkung Europas dienen.

(c) W.Winter / 05.07.2013
Die sich daraus ableitenden Win-to-Win-Situationen bieten:

- für die Regionen - Bewusstseinsbildung
- für Europa eine erforderliche Stärkung
- für die Menschen Vertrauen
  welche im Zuge der technologischen
  Entwicklungen entstehen

Werte – Wachstum - Innovation
Werte – Wachstum - Innovation

Network Europe

Regionaler Kommunikations-Plattformbetreiber

Nat. Plattform vernetzt

HbbTV interaktive offene Standards vernetzt linearTV mit Internet/Online TV

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Vernetzt Gemeinden – die Region
Die Region Murtal europäisiert
Vielfalt Europas in unserer Region dargestellt
UNSERE REGION GIBT IHR BESTES!

DVB-T
(Digital Video Broadcast – Terrestrial)

MUX-C
(Multiplex Plattform)

weltweiter Signal- und Übertragungsstandard

lokaler Programmveranstalter Plattform

in allen Regionen Österreichs
Vertiefende Erläuterungen
Werte, Wachstum, Innovation

• IKT – Informations-Kommunikations-Technologie
  (Infrastruktur / Contentplattform)

• ATV –
  Die Kommunikationsplattform(en)
  mit multimedialem Kulturgut Werte schaffen

• Vernetzte Plattform
  „BUNdtESLAND“ Regional-TV Österreich
  eine allumfassende wirkende Philosophie

  PFL – Positive Fernseh Lebensenergie
  (Europas Gemeinschaftsprogramm Philosophie lokaler Regionen)

• Local Regional TV Network Europe
  The convergent media platform
  (HbbTV – interaktive TV-Vernetzung)
  vereintes Europa vernetzt

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IKT – Informations-Kommunikations-Technologien

erfordern in den Regionen

• Koordination/Kooperation
  auf Grundlage, Basis der

• Kompatibilität und Nutzung der einzelnen Infrastrukturplattformen
  (Kabel, DVB-T, SAT, Internet/Online etc.)

zur

• Verbreitung und Vernetzung
  für ein europäisiertes regionales Bildungs, Wertefernsehen
  auf einer vernetzten Infrastrukturplattform

• Bündelung von Ressourcen
  Aufgabe eines lokalen Plattformbetreibers
Bb
Breitband/Frequenznutzung

• Koordination

• Nutzung der einzelnen Plattformen in den Frequenzregionen

• Entscheidungsfaktoren – Entscheidungskriterien

• Diskriminierungsfreie Zugänge auf einzelne Plattformen in den Regionen – (Beachtung von Wettbewerbsbedingungen)

• Einflusskriterien auf Werte und Wachstum

Aufgabe eines lokalen Plattformbetreibers

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Multimediale „Werte“
beruhen auf einer, von allen getragenen Philosophie

Positive Fernseh-Lebensenergie

- Bildungsfernsehen
  Bildung-Kultur-Gesundheit-Sicherheit etc.
- Erklärbarkeit - Profilierung
- Wahrnehmung
- Bewusstsein

Bewusstseinsbildung schafft Vertrauen

Werte schaffen Vertrauen

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Regionales Bildungsfernsehen

in den Regionen – von den Regionen –
aus den Regionen

soll europäisches Bewusstsein fördern

- Aichfeld-Fernsehstadt
- Stadt der Religionen
- Integration
- u.v.m.

Europ. Bildungsfernsehen zur
Stärkung eines vereinten Europas

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Content - Wachstum

Produktion
Anwendung
Vernetzung

Nutzen

auf einer gemeinsamen zugrundeliegenden Philosophie

lokaler Plattformbetreiber, welche die Begriffe Ideen – Wachstum – Wettbewerb entsprechend der technologischen Entwicklung erfüllen

glaubwürdig – identisch /authentisch – traditionell – nachvollziehbar – nachhaltig

Aufgabe eines lokalen Plattformbetreibers
**ATV VISION**

Neupositionierung für den Namen „Fernsehen“ in Europa

Dies auf Grundlage lokal-regionalen Fernsehgeschehens welches von regionalen Programmveranstaltern für alle gesellschaftsrelevanten Verantwortungsebenen betrieben wird

Damit verbunden ist die Schaffung einer multimedialen Volks-Fernseh-Plattform für die Bürger in den einzelnen Sendebereichen

Das Fernsehgeschehen unterstreicht die Glaubwürdigkeit des Handels jedes einzelnen Bürger

Fernsehen wird von den Bürgern für Bürger gestaltet und von diesen konsumiert

Die hierfür notwendigen Voraussetzungen auf rechtlicher, gesellschaftlicher, wirtschaftlicher Ebene zu schaffen ist als Vision angedacht und in den Raum gestellt

**ATV IDEE**

Aus der Vision sollen Ideen entstehen.

Im Konkreten sollten Ressourcen gebündelt und vernetzt werden um die daraus resultierenden Resultate nutzbringenden Anwendungen zugeführt werden

Damit verbunden und im Einklang soll auch eine wirtschaftliche Entwicklung, welche aus den einzelnen Geschäftsmodellen entwickelt und entsteht, generiert werden können

**ATV PHILOSOPHIE**

„Positive Fernseh Lebensenergie“ .......

...um den technologischen Wandel den Menschen näher zu bringen - Sicherheit zu geben und die entsprechend erforderliche Erklärbarkeit auf Grundlage des Hören und Sehens – Wahrnehmung zu vermitteln bedarf es einer grundlegend positiven Fernseh Lebensenergie

Vermittlung von Makro- und Mikro-Energie
ATV LEITBILD –

Die Basis des Leitbildes beruht auf der Grundlage vorgeschriebener Philosophie –

Positive Fernseh Lebensenergie

„Indem wir das Wohl der anderen fördern,
fördern wir unser eigenes“ (Platon)

Dem Leitbild entsprechend sollte eine „Wir – Du – Ich“ - Bewusstseinsmaching für jeden Einzelnen eine entsprechende Bedeutung erfahren

- Selbstorientiertes
- Eigenverantwortliches
- Handeln als verantwortlicher Entscheidungsträger des Unternehmens um bewusst Vertrauen zwischen allen und mit allen Beteiligten nachhaltig aufbauen und schaffen zu können

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Aus dem Leitbild rekrutierte Programmschwerpunkte der ATV Aichfeld

1. den technologischen Wandel erkläbar zu machen....!
   Bildung – Schule – Wirtschaft

2. den Menschen Ängste zu nehmen
   Sicherheit – Frieden zu geben....!
   Gesundheit – Umwelt

3. kreativen Kräften die notwendige
   Freiheit zu bieten....!
   Bewegung – Kultur – Sport

4. mit der Entwicklung den Menschen entsprechend
   Freude und Spaß zu bereiten....!
   Humor – Kunst – Spaß

Mit HÖREN - SEHEN der Neu-Positionierung des Wortes „Fernsehen“ Rechnung tragend

Lokal-regionales Fernsehen – höchste Wahrnehmung bewusst erfahren

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Leader-Region Steiermark

Frequenzregionen Österreich für die Anwendung u. Nutzung von Leader-Projekten

Lokale Werte – lokales Wachstum!

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Leader-Projekte, welche Werte und Wachstum initiieren

• ATV medienbegleitendes Minimed-Studium Knittelfeld/Aichfeld (TeleDoc-Beiträge)

• Genuss Region
  Murtaler Steirerkäse
  Spezialitätenvielfalt durch Haubenköche der Region

• Multimediales Kulturgut
  Multimedien-Plattformbetreiber
  Anwendung und Nutzung neuer Technologien

• HbbTV
  Internet/Online Technologie Plattform

• Multimediales Kulturgut
  Projekt-Profilierung
  Werte – Wachstum – Initialzündung

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Notwendige Schritte generieren…

nachstehenden 
**Nutzen:**

• Erreichung einer entsprechenden Effektivität im Zuge der Abwicklung des Leader-Projektes

• Mit der Verbreitung und Veröffentlichung in Region sollen die „Projekte“ eine entsprechende Profilierung erzielen

• Schaffung von Werten, Einbindung der KMUs etc. Wirtschaftstreibende – dadurch sollen Initialzündungen für lokales Wachstum ausgelöst werden

• Daraus soll kreatives, wirtschaftliches Potenzial in der Region ausgeschöpft und nachhaltig für Arbeitsplätze und Impulse sorgen

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Notwendige Schritte generieren…
	nachstehende
Vorteile:

• Mediale Aufbereitung bzw. Verbreitung sorgen in der Region für die Profilierung der Projekte sowie Schaffung von Werten und nachhaltigem Wachstum

• Volkswirtschaftliche Aspekte, Bildung, Kultur, Erklärbarkeit etc. sorgen für Sicherheit auf breitester Ebene ermöglichen

• Bündelung von Ressourcen (Effektivität) um strategisches Wachstum auszulösen

• Stärkung der Region durch die Schaffung neuer, zukünftige Arbeitsplätze mit Nachhaltigkeit für junge Menschen

• Wachstum erfolgt von unten nach oben (durch Anschubförderungen) (Änderung der Verteilungsprozesse)

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Conclusio - Zielsetzung

Erlangung der Erkenntnis, dass ausgewählte multimediale Anbieter als Kommunikationsplattformbetreiber zur regionalen Entwicklung dienender Projekte eingebunden werden sollten.

Finanzierung - Infrastruktur

- für Projektpräsentation / Vorstellung Projektausarbeitung
- Konzeptausarbeitung nach entsprechenden sinn- und zielorientierten Kriterien sowie
- Kostenerstellung
- Projektumsetzung / Realisierung
Finanzierung – Dienstleistungen

prozentuelle, anteilige Projektfinanzierungsabgeltung für

- Marketingtätigkeit

- Infrastrukturnutzung
  HbbTV – interaktive Bildscreen-Verbreitung und Vernetzung (Playoutnutzung)

- Bildungsfernsehen mit erkennbaren Merkmalen der Europäisierung in Zusammenhang der Projekte in den einzelnen Regionen

- Wirtschaftsimpulse/Initiativen
  neuartige Tools für regionale Internet/Online Werbungen von KMUs für Endverbraucher
Werte – Wachstum - Innovation

Probleme – Hürden

Wir finanzieren derzeit:

a. Infrastruktur
b. Inhalte
c. Techn. Entwicklungen

Jedoch können nur einmal Einnahmen in lokalen Wirtschaftsräumen generiert werden, welche nicht im Einklang für die Überwindung der Hürden stehen

Wettbewerb!
Werte – Wachstum - Innovation

Möglichkeiten – Lösungen

a. Infrastruktur:  
   gemeinsamer Nutzung zuführen  
   (Gemeinden, Wirtschaft etc.)

b. Inhalte:  
   Vermittlung, Verarbeitung regional-  
   lokaler Inhalte - Bildungsfernsehen zur  
   reg. Bewusstseinsbildung

c. Technologietransfer in die Regionen  
   Schaffung von zukünftigen  
   Arbeitsplätzen mit nachhaltiger Wirkung

Fern/Sehen muss zum  
Nah/Sehen werden!
Projekte, mit lokal-regionalem Werte- und Wachstumspotenzial in der Leader-Region Murtal

• Einführung von HbbTV Playout für regionale Kommunikationsplattformbetreiber

• Internet/Online TV Tools für KMUs

• Gesundheit – Bewegung

• Wander-Werte-Pilgerwege Integrationsprojekt

• Vernetzung von Informationsplattformen aller sich im Sendegebiet befindlichen Städte Gemeinden, öffentlichen Institutionen auf einer gemeinsamen Verbreitungsplattform

• Schaffung von multimedialem Kulturgut – Profilierung von Projekten in der Region

• Werte, Wachstum, Wirtschaft zur Stärkung der Region im Sinne eines vereinten Europas
Im Namen des Teams der ATV Aichfeld:

Danke
für
Ihre Aufmerksamkeit

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Allgemeines

Mit der Einführung von DVB-T in Österreich im Jahre 2006 begann für den Zuseher ein neues Zeitalter. Erstmals war es möglich, unerwünschte Nebeneffekte wie Doppelbilder, reflexions- oder witterbedingte Empfangsverschlechterungen, durch den Umstieg auf digitale Programmverbreitung weitgehend zu vermeiden und das Angebot der empfangenen Programme auf ein vielfaches zu erhöhen was die Nutzung der vorhandenen Infrastruktur noch effizienter ermöglichte.


Eine Erweiterung der Kapazitäten mittels Glasfaser-Technologie oder der über Antenne verfügbaren Fernseh-/Radioprogramme wird oftmals als unrentabel abgetan. Auch lokalen Fernsehanstalten ist es aus Kostengründen weitgehend nicht möglich die vorhandene Infrastruktur der öffentlich rechtlichen Anstalten zur Verbreitung des Programms zu nutzen. Oftmals sind es nur teure „Programmfenster“ zu einer unüblichen Zeit auf schmalbandigen SAT-Trägern oder im Kabel-TV.

Auch Technologien wie LTE oder Fiber to the home werden in ländlichen Gebieten, wie die für dieses Konzept beschriebenen Regionen, nicht weiter verfolgt und der dort lebenden Bevölkerung die Nutzung multimediaer Dienste und Informationszugang in Form von HD- Videostreaming oder SMART/HBB-TV vorenthalten.

Hintergrund

Aufgrund dieser Tatsachen möchten wir mit dem vorgelegten Konzept Möglichkeiten aufzeigen diese Versorgungslücken zu schließen und auch den „kleinen, lokalen“ TV-Anbietern die Möglichkeit geben ihr Programm zur Verfügung zu stellen. Dies entspricht dem eigentlichen Hintergedanken des Privatfernsehgesetzes sowie der so viel beworbenen Breitbandinitiative Österreich.

Auf den folgenden Seiten werden die einzelnen Schwerpunkte näher beschrieben und Lösungskonzepte vorgestellt. Ebenso finden sie eine Übersicht über die geschätzte Nutzungssquote und dessen Mehrwert für die Region.
Verwendete Technologien und derzeitiger Betrieb

Für die Programmverbreitung lokaler TV-Stationen wie dem Programm der AiTV Film und Fernsehproduktionen wird der DVB-T Standard angewendet und ist derzeit im SFN-Betrieb an 2 Standorten in der Steiermark verfügbar (Sendeanslage Bruck/Mur Mugel und Knittelfeld Tremmelberg auf Kanal E57 mit der Mittenfrequenz 762MHz).

Auch die Sendeanslage in Schladming (Hauser Kaibling) wird von der Fa. AiTV betrieben und vom dort ansässigen lokalen TV Anbieter genutzt.

Mit diesen bereits bestehenden Anlagen ist es möglich die Regionen des gesamten Mürztales bis hin zum Semmering mit Lokal-TV zu versorgen. Richtung Südwesten das gesamte Murtal bis Judenburg sowie im Ennstal die beiden Talachsen Richtung Nordosten und Nordwesten bis zum Bundesland Salzburg.


Der DVB-T Standard hat Zukunftsausblick

Viele Fernsehzuseher haben sich in den vergangenen Jahren für die Umstellung auf DVB-T wegen Abschaltung des Analog-TV entscheiden müssen (staatliche Förderung für den Kauf der Set Top Box) und auch damit entsprechende Endgeräte angeschafft.

Es wird inzwischen zwar an dem Nachfolgestandard DVB-T2 gearbeitet, wie er in der simpli-TV-Plattform bereits verwendet wird, jedoch sind Endgeräte für diesen Standard abwärtskompatibel und können auch DVB-T Programme verarbeiten, wodurch einer möglichst langen Nutzungs dauer des bisherigen Standards nichts im Wege steht.

Sollte DVB-T ganz verabschiedet werden, wie es von Behördenseite ja für 2016 geplant ist, wird auch die AiTV auf die neue Technologie umrüsten und somit sind Sendungen in HD mit dem Videokomprimierungsstandard MPEG-4 und eine Erhöhung der Programmzahl pro Fernsehkanal möglich.
**Kostenfaktor Betrieb für den TV-Veranstalter**

Viele lokale Fernseh-Veranstalter setzen derzeit auf die Verbreitung mittels Kabel-TV oder als Internet-TV-Stream da dies für sie die derzeit kostengünstigste Alternative darstellt. Dadurch ergeben sich jedoch wesentliche Nachteile die Attraktivität und den Werbewert deutlich mindern.

- Kabelnetzte sind regional begrenzt und dadurch ist für Werbeeinschaltungen nur der unmittelbare Empfangsraum interessant. Somit ist auch nur eine knappe Finanzierung des Programmbetriebes gegeben.

- Überregional produzierte Beiträge des Fernsehveranstalters können nicht bei dessen Zielgruppe gesehen werden da das Internet-Angebot nicht sehr stark genutzt wird (dzt. etwa 11 - 24% auf Basis eines dt. Meinungsforschungsinstitutes).

- Nicht jeder Zuseher verfügt über einen entsprechenden Internet-Anschluss bzw. ist mit der Bedienung eines PC oder mobilen Endgerätes (Tablet oder Smart Phone) vertraut.

- Oftmals kann der ISP (Internet Service Provider) die benötigte Bandbreite zum abrufen der Online Angebote nicht bereitstellen (UMTS-Stick, schlecht ausgebaute Gebiete für ADSL)

- Bei manchen Anbietern ist das verfügbare Downloadvolumen begrenzt und durcu Video-Beiträge schnell erschöpft (Prepaid – Internet Karten)

Vor allem diese Zuseher werden über eine Verbreitung des Programms via Terrestrik angesprochen, da meist auch ein Sat-Kombi-Empfänger vorliegt, welcher auch DVB-T(2) empfangen kann.

Außerdem stellt das System eine gute Alternative zum Kabel – TV dar, da es kostenlos verfügbar ist und bei entsprechendem Ausbau eine ausreichend große Programmapalette bietet, was so manchen Zuseher speziell im Indoor-Empfang oder am Zweitwohnsitz oder Wochenendhaus anspricht. Mit dabei sind dann ebenfalls die regionalen Angebote welche eine Repräsentanz der betreffenden Urlaubsregion oder der dort ansässigen Betriebe darstellt.
Dies ist ein nicht zu unterschätzender Werbefaktor für die dort heimische Wirtschaft und gleichzeitig ein guter Reiseführer falls der Zuseher aus dem benachbarten Ausland auf eines dieser Regionalprogramme trifft.

Lokale Freizeitangebote sowie Serviceinformationen mittel multimedia der Zusatzdienste (Smart-TV / HBB-TV) können hier angeboten werden, die den Zuseher entsprechend informieren.

Vielen Privat-Fernsehanbietern ist jedoch der Schritt zur terrestrischen Verbreitung ihrer Programme aufgrund der dadurch entstehenden Kosten zu hart und somit steht oftmals die Wirtschaftlichkeit der angebotenen Services in Frage.

**Shared costs Lösung**

Eine Möglichkeit dieser Hürde zu entgehen ist die gemeinsame Nutzung vorhandener Infrastruktur um damit eine kosteneffiziente Verbreitung der Programme zu ermöglichen. Bei einem DVB-T Multiplex können so bis zu 4 Programmveranstalter teilhaben und somit reduziert sich der Kostenaufwand pro juristischer Person auf ein Viertel.

Die Vorteile der gemeinsamen Nutzung eines Multiplex liegen klar auf der Hand:

- Ansuchen um eine Betriebslizenz nur 1x nötig (nur 1 TV Kanal)
- Durch Co-Location kein eigenständiger Aufbau der Infrastruktur nötig
- Abdeckung größerer Gebiete möglich. Durch Nutzung anderer Standorte wird das Programm des jeweiligen Anbieters in mehreren Gebieten gesendet, die dieser alleine nicht erschließen würde
- Höhere Einnahmen durch Werbeeinschaltungen, da der Zuseherkreis größer wird und damit die Anzahl der angesprochenen Zielgruppe
- Beiträge von anderen Betreibern können ins eignene Programm mit eingebaut werden.
Damit ist ein hoher Marktwert des einzelnen Multiplex gegeben und auch auf Seiten der Programmveranstalter kann sich ähnlich wie bei Betrieben ein Netzwerk bilden, das sich auch den Erfahrungsaustausch über Zuseheranregungen, Equipment oder Interessen ausdehnen kann.
Kurz-Funktionsprinzip am Bsp. eines DVB-T Multiplex


Diese „Elementarstreams“ werden dann an einem Video-Gateway, im Folgenden auch als Multiplexer bezeichnet, zusammengeführt und ein DVB konformer serieller Datenstrom erzeugt, der dann dem Sendegerät zugeführt wird.

Dieses wiederum erzeugt dann die einzelnen Träger für die Programme abhängig von der Modulationsart. Bei DVB-T kommt meist COFDM zu Einsatz. Um den Betrieb sicherzustellen und Fehler bei der Übertragung zu vermeiden werden Sicherheitsmechanismen wie die FEC (forward error correction) und ein Guard Intervall (GI) eingebracht. Besonders für multimediale Zusatzdienste wie HBB-TV oder Mediatheken kann ein gemeinsames Portal genutzt werden, dass je nach Programmanbieter in einzelne Registarkarten unterteilt wird und das On-Demand-Fernsehen ermöglicht.

Hierbei sind zumeist Beiträge aus vergangenen Sendungen zu finden sowie Infoseiten aus der aktuellen Region oder spezielle Beiträge. Alternativ kann auch jeder Betreiber sein eigenes HBB-TV oder Mediportal betreiben welches dann im gemeinsamen Multiplex übertragen wird.

HBB-TV wurde als „multimedialer“ Teletext entwickelt und ist dzt. nur bei großen TV-Stationen zu finden.
DVB-T(2) und Breitbanddienste (Internet/IP-TV)

Um dem Kunden ein „allround“ Angebot bieten zu können, ist geplant die derzeit noch weißen Flecken in der Breitbandversorgung mittels WLAN-Strecken abzudecken. Auch hier wird wieder vorhandene Infrastruktur genutzt. Die so genannten „HOT-Spots“ werden sich dabei als co-location-Nutzung auf den DVB-T(2) Sendeanlagen beﬁnden.

Hier kommen vor allem weitere Interessenten zum Zug, welche sich für eine Gebietsverweiterung ins Müritz/Murtal bzw. Ennstal interessieren. Der Kunde hat beim Kommunikations-Elektronik-Dienstleister dann die Möglichkeit zu wählen:

- Installation einer Zimmer/Hausantenne für das DVB – Bouquet
- Kombination DVB und Highspeed Internet
- Reiner Internetzugang, da TV schon vorhanden

Auch hier wird die IP-Infrastruktur sehr effizient genutzt. Über den Richtfunk, an welchem die Sendeanlagen angebunden werden liegen Bandbreiten zw. 100Mbits und 2 Gbits an. Dies ermöglicht die simultane Nutzung für:

- Programmszuführung zur Sendestation (incl. Zusatzdienste wie HBB-TV)
- Hot-Spot für den zukünftigen Internet Kunden mit bis zu 20Mbit
- Übertragung des DVB-T(2) Multiplex als IP-TV für Internet Kunden

Beim Kunden werden jeweils eine UHF Antenne und eine Außenantenne für WLAN (5,8 GHz oder WIMAX Technologie) montiert. Da der gesamte DVB-Multiplex aus 4 bis zu Lokalprogrammen auch als IP-Stream übertragen wird, haben Internetkunden dann auch die Möglichkeit ihre Lokal-Programme via Notebook, PC, Tablet oder Smartphone zu sehen.
Dabei ergibt sich kein Qualitätsverlust bei der Internetverbindung, da der IP-Stream mittels Multicast im „lokalen Netzwerk“ des ISP (Internet Service Provider) übertragen wird. Die Richtfunkstrecke zum Kunden erlaubt bis zu 150Mbit’s.

Dadurch ergeben sich für den Internet-Kunden folgende Vorteile:

- Uneingeschränkter Betrieb mehrerer Mediaboxen parallel zum Surfen im I-Net
- Hochgeschwindigkeits-Internet in Regionen mit unzureichendem Netzausbau
- Kein Bandbreiten-Sharing mit mehreren Internet – Kunden, die gleichzeitig online sind wie dies bei LTE, Kabel oder UMTS der Fall wäre.
- Keine Beeinträchtigung des Internet-Speed durch den Betrieb der Mediabox(en)
- Es muss keine teure Spezial-IP-TV-Box gekauft werden, da die Inhalte als APP auf jeder erhältlichen IP-TV-Box dargestellt werden können
- IP-TV auch auf PC oder mobilen Endgeräten ohne spezielle Software möglich


Weiter werden die DVB-T(2) Standorte für die Mitnutzung als Standort für Kommunikationsdienste oder UKW Sendestationen ausgeschrieben. Die dadurch erzielten Mieteinnahmen tragen ebenfalls zur Aufrechterhaltung des Sendebetriebs und dessen Kostenabdeckung bei.
Als Partner für IP-Dienste werden im folgenden diese Unternehmen genannt:

- WESTNET GmbH
- Computer Technik Center
- eelectronics Dienstleistungen

Ebenfalls zur Planung steht, einige Standorte mit einer Live-Panoramakamera auszustatten. Hier können im TV-Bild einzelne Flächen für Werbezwecke genutzt werden und die daraus resultierenden Einnahmen für den Betrieb der Sendeanlagen bzw. IP-Richtfunkstrecken herangezogen werden.

Für den Kunden ergibt sich kein großer finanzieller Aufwand da das Equipment entweder gemietet oder gekauft werden kann und derzeit keine Mindestvertragsdauer geplant ist. Auch ein monatlicher Prepaid-Service ist denkbar.

Aus Sicht der Werbeeinnahmen stehen dem DVB-T(2) Betreiber nun 3 Verbreitungsweg für Werbeinserate oder Werbespots zur Verfügung:

- DVB-T(2) Sendfenster oder Insert im Panoramakamerbild
- Im HBB-TV Portal oder der Mediathek
- Im IP-TV

**DVB-T(2), Internet und Kabel-TV Betreiber**

Eine weitere Möglichkeit ergibt sich ebenfalls für kleinere Kabel-TV Anbieter doch auch Internet mit anzubieten. Über die DVB-T(2) Sendeanlagen ist nun auch eine entsprechende Standleitung abgreifbar (per Richtfunk), welcher der K-TV Betreiber anmieten kann und somit seine Kunden ebenfalls mit Internet versorgen.

Dies ist vor allem für jene Gebiete interessant, wo eine Direkt-Anbindung mittels 5,8Ghz WLAN oder Wimax direkt vom Senderstandort aus topographischen Gegebenheiten nicht möglich ist.

Damit lässt sich ebenfalls ein Finanzierungsbeitrag für die Anlagen und deren Wartung erzielen.

**DVB-T(2) und Radio-Betreiber**


Sollte ein UKW-Radiobetreiber Interesse an einem Standplatz (co-location) haben, so könnte dieser ebenfalls die vorhandene IP-Infrastruktur anmieten um dessen Programm zur Sendeanlage zuzuspielen wodurch weitere Einnahmen möglich wären.
The BBC response to the European Commission Green Paper “Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values”
Executive summary

The BBC welcomes this Green paper and the chance to contribute at an early stage of the debate on the opportunities and challenges presented by convergence.

The history of the EU audiovisual sector is in many ways a global success story. The sector has maintained strong levels of investment in high quality EU content – c.£10bn pa from Public Service Broadcasters (PSBs) alone – and has seized the opportunity to innovate online through products like BBC iPlayer. EU creative excellence in content and services has driven the uptake of digital networks and devices. It has also had global impact. The UK market is the largest net exporter of TV formats in the world and is increasingly exporting digital services such as BBC Global iPlayer.

Alongside commercial media, PSBs have thus fostered jobs, innovation and growth in the sector. PSBs have also played a leading role in supporting democratic debate, social cohesion and cultural diversity. The BBC serves the whole public. Its content captures moments that bring the nation together – from Andy Murray winning Wimbledon, watched by 17million people, to BBC coverage of the UK General Election, widely consumed and found to improve audiences' political understanding. Its services are ever more accessible and safe for everyone thanks to a commitment to media literacy, high editorial standards and effective parental tools. Access services for audiences with disabilities are also ever improving in a field in which – as should be expected of a licence fee funded broadcaster – the BBC always strives to lead.

To date, the story of convergence has been one of complementarity rather than cannibalisation. The ‘traditional’ medium of TV continues to enjoy stable viewing at 4 hours per day per person. Online catch-up viewing is highly valued by audiences but represents a very small proportion of overall TV consumption – around 2% for the BBC. Yet while linear TV is forecast to remain predominant, it is prudent to prepare for the possibility of a more radical shift in habits.

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1 64% of BBC viewers agreed that BBC News Channel coverage improved their understanding of the key General Election issues, compared to 45% of Sky News viewers saying the same of Sky News (YouGov survey, adults 18+, May 2010)

2 Ofcom Communications Market Report August 2013
Further convergence will present opportunities, such as greater choice, control and participation for audiences, and new actors who are able to invest in EU works. It will also expose challenges. Those parts of the value chain growing the fastest have not hitherto invested in EU content to the extent of other segments such as PSBs. The evolving value chain will also bring a growing number of gated platforms and potential distribution bottlenecks. Meanwhile, audience expectations around content standards could outpace regulatory guarantees as broadcast and online content collides on connected devices.

The overall challenge is to sustain and raise further the high levels of economic and public value delivered by the sector. From industry, this will require strong creative and digital strategies. For the BBC, this means a long-term commitment to make and commission the best programmes and to fully engage with licence fee payers – offline and increasingly online. From policymakers, it will require ongoing political and regulatory support for the ‘dual system’ of public and commercial provision.

Future support does not yet necessitate a new regulatory settlement. The BBC believes the AVMS Directive provides an adequate framework. However, in some areas of the wider _acquis communautaire_, targeted interventions may be appropriate. Priorities for the sector should include:

- Supporting a strong and stable investment environment for the whole sector by maintaining strong protection for Intellectual Property;
- Sustaining high levels of content investment through continued support for PSB and the virtuous circle between PSB origination, its universal availability on different platforms, and its findability;
- Crucially, a commitment that the EU and Member State access regime and ‘must carry’ rules[^3] keep pace with changing technology and audience behavior
- A recognition of the importance of future-proofed prominence rules to ensure the findability of PSB, as proposed by the UK Government[^4] within the scope of existing EU law;
- Essential long-term certainty for the thriving DTT platform, currently delivering TV to 40% of EU homes and forecast to be irreplaceable in key markets for the foreseeable future;

[^3]: in particular, Article 31 of the Universal Service Directive and Article 6 of the Access Directive
[^4]: 'Connectivity, Content and Consumers: Britain’s Digital Platform for Growth' DCMS July 2013
• Important and unambiguous safeguards for the Open Internet by EU Regulation, alongside but not impaired by 'specialised' services for content providers who wish to procure them;
• Consideration of Government and industry dialogue on best practice among digital intermediaries to ensure potential gatekeeper power is kept under review;
• Monitoring of audience expectations and market trends in relation to linear and on-demand to ensure that content regulation remains effective;
• Ongoing support for industry-led solutions to protect children from inappropriate content and for the provision of access services.

Below we offer responses to the questions most relevant to our mission to serve audiences with high quality content that informs, educates and entertains. We recognise the ambitious breadth of the consultation and would welcome further opportunities to contribute as the debate advances.

Response to consultation questions

(Q1) 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?

1. The history of the EU audiovisual sector is in many ways a global success story. The sector has maintained strong levels of investment in high quality EU content – c.£10bn pa from PSBs alone – and has seized the opportunity to innovate online. It has been economically successful, but also plays a leading role in sustaining democratic debate, social cohesion and cultural diversity.

2. This success is in spite of inherent advantages enjoyed by US companies. Audiovisual businesses are high-risk and hit-based with high fixed costs and low marginal costs of production. US studios can spread their investments over a large highly homogenous domestic market. Scale achieved domestically can then be leveraged overseas, including in the EU. While the internet lowers barriers to entry, ordinarily diminishing the benefits of scale, this factor is offset by the 'network effect' which allows US companies to scale quickly in US, and then global, ‘winner takes all’ markets.
3. Against this backdrop, the EU ‘dual system’ of public and commercial provision has shown remarkable resilience. In the UK, ‘competition for quality’ has led to the highest levels of per capita investment in original production in the world and widespread access to a broad range of high quality content meeting diverse audience needs. It has sustained a flourishing independent sector, growing twenty fold since the early 1980s to £2.3bn in 2010, and still growing at 8% CAGR.

4. The BBC’s role has been central. As recognised last month in the UK Government’s Strategy for the sector, for every pound of licence fee investment, the BBC generates two pounds of economic value. Its content captures moments that bring the nation together – from Andy Murray winning Wimbledon, watched by 17million people, to BBC coverage of the UK General Election, widely consumed and found to improve audiences’ political understanding.

5. Much of this economic and public value is delivered via the ‘traditional’ medium of TV. TV viewing remains stable at 4 hours per day per person. TV remains the UK’s most trusted platform for news, underpinned by the BBC as the news provider that audiences choose the most – and find the most trustworthy, accurate, impartial and diverse. Forecasts suggest that live TV will remain the predominant mode of audiovisual consumption until 2020.

6. Nonetheless, it is prudent to prepare for the possibility of a more radical shift in habits. European PSB has been at the forefront of convergence through its investment in digital services, standards and skills. One example is the

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5 ‘UK Television Content in the Digital Age’ A report by Oliver and Ohlbaum Associates Ltd 6 Mediatique analysis for BBC, 2012 7 The economic value of the BBC, January 2013 8 64% of BBC viewers agreed that BBC News Channel coverage improved their understanding of the key General Election issues, compared to 45% of Sky News viewers saying the same of Sky News (YouGov survey, adults 18+, May 2010) 9 Ofcom Communications Market Report August 2013 10 The BBC remains the most trusted media provider overall: asked to pick the one media provider that they trust the most overall, 54% of people said the BBC (Populus for the BBC November 2012). When asked which one news source they are most likely to turn to for accurate news coverage, 58% chose the BBC. Asked to name the one news provider that they would turn to for impartial news coverage, 49% say the BBC (Ipsos MORI, Feb. 2013). When asked “To what extent do you agree or disagree with the following statement: [Provider] shows a range of perspectives when reporting a news story?” BBC net agreement was 79% vs. an equivalent of 69% for next nearest provider. (ICM for BBC, Nov 2011). 11 Enders Analysis
BBC’s live and catch-up TV and radio service, BBC iPlayer, which helped popularise the use of video on demand in the UK. It is now available on over 650 devices and serves up to 300m programme requests per month. Online catch-up complements rather than cannibalises linear viewing, and represents around 2% of overall consumption. UK audiences are increasingly using BBC iPlayer’s download function to ensure their content is portable across national boundaries. Such contributions to Europe’s digital success are often undertaken in partnership with other public and commercial bodies. BBC partnerships include the connected TV service YouView launched in 2012 and The Space, a digital public platform for the arts.

7. EU audiovisual companies ensure the circulation of EU works across the Union via co-productions and the export of services and content to other Member States. In exports, the UK sector is thriving with revenue generated from international sales of TV and associated activities growing by 9% between 2010 and 2011 to £1.4 billion. BBC Worldwide, the BBC’s wholly owned commercial subsidiary, powers this performance. In addition to making UK content widely available across Europe through its channels business, BBC Worldwide has also been responsible for the Global iPlayer, a ‘best of British’ subscription video on demand service available in many EU markets.

8. The success of EU exports is not confined to the internal market. BBC Worldwide is Europe’s leading exporter of TV programmes and has a major business in the US (second only to the US majors).

9. The EU audiovisual sector has therefore delivered significant benefits: economic, social and democratic; on traditional and new digital platforms; and to domestic, wider European and global audiences. Sustaining this level of success requires strong creative and digital strategies on behalf of industry and ongoing political and regulatory support for the ‘dual system’. Future support does not yet necessitate a new regulatory settlement. The BBC believes the AVMS Directive provides an adequate framework. However, in some areas of the wider acquis communitaire, targeted interventions may be appropriate. Interventions could include enabling Member States to future-proof the ‘must carry’ regime when justified by the extent of convergence.

(Q3) Are there obstacles which require regulatory action on access to

[12 'Connectivity, Content and Consumers: Britain’s Digital Platform for Growth’ DCMS July 2013]
New digital technologies have increased the number of digital intermediaries and potential gatekeepers. While convergence has brought many consumer benefits, it also poses some risks. For the most part, these are discussed in responses to questions 15 and 16.

Specific access issues arise from the development of the Internet. Traditionally, the Internet has allowed end users to access legal content and services of their choice, while enabling content and service providers (CAPs) to reach end users ‘without permission’. This ‘Open Internet’ has been a successful engine for innovation and growth, delivering mutual benefits for users, service and content providers, and network providers. The BBC accepts the potential value of ‘managed’ or ‘specialised’ services alongside the Open Internet. However, we remain concerned that some traffic management and business practices risk undermining this economic success and damaging the Internet’s contribution to media pluralism. While BEREC has found that these practices are largely confined to VOIP, it also recognised that all network operators had incentives to engage in differentiation practices.

In the UK, significant progress has been made to mitigate the risk of discriminatory practices through a Government-brokered self-regulatory code. Nonetheless, while the majority of major ISPs are signatories, some remain outside the code. The enforceability of the code and the robustness of current Ofcom powers have also been questioned.

The BBC therefore welcomes the Commission’s *Connected Continent* Regulation proposals to safeguard an Open Internet across Europe. The proposals could help reinforce the UK code and clarify NRA powers. In particular, we welcome the distinction made between ‘internet access’ and ‘specialised’ services, and the ambition to prevent the latter from impairing the former. We also welcome provisions which aim to prevent blocking, slowing down, degrading and discriminating against CAPs.

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13 As recognised by the High Level Group on Media Freedom and Pluralism.
Content Financing

(Q4) Do the current AVMSD requirements provide the best way to promote the creation, distribution, availability and market appeal of European works?

(Q5) 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?

14. The AVMS Directive provides Member States with an effective toolkit to support EU works. This is reinforced by other EU initiatives such as the Creative Europe programme. Market-led investment has the potential to grow. The thriving independent sector is playing an increasing role. Convergence has also resulted in new actors who are able to invest in EU works. Alongside the oft-touted examples such as House of Cards on Netflix, pay TV operators such as BSkyB have announced significant additional investment in content, such as Sky Arts which provides high quality content to an appreciative but restricted pay-tv audience.

15. Globally international subscription revenues have enjoyed robust growth of 10.5% compared to 0.2% decline in TV Licence revenues between 2007–12. This trend is reflected in the UK, where BSkyB for example has increased revenues by 60% over the same period to £5.5bn in 2012, compared to the BBC’s £3.7bn licence fee income.

16. However, despite those trends, investments in domestic content by new players remain small in comparison with investment by PSBs. In the UK, PSBs remain responsible for 90% of investment in UK originations and the PSBs’ channels attract the majority of audiences even on pay platforms. EBU research has found the BBC to offer the highest level of originations (whether in–house or commissioned) in Europe. This is in part due to the BBC’s long–term strategic commitment to invest in UK content and minimise acquisitions and US imports. Even factoring in pledges such as those of BSkyB, industry forecasts suggest the UK PSBs will still be responsible for c.80% of UK originations by 2016.

17. Overall, the single biggest intervention in favour of investment in a diverse range of EU content is therefore ongoing support for PSB. There exists a virtuous circle between PSB content investment, its universal availability and findability on different platforms, and its widespread consumption. Measures to future–proof the availability and findability of

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15 Ofcom International Market Communication Report 2012
16 Screen Digest, Zenith Optimedia 2013
PSB content support content investment. We return to these themes in our response to question 16.

(Q6) *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?*

18. The BBC welcomes the support the EU has shown for open and common standards and is committed to supporting such open ecosystems through its BBC Charter & Agreement commitment to: “*Do all that is reasonably practicable to ensure that viewers, listeners and other users are able to access the UK Public Services that are intended for them, or elements of their content, in a range of convenient and cost effective ways which are available or might become available in the future*”\(^{17}\).

19. The BBC is a major investor in the Research & Development of standards and regularly publishes White Papers to share its findings with industry and the public. In 2011/12, a total of approximately £12 million of benefits flowed to other broadcasters and firms as a result of the work of BBC R&D.\(^{18}\) BBC knowledge transfer and partnership is evident in its contribution to trade and standards bodies from DTG, EBU, NEM, MPEG, HbbTV and Digitag to DVB, ETSI and W3C. The BBC also helps represent organisations in the ITU. BBC R&D has helped develop the standards behind advances as diverse as analogue (eg Teletext, Nicam) and digital TV (eg DVB-T2, subtitles, audio description) and most recently the HEVC compression standard. BBC R&D is an active contributor towards the development of Internet standards.

20. In our view, industry-led initiatives tend to be effective at resolving standards issues arising for new technologies. While the proliferation of standards and devices leads to some additional costs in versioning content, these costs are not sufficient to justify the risk to innovation posed by any significant regulatory intervention. However, we recognise the potential of the EU Horizon 2020 research programme to add valuable support to industry efforts on converged platforms and on interoperability. We would encourage the Commission to consider the strong economic and general interest benefits promoted by the EU audiovisual sector in its allocation of research funding.

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\(^{17}\) Section 12(1) of the BBC Agreement

(Q7) 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?

21. A competitive platform market is essential for providing the best outcomes for consumers and the public interest. Competition, innovation and efficiency in EU markets are spurred on by DTT, a crucial counterweight to platforms which offer exclusively pay TV services. A report by Deloitte\(^\text{19}\) in 2011 illustrated the impact on competition in six EU countries if the DTT platform was not present. In all cases the impact was shown to be significant, with a marked reduction in competition predicted.

22. DTT is Europe’s most popular platform. It is in 40% of homes\(^\text{20}\) in the EU and is even more popular in the UK where it is in three-quarters of homes. DTT is popular with consumers not only because it is free at the point of use, but also because it can keep pace with their demands. Audiences increasingly expect features such as higher definition, catch-up TV and +1 services all of which the DTT platform can deliver without a subscription. The UK is embracing complementary technologies such as IP-connectivity through YouView and exploring technologies such as eMBMS in case demand for mobile broadcasting emerges.

23. Unlike other platforms in the UK, the availability of DTT to consumers is near universal. This universality, combined with its subscription-free status, ensures DTT plays a vital role in ensuring media pluralism and in ensuring access to moments that bring the nation together. It is the only platform that provides low cost and universal access to PSB services in the UK.

24. It is of course important to consider how effectively other platforms could meet consumer demand; and whether there are opportunities to free up valuable spectrum in a way that minimises disruption to viewers. In a detailed assessment of the platform, Ofcom determined that there was little prospect of cable, satellite or IPTV being a viable alternative to DTT

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\(^{19}\) The impact of DTT within Europe, Deloitte, 8 July 2011
\(^{20}\) E-Communications Household Survey, August 2013
until at least c. 2030. And the 2012 Radio Spectrum Policy Programme noted that DTT is "still the most economical platform for mass-distribution". While DTT alone does not of course deliver the interactivity and return-path benefits of IP-distribution (discussed passim), its one-to-many efficiency is indispensable in catering for peak concurrent usage.

25. Overall, broadcast services via the DTT platform deliver strong economic and social value; moving these services to alternative platforms would involve significant cost and disruption to viewers. Any case for change would need clear evidence of the costs and benefits involved and would need to take into account the considerable costs of transition and the impact on consumers.

26. The case for additional spectrum for 4G and 5G has been overstated in recent years. First, previous predictions of an explosion in data growth have been shown to be exaggerated. Recent research by Analysys Mason based on data from European regulators found that the much-quoted Cisco forecasts overstated forecast total data volumes by a factor of three. Second, even this downgraded data growth does not equate to growth in demand for UHF spectrum. In particular, the role of Wi-Fi in meeting data growth has been underestimated. Requests from iOS mobile devices to the BBC’s catch-up TV and radio service, BBC iPlayer show that 92% of plays were requested via Wi-Fi compared to just 8% via 3G. This data suggests that demand will increasingly be met by Wi-Fi, not by 4G or 5G. Spectrum for Wi-Fi can be met by higher frequencies than the UHF and has a lower opportunity cost.

27. Overall, any economic case for moving DTT from UHF spectrum would need to conclusively demonstrate that all of the costs involved in displacing broadcasting services were exceeded by the benefits of releasing the frequencies for alternative mobile uses. These costs would be significant and would include infrastructure changes, consumer disruption as well as other commercial costs relating to broadcasters’ legitimate expectations to access the frequencies used to support the DTT platform.

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23 Based on an average week for the month of February 2013. iOS requests represent 85% of all requests from mobile devices.
28. We suggest the following objectives must be met by any future proposals:

- Any future clearance of broadcasting from the 700 MHz band (694–790 MHz) should be accompanied by early certainty that full support and funding for both viewers and industry from Member States will be given and approved, consistent with the principles set out in the Radio Spectrum Policy Programme;
- This must be accompanied by strong assurances on the long-term continued use of 470–694 MHz for DTT to enable decisions to invest in the platform. In particular, the EU should seek to ensure that Agenda Item 1.1 of the 2015 World Radiocommunications Conference does not result in a mobile allocation in the 470–694 MHz band. The precedent of the 700 MHz band at WRC–2012 demonstrates that conferral of co–primary status will likely be more than a mere enabling measure and could have serious consequences for DTT; and
- Any proposal for better coordination and consistency of authorisation conditions for wireless broadband across the EU should not override Member States’ legal safeguards to take account of particular general interest objectives such as cultural diversity and media pluralism.

(Q8) What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme making and special events) carried in the same frequency bands?

29. Spectrum frequencies are licensed to ensure that services do not cause harmful interference into each other. Based on current technology, the evidence is clear that terrestrial broadcasting and mobile broadband services cannot co–exist in the same frequencies without such interference. There would therefore need to be significant technological development to enable spectrum sharing and any approach would need to observe the principle of minimising the risk of harmful interference to the primary spectrum use (i.e. DTT).

30. Research and development of technologies in this area is very welcome and white space device technology has potential and should be pursued. By using the interleaved spectrum in the UHF broadcasting bands, highly

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24 See Recital 18 and Article 6.5
25 Included in the framework of Directives 2002/21/EC and 2002/20/EC as well as Decision 243/2012/EU (RSPP)
efficient use of spectrum can be achieved in line with the European Commission’s initiatives to promote spectrum sharing and dynamic spectrum access. The technology would also enable wireless microphone use of spectrum, albeit more suitable for licensed PMSE use.

31. Although, the demand for a mobile viewing experience is not proven (with consumers showing a preference for downloading over a fixed or wifi connection rather than streaming) mobile broadcast receivers could be developed to meet any future demand. The BBC is working with industry partners to investigate the development of an eMBMS standard for such receivers which could be deployed in mobile handsets and provide an alternative to IP delivery of broadcast content.

32. Beyond this, we are aware of some support for a form of infrastructure convergence to facilitate co-channel spectrum use between broadcasting and mobile, but we are not convinced that it is either technically possible or commercially viable. Without more evidence, it is difficult for the BBC to have a fully informed opinion on this suggestion. We would caution against any regulatory action that actively promotes this option in the absence of evidence on two counts, namely that:

- This could work technically or be viable commercially; and that
- There is excess demand for services that wish to use this spectrum – in particular those frequencies between 470–694 MHz.

33. In addition, it is unclear whether any form of converged networks would be consistent with the ongoing use of wireless microphones. PMSE are a critical input to content which is highly valued by both broadcasting and mobile broadband and their future must be safeguarded.

(Q9) **What specific research needs with regard to spectrum have to be addressed to facilitate such development?**

34. In terms of white space technology and eMBMS, there are already significant research and policy discussions taking place in which the BBC is actively and constructively involved.

35. If infrastructure convergence is to be properly considered as an option, we suggest proposals would need to be informed by three areas of research:
• Technical – to determine whether infrastructure convergence can work, not only in terms of interference management, but also whether it can meet the significant network demands of a mass broadcasting audience. We would be keen to assess any emerging technical proposals;
• Commercial – existing operators are tied into long term DTT contracts and would need to end these and (likely) incur major infrastructure investment costs; and
• Strategic – policy makers will need to assess the impact on consumers and the level of consumer demand for such a move to determine whether it is sensible to displace an existing, successful service.

Scope of Regulation

(Q10) 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 audio-visual media services?

(Q11) 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?

36. Convergence clearly has the potential to challenge the graduated approach to regulation as the lines blur:

• Connected TV brings together highly-regulated broadcast content and largely ‘unregulated’ internet content on the same screen; and
• The distinction between ‘push’ and ‘pull’ media could become less clear as user interfaces are increasingly seamless.

37. In this evolving environment, audience expectation should continue to guide the approach to content regulation. Regulation should be proportionate to audience consumption and realistic, with the highest level of regulatory scrutiny focused on areas with most audience impact. It should also deal with the most serious causes of consumer harm.

38. As discussed in our response to question 1, the vast majority of the consumption of audiovisual content remains linear TV – and this is likely to be the case for some time. Linear TV also remains the most regulated medium, with substantial public interventions in the form of PSBs and
independently regulated broadcast standards. Levels of satisfaction at its regulation remain high. In the crucial genre of news, TV is the most trusted medium and rated higher than any other for key attributes such as accuracy, impartiality and independence. By contrast, general audience perceptions of internet regulation are less favourable: 23% believing it is ‘about right’ compared to 74% for TV. Online content is less trusted and its news provision is rated lower than that for TV with the sole exception of “gossip and rumour”. While many examples of high quality online news and audiovisual services belie this general finding (from those of PSBs themselves to many newspaper websites), it nonetheless gives a snapshot of what audiences expect and seek from different platforms.

39. As far as the BBC is concerned, convergence is already built into our regulatory framework: the BBC Trust upholds a common set of editorial standards and guidelines across all BBC content, regardless of platform. Regulation only differs by platform where linear standards such as the ‘watershed’ cannot be applied to digital content (and in these cases the BBC has developed a different approach to compensate, see our response to question 21 for more details). This is appropriate for a publicly funded organisation from which audiences expect higher standards than any other media provider.

40. Overall, the BBC is not aware of strong evidence of market distortions such that an immediate revision of the AVMS Directive is required. In particular, we do not support a crude ‘levelling up’ or ‘levelling down’ of regulation across linear and non-linear services. Nor do we yet see the case for expanding the scope of the Directive in order to ensure more services are subject to its obligations. The graduated approach remains broadly appropriate. Given the pace of change and complexity, effective self-regulatory models and a greater focus on industry-led initiatives are likely to be the most effective in securing public policy outcomes.

41. Nonetheless, in the medium-term, monitoring is likely to be necessary to detect any market distortion between linear and on-demand services, and between services in and out of scope of the Directive. It will also be necessary to monitor any changes in audience perceptions in response to

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26 YouGov May 2012, Ofcom made a similar finding of 77% of parents agreeing that there was about the right amount of TV regulation (Ofcom Media Tracker Survey, 2012).
27 Kantar Media research for Ofcom, 2012 slide 20
convergence. These issues are explored further in our response to questions 21, 22, 23 & 24.

(Q12) What would be the impact of a change in the audio-visual regulatory approach on the country of origin principle and therefore on the single market?

42. The BBC supports the country of origin principle and can see no immediate case for change. The principle is well established and provides certainty for providers of audiovisual media services across the single market; while respecting the variations in regulation caused by cultural differences in each Member State. While we recognise the challenges presented by content derived from outside of the EU (aspects of which are discussed further in response to question 20) we do not consider a change to this fundamental principle is necessary or desirable.

(Q13) 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?

43. One of the consequences of convergence is that a wider range of actors are present in the media and audio visual landscape with potential to influence media consumption. The role of digital intermediaries is likely to become increasingly important (as discussed in our response to question 15). The special characteristics of media and the role it plays in the cultural and democratic life of citizens in the EU warrants different treatment from more general economic regulation. We therefore support the principle set out in Article 4(8) of the AVMS Directive which gives it primacy in the event of any conflict with the E-commerce Directive.
Media literacy and plurality

(Q14) What initiatives at European level could contribute to improve the level of media literacy across Europe?

44. The BBC welcomes the importance placed on media literacy by the European Commission. Media literacy has been an important part of the BBC’s educational mission – from its role in putting BBC Micro computers into classrooms in the early 1980s to its recent First Click campaign which reached over 31 million viewers and listeners with a simple message aimed at getting ‘offliners’ online.

45. Our sixth public purpose commits us to deliver the “benefit of emerging communications technologies and services” to the public and we do this by (among other things) working in partnership with other organisations to help audiences understand and adopt emerging communications technologies and services. We are a founding member of Go ON UK, a cross-sector charity to encourage and support people, businesses and charities to enjoy the benefits of being online. Our experience suggests that locally tailored and targeted solutions generate the best results (eg our Share take Care campaign as described in our response to question 21 below) and we strongly support the sharing of best practice and principles at EU level.

46. Now more than ever, in an increasingly converged world, citizens and consumers need highly developed media literacy and digital skills to access, navigate and critically assess media services. Consumers will need enhanced skills to navigate the digital TV landscape as it becomes more complicated with the potential for content gateways to influence choice and personalisation increasing the potential for ‘filter bubble’ effects.

47. BBC commissioned research demonstrates this need for enhanced skills and has led to us launching a new Media Literacy Strategy in June 2013 committing to:

- Work in partnership to provide clear messages around benefits of emerging technologies and building digital skills and confidence of those newly online or lacking confidence;
- Help all of our audiences develop the media literacy skills and confidence required to better understand the media environment, including how content is made, presented and accessed;
• Help parents and children understand and manage the risks associated with online activity (BBC Webwise\textsuperscript{28} is another example); and
• Encourage new creative talent and audiences to experiment creatively with digital media in order to contribute to the BBC's output and participate in wider society and engage within and across communities of interest (eg. BBC Fresh Online\textsuperscript{29})

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\textbf{(Q15) Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to public intervention at EU level?} \\
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48. New ways of accessing content, while contributing to media plurality and service innovation, also creates gatekeeper risks. Analysis in a recent report by the Reuters Institute \textsuperscript{30} noted that ‘digital intermediaries’ such as search engines, aggregators and social media could: become distribution bottlenecks; distort future economic models; take editorial-like decisions; and influence the political agenda.

49. Given the undoubted audience benefits and rapid evolution of online business models, the BBC does not see a case for a general EU regulatory intervention in respect of digital intermediaries. However, the Reuters Institute report sets out a range of possible measures at EU and UK level including a “plurality dialogue” involving Government, intermediaries and other stakeholders to encourage self-regulated best practice. These measures merit consideration in order to allow policymakers to keep this fast-moving area under review.

\textbf{Access and prominence}

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\textbf{(Q16) 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’?} \\
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\textsuperscript{28} \textit{http://www.bbc.co.uk/webwise/0/}

\textsuperscript{29} Fresh Online is a new BBC online space for short form documentary films. It focuses on finding the voices and directors of the future by giving upcoming factual filmmakers an opportunity to showcase their work on a BBC platform.

\textsuperscript{30} \textit{https://reutersinstitute.politics.ox.ac.uk/fileadmin/documents/Publications/Working_Papers/News_Plurality_in_a_Digital_World.pdf}
Earlier in our response we have highlighted the economic and cultural importance of PSB. The success of this high quality, distinctive content relies not just on its production, but also on providing opportunities for as many people as possible to consume it. This means that programming should be widely available on platforms and easy to find in user interfaces and EPGs. Easy access to public service content meets audience expectations and helps reinforce the virtuous circle of investment that leads to its creation. The combination of access and prominence rules in national and European legislation are critical to maintaining this virtuous circle and they must keep pace with changing technology and audience behaviour.

First, the regulatory framework must be capable of ensuring universal access to PSB content can be secured across existing and future platforms that are used by a significant number of end-users to consume audio-visual content. Our view is that the existing framework may need to be updated in order to ensure that the objective, which lies at the heart of Article 31 of the Universal Service Directive (USD) and Article 6 of the Access Directive, can continue to be met in view of increasing convergence and technology changes. It is important that the current provisions and definitions, including of Electronic Communications Networks (ECNs) for the purposes of Article 31 USD, can adequately capture existing significant platforms.

As an example, connected TV services present new circumstances which Article 31 and Article 6 may not be capable of addressing. They enable easy access to linear and non-linear content and services without the capacity constraints of traditional broadcasting. Several different entities may be responsible for the different elements of a connected TV service/platform and the regulatory framework needs to be capable of ensuring that access can be achieved.

Similarly, it is worth considering whether and how existing regulation should take account of the trends towards mainstream consumption of on-demand content. The current access provisions appear to relate to linear services only.

It is, therefore, necessary to consider the case for updating the scope of Art 31 USD to (a) refer to television services generally (i.e. not limited to 'broadcast' or 'linear'), and (b) allow the imposition, if necessary, of 'must carry' obligations not just on operators/providers of an ECN but also
operators/providers of services/facilities which provide the final point of access by users to those services. The intention of this would be to capture the EPG or User Interface as a point of access.

55. Second, the regulatory framework must ensure prominence or findability of PSB content. Recent announcements by the UK Government[1] are a helpful step towards updating existing prominence rules in the UK and do not require any change to EU law.

56. Finally, it is important that the value public service content brings to platforms can be taken into account in the calculation of fees for access to those platforms. In the UK, PSBs are charged for access to the Sky platform under the TPS regime, but PSBs are not remunerated despite accounting for over c55% of viewing on the platform. We are currently engaged in commercial negotiations to reach a solution. Regulatory solutions may also need to be considered at either a UK or, if necessary, EU access regulation.

Protecting children from inappropriate content

(Q20) Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?
(Q21) 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?
(Q22) What measures would be appropriate for the effective age verification of users of online audiovisual content?
(Q23) Should the AVMSD be modified to address, in particular, content rating, content classification and parental control across transmission channels?

57. There is an important debate to be had on the balance between personal responsibility and increased regulatory protection in a converged world. The Green paper points to the challenges associated with the relative ease of access to adult and other inappropriate material online. In the UK, the Bailey Review—a major report on the commercialisation and sexualisation of childhood— noted that serious concerns had been raised “about what is seen as the ease of access to age-restricted and adult material on the

internet and through video-on-demand services, some of which allow unchallenged access to pornography.\footnote{Letting Children be Children” Report of an Independent Review of the Commercialisation and Sexualisation of Childhood by Reg Bailey June 2011}

58. Much of the content that causes concern is outside of the Regulatory regime created by the AVMS Directive – either because it is derived from outside of the EU or because it is user generated. The Authority for Television on Demand (ATVOD) the UK Regulator for video on demand services notes that a list of the top 100 websites visited by people in the UK includes five sites offering free hardcore material without any access controls; and no UK regulated pornography service features on the list.\footnote{ATVOD, written evidence to House of Lords’ Communications Committee Inquiry on Convergence, 2012} Network level filters and ‘safe search’ technologies can be useful in helping prevent children from accessing inappropriate material. However, these technologies are not failsafe and present new risks from unintentional blocking or third party censorship of legitimate content. In addition to ongoing support for enhanced media and digital literacy, new approaches should be explored to tackle services which fall outside of the AVMS framework.

59. For services that fall within the AVMS framework, rigorous enforcement is necessary before any consideration is given to the extension of that framework. Recent measures set out by the UK Government\footnote{Connectivity, Content and Consumers: Britain’s Digital Platform for Growth’ DCMS July 2013} working in partnership with ISPs and others demonstrate that a combination of responsible behaviour on the part of companies and self-regulation can be speedier and more effective than legislation.

60. In this uncertain online environment, PSBs provide a trusted space. They act as a safe destination online and provide editorial content which prompts discussions between and among parents and children about online safety. While PSBs only offer content of the highest editorial standards, they nonetheless ensure parents and children have the tools to ensure access to that content is appropriate to the age of its viewers.

61. In the UK, the BBC has promoted industry best practice in content labelling and parental locks. BBC parental tools for iPlayer are effective across all platforms/devices and has been adopted by the UK’s other PSBs, accounting for c60% of legal VOD viewing.
62. On BBC iPlayer long form text labels alert users to the appropriateness of its content. These are supplemented by a prominent G for Guidance symbol indicating when a programme contains content which might not be suitable for children. Audience research for BBC iPlayer showed that users find labels such as “contains scenes which some viewers may find disturbing” most useful when compared with other systems e.g. Age rating, symbols and short hand initials.  Ofcom research has also found that long form text labels are more appropriate than age ratings for VoD, with 46% favouring long form text labels and only 13% favouring age ratings.

63. The BBC parental lock, when activated, stops any programme with a content label, (“G for Guidance”) from being played on that device without a password. Users are shown a prompt screen inviting them to set up the lock the first time they try to play on-demand content with a content label, alongside other routine prompts such as a padlock indicating whether the lock is on or off.

64. Raising awareness is an important part of the efficacy of any parental tools. To help spread awareness of the iPlayer parental lock, BBC1 and BBC2 ran on air trails in peak time about the parental lock in 2010/2011 to an audience of more than 35 million.

65. With the support of such initiatives, the percentage of all iPlayer users who are aware of the iPlayer parental lock has grown over time from 35% to 50%. While use by all iPlayer users remains steady at 6%, the reasons for non-use by parents often reflect an exercise of parental judgment as well as choice from a wide range of online and offline techniques. Low levels of take-up should not be construed as lack of parental responsibility. Reasons given for not using the parental lock on iPlayer are typically that children are too young and don’t know how to use it; that parents and children watch together; that parents and children talk about what programmes are suitable or that children are too old to need parental guidance.

66. PSBs' also use their audience understanding, reach and brands to drive awareness of wider online safety issues. BBC media literacy work includes

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33 "Taste, Standards and the BBC", 2009
34 Ofcom Media Literacy Research
campaigns and bespoke programming targeting young audiences such as used for the Share Take Care campaign developed with the Safer Internet Centre.\(^{35}\)

67. Overall, the BBC believes that approaches to content rating, classification and controls should focus on enabling understanding and choice, being in the first instance industry-led and informed by user expectations. While such expectations should be monitored as convergence progresses, at present it is not evident that AVMSD need be amended.

\[\text{(Q24) Should users be better informed and empowered as to where and how they can comment or complain concerning different types of content? Are current complaints handling mechanisms appropriate?}\]

\[\text{(Q25) Are the means by which complaints are handled (funding, regulatory or other means) appropriate to provide adequate feedback following reports about harmful or illegal content, in particular involving children? What should be the respective roles / responsibilities of public authorities, NGO's and providers of products and services in making sure that adequate feed-back is properly delivered to people reporting harmful or illegal content and complaints?}\]

68. The BBC has well established and transparent mechanisms for acting on complaints. Every year we receive over 1 million comments, appreciations or enquiries about BBC programmes. We value this feedback and compile a redacted overnight report of the previous days’ reactions and circulate it to BBC staff. This ensures feedback reaches the right people quickly. We email or post over 90% of replies within 2 weeks and give people the opportunity to take the issue further if not satisfied. The BBC is transparent where User Generated Comments on our website is moderated, giving users a reason and offering them a right of appeal. Licence fee payers’ recourse for complaints about BBC programming is published in a regularly reviewed Complaints Framework.\(^{36}\)

69. Action has also been taken across the media sector in the UK to improve visibility of complaints processes through the creation of Parentport (http://www.parentport.org.uk) a single website to make it easier to complain about any programme, advert, product or service. A consortium of media regulators, including the BBC Trust, launched the website in October 2011. Early user tests found that 96% would recommend Parentport to others and 94% rated the ease of making a complaint to

\(^{35}\) http://www.bbc.co.uk/mediacentre/latestnews/2012/share-take-care.html

\(^{36}\) http://www.bbc.co.uk/bbctrust/governance/complaints_framework/framework.html
regulators as excellent, very good or good. We therefore do not consider that any further steps are necessary in the UK, though circumstances may be different in other Member States.

70. For illegal content such as reporting of child abuse pictures, the BBC believes the Internet Watch Foundation (IWF) plays a crucial role. The IWF hotline, which is confidential and can offer anonymity, allows the reporting of:
   - Child sexual abuse images hosted anywhere in the world;
   - Criminally obscene adult content hosted in the UK; and
   - Non-photographic child sexual abuse images hosted in the UK.

71. Like the EU and other member companies, the BBC contributes to the funding of the IWF. We welcome recent proposals by the UK Government that the IWF take a more proactive role.

**Accessibility for persons with disabilities**

(Q26) Do you think that additional standardisation efforts are needed in this field?

(Q27) What incentives could be offered to encourage investment in innovative services for people with disabilities?

72. The BBC is committed to making its broadcast and online services as accessible as possible to all licence fee payers. As an institution founded on public funding and universal availability, we believe it is appropriate that audiences with disabilities expect and get more from the BBC than other audiovisual providers. As a result, we offer:
   - 100% of programmes on the BBC's main channels with subtitling;
   - A range of signed programming, including a scheduled Sign Zone, See Hear (a programme made by and for the deaf community) and regular signed News; and
   - Audio description available on 20% of our main channel programming by 2015
   - Significant R&D investment in innovations to make content ever more accessible

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37 The Consumer Experience, Ofcom, December 2011
38 Connectivity, Content and Consumers: Britain’s Digital Platform for Growth’ DCMS July 2013
73. iPlayer supports provision of subtitling, audio description and sign language. Subtitling on iPlayer is available on all devices (including mobile, tablet, set-top boxes), apart from those devices where it is not technically possible to deliver them. Where there are issues with the technology, we try to work with hardware manufacturers to see if a solution can be found.

74. In a recent Eurobarometer survey, the UK had the highest level of agreement that “existing rules on accessibility in our country are sufficient to ensure people with disabilities good access”\(^{39}\). In part, this is because of the commitment of public service broadcasters and the high benchmark we set for the rest of the industry. As noted by EPRA, progressive targets – as used in the UK – are a useful mechanism for increasing provision. Where possible, the BBC seeks to share its experience in providing access services with actors in other member states.

75. Beyond the PSB offers and requirements in the UK, increased awareness of the services available through different suppliers could provide additional incentives to invest in them. For example an approach similar to Parentport could be designed to inform members of the disabled community on a variety of issues, including:

- Listing compatible devices and key services to inform consumer choice;
- Providing information on access services made by digital content providers (in addition to broadcasters) to inform decisions such as subscriptions; and
- Acting as a one-stop shop for complaints, with advice on how to ensure that feedback is effective. For example with broadcast output, there are a range of details that it is useful for users to inform broadcasters about within a complaint, such as the device used, the time of transmission, or whether it was HD or SD.

As with Parentport, a cross-industry approach offers benefits without regulatory intervention.

ENDS

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\(^{39}\) Eurobarometer 2012
Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values

British Sky Broadcasting Group plc (‘Sky’) Response

Executive Summary

The audio-visual industry makes a meaningful contribution to Europe’s economic and cultural success. This sector helps drive investment, revenue and job creation. It is also a crucial component of European culture, producing content that reflects the diversity of citizens’ experiences. Convergence presents an opportunity for market players to maximise their potential through new and innovative services, contributing further to Europe’s future global competitive advantage.

Sky is a customer facing company that understands how to entertain and inform viewers. We place our customers’ needs at the heart of everything we do, and serve these needs through investment in quality content and innovation, amongst other things. This customer-led philosophy is a key factor in Sky’s success, and is our starting point for considering the impact of convergence.

Sky believes that serving consumers with content that they value, and providing them with the technology that allows them to maximise that value, are key measures of success. And a dynamic audio-visual sector that provides consumers with choice and innovation is best supported through a commitment to market-based competition. The Commission should recognise the foundations on which existing investment in this sector is made, which enables it to compete in an increasingly global market place, and put in place the conditions for sustained future investment and innovation to serve consumers. Measures should include:

- **Ensuring that risk-taking content creators can continue to invest in high quality content by retaining control over their intellectual property.** Certainty about content rights, combined with the flexibility to exploit them in new environments, is an important determinant of whether firms risk investing in content that consumers value and that is culturally relevant. Further investment in European content is best supported by a framework that enshrines choice and allows different business models to compete on the merits. Content owners should be free to choose how to distribute and monetise their intellectual property.

- **Keeping regulatory burdens to a minimum to facilitate innovation and investment.** Consumers have access to more content on more platforms than ever before. Given low barriers to entry, rapid innovation and increased consumer choice, the audio-visual sector should be understood as a highly competitive industry where investment, innovation and competition have consistently served consumers well. There is no evidence that substantially greater ex ante regulation is required as a result of convergence. In fact, all the evidence of market dynamism suggests that the need for regulatory intervention has reduced, and that such intervention can be counter-productive.
- **Recognising and supporting the different roles that content providers and intermediaries can play.** As convergence continues, policymakers must strike an appropriate balance between regulation and industry initiatives. Consumer focused companies like Sky are meeting customers’ expectations by providing tools to get the most out of what convergence can offer, confidently and safely. Policymakers in this area can fulfil an important role too, by encouraging best practice and facilitating solutions between responsible firms. Commissioner Kroes’ activities in relation to the Better Internet for Children strategy serve as a good example of the effective progress which can be made by such approaches.

- **Retaining a sensible, practical boundary for AVMS.** Extending regulation to audio-visual services that are not ‘TV-like’ does not, on balance, appear necessary or practical. In Sky’s experience, consumers are able to distinguish effectively between long-form, professional content (whether provided via linear or non-linear services), and content of a different format (e.g. web delivered user-generated content). Customers have clear expectations when accessing content from a trusted brand such as Sky, regardless of the regulatory environment. Companies are therefore incentivised to adopt appropriate standards to meet these expectations.

- **Protecting investment through maintaining the County of Origin principle.** The Country of Origin principle remains a crucial measure that provides broadcasters and other audio-visual media service providers with the certainty they require to deliver cross-border services in a converged audio-visual environment. It is also an important component in attracting inwards investment into the EU.

- **Moving towards a co-/self-regulatory regime for all TV-like content.** Convergence reinforces the case for examining whether co-/self- regulatory models would be more appropriate ways of regulating standards of all TV-like content. As consumers increasingly take choice into their own hands and competition from new platforms and international players grows, formal obligations could be steadily reduced and the reliance on competition between brands for consumers’ trust increased, supported by industry-agreed standards.

- **Relying on market mechanisms to deliver public policy goals on media freedom and pluralism.** Commercial imperatives on issues of content distribution and discoverability are likely to be mutually beneficial. Creators want their content to be available to the widest possible audience, while platform operators want to ensure a high-quality channel line-up in order to attract customers. Sky is therefore confident that market forces will deliver positive outcomes for consumers in relation to these issues without the need for regulation. However, if policymakers consider that it is necessary to oblige platform operators to take prescriptive steps in relation to discoverability and carriage of public service broadcasters, then it is critical that this intervention is coupled with additional measures – ones that ensure that the content in question is made readily available to all platforms, including new and innovative services on a non-discriminatory basis.
1 Introduction

1.1 Sky welcomes the opportunity to respond to the European Commission's green paper on Preparing for a Fully Converged Audio-visual World (hereafter "Green Paper").

1.2 Like the Commission, we consider that convergence can be a force for economic growth and innovation in Europe. As a customer facing business, we also consider that the cultural values on which consumers place importance should continue to be protected in a converged world. Both of these objectives are best supported by a clear, consistent and proportionate regulatory framework that gives businesses the certainty and incentives they need to invest and innovate.

Sky is a multi-territory media company with a commitment to our customers

1.3 Sky is a multi-territory media company, and, as such, we are particularly well placed to comment on the ongoing changes in how audio-visual services are consumed and delivered. We offer a diverse set of services, and retail over 30m paid for subscription products\(^1\) in the UK and Republic of Ireland:

- As a content producer, we invest significant amounts on screen. We invest over £2.4bn every year in programming on news, sport, entertainment and movies. Around two thirds of Sky’s total content spend is invested in the EU. In 2014, we will spend around £600m on original European content and production (excluding spending on rights) across all our channels, an increase of over 50% from 2011. We create content via a variety of different routes, working with over 130 independent producers and co-funding many productions with other European and international broadcasters;

- As a pay TV retailer, we deliver services to over 10.4m subscribers. These services include linear channels, PVR capabilities and on-demand programming (catch-up, libraries and pay-per-view). 5.9m of our customers access content in new connected ways, either through connected set-top boxes or through taking advantage of content delivered on a mobile basis, via the Sky Go streaming service. 2.7 million Sky+HD boxes are connected to the internet, providing our customers access to the UK’s largest catch-up TV service. We serve 4.5m weekly downloads on average (up fivefold year on year), and 3.5 million movie transactions. We have also launched NOW TV, an internet delivered OTT service providing movies on demand and access to live sports content on a pay-as-you-go basis;

- As an internet service provider, we provide broadband services to approximately 4.9m customers and telephony services to around 4.5m customers (around a third of our customers take TV, broadband and telephony from us). We also offer enterprise Wi-Fi services in over 20,000 hotspots across the UK through The Cloud.

1.4 Sky itself makes a sizeable contribution to the UK economy in terms of GDP, jobs and taxes paid. The business also stimulates economic activity in a wide range of associated companies and industries. In 2013, Sky was estimated to support a £5.9 billion contribution to UK GDP\(^2\), employing over 24,000 people.

1.5 Sky continuously innovates to better serve our customers, and has an enviable history of bringing cutting edge technology to the mainstream market. We launched the UK’s first digital TV service in 1998, put consumers in control of how they watch TV through our ground-breaking PVR Sky+, launched the UK’s first nationwide high definition TV service in 2006 and the first 3D TV sports broadcast in 2009. Our content is available via satellite, cable, IPTV, the

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\(^1\) Sky 2012/13 Q4 results.

internet and terrestrial television platforms; on TVs, smartphones, tablets, PCs and laptops; on Xbox and PS3 games consoles, and via the Roku platform.

The importance of the audio-visual industry to Europe’s economic growth

1.6 A thriving audio-visual industry is important to the success of the European Commission’s 2020 strategy and, in particular, the “Digital Agenda for Europe” flagship initiative.

1.7 The audio-visual sector directly employs over one million people in the EU and is a market of over €120 billion. The bulk of the industry is made up of SME companies - two thirds of Europe’s audio-visual companies employ fewer than 10 people, many of them supported by larger companies such as Sky. The sector also plays a key social and cultural role - TV remains the foremost source of information and entertainment in Europe, with most homes having a television and average viewing of over 3 hours a day.

1.8 In the UK alone, around £13bn flows directly into the audio-visual sector each year, supporting investment in content production of around £4bn a year, and an estimated 132,000 direct jobs in the sector\(^3\).

1.9 Sky considers that growth can be fostered through a commitment to market-based competition as the source of choice, innovation and value for consumers. Importantly, the Commission needs to recognise the foundations on which existing investment in this sector is made, and to put in place the necessary conditions for sustained future investment and innovation.

2 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?

2.1 Technological change has enhanced competition by eroding scarcity in respect of communications and content distribution. As new delivery mechanisms have emerged, barriers to entry have been reduced, and more providers and services have entered the marketplace. Content producers now have multiple platforms over which they can supply their products. More importantly, consumers have an ever-increasing choice over the type of content they wish to consume, and how this is accessed. From linear channels distributed via terrestrial, satellite, IPTV or cable, to new OTT services delivering content on-demand via the internet to a variety of fixed and mobile devices, convergence is undeniably widening the audio-visual sector.

2.2 With the market now characterised by lower barriers to entry, it has become highly exposed to competition from powerful global firms. The successful US companies to which the Green Paper refers thrive in part because they have a large home market, with a single language and common cultural preferences. They have grown their businesses and invested in original

content which appeals to consumers through taking risks, innovating and competing commercially. Their activity has also been built on a proportionate regulatory regime. It is critical that the Commission does not disadvantage European firms by over-regulating.

2.3 An audio-visual framework that serves consumers by supporting European companies looking to invest in content needs to be proportionate and afford certainty. This means:

- ensuring that risk-taking creators can continue to invest in content by retaining control over their intellectual property;
- discouraging and tackling copyright infringement which could otherwise undermine sustained investment and innovation; and,
- keeping regulatory burdens at a minimum to allow innovation and investment.

The importance of intellectual property

2.4 Intellectual property rights are the foundation of the creative economy. As new distribution platforms and windows emerge, certainty about content rights and the flexibility to exploit them in new environments are key determinants of whether to risk investing in content.

2.5 Content owners should be free to choose how to distribute and monetise their intellectual property. That requires the EU to provide a framework that enshrines choice and allows different business models to compete on the merits. This commercial freedom is the basis for the investment and innovations that companies such as Sky make, to the benefit of European consumers.

2.6 Territorial licensing is an integral part of content exploitation strategies: it provides broadcasters the ability to recoup significant and risky up-front investments in original European content. Crucially, it does not preclude industry from adopting EU-wide or multi-territory licensing models where there is a sound commercial basis to do so.

2.7 As such, we do not see any legal barriers to pan-European distribution of content under the existing regime. A number of cross-border content markets already exist, including Sky’s own cross-border business in the UK and Republic of Ireland. Where there is a commercial and legally sound case for pan-European distribution of content it may be that a multi-territorial licence would be appropriate. But in some cases there are legitimate commercial reasons why a rights owner might prefer to license its content to individual countries or price differently between countries, just as in some cases it might want to adopt a uniform approach for the whole of Europe.

2.8 The Commission must therefore ensure that country by country distribution, exclusive licensing and differential pricing remain available to rights owners and distributors of audio-visual content. Mandating a pan-European approach to the distribution of audio-visual content would undermine the incentives of content producers to invest and innovate in the first place, and ultimately harm the domestic European content industries that reflect consumer taste and European culture. Indeed, those companies most likely to benefit from an approach that ignored these factors would be the global US-based companies whose success the Commission seeks to emulate.

Protecting copyright from infringement

2.9 The EU has established a robust copyright regime which supports investment in creative audio-visual content through a high level of copyright protection. This has not only sustained the creative reach of the content industry, but also improved consumer choice and reinforced Europe’s cultural diversity.
2.10 Online piracy continues to be a problem for Europe’s content industries. Sky considers that a robust approach to websites that supply content illegally for commercial return is an essential part of an environment that promotes investment in audio-visual content. These illegal sites are often hosted outside the EU which makes it difficult for rights owners to take enforcement action. The Commission must therefore continue to take a robust approach to copyright enforcement in the relevant international institutions, including the Council of Europe and the World Intellectual Property Organisation.

**Economic regulation must reflect the dynamic and competitive nature of the audio-visual sector**

2.11 The Green Paper asks whether there is a need for regulatory intervention beyond the application of existing competition rules. Sky considers there are no demonstrable problems in the provision of content to consumers that would warrant such an extension of regulation.

2.12 Consumers have more choice than ever before in accessing content. The emergence of OTT on-demand services (including Sky’s own NOW TV offering) alongside traditional platforms has increased competition in an already competitive audio-visual sector. As a consequence, the market is much broader in scope than it once was, encompassing an increasingly wide range of global players that offer a variety of content services delivered across multiple platforms.

2.13 Investment in the creative industries carries considerable risk. When Sky chooses to invest in content, we do so on the basis that we will be able to determine how best to make a commercial return on our investment. These decisions are taken in the context of an ever-wider range of competing content business models, including licence fee funded, advertising supported, subscription, transactional and hybrid models.

2.14 Content owners are incentivised to distribute their content widely, but they must be free to determine how and on what terms it is exploited. It is critical to ensure that the sources of funding for content are sustained and encouraged. No evidence has been put forward to suggest that this approach inhibits competition, or provides bad outcomes for consumers. In fact, the evidence points in the opposite direction.

2.15 The Green Paper highlights assessments carried out by UK regulators regarding access to live top-flight sports and first-run Hollywood movies to which Sky had secured rights. What the paper fails to acknowledge is that neither case resulted in new regulation being imposed on Sky.

2.16 In the case of live sports content, the Competition Appeal Tribunal (CAT) overturned Ofcom’s original ruling that Sky had acted in a way that was prejudicial to fair and effective competition in relation to the distribution of its main sports channels. Ofcom’s analysis and conclusions were heavily criticised, with the CAT finding that a significant number of its pivotal findings of fact were “inconsistent with the evidence”, “unfounded” and “wrong”. The CAT also found that Ofcom had paid too much attention to the views of Sky’s counterparties, and failed to recognise the latter’s “regulatory gaming”.

2.17 In relation to the supply of Hollywood movies on pay TV, the Competition Commission concluded that no intervention was required. In reaching this conclusion, the Competition Commission recognised that, in today’s market environment, movies are no longer the key drivers of pay TV subscriptions that they once were. The Competition Commission’s conclusion also rested on an acknowledgement of the rapid change in the audio-visual sector, particularly with the growth of the ability to deliver audio-visual services to consumers via the internet.
2.18 It is notable that nothing in either case precludes Ofcom from using its existing broadcast competition powers in future. These cases, therefore, cannot be cited as justification for giving regulators additional powers over and above the significant power of competition law. In fact, the ruling in the Ofcom pay TV case shows that the very fact of regulatory intervention can distort the behaviour of market participants by encouraging firms to devote their time and effort to ‘regulatory gaming’, rather than investment and innovation in consumers’ interests.

2.19 Convergence between content and networks has been cited as a reason for a possible change in the approach to competition regulation towards an ex ante ‘utility’ type approach. In reality the two markets remain very different and should continue to be regulated differently.

2.20 Utility-style regulation remains appropriate for a sector like telecoms that is typified by the presence of a dominant former state monopoly with ownership of long-lived non-contestable infrastructure assets, limited innovation, high barriers to entry and slow growth.

2.21 The content sector shows none of these characteristics, growing strongly with increased investment and innovation, and being highly exposed to competition from powerful global firms. Audio-visual intellectual property rights are contestable through periodic auctions. New players have frequently entered the market through this process, most recently in the UK with the launch of BT Sport following the last auction of Premier League rights. The potential emergence of global players offering OTT services means these contests are more competitive than ever before.

2.22 Where products are packaged together in bundles, this does not have any particular implications for the competition regime that should be applied. Products sold in packages normally remain distinct, identifiable products, to which different regulation can apply. Standard competition law is able to deal effectively with competition issues arising from the supply of bundles of products. There is a substantial body of competition case-law related to bundling (and the closely related concept of “tying”).

2.23 Given market conditions of low barriers to entry, rapid innovation and increased consumer choice, the audio-visual sector should be recognised as an industry where normal market incentives predominate and which does not require regulatory intervention in addition to the application of existing competition rules. Applying ‘utility’-like regulation to this market would be directly at odds with the belief that content investment can drive economic growth, and makes no sense given the economic characteristics of the sector.

2.24 The changes that market players such as Sky are responding to all contribute to an increase in competition. In light of this, there is a strong case for examining whether more specific sectoral competition powers (such as those that Ofcom are granted in the UK) remain appropriate, or whether general competition law can be relied on as in other competitive industries.

3 Financing models

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<th>4) Do the current AVMSD requirements provide the best way to promote the creation, distribution, availability and market appeal of European works?</th>
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<td>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?</td>
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3.1 Convergence creates a wider range of distribution opportunities for content. The industry has responded by evolving the ways in which productions are financed. Content creators are looking to share risks and financing through co-production, whether with other broadcasters in different territories or with independent production companies.

3.2 Sky has collaborated on a number of commissions over recent years as we have grown our original productions. For example, series 2 and 3 of *Strike Back*, an award winning action drama, were produced in collaboration with US network Cinemax. This partnership meant the programme benefited from a higher budget, with an increase in the scale of the shoot and the types of action sequences which could be included, directly contributing to its ongoing success. Sky is also collaborating on forthcoming high profile series such as *Dracula* (co-produced with NBC) and *The Tunnel* (co-produced with Canal+).

3.3 In contrast, there are actors in the value chain that do not bear any risk in relation to production investment, but still benefit from the content itself – particularly internet aggregators. Clearly, these services are of considerable benefit to consumers, allowing easy access to and discovery of popular content. But these aggregators often do not have a direct stake in the content itself, even if it is a key driver of consumer use of the service in the first place.

3.4 To ensure that the content which consumers want is created, it is imperative that the European audio-visual framework supports those in the value chain that are actively investing in content. For example, an appropriate balance on copyright exemptions between content producers and intermediary aggregators should be maintained.

3.5 Active investment by content creators should also not be undermined by the introduction of additional regulation that runs contrary to consumer preferences, such as further quotas relating to European works. When companies such as Sky take the decision to invest in original content, we do so on the basis of consumer demand and a prospect of a successful return on investment. In this context, broadcasters will continue deliver European works in even greater amounts to viewers, since it is in their commercial interests to do so.

3.6 As noted elsewhere in this response, Sky has invested heavily in original UK content over the years, and is on course to spend over £600m (excluding spending on rights) in 2014 on this. We have done this not because of public subsidies or regulatory obligations, but because programming of that nature is what our customers want.

3.7 We have also acquired third-party European works where we believe that it matches the expectations and desires of our audience, such as the Italian series *Romanzo Criminale* or the French drama *Maison Close*, both of which broadcast on Sky Arts. This reflects a wider trend within the UK market of European dramas achieving more mainstream success – a trend that has emerged as a result of the preferences of viewers, rather than mandated requirements.

3.8 Further obligations relating to European works could run contrary to viewer expectations and act as disincentives to commercial broadcasters looking to launch and maintain services. The best way to promote the creation, distribution, availability and market appeal of European works is to continue to support those European companies looking to invest in content in the ways described above.

4 **Infrastructure, spectrum and interoperability**

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?
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?

4.1 The ability of platforms to differentiate themselves is a key strength of the European audio-visual sector. The variety of platforms available means that consumers have choice and flexibility in how they consume content. Convergence has increased this choice, to the benefit of viewers.

4.2 Sky and other media companies have used the emergence of new platforms to deliver our content in new and innovative ways that consumers value. In 2007 we were the first pay TV service in the world to launch online delivery of our content. Our ‘Sky Go’ service now brings live and on-demand video content to our customers on PCs, Macs, laptops, mobile devices (such as smartphones and tablets), and games consoles via a broadband or Wi-Fi Internet connection, whether at home or on the go. The service has over 3 million users.

4.3 The Green Paper notes that delivering content to a number of different services or devices may involve a variety of different standards, and asks whether EU action is required in this area. We would note that industry bodies that have been established on an international basis have delivered technical standards with widespread adoption (such as the DVB Project). Any new technological standards should also be the preserve of industry driven initiatives.

4.4 New platforms are likely to emerge as convergence continues. The efficient management of infrastructure (both spectrum and broadband) is needed to support the delivery of services which will underpin growth in the communications market. However, while content can and will play a role in supporting the growth of new distribution platforms, it is important to ensure that infrastructure investment does not take place at the expense of investment in content and services. A balanced approach is required to ensure that incentives to invest in content and services are not subordinated to those of infrastructure, and that the significant differences that exist between content and infrastructure investments are reflected in the regulatory models that underpin them.

4.5 Sky is a heavy spectrum user, with activities ranging across many frequency bands. We use spectrum to deliver our services (via satellite, DTT and Wi-Fi), to create our content (using wireless microphones and cameras) and to connect our customers (through in-home and public Wi-Fi). Our varied use of spectrum makes us well placed to appreciate the tensions between competing applications operating in the same bands.

4.6 The likely continued rapid growth of mobile data traffic is well documented. Ofcom estimates that, under different growth scenarios, mobile data capacity can be expected to experience an 80-300 fold increase by 2030. A material proportion of this increase in demand is likely to be driven by consumers’ desire to access audio-visual content.

4.7 The growth of mobile data traffic cannot just be met by additional mobile services. Around half of the predicted increase in demand is expected to be served by Wi-Fi networks, which already account for over 70% of data traffic.

4.8 Wi-Fi is already an essential component of the mobile data ecosystem. The European Commission estimates that European Wi-Fi networks already carry up to 20 times more
internet data traffic than all cellular networks combined, and Wi-Fi traffic growth is around 4-6 times that of cellular data growth, with 4 out of 5 new wireless technologies using unlicensed spectrum.

4.9 Wi-Fi networks are a cost-efficient approach to data transfer services. There is a lower cost, in general, of deploying Wi-Fi hotspots compared to constructing a macro cell network built using licensed spectrum. As a Wi-Fi hot-spot service provider via The Cloud, Sky is acutely aware of the importance of Wi-Fi in catering for consumers' mobile data demands.

4.10 Congestion and interference are already adversely affecting Wi-Fi performance. Together with recent and forecasted increases in data traffic (including the fact that many other devices such as cameras and TVs have Wi-Fi built in), it is clear that a capacity crunch is looming. Consequently, increasing the amount of unlicensed spectrum should be a priority for targeted action by the European Commission if economic growth is not to be curtailed by cost and availability of mobile data bandwidth. As a minimum requirement, Europe should look to follow the FCC’s lead in freeing up additional spectrum for Wi-Fi use in the 5 GHz and 3.5 GHz bands.

4.11 Sky and others in the UK have undertaken trials which demonstrate that dynamic use of UHF spectrum (in TV white spaces) using geo-location database technology can fulfil a variety of innovative uses and support economic growth. These uses include enhanced Wi-Fi in home and for hot-spots, machine to machine communications and rural broadband.

4.12 Dynamic access allows efficient and innovative use of spectrum. A European spectrum strategy should prioritise making frequency bands (particularly in the UHF band) available on a licence-exempt basis. The EU should also encourage more efficient use of the sub 1GHz band by ensuring legacy networks are incentivised to use the most spectrally efficient technologies.

4.13 Further research in this area should include a comprehensive review of the benefits of making sub-1GHz bands available on a licence-exempt basis – including the implications of reserving frequencies. We would also suggest that coexistence testing between white space devices and existing UHF spectrum users will be critical in developing proportionate protection measures and allowing innovative services to flourish.

5 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 audio-visual 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 audio-visual regulatory approach on the country of origin principle and therefore on the single market?

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4 Presentation by Pearse O’Donohue, Head of Radio Spectrum Policy Unit, DG Infosoc, April 2012. Available at: http://www.cambridgewireless.co.uk/Presentation/CWS-EC_Pearse%20ODonohue.pdf.
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?

5.1 The EU has successfully fostered the potential of the single market by adopting a series of market-enabling measures, starting with the Television Without Frontiers Directive which has subsequently evolved into the Audiovisual Media Services (AVMS) Directive. Any reform of the regulatory regime should seek to preserve the best aspects of these frameworks – promoting choice and flexibility for consumers and businesses alike, to drive jobs, innovation and growth in Europe.

5.2 Convergence has the potential to challenge some of the key building blocks of the AVMS Directive. As services and platforms blur, the regulatory partitions that have been established may no longer be appropriate in the long term, given consumer experience and expectation.

5.3 The challenge for the Commission is to ensure that any changes aimed at eradicating inconsistencies in regulation do so in a proportionate way, acting as enabling instruments for innovation and growth rather than extending restrictions to areas of the market currently afforded more freedom.

Moving towards a co-/self-regulatory regime for content

5.4 The AVMS Directive draws distinctions in the regulation of ‘linear’ and ‘non-linear’ content. The Green Paper asks whether this differentiation causes ‘market distortion’. It is Sky’s view that, while there may be some marginal effects arising from the difference in regulation, content providers will in practice be driven to adhere to similar levels of protection by the need to meet consumer expectation, regardless of the regulatory requirements.

5.5 The disparity between linear and non-linear content within scope of the current AVMS Directive is primarily a conceptual construction of regulation. In practice, consumers are not aware of regulatory distinctions between the two. In part, this is because the vast majority of content that is accessed on-demand has already appeared on linear services, and therefore has already been subject to a regulatory framework. But more generally, viewers simply expect content that has ‘TV-like’ qualities – in production values or duration, for example – to adhere to particular standards.

5.6 In Sky’s experience, consumers respond in a very rational way to companies that they trust to provide them with services they want, understanding that different brands will provide them with different content. Successful mainstream brands like Sky seek to meet expectations around audience protection by ensuring that the content of the programme is appropriate, and that there are means of self-protection available to customers (e.g. PIN protection).

5.7 Convergence creates a case for examining whether co-/self-regulatory models would be more appropriate ways of regulating standards of all TV-like content. Many of the regulatory obligations on platforms and channels stem from a time when there was little choice, virtually no competition and no global internet. As consumers take the choice into their own hands and competition grows, obligations could be steadily reduced and the reliance on competition between brands for consumers’ trust increased.

5.8 In the UK, the non-linear requirements of the AVMS Directive have been implemented through a co-regulatory model, the Authority for Television On Demand (ATVOD). Such an approach could be appropriate for linear content in future.
Retaining a sensible, practical boundary for AVMS

5.9 The AVMS Directive is currently restricted to TV-like services based in the EU. Convergence, and in particular mainstream access to the global internet, has the potential to challenge the existing scope of the Directive, both on the basis of service type and jurisdiction.

5.10 Extension of regulation to audio-visual services that are not ‘TV-like’ does not, on balance, appear necessary. In Sky's experience, consumers are able to distinguish effectively between long-form, professional content (whether linear or non-linear), and content of a different format (e.g. ‘user-generated’ and other web content). The distinction between the choices that are made when accessing the internet and the choices made when receiving a curated editorialised service is very clear, and customers are capable of understanding this difference. Additionally, customers have clear expectations when accessing content from a trusted brand such as Sky, regardless of the regulatory environment, derived from the continuing relationship between provider and customer. Companies are incentivised to adopt appropriate standards to meet these expectations.

5.11 It is undeniable that the open internet contains audio-visual content that could be harmful to consumers. Similarly, there may be some blurring of expectations if devices begin to present open internet content side-by-side with more ‘TV-like’ content, which may well be a future trend of convergence. In these instances, a trusted provider such as Sky will look to equip consumers with appropriate tools and signposts (such as PIN protection and age rating) to help them make choices as to what content they consume and are exposed to. Competition between brands for consumers’ trust is likely to become a reinforcing mechanism for ensuring consumer protection.

Protecting investment through maintaining the County of Origin principle

5.12 For content services regulated by the AVMS Directive, the country of origin principle remains a crucial measure that provides broadcasters and other audio-visual media service providers with the certainty they require to deliver cross-border services in a converged audio-visual environment.

5.13 Having a single country of origin as the point of regulation across Europe allows providers to base their business in whichever member state is most appropriate for their needs. It also reduces the regulatory requirements for these operators by allowing them to deal with only one form of notification, one set of standards and a single regulatory body. This ease of access encourages inward investment in the EU, to the benefit of consumers.

5.14 Changing to a country of reception approach would involve a significant increase in regulatory risk and compliance costs (both for channel providers and platform operators) and would likely reduce the number of cross-border services operating in Europe, to the detriment of viewers and economic growth.

5.15 Concern arises where a cross-border service has to comply with the rules of more than one jurisdiction, and take into account the cultural sensitivities of more than one member state. But successful services are likely to take full account of the expectation of viewers when producing and packaging their content. For example, Sky’s Irish services abide voluntarily with Irish rules regarding elections and advertising, despite being licensed in the UK.

5.16 Where member states continue to receive services which deliberately seek to circumvent their own standards, there are existing routes available to regulators to address this issue, most notably the cooperation procedure outlined in the AVMS Directive.
Recognising the different roles that content providers and intermediaries can play

5.17 The Green Paper asks whether increased convergence in the audio-visual landscape tests the relationship between the provisions of the AVMS Directive and the E-Commerce Directive in new ways and areas. Sky comments on this as both a content provider and an ISP that has considered the interactions of e-commerce and online content in the context of online copyright infringement.

5.18 The E-Commerce Directive establishes limitations on the liability of internet intermediaries for the information which they transmit or store. These limitations reflect the fact that intermediaries do not play an editorial role in respect of content. The Commission’s early assessment of these measures as ‘indispensable to ensuring both the provision of basic services which safeguard the continued free flow of information in the network and the provision of a framework which allows the internet and e-commerce to develop’ remains appropriate. Ascribing an editorial role to intermediaries that requires general monitoring of billions of pages of content would be impractical and disproportionate.

5.19 But there are vital roles that ISPs can and do play in meeting the challenge of protecting audiences from harmful content. Sky has taken extensive steps to equip our customers with the tools to keep themselves safe across all of our communications and pay TV products. We give parents the ability to restrict access using secure PIN controls on our broadcast and VOD services. We also offer all of our broadband customers free parental control software. We do this because it is what our customers expect a trusted brand to deliver.

5.20 Policymakers in this area can fulfil an important role too, by encouraging best practice and facilitating solutions between responsible firms. In this context, for example, we welcome the EC’s interest in achieving a more consistent approach to the functioning of notice and action procedures across Europe. In the UK, the IWF has been very successful at ensuring that intermediaries are informed that they are hosting illegal content so that they are able to act swiftly to remove this. In our view the IWF represents a case of best practice for the speed and effectiveness of its take-down measures.

5.21 Similar initiatives to foster widespread cooperation may be appropriate for other areas of concern that require tackling at a global level. For example, the Commission should seek to play an active role in international bodies such as the World Intellectual Property Office in efforts to reduce audio-visual online piracy.

6 Media freedom 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’?

6.1 Convergence has clear benefits to media freedom and plurality. The internet has reduced barriers to entry, leading to an explosion in the number of news suppliers serving the European market. Consumers have easy access to a multitude of different points of view, through news delivered by broadcasters, newspapers, professional news websites and

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5 Commission’s First Report on the application of Directive 2000/31/EC.
bloggers, as well as the universal plurality offered by social media services such as Twitter and Facebook.

6.2 The Green Paper expresses concern that intermediaries, rather than the content providers, may begin to determine which content is accessible or more prominently presented to consumers. As an ISP, platform operator and a broadcaster, Sky appreciates the competing commercial interests of these players over the carriage and discoverability of content.

6.3 The level of prominence afforded to content varies depending on the regulatory regime in which it sits. But even at the widest level – for example when searching for content on the internet, which is not the subject of any sectoral regulations around prominence – harmful activities which act against consumers’ interests are prohibited by general competition law. The Commission is conducting an ongoing investigation of Google’s activities on this very matter.

6.4 The UK’s current prominence regime is based on regulation set out in the Communications Act 2003. It provides appropriate prominence to public service broadcaster (“PSB”) channels, and facilitates a fair system of channel allocation and market entry. This is because it allows for significant discretion by the platform operator to deliver the regime’s objectives without stifling innovation of the EPG or undermining content investment by commercial players, and thereby facilitating differentiation across platforms.

6.5 Within the UK there has been a debate on whether reform to this regime is needed in light of convergence. Sky’s view is that the technological developments which enable consumers to find more of the content they want are in fact making the need for regulation redundant. Consumers are empowered in a variety of ways to discover content that they want, instead of regulation imposing content that they ‘should’ prefer. If the ‘general interest’ content that the Green Paper refers to is content that consumers value, we are confident that technology rather than regulation will ensure appropriate visibility and ease of access. We see no market failure in the accessibility or discoverability of this content, and regulation should reflect this.

6.6 It is risky and counter-productive to try to legislate for technological developments which cannot fully be appreciated or accurately predicted, and which are in any event likely to result in more favourable, consumer-centric viewing experiences. Being overly prescriptive in light of these changes would likely work against the consumer interest. Broadcasters and platform operators need to be free to innovate and improve discoverability, to the benefit of consumers.

6.7 Sky also considers that existing regulations on access and universal service are sufficient. Again, as a platform operator and broadcaster, we recognise that the commercial imperatives on issues of content distribution are likely to be mutually beneficial. Creators want their content to be available to the widest possible audience, while platform operators want to ensure a high-quality channel line-up in order to attract customers.

6.8 In the UK, provisions are made to ensure the universal availability of PSB services through both ‘must-carry’ requirements on TV platforms and ‘must-offer’ requirements on the PSBs. In practice, these rules are effectively backstops which are rarely used, such is the alignment of incentives between broadcasters and platform operators. For instance, ITV decided that it was economically rewarding to include their channels on the Sky EPG many years before a ‘must-offer’ obligation was placed on them.\(^6\)

6.9 Extension of must-carry obligations to emerging platforms or non-linear services would seem both unnecessary and intrusive. Given the nascent nature of these markets (with linear TV still accounting for 90% of viewing), denying the providers of new services the opportunity to

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\(^6\) The relevant legislation was only recently brought into force in order to trigger early renegotiation of public service broadcaster licence fees
exercise their own judgement as to how to establish and grow their business would serve to undermine innovation and investment.

6.10 The issues of discoverability, access and universal service are intrinsically linked. It is axiomatic that in order for content to be easily found by consumers, it must as a first step be available on the platform in question.

6.11 As noted, we firmly believe that market forces will deliver positive and innovative outcomes for consumers in relation to these issues. However, if policymakers consider that it is necessary to oblige platform operators to take prescriptive steps in relation to discoverability and carriage of public service broadcasters, then it is critical that this intervention is coupled with additional measures – ones that ensure that the content in question is made readily available to all platforms, including new and innovative services, on a non-discriminatory basis.

7 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?

7.1 Sky considers that the current AVMS requirements on commercial communications remain broadly workable and we do not see any reason for reform. However, if the Commission does decide to intervene, then it is essential that it does so in a way which does not hamper the development of innovative advertising services.

7.2 Convergence represents an opportunity for the development of new, pioneering advertising services for consumers to enjoy (for example, interactive social media services). This month saw the launch of Sky AdSmart, a tailored advertising service which allows advertisers to serve different ads to different households based on factors such as age, location and life stage, derived from a combination of Sky's own customer data and information from consumer profiling experts across satellite TV services and online delivered content. This serves audiences by showing them more of the products they are interested in and less of those they are not. It also makes mass TV advertising more accessible than ever to niche brands, SMEs and location-specific advertisers. Innovative TV services such as Sky AdSmart enable television advertising to compete better against online and mobile forms of advertising.7

7.3 In the future, the added flexibility afforded to non-linear content could become a competitive advantage. But the editorial and commercial incentive to advertise responsibly will remain a key safeguard against inappropriate or misleading practice even for these providers. It is not in an operator's interest to advertise in a manner or context that is unsuitable for the intended audience.

7.4 In the UK, advertising is regulated through BCAP, CAP and the ASA, an organisation which mixes co- and self-regulation. Its remit has evolved over the years to encompass new advertising media and techniques (e.g. social media). Such an approach remains the most appropriate way of tackling future changes in advertising.

7 Sky AdSmart will be rolled out with due observance of our customers' privacy rights.
8 Protection of minors

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<thead>
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<th>Question</th>
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<td>20) Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?</td>
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<tr>
<td>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?</td>
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<tr>
<td>22) What measures would be appropriate for the effective age verification of users of online audio-visual content?</td>
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<tr>
<td>23) Should the AVMSD be modified to address, in particular, content rating, content classification and parental control across transmission channels?</td>
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8.1 We agree with the Commission that the protection of children in the face of convergence and the proliferation of content across media and devices is an important challenge that needs to be met by service providers. Sky is an active member of the coalition of companies supporting the 'European Strategy for a Better Internet for Children', and has also been at the forefront of significant measures which are being taken in the UK to protect children online. In the main, Sky believes that the right approach in addressing these issues is through coordinated actions by responsible companies, rather than the imposition of blanket regulations which may prove impractical.

8.2 Over the last 20 years Sky has established itself as a successful and responsible consumer business. Our customers expect us to deliver the products and services they want in a safe environment. We have responded to the trust that they place in us by helping families keep their children safe when enjoying the content we provide on-screen and online. That’s why we equip parents with the tools they need to implement the choices they make over access to content.

8.3 We have developed a number of parental controls for our various products. We give parents the ability to restrict access to content and channels on the Sky set-top box using secure PIN controls which operate across both our broadcast and VOD services. We also offer all of our broadband customers free parental control software to install on their PCs and laptops, allowing the same customised approach to online content.

8.4 Sky is also developing a network-level control solution that will provide protection for all connected devices in the home. This will be deployed later in 2013, and will be available for both new and existing customers. We will support the new parental control products with a major communications and marketing campaign designed to maximise take up.

8.5 Sky has implemented default filtering on The Cloud, our public Wi-Fi service which provides our customers with access to over 20,000 Wi-Fi hotspots across Britain’s high streets, in venues such as restaurants, coffee shops and railway stations. This means that websites which contain content only suitable to adults are inaccessible in the public places served by The Cloud. As a leading Wi-Fi provider, we believe this is an important contribution to ensuring children are protected when using the internet outside of their homes, providing reassurance for parents.

8.6 In the UK, the four major ISPs have worked together to drive better protections for children through parental controls. In 2011 these ISPs issued a Code of Practice on this issue, aimed at simplifying parental controls, taking steps to inform customers of their availability and
encouraging take-up. This Code is an example of the self-regulatory measures which have delivered a flexible and effective outcome for consumers, well ahead of a legislative solution.

8.7 There are many successful existing and on-going initiatives, including PEGI and other age-rating systems, and content classification systems already well-established in certain sectors and countries. Sky's vision is to ensure that there is a comprehensive network of content classification, so that such information is available, wherever needed, to children and their families.

8.8 As a UK licensed television broadcaster Sky complies with Ofcom's Broadcast Codes which require that we do not broadcast any material that might seriously impair the physical, mental or moral development of children, and that other material not suitable for children is only broadcast after the watershed. These principles naturally follow through when customers are watching the same content on mobile devices via the internet.

8.9 Where Sky offers on demand viewing to its customers on mobile devices such as smartphones, tablets or laptops, content is classified by an age rating (i.e., U, PG, 12, 15, and 18).

8.10 Sky understands that technical solutions designed to restrict access to content are important but also acknowledges the vital role that education plays in ensuring on-line and connected tools can safely be used to their potential. Through our Sky Skills Studios we are helping educate more than 3,000 young people about e-safety and cyber bullying.

8.11 Given the cross-border nature of the internet, and the volume of content provided from outside the EU, stringent regulatory rules on content providers are likely to be ineffective. The role of policymakers should therefore shift to one focused more on encouraging best practice and facilitating solutions between responsible firms. Commissioner Kroes' activities in relation to the Better Internet for Children strategy serve as a good example of the effective progress which can be made by such approaches.

9 Accessibility

| 24) Do you think that additional standardisation efforts are needed in this field? |
| 25) What incentives could be offered to encourage investment in innovative services for people with disabilities? |

9.1 Sky has considerable experience in making its products and services available to consumers with differing abilities in the national markets in which it operates, to the benefit of consumers' quality of life and the European digital economy.

9.2 Disabled people can access a wide range of services offered by Sky. We offer more than 25,000 hours of audio described content on Sky's wholly owned channels, alongside over 400,000 hours of subtitles annually. We also support customers whose preference is British Sign Language through a partnership with the British Sign Language Broadcasting Trust. These access services are easy to access and are enabled through the on-screen menu of Sky's EPG.

9.3 We work closely with disabled people and the organisations that represent their interests to ensure we understand how best enable them to get the most from Sky. Detailed expert advice and user testing has not only helped us to make our core products accessible but has also led to the launch of bespoke products like Sky Talker, the Easy Grip remote control and the Accessibility website.
9.4 Sky considers that industry-led initiatives are the best means to deliver accessible solutions to consumers with differing abilities. Sky is currently participating in a series of technical workshops organised by the industry co-regulator, ATVOD, aimed at facilitating greater use of technical standards for delivery of access services by service providers across platforms. Sky's endeavours to make its products and services available to consumers with differing abilities were undertaken long before any legislation was introduced in this area are testimonies to the fact that a market-led approach can be successful and should be the preferred option, in the absence of any significant market failure(s). Our approach to accessibility is based on our responsibility to people with disabilities as valued customers.

9.5 Disproportionate regulatory intervention at the EU level in the audio-visual and electronic communications sectors, or even the threat of such action, could inhibit the investments and innovation needed to sustain current growth in digital TV or communications networks and services, to the detriment of all consumers and citizens, including those with differing abilities.

9.6 In the area of accessibility the EU's role should be to provide enhanced benchmarking and good practice exchanges, recognition and award schemes, as well as increased R&D and innovation support to all market players.

Sky

Sep 2013
Le 30 septembre 2013

Réponse du Groupe CANAL+ à la consultation de la Commission européenne sur le livre vert « Se préparer à un monde audiovisuel totalement convergent : croissance, création et valeurs »

Le Groupe CANAL+ remercie la Commission européenne de lui donner l'opportunité de s'exprimer sur les transformations en cours du paysage audiovisuel que la Commission qualifie de « convergence des services de médias et des moyens par lesquels ces services sont acquis et fournis ».

On assiste en effet depuis quelques temps, avec l'émergence des écrans connectés, à des changements radicaux tant dans les offres que dans les modes de consommation. Ces changements constituent à la fois une chance formidable pour le secteur audiovisuel et les consommateurs en permettant sur un même écran de consommer tant des contenus linéaires (chaînes de télévision reprises de réseaux de distribution traditionnels, comme la TNT ou le satellite, avec le complément de chaînes diffusées depuis l'Internet) que des contenus non linéaires (télévision de rattrapage, vidéo à la demande…), y compris en mobilité, mais ces changements constituent aussi un défi majeur dans la mesure où la profusion des offres provenant indistinctement de l'Internet ou de la télévision risque de bouleverser les modes de consommation, la perception des offres de contenus par les consommateurs mais aussi plus généralement les équilibres économiques prévalant aujourd'hui dans le secteur audiovisuel.

Dans ce contexte évolutif, les groupes audiovisuels ont su adapter leur stratégie. En particulier le Groupe CANAL+ a su élargir la distribution de ces services à toutes les plateformes et terminaux (TNT, câble, satellite, ADSL, consoles de jeux, smartphones, et tablettes…) et a su diversifier son offre de services en proposant à ses abonnés des services complémentaires à ses chaînes de télévision, comme par exemple des services de télévision de rattrapage inclus dans l’abonnement mais aussi en lançant dès 2005 un service de vidéo à la demande, CANALPLAY, aujourd'hui accessible sur tous types d'écran connecté et plus récemment un service de vidéo à la demande illimité par abonnement, CANALPLAY Infinity. Outre l'enrichissement de son offre, le Groupe CANAL+ développe aussi de nouveaux usages télévisuels, comme par exemple, son moteur de recommandation personnalisée « EUREKA ! » qui permet d’identifier la consommation de ses abonnés et de leur proposer
des programmes en phase avec leurs préférences. Le Groupe CANAL+ innove donc sans cesse pour satisfaire les attentes de ses abonnés.

Toutefois, force est de constater que le secteur audiovisuel, et particulièrement en France, évolue dans un environnement très encadré et réglementé, qu’il s’agisse de la réglementation sur les services de télévision ou de celle sur les services audiovisuels à la demande.

Or, avec la généralisation de l’Internet à haut débit, et bientôt à très haut débit\(^1\), et la multiplication des terminaux connectés\(^2\), les groupes audiovisuels européens sont aujourd’hui confrontés à la concurrence des plateformes Internet (pure players, plateformes vidéo qui combinent des activités d’hébergement et des activités d’édition de services en ligne…) qui proposent des services similaires ou quasi-similaires à ceux des acteurs traditionnels (par exemple, on trouve de plus en plus d’œuvres cinématographiques en intégralité sur ces plateformes) mais qui, compte tenu de l’absence ou de l’imprécision de la réglementation, échappent à tout encadrement car elles ne sont pas considérées comme des services de médias audiovisuels à la demande.

De plus, les groupes audiovisuels français souffrent également de la concurrence des services audiovisuels établis dans des pays européens peu réglementés mais qui proposent leurs services aux consommateurs résidant sur le territoire français\(^3\).

Fort de ce constat, le Groupe CANAL+ appelle la Commission européenne à définir un cadre réglementaire juste et équitable pour que l’ensemble des acteurs audiovisuels aujourd’hui actifs sur le marché européen puissent, dans l’intérêt des consommateurs européens, développer leurs activités dans un environnement de concurrence loyale. Il en va de la promotion de la diversité culturelle et de sa diffusion dans le monde, mais aussi du développement des industries audiovisuelles européennes qui sont à la fois créatrices d’emplois et de valeurs.

\(^1\) Au 31 mars 2013, l’ARCEP communique sur 24.2 millions d’abonnements internet haut et très haut débit, soit une croissance nette de +5% sur un an. Les abonnements très haut débit, en progression de +22% sur un an, représentent à date moins de 7% du total, soit 1.7 millions d’abonnements.

\(^2\) En 2012, il s’est vendu en France, 6.6 millions de téléviseurs dont 1.6 millions de Smart TV, 1.6 millions de consoles de salon, 5.3 millions d’ordinateurs (fixes ou portables), 3.6 millions de tablettes tactiles, plus de 13 millions de smartphones sur 23 millions de téléphones mobiles. (source : GFk).

\(^3\) Selon l’Observatoire européen de l’audiovisuel, en 2012, on comptait en France plus d’une cinquantaine de services de VdD nationaux et 6 services VdD établis à l’étranger s’adressant au public français, alors que la tendance est inversée dans d’autres pays : au Royaume-Uni, 14 services établis sur le territoire britannique s’adressaient principalement à des publics d’autres pays contre 10 visant le public britannique ; le Luxembourg quant à lui accueillait 51 services de VdD ciblant le public d’autres pays contre un seul à vocation nationale.
Considérations relatives au marché :

(1) Quels sont les facteurs qui permettent aux sociétés américaines de s'imposer sur le marché morcelé de l'UE, en dépit des barrières linguistiques et culturelles, alors que nombre de sociétés européennes ont des difficultés à y parvenir? Quels sont les facteurs qui freinent les sociétés européennes?

(2) Quels sont les facteurs qui influent sur la disponibilité du contenu d'appel? En la matière, existe-t-il actuellement des pratiques au niveau des prix de gros qui influent sur l'accès au marché et le fonctionnement durable des entreprises? Si c'est le cas, quelles en sont les conséquences pour le consommateur? Une action réglementaire est-elle nécessaire en plus de l'application des règles de concurrence?

(3) Y a-t-il des obstacles exigeant une action réglementaire en matière d'accès aux plateformes ?

Réponse commune aux questions 1 à 3 :

1/ Les principaux facteurs qui expliquent la domination des sociétés américaines et plus généralement des acteurs de l'Internet

Le premier facteur qui vient à l'esprit pour expliquer la domination des sociétés américaines sur le marché de l'audiovisuel en Europe est celui lié à la puissance des programmes qu'elles diffusent, programmes devenus « culture universelle » basée elle-même sur une langue universelle.

Cette domination des grands groupes américains s'explique également par le modèle économique qu'ils ont adopté : nombre d'entre eux ont adopté un modèle intégré mettant à disposition du consommateur un support, un système d'exploitation, un marché des applications. Ils créent ainsi des services et des interfaces simples et très intuitives en réponse aux demandes des consommateurs, par exemple en donnant accès à des contenus stockés sur le cloud via des terminaux mobiles ou en donnant accès à l'expérience de la télévision connectée grâce à des consoles de jeux. Ces environnements maîtrisés confèrent à ces acteurs une place majeure pour ce nouveau mode de consommation qu'est la télévision connectée. De plus, l'innovation constante de ces grands groupes américains pousse les
consommateurs à s'équiper et se rééquiper régulièrement tout en restant, dans la plupart des cas, fidèles à la marque.

Enfin, les grands groupes américains de l'Internet, comme tous les acteurs de l'Internet, bénéficient aujourd'hui d'une **asymétrie de réglementation** qui rend leurs contenus et services plus compétitifs que ceux des acteurs traditionnels européens.

A titre d'exemple, la généralisation des supports connectés entraîne la convergence, sur le même écran, de deux univers régis par des réglementations différentes : les chaînes de télévision et les services de médias audiovisuels à la demande (SMAD) européens, et spécialement les services français, sont extrêmement encadrés (investissements dans la production, protection de l'enfance, respect du pluralisme, respect de la territorialité des droits, respect des mesures contre le piratage, protection des données personnelles...), alors que la plupart des autres services issus de l'Internet se développent dans un environnement fortement dérégulé où seules quelques règles fondamentales s'imposent à eux (règles d'ordre public, diffamation...). **Cette différence d'encadrement juridique pour des services quasi-similaires crée des distorsions de concurrence entre ces services.**

En outre, la généralisation de la télévision connectée en Europe ouvrira encore plus largement l'accès à des services édités hors d'Europe qu'il s'agisse d'offres linéaires ou non linéaires, ce qui renforcera les distorsions de concurrence déjà existantes.

Les distorsions de concurrence résultent aussi de contraintes réglementaires ou du droit de la concurrence qui pèsent sur certaines sociétés européennes. On peut citer par exemple celle qui pèse sur le Groupe Canal+ en matière de droits VoD et SVoD. En effet, le Groupe s'est vu interdire d'acquérir tout droit VoD et SVoD à titre exclusif pendant une période d'au moins 5 ans alors même que des sociétés américaines de dimension mondiale, comme Amazon ou Netflix, s'implantent en Europe avec un modèle basé sur des contenus en grande partie exclusifs qu'elles peuvent en outre amortir sur des territoires plus larges que les acteurs traditionnels (financement par Netflix de nombreuses contenus exclusifs, en particulier de séries comme la série à succès « House of cards » ou accords pour l'acquisition de contenus premium exclusifs avec des majors américaines).

2/ **Les actions pour promouvoir les sociétés et œuvres européennes**

L'action des pouvoirs publics européens devrait viser en priorité à **réduire, voire à supprimer, l'asymétrie de contraintes, notamment réglementaires, qui créent des distorsions de concurrence entre les acteurs traditionnels de l'audiovisuel et les nouveaux acteurs de l'Internet.**
A ce titre, la Commission européenne devrait notamment veiller à ce que les autorités nationales n'imposent pas de contraintes supplémentaires et excessives aux acteurs traditionnels nationaux. A cet égard, le Groupe CANAL+ ne peut qu'être surpris et inquiet des propositions récentes faites par le régulateur français (CSA) de renforcer ses pouvoirs de régulation ex ante du secteur de la télévision payante. Cette proposition semble pour le moins paradoxale au moment où l'ensemble des acteurs de la filière audiovisuelle met en avant l'asymétrie de régulation qui existe entre ces acteurs traditionnels et les nouveaux entrants du monde de l'Internet, en particulier les géants américains de l'Internet. C'est d'ailleurs l'une des conclusions auxquelles est arrivée par exemple la Commission des usages de la télévision connectée qui a travaillé sous l’égide du CSA tout au long de l’année 2012.

L'action réglementaire des pouvoirs publics européens devrait aussi se concentrer sur la question du référencement des services et contenus européens. Dans un environnement d'hyper-choix, se pose nécessairement la question du référencement des contenus d'une part et des services d'autre part : sans une certaine mise en avant des contenus, productions et programmes européens, mais aussi des services qui les proposent, le modèle ne sera pas viable. En effet, les portails et agrégateurs de contenus pourraient être tentés de favoriser et de mettre en avant leurs contenus propres et de reléguer à un second plan les services et contenus européens concurrents. Ces services et ces contenus seraient alors invisibles aux yeux des téléspectateurs utilisant les systèmes d'exploitation et de navigation développés par de grands opérateurs multimédias internationaux, quelles que soient les qualités intrinsèques de ces programmes ou services.

Ces services de référencement et moteurs de recherche, au-delà d'aiguiller les téléspectateurs vers un contenu plutôt qu'un autre, conduiraient aussi à une captation d'une partie de la valeur (recettes publicitaires, commission de référencement...). Or, cette captation se ferait aujourd'hui sans contrepartie relative au financement des contenus. Pour remédier à cette situation, il conviendrait d'assurer le meilleur référencement possible des offres nationales et européennes qui sont d'ailleurs les plus à même de promouvoir l'objectif de diversité culturelle poursuivi par l'Union européenne.

- Le référencement des services

Si aujourd'hui, le référencement des services audiovisuels peut parfois être traité par le biais des contrats passés entre les éditeurs de services et les fabricants, demain ces contrats devront être passés avec les géants de l'Internet. Or il est à craindre que les discussions soient déséquilibrées au profit de ces derniers qui voudront privilégier leurs propres services. Le risque est grand de voir les chaînes de télévision et les SMAD européens relégués en fin de liste alors que des services non européens proposant pour partie les mêmes contenus figureront en tête de liste.
C'est pourquoi le Groupe CANAL+ pense que le principe d'un bon référencement des services audiovisuels européens et le principe d'un accès non discriminatoire aux terminaux connectés, devraient être affirmés au niveau européen, de manière à garantir aux services qui contribuent au soutien de la production audiovisuelle et cinématographique européenne la meilleure visibilité possible sur les écrans connectés vendus en Europe. Ainsi une obligation de « must offer – must deliver » devrait être imposée, obligeant tant les constructeurs que les agrégateurs à reprendre et valoriser ces services essentiels à la pérennité du secteur audiovisuel européen. En toute logique, cette approche devrait aussi obliger à la reprise et au bon référencement des bouquets de chaînes dont le travail d'agrégation a été pensé et réalisé par un tiers (et ce, dans leur intégralité).

Au-delà du référencement lui-même des services européens, se posera également la question de l'ordre d'apparition de ces services depuis les nouvelles interfaces (pages d'accueil, guide des programmes et marché des applications...) désormais pilotables par la gestuelle (tactile ou par un mouvement de la main) et par la voix. Pour des raisons de commodité et dans l'intérêt des consommateurs, ceux-ci devraient être en mesure de retrouver aisément sur les terminaux connectés les services qu'ils connaissent déjà en télévision, dès la première page de référencement.

Au-delà du référencement par des moteurs de recherche, se posera aussi rapidement la question du référencement réalisé indirectement par les réseaux sociaux qui de plus en plus jouent un rôle de prescripteurs vers les contenus recommandés par des tiers. Ces nouveaux acteurs que sont les réseaux sociaux sont aussi susceptibles de capter une partie de la valeur, alors qu'ils ne contribuent pas au financement des contenus.

- **Le référencement des contenus**

Demain, avec le développement des terminaux connectés, le consommateur pourra encore plus facilement accéder directement aux contenus audiovisuels via des moteurs de recherche. Or, dans le contexte de profusion des offres, il est à craindre que les liens proposés en priorité par les sites de référencement, inévitablement gérés par les géants américains, conduisent le consommateur vers des sites ou services non nationaux et non européens. Comment dans ces conditions garantir la valeur des exclusivités détenues par les opérateurs européens si les consommateurs sont prioritairement orientés vers des services concurrents extracommunautaires et principalement américains ?
Modèle de financement :

(4) Les exigences actuelles de la directive SMA offrent-elles le meilleur moyen de promouvoir la création, la distribution, la disponibilité et l’attrait commercial des œuvres européennes?

La directive SMA, de par sa double exigence d'acquisition et d'exposition des œuvres européennes tant pour les services linéaires que pour les services non linéaires, contribue incontestablement à encourager la création et à favoriser la distribution et la disponibilité de ces œuvres. À ce titre, elle constitue un instrument efficace au service de la diversité culturelle, objectif affirmé par la Convention de l’UNESCO sur la protection et la promotion des expressions culturelles du 20 octobre 2005.

On observe qu'en France où les obligations d'investissements et de diffusion/promotion sont plus strictes que celles de la directive SMA, l'industrie de la création audiovisuelle et cinématographique est une des plus dynamiques d'Europe. Les quotas ont donc bien un effet bénéfique sur le secteur de la création.

Cependant, on peut regretter que peu d'États aient effectivement mis en place des mesures spécifiques de soutien à la création audiovisuelle et cinématographique sur les services non linéaires (ou services audiovisuels à la demande)⁴. En effet, en l'absence de mesures contraignantes, à l'instar des obligations définies en France pour les services de médias audiovisuels à la demande, les œuvres européennes ne bénéficient pas d'une exposition privilégiée sur ces services et sont donc peu présentes.

En outre, le Groupe CANAL+ observe que les services de médias audiovisuels à la demande qui contribuent à l'objectif de promotion de la diversité culturelle subissent aujourd'hui la concurrence de services établis en Europe dans des pays où la régulation de ces services se limite au stricte minimum de la directive SMA et plus encore la concurrence de plateformes de vidéo (quelles soient ou non établies en Europe) qui ne contribuent pas au financement de la création, alors même que celles-ci peuvent dans certains cas constituer leurs produits d'appel.

(5) Comment la convergence et le changement de comportement des consommateurs influent-ils sur le système actuel de financement du

⁴ Selon le rapport du 24 septembre 2012 relatif à l'application des articles 13, 16 et 17 de la directive 2010/13/UE au cours de la période 2009-2010, « seuls six des États membres ayant appliqué la directive (c'est-à-dire ayant imposé aux services à la demande l'obligation de promouvoir les œuvres européennes) ont indiqué dans leur rapport que leur législation définissait des mesures concrètes » (p. 6).
contenu ? Comment les différents acteurs de la nouvelle chaîne de valeur contribuent-ils au financement ?

Si la consommation de la télévision linéaire reste aujourd'hui dominante et continue d'ailleurs de progresser (en 2012, en France, 3h50 de télévision par jour, soit 3 minutes de plus qu'en 2011)\(^5\), les utilisateurs consomment aussi de plus en plus de contenus à la demande qu'ils s'agissent de contenus offerts par des services de VOD ou de catch up TV\(^6\) ou de vidéos sur des sites de partage, d'ailleurs trop souvent illégaux.

Or, aujourd'hui, en l'état de la réglementation, aucun de ces sites de partage de vidéos ne contribuent au financement de la création.

C'est pourquoi, le Groupe CANAL+ estime que les acteurs finançant très largement la création, tels que les opérateurs de services de télévision et de SMAD européens devraient bénéficier d'un traitement privilégié en termes de référencement et de visibilité par rapport aux acteurs du net n'apportant aucun financement à la création.

**Interopérabilité de la télévision connectée**

(6) Une action de l'UE est-elle nécessaire pour remédier au morcellement actuel ou potentiel du marché et assurer l'interopérabilité à travers les frontières ? Est-il nécessaire d'élaborer de nouvelles normes ou d'actualiser celles en vigueur sur le marché ?

Le Groupe CANAL+ pense que pour qu'une solution d'interactivité soit aujourd'hui implémentée avec succès sur des télévisions connectées, il faut que celle-ci soit standardisée. À cette fin, le marché nous semble être le mieux à même de trouver les bons standards aux bons moments, et il nous semble judicieux de laisser les acteurs locaux et les groupements interprofessionnels poursuivre leurs discussions sur ce sujet.

**Infrastructure et spectre radioélectrique**

(7) Dans quelle mesure les différences entre les plateformes fournissant du contenu (par exemple radiodiffusion hertzienne et par satellite, haut

\(^5\) Source Médiamétrie

\(^6\) Selon Médiamétrie, en mars 2013 : 36% des individus de 15 ans et plus déclarent avoir regardé au cours des 12 derniers mois des contenus TV délinéarisés (hors enregistrement). Ils sont 67% chez les 15-24 ans et 62% chez les 25-34 ans. 15 millions d’individus de 15 ans et plus ont consommé de la catch up TV au cours des 12 derniers mois (29% des 15 ans et plus). Ils sont 9 millions au cours des 30 derniers jours (18%). Plus du tiers des 15-24 ans (35%) et des 25-34 ans (35%) utilisent ces services une fois par mois.
débit filaire y compris par câble, haut débit mobile) sont-elles pertinentes relativement à l’usage qu’en font les consommateurs et aux obligations de service public ?

(8) Quels sont les modèles d'attribution et de partage des radiofréquences qui peuvent offrir des possibilités de développement à la radiodiffusion, au haut débit mobile et à d'autres applications (matériel de fabrication de programmes) exploités dans les mêmes bandes de fréquences ?

(9) Quels sont les besoins de recherche spécifiques au spectre radioélectrique qui doivent être satisfaits pour faciliter un tel développement ?

Réponse globale aux questions 7 à 9 :

Les différentes plateformes sont complémentaires et le Groupe CANAL+ a fait le choix d'être présent sur l'ensemble de celles-ci. Cependant, il observe que la plateforme TNT présente un certain nombre d'avantages : l'installation est facile, la grande majorité des foyers étant équipés d'une antenne hertzienne ; la couverture TNT est très satisfaisante puisque 97 à 98% du territoire français est couvert. L'abonnement à des offres payantes complémentaires est également très simple en réception TNT, le distributeur fournit un décodeur qui s'insère entre l'antenne et le téléviseur. Il convient toutefois de rappeler que l'octroi d'une fréquence hertzienne s'accompagne dans le même temps d'un régime d'obligations de financement de la création particulièrement important.

En outre, les plateformes satellites du type TNTSAT sont un bon complément pour les zones mal desservies en TNT : elles permettent l'accès à des offres plus riches gratuites ou payantes.

A ce titre, Groupe Canal+ met en garde contre un appauvrissement excessif des fréquences disponibles pour le secteur de l'audiovisuel au profit du secteur des télécommunications. Une telle réallocation de ressources ne peut être envisagée que si elle s'accompagne de la levée de toutes les contraintes qui pèsent aujourd'hui sur la fourniture de services audiovisuels via les réseaux filaires haut débit (accès ouvert et non discriminatoire à la facilité essentielle que constitue l'accès aux abonnés de ces réseaux ; garantie en terme de neutralité des réseaux et de l'internet).
Cadre réglementaire

(10) Eu égard à la convergence des médias, est-il possible d'établir que la différenciation réglementaire entre services linéaires et non linéaires provoque une distorsion du marché? Si oui, quel serait le meilleur moyen d’y remédier tout en préservant les valeurs qui sous-tendent le cadre réglementaire de l’UE applicable aux services de médias audiovisuels?

Pour le Groupe CANAL+, la différenciation réglementaire des services linéaires et des services non linéaires ne provoque globalement pas une distorsion du marché car il lui apparaît logique de traiter différemment des services dont les fonctionnalités et les modes de consommation diffèrent (difficile d'imposer des règles liées à une grille de programmes pour des services non linéaires qui, par nature, se consomment à la demande).

En revanche, constitue une véritable distorsion de concurrence l'existence de services similaires régulés de manière différente : c'est notamment le cas des services audiovisuels (linéaires et non linéaires) régulés par la directive SMA et qui sont aujourd'hui directement concurrencées par des services Internet (plateformes de vidéo, notamment) qui ne rentrent ni dans la catégorie des services linéaires, ni dans celle des services non linéaires, au sens de la directive SMA, et qui, de ce fait, échappent à la réglementation européenne.

Une attention particulière devrait ainsi être portée à ces services issus de l'Internet qui comportent majoritairement des contenus vidéos et qui, pourtant, se prétendent de simples hébergeurs : dès lors que les contenus vidéos deviennent majoritaires sur de tels sites, on voit mal pourquoi ils ne se verreraient pas appliquer le même régime que celui des services de médias audiovisuels à la demande (services non linéaires au sens de la directive SMA).

(11) Est-il nécessaire d'adapter la définition de fournisseurs de SMA, et/ou le champ d'application de la directive SMA, afin de soumettre à certaines ou à toutes les obligations de ladite directive ceux qui en sont actuellement dispensés, ou y a-t-il d'autres moyens de préserver les valeurs ? Dans quels domaines la priorité pourrait-elle être accordée à l'autorégulation ou la corégulation ?

Comme indiqué en réponse à la question 10, la vraie problématique à régler est celle de la concurrence déloyale faite aux services audiovisuels couverts par la directive SMA par des services qui soit échappent à toute réglementation parce qu'ils sont établis en dehors de l'Union européenne, soit ne relèvent que de la directive eCommerce, directive qui ne régule pas le contenu des services en tant que tels.
Dans ces conditions, le Groupe CANAL+ préconise de **revoir le champ d’application de la directive SMA** et en particulier ses définitions de « fournisseurs de services de médias » et de « services de médias audiovisuels à la demande »⁷, de manière à **couvrir des services Internet qui aujourd’hui s’abritent derrière leur statut d’hébergeur pour échapper à toute régulation des contenus qu’ils proposent, alors que ces services offrent des contenus éditorialisés financés par la publicité**. Cet élargissement du champ d’application de la directive devrait nécessairement intégrer au préalable une réflexion sur la responsabilité éditoriale de ces services.

**Quelle serait l’incidence d’un changement d’approche réglementaire de l’audiovisuel sur le principe du pays d’origine et donc sur le marché unique ?**

Aujourd’hui, les services audiovisuels établis en France subissent la concurrence de services audiovisuels qui s’adressent au public français tout en étant établis dans des pays européens où la réglementation est moins stricte qu’en France. Or, on constate que les procédures anti-délocalisation (celle prévue par la directive SMA pour les services linéaires ou celle prévue par la réglementation française pour les services non linéaires) sont extrêmement complexes à mettre en œuvre et ne suffisent pas à régler ces situations.

C’est pourquoi le Groupe CANAL+ souhaite que la Commission européenne mette en place des outils efficaces pour éviter cette concurrence déloyale, voire, à l’instar de ce qui sera mis en place à partir de 2015 en matière de TVA pour les services électroniques⁸ et du projet de règlement sur la protection des données personnelles actuellement en discussion au Conseil et au Parlement européen, engage une réflexion sur l’opportunité d’appliquer le principe du pays de consommation.

**La convergence accrue dans le paysage audiovisuel met-elle à l’épreuve la relation entre les dispositions de la directive SMA et de la directive sur le commerce électronique et dans quels domaines ? Pourriez-vous en fournir des exemples concrets ?**

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⁷ Définitions issues de la directive SMA : « fournisseur de services de médias » : la personne physique ou morale qui assume la responsabilité éditoriale du choix du contenu audiovisuel du service de médias audiovisuels et qui détermine la manière dont il est organisé;

« service de médias audiovisuels à la demande » (c’est-à-dire un service de médias audiovisuels non linéaire) : un service de médias audiovisuels fourni par un fournisseur de services de médias pour le visionnage de programmes au moment choisi par l’utilisateur et sur demande individuelle sur la base d’un catalogue de programmes sélectionnés par le fournisseur de services de médias;

⁸ La directive TVA, 2008/8/CE du 12 février 2008 substitue au principe du pays d’origine le principe du pays du consommateur, à compter du 1er janvier 2015 pour les services électroniques.
Oui, l'apparition de nouveaux acteurs sur le marché audiovisuel, comme par exemple les plateformes de vidéo, qui ne relèvent aujourd'hui que de la directive eCommerce, alors même que l'on peut légitimement s'interroger sur leur statut d'éditeurs de services, montre que les règles des directives SMA et « commerce électronique » ne peuvent pas être exclusives les unes des autres.

Comme indiqué supra, le Groupe CANAL+ considère que les nouveaux acteurs de l'Internet qui sont trop facilement qualifiés de simples hébergeurs alors même qu'ils mettent à disposition des contenus audiovisuels au même titre que les acteurs traditionnels de la télévision, devraient entrer dans le champ de la directive SMA et être contraints aux mêmes obligations que les services de médias audiovisuels qui relèvent déjà de cette directive.

(14) Quelles initiatives, au niveau européen, pourraient contribuer à relever le niveau d'éducation aux médias en Europe ?

La problématique de l'éducation aux médias devrait avant tout être traitée au niveau national pour tenir compte des caractéristiques propres à chaque pays. En France, le CSA mène actuellement une réflexion sur ce sujet avec les chaînes.

Liberté et pluralisme des médias

(15) La possibilité de prédéfinir un choix par des mécanismes de filtrage, y compris par des fonctions de recherche, devrait-elle faire l'objet d'une action publique au niveau de l'UE ?

Voir supra la réponse aux questions 1 à 3 et en particulier nos développements sur le référencement des services et des contenus audiovisuels.

(16) Quel devrait être le champ d'application de la réglementation existante concernant l'accès (article 6 de la directive «accès») et le service universel (article 31 de la directive «service universel») compte tenu de la convergence croissante des services linéaires et non linéaires sur plateformes communes? Dans un environnement radiodiffusion/haut débit convergent, est-il particulièrement nécessaire d'assurer l'accessibilité d'un «contenu d'intérêt général» et de veiller à ce qu'il soit facile d'en trouver et d'en profiter?
Avant même de s’interroger sur l’opportunité de la définition d’un « contenu d’intérêt général », il nous paraît essentiel, comme évoqué ci-dessus au point 7, de garantir aux consommateurs européens qu’ils pourront avoir accès aux mêmes types de contenus quelle que soit la plateforme de diffusion de ces contenus. Notamment dans les villes où les réseaux filaires à haut et à très haut débit constituent la plateforme d’accès aux contenus largement majoritaire et privilégiée, il convient de s’assurer que les opérateurs de réseaux n’imposent pas des contraintes artificielles à l’accès à leurs réseaux afin que les utilisateurs de ces réseaux aient accès à tous les types de contenus de manière non discriminatoire et avec le même niveau de qualité que celui disponible via d’autres plateformes de distribution.

Communication commerciale

(17) Les dispositions actuelles de la directive SMA concernant les communications commerciales seront-elles encore appropriées lorsque l’expérience de la convergence deviendra peu à peu une réalité? Pourriez-vous fournir des exemples concrets ?

Le développement de la convergence, qui se traduit par l’accès sur un même terminal à des contenus audiovisuels réglementés de façon différente selon qu’ils proviennent de services linéaires, de services non linéaires ou de plateformes Internet, soulève en effet la question des distorsions de concurrence pouvant exister entre ces services sachant que certains (chaînes de télévision, services de télévision de rattrapage et VaD) relèvent de la directive SMA alors que d’autres (services de l’Internet y compris ceux venant de l’extérieur de l’Union européenne) ne sont pas soumis à la directive SMA.

Cette divergence de traitement entre des services qui fournissent les mêmes contenus est d’autant moins acceptable que les consommateurs n’ont souvent plus conscience du type d’environnement dans lequel ils se trouvent : ils passent de manière fluide et transparente d’un service/mode à l’autre (par exemple, application ou service non linéaire intégré ou synchronisé avec le flux – sur l’écran principal ou un 2ème écran – en push ou en pull).

Du point de vue de la protection du consommateur, force est d’ailleurs de constater que la publicité sur les services Internet peut en réalité s’avérer beaucoup plus intrusive que sur le linéaire (pop up, spot ou bannière imposée pour accéder au service, contenu publicitaire poussé).

Dans ces conditions, il serait logique de définir un ensemble de règles communes (« level playing field ») à l’ensemble des services, ceux visés par la directive SMA en vigueur (services linéaires et non linéaires) et les services sur Internet. Il devrait notamment s’agir de règles de nature déontologique qui auraient pour but d’éviter toute
intrusion dans la diffusion de programmes audiovisuels et de protéger les utilisateurs. Ces derniers sont en effet en droit d’attendre le même niveau de protection lorsqu’ils regardent un film sur une chaîne de télévision ou sur une plateforme Internet.

(18) Quels seraient les instruments réglementaires les plus appropriés pour faire face à l’évolution rapide des techniques publicitaires? Y a-t-il d’autres possibilités d’autorégulation ou de corégulation?

Compte tenu de l’évolution rapide des techniques publicitaires, il serait souhaitable que la réglementation reste flexible et n’empêche pas l’adoption de règles complémentaires via des processus de corégulation ou d’autorégulation. En effet, le secteur peut être le mieux à même de s’adapter au marché et, dans un contexte publicitaire morose, il est important de laisser aux acteurs de l’audiovisuel une marge de manœuvre suffisante pour développer de nouvelles techniques publicitaires qui pourraient être sources de nouveaux revenus.

(19) Qui devrait avoir le dernier mot quant à l’acceptation des bandeaux publicitaires, ou d’autres techniques novatrices d’affichage, à l’écran?

Eu égard à leur responsabilité éditoriale, les fournisseurs de services audiovisuels (linéaires et non linéaires i.e. les éditeurs de chaînes, de services de télévision de rattrapage ou de VàD) doivent pouvoir garder le contrôle de ce qu’ils acceptent sur leur antenne/leur service. La question de la maîtrise des flux par l’éditeur du service est absolument fondamentale. Sans cette maîtrise, il serait par exemple possible qu’un service internet extra-européen envoie des bannières « adultes » pendant la diffusion télévisée d’un programme jeunesse.

Protection des mineurs :

(20) Les dispositions actuelles de la directive SMA sont-elles adaptées aux problèmes que pose la protection des mineurs dans un environnement médiatique convergent?

(21) Même si, de plus en plus, les appareils et plateformes utilisés pour accéder au contenu comportent des outils de contrôle parental, la diffusion de ces derniers semble encore limitée. Quels mécanismes faudrait-il pour sensibiliser les parents à de tels outils?
(22) Quelles seraient les mesures appropriées à la vérification efficace de l’âge des utilisateurs de contenu audiovisuel en ligne ?

(23) La directive SMA devrait-elle être modifiée de façon à couvrir, en particulier, le contrôle parental et la classification du contenu sur tous les canaux de transmission ?

(24) Les utilisateurs devraient-ils disposer de davantage d’informations pour savoir à qui et comment signaler un certain type de contenu, et de moyens pour déposer plainte ?
Les mécanismes actuels de traitement des plaintes sont-ils appropriés ?

(25) Les moyens par lesquels les plaintes sont traitées (moyens financiers, réglementaires ou autres) sont-ils appropriés pour fournir un retour d’information adéquat suite aux signalements de contenu préjudiciable ou illicite, impliquant des enfants notamment ?
Quels devraient être les rôles/ responsabilités respectifs des pouvoirs publics, des ONG et des fournisseurs de produits et services pour faire en sorte qu’un retour d’information adéquat soit dûment fourni aux personnes signalant du contenu préjudiciable ou illicite ou déposant plainte ?

Réponse globale aux questions 20 à 25 :
Le Groupe CANAL+ a toujours été extrêmement attentif à la protection du jeune public et a très tôt mis en place sur sa chaîne CANAL+ un dispositif en ce sens qui consiste, d’une part, à classifier ses programmes via des pictogrammes et, d’autre part, à choisir les horaires de diffusion adaptés aux différents types de programmes.

De même, le Groupe a lors du lancement de son service de VàD, CANALPLAY, en 2005, pris l’initiative, à l’instar de ce qui existait déjà en télévision, de mettre en place des mécanismes adaptés pour protéger le jeune public. Par la suite, le Conseil supérieur de l’audiovisuel (CSA) a lors de la transposition de la directive SMA adopté une délibération qui définit un ensemble de règles visant à protéger le jeune public et qui s’applique aujourd’hui à l’ensemble des services de médias audiovisuels à la demande (services de VàD et de télévision de rattrapage).

Ces dispositifs sont aujourd’hui efficaces et prouvent que l’approche choisie par la directive consistant à protéger le jeune public tant vis-à-vis des contenus distribués par les services
linéaires que ceux délivrés par les services non linéaires est adaptée à l'environnement médiatique actuel. Même si l'encadrement juridique est différent pour les services linéaires et les services non linéaires (pour tenir compte des différences dans les offres et dans les modes de consommation des uns et des autres), celui-ci est efficace, étant entendu que l'efficacité de tout dispositif repose également sur la vigilance et l'engagement des parents qui disposent aujourd'hui d'outils de protection à l'efficacité démontrée.

Cependant, force est de constater que les citoyens européens peuvent aujourd'hui accéder via Internet à des contenus fortement préjudiciables aux mineurs, sans alerte préalable à leur accès ou via des systèmes d'information souvent inefficaces (simple déclaration de majorité). Ces contenus proviennent dans la plupart des cas de sites Internet établis en dehors de l'Union européenne.

C'est pourquoi, comme indiqué supra en réponse à la question 11, le Groupe CANAL+ souhaiterait que le champ d'application de la directive SMA soit élargi pour englober les sites Internet qui proposent des contenus audiovisuels similaires aux contenus proposés par les chaînes de télévision ou les SMAD. Un tel élargissement permettrait en outre d'obliger ces services à mettre en place des systèmes efficaces de protection du jeune public. Dans la mesure où ces contenus préjudiciables proviennent souvent de sites Internet établis en dehors de l'Union européenne, une étude d'impact devrait être réalisée sur la faisabilité d'appliquer pour ces sites le principe du pays de consommation (cf. question 12 supra).

En réponse à la question 24, le Groupe CANAL+ indique que, conformément à la législation française, chacun de ses sites dispose d'outils adaptés pour signaler tout contenu abusif.

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Enfin, le Groupe CANAL+ souhaite à l'occasion de cette consultation attirer l'attention de la Commission européenne sur les risques accru de développement du piratage des contenus audiovisuels en raison de la convergence du monde audiovisuel et de l'Internet. En effet, le développement des systèmes hybrides mêlant télévision et Internet risque d'accroître le piratage des contenus protégés puisqu'à partir d'un même écran, l'utilisateur pourra de manière quasi transparente naviguer entre des chaînes de télévision et des services Internet, y compris des sites illégaux de contenus audiovisuels.
Les pouvoirs publics européens devraient donc user de tout leur poids pour stimuler une coopération internationale dans le domaine de la lutte contre le piratage passant notamment par une mesure consistant à **interdire le référencement des services de streaming illégaux sur les portails et moteurs de recherche**. On constate en effet que leur référencement est très large sur les téléviseurs connectés aux États-Unis.

En conclusion, le Groupe CANAL+ souhaite que la Commission européenne définisse un cadre juridique équitable et applicable à l’ensemble des parties prenantes du marché audiovisuel : acteurs traditionnels de la télévision, nouveaux acteurs de l’Internet, services établis en Europe et services extra-européens.

Dès lors que ces nouveaux acteurs de l’Internet mettent à disposition des contenus audiovisuels sur les mêmes supports et en concurrence des chaînes traditionnelles de télévision et des services de médias audiovisuels à la demande, ils devraient respecter les mêmes règles que les acteurs traditionnels de l’audiovisuel, à savoir celles de la directive SMA (investissement dans la production, exposition des œuvres, protection du jeune public, règles en matière de publicité...), voire celles plus strictes définies par certains États membres lorsque les services de ces acteurs sont consommés sur le territoire de ces États. Au-delà de l’élargissement du champ d’application de la directive SMA aux nouveaux acteurs de l’Internet, la Commission européenne devrait engager d’autres actions, en particulier dans le domaine du référencement des services audiovisuels sur les écrans connectés de manière à garantir un bon référencement des services audiovisuels européens.
Executive Summary

Channel 4 welcomes the publication of the European Commission’s Green Paper on Audiovisual Convergence. Channel 4 agrees with the focus of the Green Paper on Growth, Creation and Values. The Green Paper highlights the key public policy questions which national and EU policy makers will have to tackle if Europe is to succeed in the fully converged world.

Channel 4 believes the current EU regulatory framework for the audiovisual sector is broadly positive and there is much in the current regime that continues to work well. A policy appraisal should not seek a radical change for its own sake.

Since its adoption in 2007, the Audiovisual Media Services (AVMS) Directive has provided an effective regulatory framework for the regulation of content. The AVMS Directive has nurtured the development of multi-channel television and digital services across Europe. The Directive has proved robust and resilient in regulating linear and non-linear services.

Channel 4 believes future policy development at EU level should focus on incentivising investment in original European content, including investment by Public Service Broadcasters (PSBs), and on meeting consumer expectations of high-quality content and services delivered in a variety of ways. Channel 4 believes that the EU and national governments should prioritise a combination of the following policies:

• Updating the Electronic Programme Guide (EPG) regime to take into account convergence and secure prominence for public service content in non-linear environments;

• Greater recognition for the role advertising plays in funding original European content including public service content. The current advertising minitage framework in Europe should be maintained including the EU wide hourly limit of 12 minutes for linear services as this has a direct impact on commercially funded public service broadcasters’ ability to invest in public service content. Channel 4 does not believe there is a need in the foreseeable future for the European Commission to adopt a revised Interpretative Communication on Advertising;

• Spectrum allocation that takes into account the significant economic, social and cultural value the DTT platform delivers for consumers. The DTT platform plays a key role in the success of the UK and EU audiovisual sector. DTT is the most popular television platform in the UK, delivering public service content to three quarters of UK homes (in Europe as a whole 240 million households), and has brought a huge expansion of choice in channels and services, universally available and free at point of use, driving competition between platforms and stimulating innovation;

• Protecting the openness of the internet. The open internet has led to spectacular levels of innovation and growth – delivering a wide range of benefits for consumers, business
and the economy. As online distribution of content will continue to increase in importance, the open internet needs to be safeguarded to promote media pluralism;

- **IP Protection** – policy makers need to protect the integrity of the broadcasting signal in order to prevent online companies from transmitting broadcasters’ content without their permission. In particular, as these parasitic services compete both for viewers and revenue, making money from broadcasters’ channels by selling advertising around our content.

- **Flexibility** in terms of regulation, given the high levels of uncertainty as we make the transition towards a fully converged world. Channel 4 believes there may be scope for greater use of self and co-regulation.
Channel 4

Channel 4 is a publicly-owned, commercially-funded UK public service broadcaster, with a statutory remit that includes it being innovative, experimental and distinctive. Channel 4’s not-for-profit status ensures that the maximum amount of its revenues is reinvested in the delivery of its public service remit.

In fulfilling its remit, Channel 4 is committed to providing consumers with a wide range of high-quality content and services. This is delivered first and foremost through investment in originally commissioned content. In 2012, Channel 4 spent £608 million on content, of which £434 million was spent on original UK content across its portfolio of services and across a wide range of genres from news, current affairs and factual, to high quality drama and film. Channel 4’s ownership and funding model means that it operates on a not-for-profit basis, which in turn ensures that the maximum amount of its revenues is reinvested in the delivery of its public service remit.

The Channel 4 publisher-broadcaster model, under which Channel 4 does not make its own programmes but sources its commissioned programming from the independent sector, gives it a unique position of how investment in audiovisual content can help contribute to economic growth in the sector.

In 2012, Channel 4 worked with 460 different independent producers across the UK many of them specialist digital companies. Channel 4’s investment in original content has a catalytic impact on the UK’s creative economy. A recent report from Oxford Economics showed Channel 4’s activities generate £1.1 billion for the UK economy each year and supports 28,000 jobs across the UK.

In response to changing viewer demand, Channel 4 has broadened its portfolio of services in recent years to offer a range of digital services that broadens the range of content provided as well as extending reach and impact. In addition to the main Channel 4 service, the Channel 4 portfolio includes E4, More4, Film4, 4Seven and 4Music, as well as timeshift and HD services, including Channel 4 HD. The portfolio also includes a range of related online activities including channel4.com, Channel 4’s bespoke video-on-demand service 4oD, and stand-alone digital projects.

Channel 4 believes that convergence offers challenges and opportunities for Europe’s audiovisual sector. Channel 4 is itself navigating through one of the most disruptive periods of history faced by the media sector by pursuing a strategy of “Investing in Innovation”. This means innovating creatively and commercially to continue to support investment in public service outcomes on a commercially self-sufficient basis.

Creative innovation

As part of its creative renewal strategy, following the retirement of the long-running series Big Brother and other long-established titles, Channel 4 has boosted commissioning spend, investing an all-time high of £434m in original content across TV and online services in 2012, and experimenting with many new programmes across the schedule. The success of this creative renewal process was demonstrated by the fact that in 2012 almost three quarters of the top performing programmes on Channel 4 were new titles, and over 60 series
franchises have been established since 2011. Our creative approach has been underpinned by a strategy to work with the widest range of suppliers as possible. In 2012 we worked with 460 independent content suppliers across film, television and digital media, and were topped both Broadcast’s Indie Survey and Pact’s Members Survey as the best broadcaster for independent producers to deal with.

Bold and innovative programming in 2012, in line with our remit to provide alternative views, stimulate debate, inspire change and nurture talent included: *Plane Crash*, where we battled with red tape for four years in the name of science to allow scientists and viewers to study the impact of crash landing a Boeing 727; the series *The Undateables* which set out to examine a rarely explored idea, the dating lives of people with disabilities; and *Bank of Dave* which followed Burnley based businessman Dave Fishwick’s attempt to establish a community bank following his frustration with the current financial system in meeting the needs of local business and consumers. 2013 has seen further creative success: *Educating Yorkshire*, a documentary series about life in a UK secondary school, and *Skint*, an unvarnished look at how people survive without work, have both successfully engaged high volume audiences with social issues. There has been a resurgence of distinctive drama on the channel – with hits including *The Mill, Southcliffe* and French acquisition *Les Revenants*. *Channel 4 News* has made waves through a series of exclusive scoops, and we have broadcast ground-breaking coverage of major racing events such as the Grand National, having won the exclusive rights to the sport in 2012.

Online, Channel 4’s digital teams continued to pioneer new content experiences, from the mass participation of *Foxes Live* to the award winning game accompanying the film “*The Snowman and the Snowdog*” with over 1m downloads in just over 3 weeks and reaching number 1 in the free iPhone games chart.

The quality of Channel 4’s output emanating from its creative renewal strategy has been recognised with a high number of major industry awards across multiple platforms, from film, comedy, drama and sport to current affairs, documentary and marketing. Channel 4’s London 2012 Paralympic Games coverage was awarded the BAFTA\(^1\) for best sport and live event. The quality of Channel 4’s output emanating from its creative renewal strategy has been recognised with a high number of major industry awards across multiple platforms, from film, comedy, drama and sport to current affairs, documentary and marketing. Channel 4’s London 2012 Paralympic Games coverage was awarded the BAFTA\(^1\) for best sport and live event.

Our creative success has also resonated strongly with audiences. Research shows that audiences perceive Channel 4 as delivering to the remit more effectively than for many years – with data from our brand image tracker showing significant gains in the areas of: ‘taking a different approach to subjects compared to other channels’; ‘showing different kinds of cultures and opinions’; and ‘catering for audiences other channels don’t cater for’.

**Commercial innovation**

In order to maximise the impact of creative renewal, Channel 4 has also embarked on a commercial strategy to evolve its business by investing in digital activities and innovation through data.

Channel 4 has for many years been at the forefront of seizing the opportunities offered by technological developments to provide viewers with content on multiple platforms and to

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\(^1\) BAFTA - The British Academy of Film and Television Arts
evolve the commercially self-sufficient model under which Channel 4 fulfils its remit. For example, Channel 4 was the first broadcaster in the UK to make its content available on an on-demand basis with the launch of 4oD on channel4.com in December 2006.

Channel 4’s record of innovative achievements includes:

- **A future facing commercial strategy** that aims to fully harness the potential of digital convergence to drive understanding and engagement with our audience. Channel 4’s **Viewer Engagement Strategy** has led to the signing up of more than 9 million registered viewers including a third of all 16-24 year old in the UK. Channel 4 believes this strategy will enable it to better serve viewers and to provide advertisers with greater insights into our audience, thus enabling innovation in advertising and sustaining our advertiser-based revenue model.

- **Continuing to invest in mobile apps, online games and connected TV.** Channel 4 is a joint venture partner in the internet TV consortium **YouView**. YouView provides a subscription-free internet TV service which seamlessly brings digital TV combined with the last 7 days’ catch-up TV, on demand services and interactive applications straight to the television set. Since its launch in July 2012, YouView has become the fastest growing UK TV platform, now taken up by over half a million homes.

- **Second screen experiences** – in September 2013, Channel 4 announced the launch of a new second screen experience app “4Now”. This new product (initially available on iOS devices) provides a range of selected interactive experiences, designed to be consumed in “real time” – whilst the user is viewing a programme on their main TV screen.

4Now will provide a centralised destination for viewers to access a range of content, including information about the shows that are on at that time, access to the online social chatter around the shows and the chance to participate in real time polls and votes.

Channel 4 also plans to explore new commercial models via 4Now including, synchronised advertising and sponsorship formats. These may be presented in real time, alongside the traditional spot advertising, that are playing on the main TV.

**Future Market Developments**

There are good reasons to believe that linear viewing will continue to remain the mainstream method of consuming content in the medium term. Despite the tremendous technological upheaval the broadcasting sector is going through - television as a medium remains as resilient as ever. In a world where consumption of content on computers, smartphones and tablets is increasing - linear TV viewing on TV sets remains in rude health. This is supported by Ofcom’s Communication Market Report 2013², which underlines that despite the rise in penetration of internet-enabled devices, 90% of TV viewing in the home remains predominantly live, with the remaining 10% comprising time-shifted viewing via recording devices and viewing of catch-up TV VoD services in the UK. The factors which drive linear viewing currently such as; the “water cooler effect”, discussing shows with colleagues.

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and friends; “event TV” such as sports and events of national importance will always be predominately viewed live; and “lean back consumption” where viewers want a passive viewing experience, will continue to be relevant in the medium term.

In terms of likely developments over the next ten years, Channel 4 anticipates a converged market, enabling creative innovation in the range of audiovisual content available for consumers.

However, technological and consumer trends do suggest audience viewing will become less tethered to the schedule in the medium term. This will be driven by the continued roll out of superfast broadband, increased take up of VoD capable devices such as smartphones and tablets, and improvements in the consumer experience and the growing availability of VoD content from multiple providers.

In relation to advertising, it is likely that over the course of the next ten years linear and VoD will be treated as variants of essentially the same product. Channel 4 foresees audiovisual advertising incorporating innovations such as dynamic ad serving, detailed targeting through socio-economic indicators, location and behaviour, airtime auctions, leverage of the second screen, and new advertising formats. This will enable audiovisual advertising to meet both branding and direct response advertiser requirements. Product placement, sponsorship and advertising-funded programming will also gain further traction.

The diagram below outlines possible developments in relation to audiovisual advertising over the next ten years:

![Audiovisual Product Evolution Diagram](image)

**CHANNEL 4’S OVERARCHING VIEWS ON THE EU POLICY FRAMEWORK**

Channel 4 welcomes the publication of the Green Paper, in particular the pertinent questions posed in relation to challenges and opportunities faced by the audiovisual sector as convergences progresses.

Channel 4 believes the current EU regulatory framework for the audiovisual sector is broadly effective in supporting investment in content and wider public service outcomes, and puts in place appropriate and proportionate consumer protections. There is much in the current regime that continues to work well. As such a policy appraisal should not seek a radical change for its own sake but seek to adapt and modernise audiovisual policy where it could better help sustain the EU audiovisual sector in future, recognising the enormous cultural, social and economic value generated – in particular the contribution by the EU’s public service broadcasters. These points are discussed in further detail in response to the Commission’s specific questions in the Green Paper.
In terms of creativity, the future for television remains bright, TV as a medium is thriving as it allows greater depth to explore complicated narratives.

**AVMS Directive**

Since its adoption in 2007, the Audiovisual Media Services (AVMS) Directive has provided an effective regulatory framework for the regulation of content. The AVMS Directive has nurtured the development of multi-channel television and cross-frontier broadcasting in Europe.

The Directive has proved robust and resilient in regulating linear and non-linear content.

However, Channel 4 believes it would be prudent for the European Commission to prepare the groundwork for future policy development in relation to the converged world which is to emerge in the medium to long term. This could include commissioning external studies which consider possible future convergence scenarios. Channel 4 would welcome the opportunity to contribute to this work.
CHANNEL 4 RESPONSES TO GREEN PAPER QUESTIONS

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?

Broadcasters in Europe have historically operated at a national level because of linguistic and cultural differences. However, the proliferation of channels and globalisation have led to increased demand for compelling programmes and formats from across the world. While this has led to many US titles being acquired by European broadcasters and establishing themselves as popular programmes in Europe, this has also led to EU broadcasters increasingly exploiting their IP in international markets.

This trend has been reflected by developments in the UK, according to Deloitte, UK exports of TV content increased by almost £1 billion between 2007 and 2012 to £1.6 billion.³

PACT, the UK’s independent producers association, reported that international revenues increased more than six per cent to £771 million in 2012 – sales of finished programmes increased by £33m to £152m.⁴ In 2011, sales to Europe from UK producers totalled £421m.

Non-domestic European programmes are also increasingly being shown on UK channels, in particular content from Scandinavia, Italy and France. Channel 4 recently screened the French drama “Les Revenants” at peak time to appreciative audiences.

However, it cannot be denied US producers have established a successful presence in the European Union. The relative success of US content producers in the EU and the global market are due to many factors including; the quality and global appeal of content produced by US programme makers, the willingness to invest in marketing and distribution, a greater focus on commercialising investment and the benefits of economies of scale accruing from a large domestic US market enabling the investment in content with higher production values.

In comparison to their US counterparts, European broadcasters have only relatively recently realised the importance of exploiting the IP rights of their programmes and formats beyond their national borders. However, with pressure mounting on domestic budgets for major investments, there is a trend emerging amongst European broadcasters to seek international co-productions deals for big budget dramas and high impact content.

According to PACT⁵ a key factor behind the success of the UK independent production sector in exporting content around the world are the “terms of trade” introduced by the UK Communications Act 2003. These terms of trade have resulted in the independent production companies owning the rights to programme commissioned by broadcasters

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³ What Television is: 2013. An industry of industries


including international rights. It is widely recognised this change has acted as a catalyst to growth and entrepreneurialism – and continues to do so.

As part of the follow-up to the Green Paper, the European Commission may want to consider commissioning an in-depth study to look at how European broadcasters and content producers could exploit the EU and international markets more successfully.

(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?

All media companies compete for the attention of consumers. The competition to broadcast premium content such as Premier League football matches and films produced by Hollywood majors on an exclusive basis is extremely high.

In a competitive market, pay-TV operators are at the forefront in acquiring rights to premium content due to their business model and their economic power on the market. For pay-TV operators, access to premium content on an exclusive basis is essential to attract and retain subscribers. This is because channels that broadcast highly valued premium content are not easily substitutable with other channels.

Pay-TV is now commonly sold as a bundle including broadband and telephony services. The bundling and pricing of these services is part of a clear strategy by UK pay-TV operators to reduce churn to other platforms.

Channel 4 believes that wholesale access to premium content is beneficial to competition as it increases consumer choice between pay-TV operators. Effective wholesale access also acts as restraint on the market power of potentially dominant operators.

However, there is a danger that bundling and the incentives offered to consumers to purchase multiple services could “lock-in” consumers by making it difficult to switch operators. Channel 4 welcomes the work of Ofcom and the European Commission in considering how to make switching easier for consumers in the communication sector.

In one particular area the EU audiovisual framework supports the availability of key events of national importance to ensure they are made available to society on a universal and free to view basis through Article 14 of the AVMS Directive. Channel 4 believes that this principle should continue to be safeguarded in the converged area. These provisions could also be “future proofed” to include a broader range of platforms and modes of consumption to reflect the changing nature of content consumption, albeit that television currently remains the primary way in which such events are viewed.

In general terms, Channel 4 believes the current UK and EU competition regimes are successful in delivering benefits to consumers, but there is room at the margins in how the regime operates.

Channel 4 believes that as competition becomes increasingly global and fast-paced, the competition authorities face significant challenges in operating efficiently and taking
decisions in a timely fashion. Channel 4 is not calling for the fundamental principles to be amended, but would welcome clearer recognition of the fact that enterprises operating in this sector are doing so in a dynamic context which is unprecedented in both technological development and consumer behaviour.

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

One of the important principles of public service broadcasting is “universality” - the availability of public service content to all potential viewers on a universal and free to view basis. This is in part underpinned by ‘must carry’ and ‘must offer’ regulations. ‘Must carry’ and ‘Must offer’ provisions have historically been implemented by Member States to help the roll out of new distribution platforms and to ensure access to content for public interest reasons.

In the UK, to date ‘must offer’ has been a key intervention to ensure public service content reaches the whole UK population. Channel 4 also believes that “Must Carry” rules will continue to be relevant in the converged world. In any future EU policy framework, Member States should have the freedom to impose must offer and must carry status on channels and services on key major platforms with significant end-users in order to promote plurality of provision and public policy objectives. The must offer measures should strike a balance between ensuring universality and providing a safeguard that PSBs are not burdened with greater distribution costs in the on-demand world.

There is a need for greater recognition by policy makers that in some countries, platforms such as cable and satellite have emerged as powerful economic operators. In the UK, a satellite pay-TV operator is currently able to charge significant access or retransmission fees to carry PSB channels on its platform even when Channel 4 and other UK PSBs are by far the most watched channels, as well as bringing the platform huge audience and brand value.

In the case of public service broadcasters, and in particular broadcasters like Channel 4 who are not profit-maximising, money spent on platform fees could be better spent by PSBs on investing in UK and European content as our not-for-profit status ensures that the maximum amount of its revenues is reinvested in the delivery of its public service remit.

This view is supported by a recent report commissioned by the UK government from the consultants Mediatique which considered whether a deregulated model of carriage might deliver additional benefits for UK viewers. Channel 4 welcomes Mediatique’s conclusion that under a new, deregulated model “an outcome whereby payments flow from TV platform operators to PSBs is plausible and that this could lead to an increase in expenditure on original content industry wide”.

Channel 4 believes any regulatory action proposed in relation to access to platforms should be proportionate and should take into account the significant value public service broadcasters provide to platforms such as cable and satellite, whilst also delivering cultural, social and economic value through content investment.
Given the market power of large platform operators, Channel 4 believes NRAs should have back stop powers to ensure a level playing field between platform operators and content providers.

**Financing Models**

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

As a public service broadcaster, Channel 4’s primary focus is the fulfilment of its public service remit, which is laid out in legislation by the UK Parliament. In addition Channel 4’s public service licence for the main Channel 4 service set by the NRA Ofcom lays out specific and more quantitative quotas, which concern both commissioning levels such as origination and genre obligations, for example in news and current affairs. Channel 4’s remit is delivered first and foremost through investment in originally commissioned content. In 2012, Channel 4 spent £608 million on content, of which £434 million was spent on original UK content across its portfolio of services.

Channel 4 recognises the mandatory percentage requirements established by the AVMS Directive to broadcast European and independent works are a signal to broadcasters of the importance of investing in European content. Quotas can help stimulate the volume of domestically produced content but it is not clear whether they are the only way to promote the creation, distribution, availability and market appeal of European works in the converged era.

As a publicly owned, public service broadcaster, Channel 4 continues to deliver high levels of investment in UK content as part of its public service remit, which contains a mixture of broad objective elements which are not quota driven (such as being diverse, innovative, experimental) and elements in its Ofcom licence that are more quota driven. In 2012, Channel 4 exceeded the quota requirement of 50% for European works comfortably by originating 68%, and in the case of European independent production quota, Channel 4 originated 47%, significantly exceeding the 10% minimum quota requirement.

Channel 4 believes there is no guarantee that establishing quotas leads to the production of compelling quality content or that it enhances the market appeal of European works. The success of the UK audiovisual sector is a result of combination of a strong cultural tradition, exceptional creative talent, supportive government and regulatory policy, a broadcasting ecology with a strong emphasis on delivery of public service content and a healthy commercial sector.

Channel 4 believes EU and national governments should take a holistic approach towards the audio-visual sector in the converged era with the policy aim of incentivising investment in original European content and therefore help promote the continued growth of the sector, including investment in public service content. As outlined above there are a number of policy levers that can help achieve these ambitions, in particular:

- The updating of the Electronic Programme (EPG) regime to take into account convergence and secure prominence for public service content in non-linear environments. Consumers and citizens should be able to discover and access PSB
content easily in a converged environment. There is a danger if EPG rules are not updated for the online world, vertically integrated operators may discriminate in favour of their content or that platforms may strike commercial deals at a global level with global media players and thus marginalising European content providers.

- Greater recognition for the role advertising plays in funding original European content, including public service content. The current advertising minutage framework in Europe should be maintained including the EU wide hourly limit of 12 minutes for linear services as this has a direct impact on commercially funded public service broadcasters’ ability to invest in public service content. In the case of the UK, current advertising rules provide for different minutage allowances for PSB channels (an average of 7 minutes per hour (8 mins in peak)) and non-PSB channels (an average of 9 minutes per hour (12 mins in peak)). Channel 4 believes harmonisation down to PSB levels, would have a direct positive impact on the ability of all commercially-funded PSBs to invest in original UK content and deliver public service obligations.

- Channel 4 believes the greater flexibility allowed under the AVMS Directive for advertising during the transmission of non-linear services should be retained as VoD is a “pull service” where the consumer makes a more active choice in the decision of which content to consume.

- Protecting the openness of the internet. The open internet has led to spectacular levels of innovation and growth – delivering a wide range of benefits for consumers, business and consumers. As online distribution of content will continue to increase in importance, safeguarding the open internet will also contribute in promoting media pluralism.

- Spectrum allocation that takes into account the significant economic, social and cultural value the DTT platform delivers for consumers. The DTT platform plays a key role in the success of the UK and EU audiovisual sector. DTT is the most popular television platform in the UK, delivering public service content to three quarters of UK homes (in Europe as a whole 240 million households), and has brought a huge expansion of choice in channels and services, universally available and free at point of use, driving competition between platforms and stimulating innovation;

- Protecting the integrity of the broadcasting signal in order to prevent online companies from transmitting broadcasters’ content without their permission.

- Support for training and skills development – so the EU audiovisual sector is able to reap the benefits of convergence.

- Enabling current and future business models to develop and flourish.
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?

Convergence and changing consumer behaviour have enabled a range of new business models for content providers, but it is too early to determine how these will affect the current system of content financing as the impact to date has been relatively limited.

In Channel 4’s view, broadcasters - and in particular, public service broadcasters - will continue to play a major role in the financing of original content in the UK. Public service broadcasters are responsible for the vast majority of investment in original UK content - £2.6bn was spent on first-run originations by the main five PSB channels in 2012\(^6\) and its channels attract over half of all TV viewing hours.\(^7\)

This premise is based on the continued popularity of linear TV and continuous innovation by broadcasters to meet the challenges of convergence. In the case of Channel 4, this is underpinned by its creative and commercial innovation strategies outlined above.

New players contributing to the cost of creating content are emerging but not fully replacing the revenue streams available from other, traditional means of exploitation. For example, DVD sales are steadily declining, but they are not (yet) being fully replaced by revenues from sales to digital and on-demand platforms. This is creating very real tension and pressure in the funding models for creating new content, especially comedy and drama. This emphasises the importance of broadcasters, and PSBs in particular, investing in these kinds of genres.

**Interoperability of Connected TV**

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?

Channel 4 is not aware of evidence to indicate significant consumer harm resulting from actual or potential fragmentation due to lack of interoperability between the different internet TV standards operating across the EU.

The development of various internet TV standards reflects the market conditions and business models in the different Member States. The majority of continental European broadcasters apart from Italy (MHP) have adopted Hbb-TV as a standard for internet connected TV.

The UK broadcasting market is arguably the most competitive in the European Union – with intense inter-platform competition. The adoption of Hbb-TV by UK broadcasters at the time would not have been regarded as sufficiently innovative to compete with services provided

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by satellite and cable operators. The current UK D-Book specification does now incorporate many of the HbbTV standards. The D-Book is the UK technical specification for DTT.

Channel 4 is a joint venture partner in the internet TV consortium YouView. YouView provides a subscription-free internet TV service which seamlessly brings digital TV combined with the last 7 days’ catch-up TV, on demand services and interactive applications straight to the television set. YouView is the world’s first truly fully integrated DTT and IP platform. Were the UK required to comply with Hbb-TV, it would not have been able to develop such an innovative platform.

An area where the European Commission may consider launching an initiative would be to tackle the challenges faced by broadcasters and other content providers when they provide VoD content across the diverse range of technology platforms.

The lack of common technical standards means Channel 4 has to provide a highly specific technical solution on a platform by platform basis. Whilst there is some reuse of video assets across platforms, the actual VoD Players (applications) still tends to be bespoke. As a result, the “per viewer” acquisition cost increases as we extend the reach of 4oD onto smaller or emerging technology platforms.

**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?

Channel 4 and other UK PSBs distribute their content on all key broadcasting platforms as well as broadband. However, for UK PSBs, the Digital Terrestrial Television platform remains the most important form of distribution, essential in enabling the PSBs to deliver on their universal service obligations. For consumers, DTT has delivered an expansion of choice in channels and services, and is free at point of use. These features have been responsible for driving competition between platforms, supporting ad funded PSB models and stimulating innovation in the UK, which now has an extremely healthy and competitive market place with DTT, cable, satellite, mobile and IPTV offering viewers a diverse range of choices.

Different platforms provide for different consumer experience in terms of availability, coverage and quality.

- Broadcast platforms (terrestrial, cable and satellite) set a precedent for the quality of experience expected by users. (Broadcast over DTT reaches 98.5% of UK homes.

- Cable and broadband platforms have the advantage of very large capacity in terms of the number of digital channels they can carry, but the cost of infrastructure may prohibit roll out in less populated areas. The satellite platform offers access to greater bandwidth than other broadcast platforms and broadband, however planning restrictions may prohibit consumers installing satellite dishes in certain geographic areas or buildings with multiple dwellers. Video content delivered via over the top broadband on a “best efforts” basis is generally less reliable, subject to buffering, particularly at peak times.
Video content delivered over mobile broadband is subject to similar reliability issues as fixed broadband.

Additionally, broadcast networks have the advantage of being a very cost efficient means of broadcasting to large audiences; as a one-to-many broadcast method, the cost of transmitting linear broadcast is independent of the number of viewers and listeners. In contrast for content delivered on demand via broadband, costs are proportional to the number of viewers and listeners. Cost efficiency is distribution leaves more funding available for the creation of original EU content.

However, high speed broadband penetration means linear broadcast and broadband services are increasingly able to provide complimentary services e.g. 2nd screen experiences, to the benefits of viewers.

For the DTT platform to stay at the forefront of broadcasting innovation for the benefit of viewers, Channel 4 believes it is vital that the EU promotes policies which allow sufficient allocation of spectrum for DTT services.

[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?

As noted above, in the UK the DTT platform is currently the only platform which allows Channel 4 and other UK PSBs to fully meet their public service obligations to ensure universality of coverage.

DTT is also vital for cultural, social and economic reasons in supporting advertiser funded public service broadcasting. It is therefore essential that the EU promotes policies which allow sufficient allocation of spectrum for the DTT platform to continue to operate free from interference.

If it were possible for UK PSBs to deliver their obligations and achieve the same level of coverage and stay true to the fundamental principles of free to air television they would be open to switching platforms. However we do not anticipate this to be the case in the short to medium term. Channel 4 notes that this view is echoed by the UK regulator Ofcom in its UHF Strategy Paper.

Channel 4 believes core broadcast services should be licensed and assigned spectrum to ensure coverage certainty and to minimise interference. The current policy of licensing and assigning PMSE should also continue. This regulatory certainty will help promote investment and innovation in relation to broadcasting services.

The use of “white space devices” can be used to share spectrum with sufficient management and regulation, particularly with respect to utilising unused spectrum by regional broadcast networks. However, this should be tightly managed using a database approach and rigorously regulated to prevent interference.

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8 http://stakeholders.ofcom.org.uk/consultations/uhf-strategy/statement/
At the current stage of development, the use of cognitive devices requires more testing in order to prove how effective they would work in avoiding interference. There also needs to be more research carried out on how effectively cognitive devices could co-exist with “white spaces”.

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

Channel 4 does not believe it would be realistic to assume that broadcast and wireless broadband platforms will converge in the medium term into a single platform, carrying both wireless broadband traffic and broadcast media content.

For fully convergent platforms to become a reality, further research needs to be carried out in the following areas:

• The integration of broadcast receivers into mobile devices. The Japanese (ISDB-T receivers integrated in smartphones) and South Korean (T-DMB receivers in mobile and smartphones) markets have already integrated broadcast receivers into mobile devices. Further research needs to be carried out relating to commercial viability and power (battery time) for their widespread use in the EU.

• Promotion and utilisation of wi-fi wherever possible to minimise spectrum usage.

• Offloading broadband traffic onto broadcast networks. Broadcast networks are optimised to deliver linear content over a large coverage area to a mass audience, whereas broadband networks are optimised to deliver non-linear content to a smaller audience. However, as consumption of media content from broadband networks increases with subsequent increases in demand for data from the networks. Offloading of broadcast type content to broadcast networks would relieve congestion on broadband networks. To optimise the offloading, both networks would need to be able to “communicate” with each other to optimise the delivery of content. There needs to be further in-depth research in how technical convergence could work, and the implications from a regulatory, policy and commercial perspective.

• The management of white space and cognitive technologies in order to mitigate interference and maximise spectrum usage.

• Trends in consumption of linear and non-linear content from the perspective of the user and its impact on networks.

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?

Given the current level of development of convergence, Channel 4 believes there is no significant evidence of market distortion caused by the different regulatory treatment of linear and non-linear services.
The principles behind the different regulatory distinction between a “push service” such as linear television, in which a TV channel may push content to a viewer, and a “pull service” such as video on demand in which the consumer makes a more active choice in the decision of which content to consume still remains valid.

According to Ofcom’s Communication Market Report 2013, despite the rise in penetration of internet-enabled devices, 90% of TV viewing in the home remains predominantly live, with the remaining 10% comprising time-shifted viewing via recording devices and viewing of catch-up TV VoD services. In terms of time-shifted viewing PSBs catch-up TV services are the most popular.

However, Channel 4 believes that one way of protecting the values underpinning the AVMS Directive is to ensure that an EU policy framework allows Member States the freedom to intervene to ensure that public service content - linear and VoD services - must be easily discoverable by audiences in the online world so that PSBs can continue to invest in high quality original European content. The UK government has recently indicated it will ensure this by legislating to maintain the prominence of PSBs – both linear channels and VoD variants - on electronic programme guides.9

(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?

All of Channel 4’s linear and non-linear television or “television like” services come under the scope of the AVMS Directive to some degree. Channel 4 believes there is no evidence to suggest the need to adapt the definition of a “Media Service Provider” or the scope of the AVMS Directive.

The concept of “TV like” services is a sound and a pragmatic approach in deciding whether or not non-linear services should be regulated under the AVMS Directive.

In the UK, non linear TV like services are regulated by the independent co-regulator ATVOD. The co-regulatory framework has received broad support from industry and consumers. Channel 4 believes there are clear benefits of the co-operative approach characterised by co-regulation as it encourages “buy in” from the industry – including a number of players who might not otherwise have willingly engaged with regulation. This “buy in” encourages voluntary compliance with the regulatory principles and rules which are beneficial to consumers.

ATVOD ensures there is regular and substantive engagement with representatives of consumer interests. There is a recognition that the co-regulatory framework needs to be flexible and adaptable as the market develops but with the core principle to protect the consumer interest safeguarded.

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To protect “values”, Channel 4 believes public policy initiatives such as the need to improve the take up of parental control software should be considered to ensure children do not access online content inadvertently which is inappropriate or harmful.

Channel 4 welcomes the work of ATVOD in attempting to ensure that on-demand services which provide hardcore pornographic material do so in a manner which secures that such material cannot normally be seen by the under 18s.

The European Commission should consider requiring Member States to ensure that payments are not processed to media services which allow under 18s to access hardcore pornography.

Channel 4 believes it would be beneficial that an EU framework is adopted encompassing national initiatives such as outlined by the UK\(^{10}\) in tackling hardcore pornographic material by VoD providers.

This we believe could lead to increase in public confidence in VoD services and platforms, as consumers are assured that both adults and their children do not have to access R18 content.

(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?

The country of origin rule in the AVMS Directive is the key principle which has helped establish cross frontier European broadcasting.

Channel 4 believes any move away from the principle of country of origin should only be considered in specific circumstances such as an aim to regulate content delivered over the internet from outside the EU for public policy objectives. However, this will need to be designed in such a way which does not undermine the country of origin principle for EU based operators.

If the measures are not well designed, one possible outcome could be that EU based cross frontier operators may establish themselves outside EU jurisdiction with subsequent loss of jobs, investment and effective regulatory oversight.

(13) Does increased convergence in the audiovisual 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?

Channel 4 is not aware of any practical examples that increased convergence is testing the relationship between the provisions of the AVMS Directive and the E-Commerce Directive.

Channel 4 notes that Article 4(8) of the AVMS Directive provides clarity for NRAs and stakeholders were there to be any regulatory uncertainty in relation to the scope of the two Directives “In the event of a conflict between a provision of Directive 2000/31/EC (e-

commerce) and a provision of this Directive, the provisions of this Directive shall prevail, unless otherwise provided for in this Directive”.

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

Channel 4 believes media literacy has a vital role to play in enabling citizens to have the critical skills, knowledge and understanding, to reap the full benefits of both traditional and new communication services.

This is increasingly pertinent as the traditional approach to regulating online services may not be effective because of the global nature of the internet and the proliferation of choice. Media literate consumers and citizens will have the skills to be aware of the risks and opportunities of consuming online services including social media.

At a European level, the European Commission should promote exchange of best practice in relation to media literacy amongst Member States and other stakeholders with a greater focus on the challenges and opportunities offered by the converging media environment.

Media Freedom 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?

The internet has provided citizens with unparalleled access to information from around the globe. The internet has facilitated citizens to engage in debate and influence the democratic process through citizen journalism, personal blogs and social media – contributing to freedom of expression and media pluralism.

This is particularly so in the area of news, where the internet has allowed citizens to personalise the news they consume by pre-defining choice e.g. a subject matter or areas of interest through filtering mechanisms including in search facilities. This has led to concern amongst some, of the long term impact on democracy if citizens only consume content from a political perspective which they agree with rather than also consuming other political view points.

More broadly, another concern which has been raised is that this may decrease the role of media as editors in the public sphere and strengthen the role of platform providers and digital intermediaries.

To allay these concerns, it is important there are safeguards in place to ensure that platform providers and digital intermediaries do not discriminate in favour of or against specific content for reasons of commercial self interest and to safeguard plurality.

Channel 4 believes an effective implementation of media literacy programmes highlighting the possible effects of filtering technologies and EU intervention and policies safeguarding the open internet should be promoted.
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’?

Channel 4 believes Member States should have the freedom to update the Electronic Programme Guide (EPG) regime to take into account convergence and secure prominence for public service content in non-linear environments such as connected devices, video-on-demand, catch-up services, or non TV devices such as mobile.

EPG prominence for linear services in the UK has worked well in supporting investment and consumption of public service content as it enables viewers to easily find and access the content provided by public service channels and this in turn drives attention to them and enables them to reinvest revenues back into the production of high quality original European content.

Channel 4 believes as quality European content continues to be strongly valued by the public, it is important to ensure that it is easily available to consumers even if the platform they choose does not use a conventional EPG.

For example, the internet TV service YouView has applied linear EPG rules to non-linear services by giving the on-demand services of PSBs prominence. Channel 4 believes this could be an example of how to ensure prominence. Prominence for public service content provided online or accessed via connected devices would ensure that this content reaches a wide audience, thus generating revenues that could be re-invested in original UK and European content.

Article 6 of the Access Directive allows Member States the freedom to introduce national legislation in relation to the presentational aspects of Electronic Programme Guides and “similar listings and navigation facilities” for both linear and non-linear services. Channel 4 believes these provisions should be retained.

The UK government has outlined in its policy paper “Connectivity, Content and Consumers” published in July 2013 its intention to ensure that PSBs – both linear channels and VOD variants - continue to be easily accessible and discoverable by audiences online via a range of devices so that they can continue to invest in high quality UK originated programming.

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Commercial Communications

**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?**

Channel 4 believes the current rules of the AVMS Directive regarding commercial communications have proved effective, and in our view will continue to be over the short to medium term as convergence progresses.

The different regulatory rules which apply to commercial communications included in linear and non-linear services have not raised competitive concerns. In terms of market development, on demand services are still at a nascent stage.

The advertising rules in the AVMS Directive are based on high level principles thus allowing the advertising industry to innovate in both the traditional broadcasting sector and in the on-demand area, whilst at the same time providing high level of protection for consumers.

Despite the tremendous changes experienced by the audio-visual sector since the adoption of the AVMS Directive in 2007, Channel 4 does not believe there is a need for the European Commission to adopt a revised Interpretative Communication on Advertising.

Channel 4 is concerned that if a revised Interpretative Communication is adopted an overly restrictive approach could be applied to certain provisions of the Directive where currently there is freedom for Member States to adapt and apply the requirements in a way that reflects national market developments.

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

Channel 4 believes self regulation has a key role to play in relation to addressing the regulation of new advertising techniques. A well designed self regulatory regime can address and protect consumers’ concerns whilst avoiding the inherent complexities and delays of a legislative process.

In the UK, the advertising self-regulatory system is based on an agreement between advertisers, agencies and media owners that each will act in support of the highest standards in advertising, to ensure that all adverts are legal, decent, honest and truthful. For broadcast advertising, BCAP operates under contract from Ofcom in a co-regulatory partnership. See link: [http://www.cap.org.uk/About-CAP/Who-we-are.aspx](http://www.cap.org.uk/About-CAP/Who-we-are.aspx)

A specific example where self regulatory approach has recently been adopted is Online Behavioural Advertising (OBA) or interest-based advertising. In October 2012, a cross-industry self-regulatory initiative was developed by leading European associations to introduce pan-European standards to enhance transparency and user control for OBA.

This initiative will be overseen by the European Interactive Digital Advertising Alliance, whose principal purpose is to licence the ‘OBA Icon’ to companies involved in Online Behavioural Advertising across Europe. The OBA Icon is a consumer-facing, interactive symbol that links consumers to an online portal, where they can find easy-to-understand
information on the practice of OBA as well as a mechanism for exercising informed choice on whether they would like or not to receive OBA by some or all companies.

This self regulatory approach has been actively supported by the European Commission.

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

Channel 4 believes it is vital that content providers have ultimate editorial control over commercial communications accompanying their content – be it commercial overlays or other novel techniques on screen.

Allowing third parties to insert commercial overlays will not only raise regulatory questions if issues arise over breach of advertising rules but also have a negative impact on advertising funded broadcasters’ ability to invest in original European content.

Channel 4 believes the European Commission may want to consider legislating for protecting the “signal integrity” of broadcasters to ensure third party distributors are unable to manipulate the signal in any way (e.g. add advertisement) or add functionalities like ad-skipping without the prior consent of the broadcaster as recently adopted by the Flemish government.

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?

Channel 4 believes the current rules of the Audiovisual Media Services Directive are broadly appropriate in meeting the challenges of protecting minors in a converging media world. The principles established in the AVMS Directive provide an effective framework in protecting minors for both traditional broadcasting and the on demand world.

However, Channel 4 agrees connected TV devices which allow consumers’ access to differently regulated services or services which are not regulated on the same screen simultaneously; e.g. traditional broadcasting, an on-demand service and in particular unregulated content from providers outside EU jurisdiction has the potential to cause consumer confusion in relation to protection of minors.

Channel 4 believes the solution to tackling unregulated content from outside the EU jurisdiction involves a combination of media literacy initiatives and technical solutions integrated in browsers that provide for age appropriate access, and use of filtering technologies to filter out content that is harmful to minors.
Channel 4 has sought to ensure that its online services sufficiently protect minors from accessing unsuitable content by providing detailed programme content information and clearly signposting content that is inappropriate for under-eighteens. This includes offering parents the option to set a PIN code so a device does not play either 16 or 18 rated content unless you type in the PIN code.

Since the publication of the UK government’s Bailey Review of the commercialisation and sexualisation of childhood in 2011, Channel 4 has updated its on demand service 4oD to include a more integrated PIN and parental lock system that prevents access to any content parents deem unsuitable for their children. Whereas prior to this update the parental control system was just promoted on the site, it is now omnipresent and integrated into all core viewing management features, so it is visible at all times. Channel 4 has also introduced a new parental lock ‘padlock’ icon by the search bar so parents know at all times if the parental lock is on, and viewing guidance about content has been given more prominence within the player itself.

Channel 4 has also worked to ensure parents are informed about this updated system: the parental lock ‘padlock’, which is visible at all times, takes parents instantly to the page where PIN Protected Content, Channel 4’s rating system and how to set up a pin is explained. At the bottom of this page is a link to the UK Council for Child Internet Safety. There are also FAQ’s on the parental lock system on other parts of the 4oD site, and the system is clearly explained on other Channel 4 websites such as the 4Viewers site.

Channel 4 welcomes the European Commission initiative “A European Strategy for a Better Internet for Children”.

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

Channel 4 believes there is no need to amend the AVMS Directive to address the issues of content rating, content classification and parental control across transmission channels. Due to cultural differences, Channel 4 believes these important issues are appropriately dealt with at a Member State level.

(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?

(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?

Channel 4 believes it is important that viewers are informed and empowered to provide feedback and lodge complaints regarding our content. Channel 4 has established a comprehensive and viewer friendly system, these include:
Channel 4’s Viewer Enquiries centre is contactable by phone, email and letter and the address and telephone number is available through Directory Enquiries as well as on the Channel 4 website. All contacts from audiences are logged and then each day this log is distributed throughout Channel 4. Channel 4 also operates a dedicated website 4Viewers, which includes links about Channel 4’s policies and services. This includes FAQ’s on how to contact Channel 4 if they have a complaint. [http://www.channel4.com/4viewers/contact-us](http://www.channel4.com/4viewers/contact-us)

For a complaints relating to Channel 4’s VoD service, viewers are directed to the regulator ATVOD: [http://www.channel4.com/4viewers/faq/name/what-is-atvod/id/400289698](http://www.channel4.com/4viewers/faq/name/what-is-atvod/id/400289698)

Channel 4 also monitors comment about its content on social media platforms such as blogs, Facebook and Twitter, as well as commissioning on-going audience research on Channel 4’s programmes and services.

Channel 4’s monitoring across these varied platforms has continued to show that concern about content being watched by children is at a very low level amongst its audiences – contributing to a very small number of complaints so far in 2013.

However, as part of its on-going commitment to ensuring that we are connected with the concerns and views of our audience, in the last 18 months Channel 4 has sought to make it even easier for parents to express their views on Channel 4’s content – for example linking to the website Parentport from its dedicated 4Viewers website.

**Accessibility for Persons with Disabilities**

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

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

Communications services are a vital means of connecting people with the wider world – whether via telephony, television or the internet. For disabled people, this is of crucial importance – disabled people are often higher users of some communications services than others: for example, they watch more television than average and are more dependent on features like online shopping. It is therefore essential that efforts are made to ensure these services are accessible to everyone.

As a public service broadcaster, Channel 4 is committed to ensuring its content is accessible to as wide a group of individuals as possible. It works hard to make its content accessible to those with sensory impairments regardless of whether this content is accessed on its main linear channel, or other digital platforms. Channel 4 also works closely with Ofcom and disability groups to ensure it is responding to the needs of people with disabilities, and to acknowledge any concerns they may have.

Channel 4 has always significantly exceeded its statutory access services quotas – and in 2010 announced major voluntary commitments to increase its provision of subtitling and audio description from 2011. This included pledging, for the first time, to subtitle 100% of programmes across all of its digital channels as well as the main Channel 4 service.
In addition to subtitling, Channel 4 is also required by Ofcom to provide audio description for 10% of all programmes on the main channel, E4, More4 and Film4 – and in 2011 made a voluntary commitment to more than double this provision to 20%. These quotas were significantly surpassed, with 34.5% of all programmes on E4 providing audio description, and at least 24% on the other channels covered.

Channel 4 agrees that in encouraging further provision of access services a “market response is preferable to regulatory intervention”.

Channel 4 believes that its success in meeting its voluntary commitment to providing access services above and beyond its basic statutory requirements demonstrates that voluntary, industry led approaches can be successful in increasing accessibility and responding to the changing needs of viewers.

Channel 4 therefore sees no evidence to suggest further regulation in this area is necessary and believes the European Commission should instead encourage further industry-led approaches to increase accessibility.

Channel 4 recognises viewers with sensory impairments expect to be able to have the same level of access to content on these platforms as they do on television – and in 2009 voluntarily introduced subtitling to its 4oD on-demand service. It is working towards making 100% of its catch-up content available with subtitles, as well as an increasing range of archive content.

Channel 4 is part of a technical industry working group established in the UK by the independent co-regulator ATVOD to develop a set of technical standards for the delivery of access services provided on-demand, so that they can work across different on-demand platforms. The European Commission may want to consider building on the work being undertaken by ATVOD by encouraging the development of pan-EU technical standards for the provision of access services.

Channel 4 believes that the access services provided by YouView – a subscription-free connected TV service, of which Channel 4 is a shareholder – provides a good example of industry coming together to increase accessibility without regulation.

YouView has worked closely with a wide range of disability organisations to assess and respond to the needs of viewers who have sensory impairments. Accessibility was a core requirement in the user interface design and YouView will also be promoting best practice accessibility models to all third-party developers of its apps and services.

September 2013
10.09.2013

EBU reply to the European Commission Green Paper – Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values

The European Broadcasting Union (EBU) is the world's foremost alliance of public service media organisations, with Members in 56 countries in Europe and beyond. The EBU's mission is to defend the interests of public service media and to promote their indispensable contribution to modern society. It is the point of reference for industry knowledge and expertise. The EBU operates Eurovision, the media industry's premier distributor and producer of top quality live sport and news, as well as entertainment, culture and music content. The Eurovision satellite and fibre network is the largest and most reliable in the world directly plugged in to public service media everywhere.

The EBU welcomes the initiative by the Commission to open a public debate about convergence in the audiovisual media landscape and takes the opportunity to share its views on the main themes and questions identified in the Green Paper. The EBU looks forward to establishing a continued dialogue with the EU institutions and relevant stakeholders.

Executive Summary

1. **Convergence brings tremendous opportunities to audiences and the audiovisual industry.** Audiences’ capacity to choose when and where to enjoy a huge range of content is significantly enhanced. Naturally, audiences need to be equipped with skills to use this range of platforms: the promotion of media literacy should therefore be a part of audiovisual media convergence policies. For the audiovisual industry, the numerous opportunities created by convergence open doors for new services and innovative ways of reaching audiences.

2. At the same time, **convergence generates some critical challenges from a public policy perspective.** Access to audiovisual media is a complex landscape, influenced by a growing range of mostly global players. Pursuing public interest objectives in this landscape requires a proper understanding of the multi-platform environment and the role of digital intermediaries. The existing regulatory framework has supported a vibrant industry, but faces longer-term challenges in this rapidly changing environment. More generally, the speed and scale at which convergence is advancing is impressive and seems likely to further accelerate. All of which makes the present debate all the more timely and important.

3. The significant economic potential and anticipated impact of convergence are driving a range of changes in the industry that make it particularly vital and timely to give consideration to the broader political perspective and context, including the fundamental role of the media for a democratic society. **With ever-greater and faster access to information for citizens, the role of the media in serving the democratic, cultural and social needs of each society is more important than ever.** The primary goals and values of the current
audiovisual regulatory framework (protection of consumers and vulnerable groups, promotion of cultural diversity and media pluralism etc.) remain just as relevant. But the practical implications of a situation where many players – who, in contrast to European audiovisual media service providers, are global and operating in an often unregulated environment - obviously need to be examined further.

4. So far, public service media (PSM) organisations have been instrumental in developing digital technology and driving its adoption. They continue to play an essential role in helping the public, as well as the industry, to actually benefit from the opportunities created by convergence. This instrumental role has developed in many ways, as demonstrated below:

- Digital innovation: the EBU and its members have been early drivers of digital technologies, standards and innovation (DVB, DAB, HDTV, UHDTV, TPEG, peer-to-peer technology for the Internet etc.). The promotion of digital TV and radio standards opened up opportunities for multi-channel delivery and increased the wealth and diversity of content offers to the benefit of audiences.

- PSM embrace the Internet: while linear consumption on TV and radio devices remains dominant, many PSM are also trusted brands in the online environment. Over the past decade, they have become an indispensable point of reference through a range of online services: from catch-up TV, radio podcasting, and live streaming of their programmes through their webportals, to making available services through smart phone and tablet applications.

- Hybrid systems: PSM have been at the forefront of the development of hybrid TV systems such as HbbTV, YouView, MHEG-5 and MHP, which offer audiences a whole range of options for accessing audiovisual content which goes far beyond traditional linear TV. PSM have also been instrumental in the development of technical standards for hybrid radio such as RadioDNS.

- Sustained investment in original content: in the era of convergence, PSM remain committed to high and sustained levels of investment in high-quality and original European audiovisual productions. PSM in the big five markets (FR, GE, UK, SP and IT) currently invest over EUR 10 billion in content every year and on average 2/3 of PSM programming consists of own or commissioned works. PSM are also a guarantee for reinvestment in original content. Thus, they support the development of new content by creative talent in Europe and further develop innovative ways of delivering that content to the public.

- Media literacy and empowerment: PSM’s crucial role lies in helping people build the necessary skills and trust to become informed and active citizens in a multi-platform environment. They provide trusted spaces where people can confidently access media platforms and can critically engage with media. Many PSM also create safe, creative online digital environments for children and young adults and help them understand the risks associated with online engagement (Hetklokhuis.nl, ketnet.be, cbeebies, Planet Schule etc.).

5. Currently, Europe boasts a vibrant media industry. The European dual system of public and private broadcasting, often called the European audiovisual model, has brought about a culturally diverse offer of content and services, which is unparalleled elsewhere in the world. As such, digitization and technical convergence alone are of limited value to citizens. But high quality content and services – which remain primordial in the digital world as much as in the analogue world – can now be accessed with greater flexibility and convenience. Naturally, such services need to be creative and innovative in order to continue appealing to the audience in a more competitive media environment. Exponential growth of audiovisual content quantity on the Internet should not to be mistaken for a growth in terms of quality, choice and diversity. **Real choice for citizens can only be ensured by conditions that enable a diverse offer of high quality content.** Thought must be given to ensuring that technological innovation serves social and cultural goals and not merely economic profitability.

6. **Clearly, sustained investment in original content must be a key policy priority.** But it will be meaningless without additional steps to ensure wide and easy access to such content for all audiences, across the growing range of distribution platforms. Reaping the full benefits of convergence also implies that the best possible combination of broadcast and broadband technologies is made. Specific incentives therefore need to be in place to promote the most efficient use of the different relevant technologies. In a converging world with an increasing number of digital intermediaries, the EBU believes that the digital terrestrial platform continues to play a crucial role. It delivers universal, free-to-air access to a wide range of channels. It significantly contributes to platform competition and user choice even in countries where other distribution platforms are predominant. It will continue to be in a unique position to deliver these benefits in the foreseeable future, allowing innovation in response to consumer preferences and technical development. The Digital Terrestrial Television (DTT) platform has for many years successfully delivered high quality free-to-air content; bringing social, cultural and economic benefits to four out of ten households in the EU. **Tried and trusted terrestrial broadcasting platforms play a role that will remain necessary to complete and complement offers delivered through broadband technology.**

7. We also recognize that the Internet plays an ever more important complementary role to TV and radio in disseminating news, information and audiovisual content, creating a vital need for effective rules on net neutrality. In a converged media environment, most non-linear content in hybrid offers is likely to be distributed over the open Internet. By using specific traffic management tools, network operators providing Internet connectivity can act as gatekeepers for data traffic flows to end-users. This entails the risk that users may no longer have full access to a plurality of information and the quality content of their choice. **The EBU supports a strong regulatory framework for net neutrality, both at EU and national level, reflecting the fact that the openness and non-discriminatory features of the Internet are key drivers for innovation, economic efficiency and safeguarding media freedom and pluralism.** As a general principle, providers of electronic communications to the public should not be allowed to apply any traffic management practices which would block, throttle or degrade any content services. Non-discrimination is important to prevent providers from privileging their own content services or applications, or those for which they have concluded commercial arrangements. In addition, it is important to ensure that the development of managed
services/networks (such as IPTV) by providers is not detrimental to the open Internet.

8. Convergence is adding significant complexity to the access value chain. It puts Internet companies, device manufacturers and other platform operators in a key position to decide whether and to what extent media services are accessible to the public. **Reaching all audiences with diverse content lies at the heart of the PSM model**: we therefore strongly believe in content distribution models which enable as many citizens as possible to actually access a plurality of media content. Universal access to networks, devices and other platforms should therefore be sufficiently guaranteed. As digital intermediaries are often large and powerful organisations which operate at a multinational if not global level, the need for more coordinated policy approaches securing universal and easy access for citizens increases. In this respect, **public policy safeguards for transparency, monitoring access practices and effective “backstop” powers for regulatory authorities where platform practices become a threat to plurality will provide citizens with the necessary trust to use and engage with these platforms**.

9. It is in the citizens’ interest to have access to a broad range of media services, in particular those deemed important for the democratic, cultural and social needs of European societies. In a converged media environment, there are further opportunities to foster fundamental rights and democratic values. However, if PSM are to fulfil this role, they must be visible. Currently, national must carry, due prominence or "must-be-found" rules guarantee the visibility of services of public value on the main TV (and radio) platforms and help to make sure that all citizens can actually consume media content of public value. **However, convergence creates challenges for existing prominence regimes, which could fail to fully reach the public policy objectives for which they were originally designed. The EBU strongly advocates in favour of an appropriate prominence approach as a key component of any policy framework relating to the access to platforms**.

10. Finally, broadcasters’ access to platforms may also be hampered by copyright issues. **The complex framework of rights clearance for broadcasters’ online services in particular needs to be simplified to offer consumers easy access to such services on Internet-connected devices**.

11. In light of these arguments, the EBU would like to recommend that the EU pursues the following objectives in developing appropriate policy approaches on convergence:

- Create the right conditions for citizens to reap the full benefits of convergence;
- Ensure that current goals and values underpinning media policies, such as media freedom and pluralism, cultural diversity, accessibility, protection of minors and of vulnerable groups and data protection are adequately fostered and safeguarded;
- Maintain and support high levels of sustained investment in original content;
- Facilitate and support the development and strengthening of platforms for media distribution at national and EU level;

- Streamline the copyright clearance framework for EU-operated services so that multiplatform access to programmes and related online services offered by EU broadcasters is facilitated;

- Secure efficient use of both broadband and broadcast technology;

- With regard to the terrestrial broadcasting platform:
  - Ensure that it continues to be as strong, appealing, relevant and competitive as it is today and provide a strong signal at EU level that sufficient UHF spectrum will be made available for long-term broadcasting use;
  - Ensure that any changes to the use of broadcasting UHF spectrum do not create any disadvantages for audiences nor any additional costs for broadcasters;

- Ensure universal and easy access across platforms to a plurality of information sources and diverse content. This particularly requires action in the following fields:
  - Strengthening net neutrality principles regarding the open Internet through regulatory safeguards, both at EU and national level and ensuring their effective implementation;
  - Leaving room for Member States to apply must-carry rules on managed networks for linear and non-linear audiovisual media services of general interest;
  - Providing safeguards for access to content platforms and gateways, in the interest of media freedom and pluralism, in addition to rules on access to technical facilities;
  - Leaving room for Member States to ensure the findability of programmes and services which are of particular value for society;
  - Ensuring sufficient levels of transparency for consumers regarding the practices of digital intermediaries, and proactive monitoring and effective “backstop” powers for regulatory authorities where platform practices become a threat to plurality;

- Protect signal and content integrity against commercial overlays and other parasitic business models across platforms to safeguard the European audiovisual production value chain;

- Ensure that third parties are prevented from transmitting broadcasters’ content or signal without their permission via effective IP protection.
2. GROWTH AND INNOVATION

2.1. 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?**

Measuring the success (or failure) of a given audiovisual media industry is a complex matter. One should not only consider its economic features (specific market structure/organisation, the size of domestic market etc.) but also its unique social and cultural dimensions to draw accurate conclusions.

Audiovisual works encompass particular national values, identity and meanings that very often go beyond their strictly commercial value. A number of specific factors need to be considered, such as audiences' affinity with media content closely linked to local language and culture; the regulatory and support mechanisms in place to serve public interest; the broad diversity of players active in the industry; the need to ensure specific productions or content services aiming to benefit minorities or people with special needs/disabilities, etc.).

Simply measuring success through economic revenue or audience share figures is not enough. It is also necessary to take into account the social and cultural benefits arising from audiovisual productions, independently of the economic profit generated. Success is a relative term, depending directly on the objectives set.

**Competitive advantages: the US (economic) success formula**

The US 'success formula' is well-known by now. US companies have managed to successfully establish a competitive advantage in relevant markets outside the US by exploiting the presence of economies of scale. They are backed by a large domestic market (with one prevailing language), characterised by a specific market structure (presence of large integrated companies). Well organized and powerful industrial clusters foster innovation as well as research and development, and have become hubs for attracting talent. Meanwhile, the wide-spread use of English around the world facilitates the international distribution of US films and fiction (together with an effective marketing machine, in which big budgets are invested).

Moreover, the EU and US approaches to data protection and privacy are quite different. While data protection is recognised as a fundamental human right in Europe and as such, benefits from a strict regulatory framework, the US approach is more focused on commercial purposes and consumer rights. In practice, differences between US and EU data protection rules allow US companies to collect user data relating to the use of programmes and services by European consumers, offering them a real competitive advantage. It is a general feature of the online economy that the collection and control of usage data confers an enormous competitive advantage. This is not only relevant in the EU/US context and for the collection of data from Internet searches. It also affects the relationship between broadcasters and distributors/intermediaries. Broadcasters have a legitimate interest in not being
excluded from access to usage data regarding their own services that may be collected by third parties.

One might also argue that the more flexible regime of ownership of rights and the remuneration for use of audiovisual works under US law has served to reinforce this competitive advantage.

The thriving and diverse EU audiovisual media industry

Another consideration is the unique structural characteristics of the European audiovisual industry, including language and cultural specificities; the preferences of national markets and the limited availability of financial sources. In Europe, a variety of actors, ranging from small independent producers to large groups, produce high quality media content and ensure the preservation of cultural and linguistic diversity across the EU.

Cultural diversity is a valuable asset in the EU. Specific public policy interventions both at national level and EU level support the EU audiovisual media industry and allow the audiovisual media sector to flourish (some ensure competition, whilst others aim at securing important public values for Europe, such as media pluralism and cultural diversity). In that context, Public Service Media (PSM) play an indispensable role, as they largely invest (and reinvest) in locally produced, high quality content, thus stimulating national media industries. PSM therefore contribute to economic and industrial growth and at the same time promote diversity.

The EU’s trade deficit is clear: in 2010, the market share of European films in the US was 6.5%. In 2011, the average market share for US films in EU countries was 61.4%.\(^2\) The EU is the primary export market for US films, whereas the majority of EU Member States primarily export within the EU. However, that does not necessarily render the EU industry unsuccessful.

Furthermore, EU-US negotiations on the Transatlantic Trade and Investment Partnership (TTIP) should not diminish the scope for regulatory and support mechanisms designed to promote investments in original content and secure public value in the EU audiovisual market. It is widely understood that open trade in audiovisual services between the EU and US would expose the EU audiovisual sector to the overwhelming competitive advantages of its US counterpart, and further accentuate the existing trade imbalance.

The EU audiovisual market: key figures

- The EU audiovisual market represents 20% of the world audiovisual market in 2011 and has a value of EUR 131 billion.\(^3\)
- The vast majority of the 121,000 companies\(^4\) composing the EU audiovisual sector are independent from extra-EU conglomerates.
- EU companies, whether public or private, and operating either on a pan-European, national, regional or local level, make up a pluralistic and diverse EU TV landscape

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\(^2\) Trade in commercial services. Key developments in 2011: a snapshot, WTO
\(^3\) European Audiovisual Observatory, Yearbook 2012.
\(^4\) European Audiovisual Observatory, Yearbook 2012, based on Eurostat data.
They produced almost 1,300 films in 2012.\(^5\)

They provided more than 8,300 TV channels and more than 2,700 on-demand audiovisual services by mid-2013.\(^6\)

The European dual system of public and private broadcasting has successfully contributed to maintaining a thriving European audiovisual industry with high take-up and demand. The competition between public and private media organisations has led to a healthy diversification of productions, offering a range of content catering for the variety of audiences’ interests. And the dual system contributes to plurality in news and current affairs as well as cultural diversity. PSM organisations have a particularly essential role as far as the creation and distribution of diverse European content is concerned, due to their strong commitment to investment in quality original content. Some figures reflecting this role are highlighted in the frame below:

**PSM contribution to growth in the European audiovisual industry:**

- PSM broadcast **275 national and international TV channels** in the EU, more than 180 national and international radio stations, hundreds of regional and local services\(^7\) and already **more than 400 on demand audiovisual services** in 2013,\(^8\) that are recognized for the quality of their programming and their fulfilment of public service values.

- In an era of convergence and multi-platform distribution, PSM services continue to be trusted and popular among a wide share of European audiences. In the EU, TV channels broadcast by PSM gathered in 2012 **an average 27.8%\(^9\) viewing share.** In general, radio also remains very popular. In 2012, it reached **80%** of the population in an average week in many European countries and people spent more than **3 hours** listening to radio every day (192 minutes). On average, more than four out of ten radio listeners listened to PSM radio in these countries.\(^10\)

- PSM contribute to the EU audiovisual value chain through **major investment in content.** In the UK, PSM overall network spend amounted to EUR 3.4 billion in 2012.\(^11\) In Germany, ARD and ZDF invested EUR 3.8 billion in 2011.\(^12\)

- More so than other audiovisual service providers, PSM in particular invest in the creation of quality original content. **In the "big 5" markets (France, Germany, Italy, Spain and the UK), 71% of PSM programming spend was invested in original content.**\(^13\)

- Currently, European fiction represents **37%** of total fiction programmes (feature films, TV films, short films, series and animation) broadcast by all European TV channels, a figure that rises to **more than 60%** when considering PSM alone.\(^14\)

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\(^{5}\) European Audiovisual Observatory, Focus 2013.

\(^{6}\) European Audiovisual Observatory, Mavis Database.

\(^{7}\) EBU, Media Intelligence Service (MIS).

\(^{8}\) Figures from the European Audiovisual Observatory.

\(^{9}\) EBU, Media Intelligence Service (MIS) based on data from Eurodata TV Worldwide.

\(^{10}\) EBU, Media Intelligence Service (MIS) based on data from 18 Members.

\(^{11}\) OFCOM, Public Service Broadcasting Annual Report 2013.

\(^{12}\) EBU Media Intelligence Service (MIS) based on Members’ data.

\(^{13}\) Oliver & Ohlbaum Associates Ltd., PSB investment in the creative industries in Europe, 2010.

\(^{14}\) EBU Media Intelligence Service (MIS) based on data from European Audiovisual Observatory (referring to data provided by ROVI).
The production of culturally diverse content is a European asset. EU audiences appreciate this, as shown by the popularity of original locally produced content. There is a need to preserve this European asset. It generates social and cultural benefits that go beyond the audiovisual industry. Support for sustained investment will contribute to spur audiences’ interest in diversified content.

Recognising the value of quality in European content is all the more crucial at a time when changing distribution models and consumption patterns highlight the importance of quality content as a the primary driver of the audiovisual market. This fact is certainly recognised by the successful US companies referred to in this Q1. Take the much-touted example of Netflix. Indeed, its recent high-profile investment in the production of original content has only served to highlight what PSM have long known to be true: quality content builds audiences and strengthens their loyalty.

**Distribution of audiovisual works and access issues**

The way in which audiences enjoy content is changing rapidly. Ensuring wide access to the quality content created by PSM through audiences’ preferred means is the key to being competitive. The full value of the content produced by PSM will only be realized if European PSM can stay fully apace with all new forms of access on a growing range of devices.

In the current rapidly-evolving and converging environment, changes are needed to ensure that quality European content enjoys a level playing field with content from US or other international players in the EU market. Large US-based companies have controlled international cinema distribution markets for decades: this has given them a competitive advantage and contributed to the successful export of their audiovisual works. With the advent of convergence, they may be able to exploit economies of scale to an even wider extent than before. So, in addition to supporting investment in content, another key priority is to support the development and strengthening of platforms for media distribution both at the national and European level.

The EBU would like to point to another specific risk linked to the fact that non-EU companies control content platforms. It may become harder for European audiences to access European content and could also impact the diversity of content and news which is produced. As convergence progresses, the need for specific measures becomes ever greater in order to secure wide, easy and universal access for European audiences (see answers to Q3 and Q16).

**New audiovisual services in converged markets**

The regulatory framework should enable public and private partnerships, allowing EU companies to compete on a level playing field with their US competitors. EU and national competition rules in particular should be applied accordingly. There are a few examples of such successful cooperation: the YouView joint venture in the UK and the test application Stievie for iPhone and iPad (live and catch-up TV covering the past 36 hours) in Belgium (Flanders).

However, there are concerns that other ventures that would have benefited EU consumer interests have been found to violate EU and/or national competition law, leaving the field open to US conglomerates to effectively take over the market. A combination of "first-mover advantage" and global resources quickly create
overwhelming barriers to entry for EU market players in this sector, as the market for global search engines has already clearly demonstrated.

Moreover, undue restrictions imposed on PSM with respect to their presence on, and dedicated services for different platforms (including the mobile platform) can stifle future innovation and competition between broadcasters (intra EU and EU/US) and between platform operators. It is important to note that *ex ante* public value tests for significant new PSM services under the State aid rules must be applied and interpreted in an appropriate and proportionate way, in order to prevent an overall chilling effect on broadcasting innovation in the EU. If such *ex ante* tests are too expensive and burdensome, PSM will simply not launch any new public interest services and the market and consumers will suffer.

**Copyright**

Copyright issues are also an important factor impacting the creation of a level regulatory playing field with US and other non-EU companies offering content. Possible obstacles to broadcasters' access to platforms requiring regulatory action (Q1 and Q3) directly relate to copyright. The complex framework of rights clearance for broadcasters' online services in particular needs to be simplified to offer consumers easy access to such services on Internet-connected devices.

At present, the licensing of broadcast programmes is only facilitated by regulatory measures at EU level for the *simultaneous* retransmission of programmes by *cable* (see below), but not for the retransmission on *other* third-party platforms, nor for the *non-linear* (e.g. on-demand) use of broadcast programmes by such platforms (including by cable). If cumbersome rights clearance prevents connected devices from being used to show the programmes and related online services of EU broadcasters, then merely ensuring *technical interoperability* of such devices EU-wide would be meaningless.

For example, in order to reach the Single Market objectives of the Television without Frontiers Directive, the 1993 Cab-Sat Directive facilitated certain licensing systems under copyright. This was pursued to create "a single programme production and distribution market" in the EU.\(^1\)

The principles underpinning these licensing systems can also be applied to other forms of retransmission of broadcast programmes as well as to broadcast-related online services, so that both services can be delivered via any platform.\(^2\) Therefore, while the EBU wholeheartedly embraces the potential of technical solutions to overcome obstacles to online media delivery, as detailed in the Green Paper, these will be fundamentally limited if the rights clearance issues for the multiplatform use of programmes are not addressed. Without simplified rights clearance for the platform-neutral distribution of EU programmes and related online services, EU broadcasters will fail to fully benefit from the opportunities offered by media convergence. For similar reasons, the framework for the cross-border access to EU programmes also needs to be improved.

\(^1\) This was highlighted by the European Court in the *Murphy* case, *Premier League v. QC Leisure*, Joined Cases C-403/08 and C-429/08 at nr. 121.

\(^2\) For recent support for the proposal to apply the "satellite injection" rule to online services, see the Lisbon Council Policy Brief of 30.5.2013, by Prof. Hargreaves/Hugenholtz, available at [http://gallery.mailchimp.com/e11b949d8350120e252700029/files/LisbonCouncil_policybrief_FIN2_web.pdf](http://gallery.mailchimp.com/e11b949d8350120e252700029/files/LisbonCouncil_policybrief_FIN2_web.pdf)
Moreover, another aspect of copyright that plays in favour of US companies regarding rights clearance is the fact that ownership of rights and the remuneration for use of audiovisual works under US law is more straightforward than the variety of regulations under national copyright laws in most EU Member States, and therefore less costly.

This difference results in US-originated online services facing fewer (cross-platform or cross-border) rights issues. The disadvantage faced by EU broadcasters is further compounded by the fact that, contrary to US companies, they do not necessarily benefit from a large domestic market where they can easily recoup their investments. Although PSM remain strongly committed to fostering cultural diversity in Europe, a fair balance must be attained by streamlining the rights transfer and licensing processes within the EU legal framework. This will also keep remuneration for programme contributors free of unnecessary administrative costs.

(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?

So-called premium content, whether film (eg latest Hollywood movies) or sports (eg football World Cup or the Olympics), generates potentially high audience shares and high advertising revenues. Its availability is characterized by complex legal and factual conditions, including competition and copyright law. For example, the Court of Justice recently considered in the Murphy Case\(^\text{17}\) that broadcasting rights may be sold on an exclusive basis, but absolute territoriality may be contrary to the EU principles of competition law and free movement of goods and services.

Buying the rights to the most popular content is also highly competitive, and this can lead to very high prices for the most valuable content, which is mainly bought by pay-tv broadcasters, who are able to pass on the costs to pay-tv subscribers downstream, potentially in triple play bundled services (e.g., broadband, content and phone). In some countries this can lead to the exclusion of certain classes of consumers from important national sporting events.

Consumers should not be denied the opportunity to access premium content, which in the case of major national sporting events in particular plays an important role for social and cultural cohesion. For this reason, and as recognised in numerous EU cases, decisions and standards, the public remit of public service broadcasters is both broad and diverse. It should ensure universal free access to a wide range of content and services in the public interest on all platforms, including the more popular content as well as content for minority tastes.\(^\text{18}\)

Article 14 AVMS Directive lays down framework conditions to enable Member States to ensure that certain events (cultural as well as sports) of major importance for society (reflected in a national list, known as “Listed Events”) are available universally to all viewers on a free-to-air basis. The conditions should be interpreted in a platform-neutral way to prevent certain events from only being made available to the public on

\(^{17}\) Premier League v. QC Leisure, Joined Cases C-403/08 and C-429/08.

\(^{18}\) Communication from the Commission on the application of State aid rules to public service broadcasting, 2009/C 257/01, paragraph 81.
an exclusive basis by pay-tv broadcasters or any other pay service provider on any platform (i.e., including telecoms operators and/or internet services providers), thereby depriving a substantial proportion of the public of the possibility of following such events on a free to view basis. In this way, it can be ensured that the rules are "future-proof" and take into account different platforms and modes of consumption.

In the converged media world, where free-to-air audiovisual media may not only face competition from traditional pay-tv operators but also from vertically integrated pay-models of telecommunications and technology conglomerates (sometimes vertically integrated global media groups), these provisions may become even more vital to ensure universal access to major national events for all.

In those cases where free audiovisual access to major events is severely at risk or restricted, the EBU takes the view that EU Member States should consider implementing or expanding the Listed Events provision (as appropriate and required) to ensure that viewers are effectively guaranteed free access to coverage of Listed Events (including, but not limited to, national sporting and cultural events) in a converged media environment.

The EBU regards the universal availability of such live events to be a vital part of the fabric of society and a major contributor to social and cultural cohesion. The Listed Events legislation, ensuring universal access to live events of national importance free-to-air, is a much more effective, efficient and proportionate regulatory tool compared to ex post regulation on the basis of competition law and/or direct regulatory intervention against individual companies, which may be costly and ultimately ineffective.

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

Citizens can now access content in new and more convenient ways and there is a huge potential for an ever more diverse and plural offer. However, the economic players controlling major platforms could become gatekeepers between content providers and the public and therefore restrict or distort access to media content. In the EBU’s view, the existence of these risks call for a proper reflection on how to improve policy and regulatory safeguards relating to access to platforms.

The fundamental contribution to society of the media, in particular PSM, lies in the way it empowers citizens by helping them form critical opinions, make informed choices and engage in the public domain. Sustaining wide, easy and non-discriminatory access for citizens to a plurality of media, not in the least PSM, should be a major preoccupation driving any future policy approach responding to the challenges of convergence both at EU and at national level.

PSM organisations embrace convergence and make engaging digital content and services available on a multitude of platforms. Over the past decade, PSM have strengthened their presence online and through other channels: from catch-up video services and live streaming of their programmes through their webportals, to making available services through smart phone applications and tablets. They are establishing new ways of connecting with their audiences through their active involvement in the development of hybrid systems (HbbTV, MHP, YouView etc.) and actual content
provision through connected devices. Cooperation between media organisations and platforms proves to be of ever increasing importance to continue bringing diverse and quality content in a compelling way to the citizen.

The EBU thus subscribes to the challenges identified by the Commission in this Green Paper and generally welcomes more transparency in the way these platforms operate and exercise their role as gatekeepers. The EBU would like to highlight several key issues which emerge from the debate about access to platforms and which may require (some form of) public intervention in order to ensure that the public interest is properly preserved.

Before pointing to a number of shortcomings in current legislation and presenting possible regulatory solutions, it is necessary at first hand to clarify the potential role of “platforms” and identify the risks impacting citizens’ access to a diverse and plural offer of media content.

1. Platform operators and digital intermediaries as potential gatekeepers

We understand the notion of "platforms" as used in Q. 3 in a broad sense, covering not only technical networks used for the transmission of audiovisual content but also additional facilities for making audiovisual content available, which may include elements of software (e.g. applications) and hardware (e.g. connected TV sets and other connected devices), navigation systems (e.g. EPGs) and aggregated content offers (for more detail see Q. 16 under (d)\(^\text{19}\)).

Currently, there is limited data in the public domain about the behaviour of intermediary actors, their role as gatekeepers and the repercussions they may have on the plurality of media content and the wider public interest.

A recent study by the Reuters institute refers to these actors as “digital intermediaries” and identified four different types: news aggregators, search engines, social media and digital stores.\(^\text{20}\) Whereas the notion of platform (or intermediary) indicates that they adopt a neutral approach to the content they carry, they might in fact have a substantial impact on control access. Their decisions not only directly impact the availability of content (becoming real bottlenecks), but can also affect the definition of the public/political agenda (due to their editorial capacity) as well as the economy of content provision.

This new gatekeeper position assumed by platform operators entails a specific risk, as media organisations might have difficulties accessing the former’s distribution/commercialization platforms. Even if basic access is ensured, the prominence of certain media organisations could be very low in favour of services that have reached better agreements with the platform operator or better fit their business models.

It is also necessary to have a look at practices by platform operators concerning the collection of usage data. Such practices may not only raise questions about the

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\(^\text{19}\) Given that decisions made at the level of the media device or the Internet connectivity can impact citizens’ ability to access content and represent an important bottleneck for the distribution of media content, it is necessary to include manufacturers of connected devices and Internet connectivity providers in the scope of any assessment of the obstacles to access to platforms.

protection of personal data, but also about the sharing of usage data to the benefit of all stakeholders, allowing them to better serve their customers and to compete on an equal footing. For example, broadcasters should be informed and, upon request, be given access to any data collected by intermediaries relating to the use of their programmes and services.

2. **Easy and wide access to media of public value: a precondition for media freedom and pluralism**

*In the digital and multiplatform environment, access to platforms is becoming a precondition for media freedom and pluralism, essential for the exercise of freedom of expression and information by citizens.*

Consumers and media service providers need wide and easy access to platforms (including portals, connected devices and user interfaces). Digital intermediaries and platform operators may condition the access to content and services and may pose a threat to access in both directions, from the user to the content provider and vice versa. In many cases, their impact does not only result from the control of an essential facility but from their potential dominant position in adjacent markets or other parts of the value chain. This is a global trend.

a) **Universal access to a plurality of media services**

Today, the digital terrestrial platform provides universal, free-to-air access to media services that seek to inform, educate and entertain European citizens and contribute significantly to media pluralism. By providing citizens direct and free access to these services, the DTT platform helps to improve market competition and consumer choice even in those countries where other broadcast distribution platforms are dominant. Moreover, for a majority of European viewers terrestrial networks are still the primary means of receiving TV services. These social, economic and cultural benefits cannot be replicated by any other distribution platform in the foreseeable future.

Convergence is adding significant complexity to the access value chain. It puts Internet companies, device manufacturers and other platform operators in a key position to decide whether and to what extent media services are accessible to the public. Reaching all audiences with diverse content lies at the heart of PSM’s mission. This is why the EBU strongly believes in content distribution models which enable as many citizens as possible to actually access a plurality of media content. Thus, it is necessary that universal access to networks, devices and other platforms is sufficiently guaranteed. As digital intermediaries are often large and powerful organisations which operate at a multinational if not global level, the need for more coordinated policy approaches securing universal and easy access for citizens increases.

Furthermore, the EBU believes that it is of key importance that operators providing access to platforms (in the broad sense) guarantee full transparency to citizens on how access to content is determined. It will not only provide citizens with the necessary trust to use and engage with these platforms but will also help them to establish whether and to what extent certain practices conditioning access could pose a threat to plurality.

**Thus, any policy framework securing universal access and plurality of information should not only secure effective competition and net neutrality principles but also contain concrete safeguards for access to media services on all relevant platforms. Such a framework should also include sufficient levels of**
transparency and monitoring of access practices and provide effective “backstop” powers for regulatory authorities where platform practices become a threat to plurality.\(^{21}\)

b) Findability of media services of public value

Prominence rules are specifically designed to ensure that as many citizens as possible can easily access media services of public value. Currently, national prominence or "must-be-found" rules guarantee the visibility of services of public value on the main TV (and radio) platforms\(^{22}\) and help to make sure that many citizens can actually consume media content of public value.

Given their increasingly important roles in selecting and guiding towards content and information, digital intermediaries, through their decisions and the design of their platforms, impact the “findability” of content with a public value or with a particular function for democratic society. Thus, convergence raises a challenge where existing prominence regimes could fail to fully reach the public policy objectives for which they were originally designed.

Whereas a sustained commitment by PSM to drive new technology definitely helps to secure a better position for public value content on many access platforms, the EBU strongly advocates that the development of an appropriate approach to prominence should also be a key component of any policy framework relating to the access to platforms.

It is also true that the use of open standards such as HbbTV - provided that these are supported by networks and devices - may ease access problems or make them less likely to occur (see Q. 6 below). Despite this link, it is important to distinguish access and standardization/interoperability as separate issues.

3. Summary of the current regulatory situation

The current regulatory situation is characterised by the existence of certain ex ante safeguards in the form of net neutrality principles (at least in a rudimentary form) for the open Internet and in the form of access and must-carry rules for managed networks (e.g. cable TV and IPTV networks). However there is a striking absence of concrete safeguards as regards access to content platforms (see Q. 16 (d) for a possible definition of this term) and the findability of content on user interfaces.

An overview of the current regulatory situation is given in Table 1 on the following page.


\(^{22}\) The existing scheme in the UK covers public service channels. See Section 310 (I) and (2) of the Communications Act 2003.
The above table reflects the EBU's understanding of the current legal situation.

4. The need for ex ante regulatory safeguards

There are strong indications that ex ante safeguards are necessary with regard to infrastructure and content gateways. This is even more important when considering market concentration and vertical integration, where technical and content elements are combined, or where companies provide content platforms and at the same time content/media services and/or technical infrastructure (networks or devices).

As highlighted above, access to platforms is becoming a precondition for media freedom and pluralism in the digital and multiplatform environment, and essential for citizens' exercise of their freedom of expression and information. Because of the close link between access to platforms and media freedom and pluralism, or more generally freedom of expression and information, merely addressing access through competition rules is not adequate.

As media freedom and pluralism hold a prominent position in the European constitutional framework, access to content platforms/gateways must not merely or primarily be considered from a competition law perspective.

Competition rules - whether general or sectoral, as in the case of the telecom directives - have a purpose which is different from media law: their objective is to prevent significant distortions of competition in the market place. They prevent single undertakings from abusing of a dominant market position, and acquisitions or mergers of separate companies from creating a dominant position. However they do not prevent
the organic growth of single companies that, with or without vertical integration, are effectively able to act as gatekeepers.

Moreover, general competition rules apply only apply ex post, and their application in emerging markets is often characterised by long procedures and uncertain results. Applying general competition rules to the converging platform market may in certain cases help to open up the market, but falls short of providing any guarantees for a functioning media system which fulfils its democratic, social and cultural role.

Accordingly, the EBU sees a case for public intervention and for strengthened and enlarged ex ante safeguards along the following axes:

- **Strengthening net neutrality principles regarding the open Internet through regulatory safeguards, both at EU and national level and ensuring their effective implementation;**
- **Leaving room for Member States to apply must-carry rules on managed networks for linear and non-linear audiovisual media services of general interest;**
- **Providing safeguards for access to content platforms and gateways, in the interest of media freedom and pluralism, in addition to rules on access to technical facilities;**
- **Leaving room for Member States to ensure the findability of programmes and services which are of particular value for society;**
- **Ensuring sufficient levels of transparency for consumers regarding the practices of digital intermediaries, and proactive monitoring and effective “backstop” powers for regulatory authorities where platform practices become a threat to plurality.**

These points are developed in more detail in the following sub-chapters and in our response to Q. 16.

a) **Ensuring open Internet with effective rules on net neutrality**

There is an increasing need for effective rules on net neutrality, as the Internet plays an ever more important role in disseminating news and information. This includes more and more audiovisual content, which is an important cultural and social vector.

In a converged media environment, much of the non-linear content of hybrid offers is likely to be distributed over the open Internet. Thus, net neutrality principles are a fundamental instrument to safeguard freedom of expression and information.

By using specific traffic management tools, network operators providing Internet connectivity can act as gatekeepers for data traffic flows to end-users, which entails the risk that users may no longer have full access to a plurality of information and quality content of their choice. As recognised by BEREC last year, network operators clearly have incentives to engage in differentiation practices regarding Internet traffic, not only if they are vertically integrated companies, but also in the absence of vertical integration.²³

²³ BEREC Report on differentiation practices and related competition issues in the scope of net neutrality, BoR content online (12) 132, 26.11.2012.
The EBU supports a strong regulatory framework for net neutrality, both at the EU and national levels, which reflects the fact that the openness and the non-discriminatory features of the Internet favour innovation and economic efficiency, and safeguard media freedom and pluralism.

Any policy framework will need proper safeguards to maintain the open and non-discriminatory character of the Internet, and to promote its public service value. As a general principle, providers of electronic communications to the public should not be allowed to apply any traffic management practices which would block, throttle or degrade any content services. Exceptions should only be allowed in exceptional and clearly defined cases, for example along the lines of the recent Dutch law on net neutrality,\(^\text{24}\) and would only cover measures to the extent that they are necessary:

- to comply with a legal requirement or court order,
- to restrict unsolicited communications (with the user's prior consent),
- to preserve the integrity of the network, or
- to minimise the effects of traffic congestion in a non-discriminatory and verifiable way (treating equivalent types of traffic in the same way).

Non-discrimination is important to prevent providers from privileging their own content services or applications, or those for which they have concluded commercial arrangements.

In addition, it is important to ensure that the development of managed services/networks (such as IPTV) by providers does not harm the open Internet. Not only should there be no general degradation of the quality of the service delivery on the open Internet, but the capacity for the open Internet should continue to be developed in a dynamic way. The definition of minimum requirements regarding quality of service would be a useful instrument in this respect.

\(b)\) Must-carry rules for managed networks (cable TV and IPTV)

In contrast to the open Internet, which is based on the "best effort principle", quality of service is guaranteed for (selected) services carried over "managed networks" (also referred to as "specialised services"). Cable television networks are a traditional example, but IPTV services on broadband networks fall into the same category.

To ensure access to a comprehensive and pluralistic offer of radio and television services for viewers and listeners, and in particular to services of particular value for society, Member States have introduced must-carry obligations for operators of cable television and similar networks used for the distribution of radio and television services. According to Art. 31 of the Universal Service Directive, Member States may impose such obligations, for the benefit of specified radio and television channels and complementary services, on operators of networks which are used by a significant number of their users as the principal means for receiving radio and television. Whereas the purpose of rules on access to telecom networks/services in the Access Directive is to ensure competition in the telecom market, the purpose of must-carry rules is, by contrast, to ensure citizens' access to general interest content which is of particular value for society. Accordingly, national must-carry rules are normally part of

\(^{24}\) Art. 7.4a of the Telecommunications Act, which entered into force on 1 January 2013
media law. They are nevertheless referred to in the EU telecom package, since they place obligations on network operators.

**It is important that Member States maintain the freedom to apply must-carry rules, whenever deemed appropriate, to managed networks, including cable TV and IPTV networks.**

**With regard to connected TV, it is also important that must-carry obligations cover, as a complementary service, the hybrid TV signalling, which is part of the broadcasting signal and allows viewers to interact with the programme and to access complementary on-demand content.**

Art. 31 of the Universal Service Directive currently restricts national must-carry rules to linear audiovisual media services. This restriction is at odds with a world in which linear and non-linear services are converging. Accordingly, it will at some point become necessary to broaden this provision so that Member States can include the transmission of non-linear audiovisual media services in their must-carry rules (see response to Q. 16 under (b)).

c) Safeguards for access to content platforms/gateways

Whereas the regulation of the open Internet and managed networks concerns the operation of technical network infrastructure and transmission services, content platforms/gateways are situated between the audiovisual media service and the transmission service.

Examples include platforms which bring together (linear and/or non-linear) content from different media service providers, such as interactive content portals provided by manufacturers of connected TV sets, media players providing live and catch-up radio and TV for a variety of connected devices, iTunes-like digital stores, and services like Google TV, Netflix etc. (For a possible definition of content platforms/gateways, see our response to Q. 16 under (d))

In line with the different functions of media and telecom law, access to such content platforms/gateways is not currently covered by the access rules of the telecom package. Rules on access to relevant content platforms/gateways in a converged media environment should, in the first place, serve the citizen's right to information and also foster media freedom and pluralism, and not just competition in the telecom market. Accordingly, media law would seem to be the best way of dealing with these access issues.

As shown in Table 1, neither the telecom rules on fair, reasonable and non-discriminatory access to telecom networks/services, nor must-carry rules for broadcasting services on cable TV and similar networks cover access to the new content platforms (including portals, user interfaces and other gateways controlled by intermediaries).

In other words, there are regulatory safeguards for access to network infrastructure, introduced in the interest of competition in the telecom market, but no safeguards for access to content platforms, in the interest of access to information and media pluralism. This can be considered as a regulatory asymmetry which is difficult to justify.

**Considering the importance of audiovisual services (radio, television and new media) in forming public opinion in a democratic society, there is a need for**
regulatory safeguards to be in place to ensure access and plurality on content platforms and gateways. The existence of access obligations would also give regulatory authorities a basis for monitoring and swiftly addressing problems in the market, for example detecting an operator’s exclusionary behaviour at an early stage.

This is all the more significant as content platforms/gateways are becoming increasingly important in a converged media environment: they are the key to providing an integrated, seamless offer of linear and non-linear media content.

d) Findability of services on user interfaces

It is not enough that media services are available on content platforms; they must also be findable for the user. Accordingly, regulation must not only address access to content platforms/gateways as such, but also the findability of media services on user interfaces, and in particular public services which are of particular value for society (see in more detail our response to Q. 16 under (c)).

Some Member States have laid down certain provisions in national law which could serve as a starting point (for example, Germany with its rules on non-discriminatory access to user interfaces on broadcasting/telemedia platforms, and the United Kingdom with its rules on appropriate prominence for public service channels on EPGs). Member States must retain the power to develop these provisions further and to adapt them to the converging media environment.

There might also be benefits in developing an EU-wide approach, and enshrining basic access principles in the acquis communautaire, not least because some of the most relevant content platforms/gateways are likely to be operated at a multinational level.

Media freedom and pluralism are values which are just too important for democracy to be left entirely to the market. This is not only true for traffic management on the Internet but also for the findability of programmes and services which are of particular value to citizens in Europe.

2.2. Financing models

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

The current AVMS requirements to promote the creation of European works continue to be an important instrument and prove that the EU is committed to protecting cultural identity and diversity.

PSM organisations are major investors in audiovisual productions. All together, PSM organisations in the big five markets (FR, GE, UK, SP and IT) invest over EUR 10 billion every year in content. European works – both domestic and non-domestic - are

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25 EBU Media Intelligence Service (MIS), based on data from Members.
significantly more prominent in the TV schedules and on-demand catalogues of PSM organisations, according to the latest Commission study on European works.\(^{26}\)

The high proportion of European content on public service channels across the EU is fuelled by the fact that European audiences want to view, listen and enjoy European content. They continue to have a strong preference for audiovisual productions which are deeply rooted in local and regional culture and there is no indication that this strong appeal is likely to diminish. As highlighted in the latest Commission study on European works, in most Member States, media organisations and PSM in particular, also have to abide by additional national content requirements to reflect linguistic or cultural or regional specificities in a Member State.\(^{27}\)

While the quota system for European works definitely has its merits, the best way to ensure the creation and market appeal of European audiovisual programmes is to support a well-functioning audiovisual media value chain both at national and European level and to ensure that European media companies have the economic strength to produce or commission content. Considering the major contribution PSM organisations make to European audiovisual production, sustainable funding for public service media is of key importance.

The EBU would also strongly encourage both the European Commission and Member States to ensure that audiences can access public service content on the platform of their choice. As we already suggested in the response to the Commission’s consultation on net neutrality,\(^{28}\) effective implementation and enforcement of net neutrality principles - alongside the implementation of must-carry rules and modern prominence rules for PSM content - are a fundamental instrument to preserve the availability and distribution of culturally diverse European offers.

\[(5)\text{ How will convergence and changing consumer behaviour influence the current system of content financing? How are different actors in the new value chain contributing to financing?}\]

Convergence brings many opportunities for audiences to access and engage with content in a variety of ways. Whereas linear consumption on traditional TV sets remains hugely popular, audiences have also started accessing the content they want to watch at any time through various connected platforms and devices or through new ‘over-the-top’ (OTT) services.

Convergence has also unleashed the potential for additional investment in content. Some new players, such as VoD platforms, have recently started investing in content. Despite the stark initial growth rates in investment by new players, the level of commitment to invest in original works is still nowhere near the level of investment by media organisations in the broadcasting sector.

\(^{26}\) Attentional Ltd, Study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of European works in audiovisual media services, 13.12.2011, p.141-143, 145 and 166. 
\(^{27}\) \textit{Ibid.}, p.8. 
\(^{28}\) EBU response to the European Commission’s consultation on specific aspects of transparency, traffic management and switching in an Open Internet, 15.10.2012.
Today, the vast majority of original productions continue to be made or commissioned by PSM organisations or their commercial counterparts. As already highlighted above, PSM organisations in the big five markets (FR, GE, UK, SP and IT) together currently invest over EUR 10 billion in content every year. On average, their programming consists of around 65% of owned and commissioned audiovisual productions, and some of them give as much as 90% of their airtime to local formats. In 2011, the BBC had on average the highest share of own programme productions (including commissioned productions): over 95% of their total programming schedule. Several other PSM organisations also record high own programme production. This is the case for BNT (Bulgaria), ZDF and ITV (all above 90%) and for France Télévisions, RTVE, Channel4 and LTV (Lithuania) (all above 70%).

PSM organisations invest in content within a particular context: delivering their public service remit. This offers strong safeguards to reinvest revenues from content in new, original content. Until today, new platforms and new market entrants still primarily tend to pay a license to use already created works or invest in particular productions formats rather than to directly invest in diverse and high quality audiovisual productions (whether it’s breaking news, documentaries or fiction).

The EBU believes that continued investment in quality content remains the key driver for technological innovation and the development of new services. Audiences will only access and engage with the various platforms/devices if the stream of creative audiovisual works is sustained. Thus, sustaining the investment streams for original content should be a key part of any future public policy approach accompanying convergence.

2.3. Interoperability of connected TV

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

The EBU feels that industry is currently working to address current and potential fragmentation in Connected and Hybrid TV markets, as well as the challenges of ensuring cross border interoperability. Notwithstanding these efforts, there may be some measures required to ensure that consumers can access the new and innovative services whether they receive their services via cable, IPTV, satellite or terrestrial networks. Below, we will explain issues associated with interoperability, and how these are, and may be, addressed.

Various industry stakeholders are exploiting the opportunities offered by Connected and Hybrid TV to enrich consumers’ viewing experience. We could divide the discussion between:

(a) Vendor-specific and mostly proprietary Connected TV platforms offering downloadable applications

Examples of such systems are Samsung “Internet@TV”, Sony “BraviaTV”, Panasonic “Vieracast”. Such Connected TV offerings have similarities with the

29 Figures provided by EBU, Media Intelligence Service (MIS).
app-based smartphone and tablet sectors. Broadcasters and content providers wishing to offer similar services across a range of devices are called upon to develop specifically for each vendor’s solution.

Such burdens to ensure a similar experience across a range of similar devices led to the development of the solutions described in (b) below. Some vendors have grouped together to provide a single development environment for their platforms, e.g. SmartTV Alliance (http://www.smarttv-alliance.org), to address the lack of interoperability between platforms, but this remains an exception to the norm.

(b) Broadcast bound applications offered by broadcasters to suitably enabled connected TV sets

Typically the consumer will see a “red-button” trigger on screen inviting to connect to the services. These offerings typically use one of three open ETSI standards: HbbTV (TS 102 796), MHEG-5 (ES 202 184) and MHP (TS 102 728). These systems are sometimes referred to as “Hybrid TV”.

In their simplest form, Hybrid TV services helped to replicate analogue teletext services in a digital domain. In their current form, they particularly allow consumers to directly access broadcasters’ catch-up services without further mediation. Given that these systems are standardised, broadcasters can offer the same services to all devices suitably equipped in their markets.

EBU Members are active in both types of Connected TV platform, often working with Consumer Electronics vendors to ensure the availability of applications on their platforms, and in parallel offering similar services available via their linear broadcasts. Given the early stage of the Connected TV market, Connected TV and Hybrid TV services are typically complementary, and thus co-exist in end consumer devices.

While standardisation is not a guarantee of interoperability between services and devices, or across different markets, the EBU recognises the importance of building interoperability provisions into the standardisation development process from the outset, and HbbTV’s interoperability efforts are a case in point.30

Each market has tended to form a Hybrid TV launching group co-ordinating the launches in their own territory. This is a similar scenario to the launch of High Definition Television Services (HDTV). These groups (e.g. French HD-FORUM, Italian DGTVi, Scandinavian NORDIG) in turn report into FAME (Forum for Advanced Media in Europe, formerly the EHDF - European High Definition Forum) itself charged with addressing interoperability issues for new media services being launched in Europe such as Hybrid TV. FAME is jointly chaired by the EBU and DIF (http://www.difgroup.eu).

Looking more closely at how these national launch forums have profiled Hybrid TV for their markets, we see there has been a trend to follow the specifications developed in the French HD FORUM, following the HbbTV-standard. This has been the case for Spanish, Dutch and Nordic markets amongst others. These provide for additional elements to aid implementation of adaptive streaming and digital rights managements where these may be required.

30 See http://www.hbbtv.org/pages/about_hbbtv/introduction.php for a range of interoperability provisions in HbbTV. In addition HbbTV 2.0 will have a linkage between the specification availability and that of the associated Test Suite.
Considering that Hybrid TV services are available to any connected TV device that has used one of the appropriate open standards, the EBU feels that it is important that the consumer’s access network carries the appropriate Hybrid TV signalling to ensure that where services are available, these are appropriately visible to the user (see also response to Q 16 regarding must carry). Thus, if a trigger in the form of an invitation to press the “red button” is available to DTT viewers of a given broadcaster, it should also be available to cable and satellite viewers of the same broadcaster. While industry-led interoperability efforts seek to address these requirements, there may be some cases where additional measures are necessary to ensure this.

Finally, with increasing movement of consumer electronics devices in Europe, it is potentially frustrating to have Hybrid TV services disabled depending on where a particularly device is purchased. On the one hand, it is understandable that vendors are anxious to ensure that such Hybrid TV services are enabled by default only where there are assurances that these services function correctly. On the other hand, this can be seen as frustrating when equipment is brought from one territory where the services are not enabled by default to one where they are. In some cases, this can extend to the Hybrid TV functions not being available at all in some receivers, although they may be available on the similar receivers from the same vendor in another territory.

This latter difference between software versions shipped with receivers in different territories places a burden on content providers to ensure that their applications function correctly on all potential software platforms from major vendors potentially available in their territories.

Looking to future developments, the EBU is actively supporting the general industry trend towards incorporating HTML5 (www.w3c.org/html5) and MPEG-DASH (http://dashif.org/mpeg-dash/) in the open HybridTV Standards. Recognising that this trend is also visible in the Connected TV space, with many vendors also incorporating elements of HTML5 in their products, the challenge will be to harmonise the profiles of HTML5 and MPEG-DASH adopted for use across the industry with the main initial focus on HbbTV V2.

Coming back to the question, the EBU recognises the challenges posed by interoperability in the Connected TV and Hybrid TV spaces, and seeks to address these at the early stages of development where possible. Industry in general, through organisations such as FAME, also recognises the need to address interoperability issues. The EBU feels that a Commission endorsement of these interoperability measures and continued dialogue within the industry is for the time being the best mechanisms to address such issues. As outlined above, additional measures might in some cases be necessary to ensure consumers access to services.
2.4. 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?

The delivery of media content aims to reach and enhance the consumer experience on the different static and mobile types of available devices (TV and Radio sets, tablets, smart phones, etc).

While linear TV viewing remains the predominant means of consuming high-quality content (93%), non-linear services are expected to grow further (5% is Personal Video Recorder and 2% is online). Similarly, linear radio consumption remains predominant while in parallel non-linear radio consumption has increased over the past few years.

The broadcasting platforms (terrestrial, cable and satellite) are optimised for the delivery of linear content to large screens in a stationary environment. Mobility can be mainly served by terrestrial platforms (both broadcasting and broadband). Terrestrial broadcasting platforms would be able to serve even mobile devices such as smart phones and tablets if they would have radio and TV tuners integrated like in other countries (e.g. Korea, Japan).

At present, terrestrial broadcasting platforms are unique thanks to their universality and free-to-air services, generating social, cultural and economic benefits for European citizens and contributing significantly to media pluralism.

Currently, Digital Terrestrial Television (DTT) is the most popular means of receiving TV in the EU. Four in ten households in the EU access television through DTT. In many countries, DTT is the platform which provides most free-to-air services, in contrast with other platforms which require a subscription or have a limited number of free-to-air services (such as the satellite, cable and broadband platforms).

While DTT provides universal coverage, cable platforms focus on densely populated areas, with poor coverage in rural areas because of their cost. Satellite provides very extensive coverage but it is sensitive to weather conditions and suffers from shadowing effects (especially in dense urban areas), and to local rules and legislation that often restrict the installation of satellite dishes.

31 Source: IHS – ScreenDigest: Cross-platform Television Viewing Time FY 2012. It indicates % of daily viewing per person (average in EU big 5).
32 For on-demand (nonlinear) viewing it is to be noted that 80-90% of Android smartphone and tablet mobile traffic is already being off-loaded to private Wi-Fi, e.g. within the end-user’s home, mobile broadband networks accounts for only 10-20 %, especially for long media formats (see ‘Impact of traffic offloading and related technological trends on the demand for wireless broadband spectrum’ Report for the EC by Wik Consult and Aegis). A recent European Commission study found that 71% of all wireless data traffic delivered in 2012 to smartphones and tablets in the EU was delivered using Wi-Fi, possibly rising to 78% by 2016.
33 EBU report, Public radio and new media platforms 2011.
35 Special EuroBarometer 395, e-Communications Household Survey (requested by European Commission, DG Connect), August 2013.
Cable and wired broadband platforms have the advantage of being able to accommodate capacity for a very large number of digital programmes, but the cost of infrastructure may prohibit roll-out in less populated areas. Satellite platforms can also offer a large number of services, because there is greater bandwidth available to sustain greater numbers of TV channels when compared to broadcasting and broadband.

However, in terms of consumer experience, all broadcasting platforms offer a predictable and guaranteed quality of service. The full capacity of the platform is available to all concurrent viewers: quality is thus independent of the number of viewers. On the other hand, mobile broadband platforms are based on best effort service and quality cannot be similarly guaranteed: the capacity of the platform is shared between concurrent users. As their number increases, the capacity available to individual users is thus reduced and ultimately leads to degraded quality.

This is also reflected in contracts which all include a volume cap, rendering the mobile internet connection useless when the limit is exceeded. Fixed-network broadband platforms offer best effort internet connection for OTT content. Latest announcements by Deutsche Telekom that the contract includes a volume cap reveal that even broadband platforms are not suited anymore for unlimited video consumption by the consumer, as they can only watch a limited amount of HD video per month, less than on terrestrial broadcast. Managed networks (IPTV) offer a guaranteed video quality, but are only available by network operators controlling the network end-to-end and integrating the service delivery platform (→ verticalization).

Figure 1 below shows the total forecast delivery (in PB/month) for the UK mobile broadband and DTT networks. The graph for mobile broadband networks is taken from the Ofcom document “Securing long term benefits from scarce spectrum resources”. The two horizontal lines show current Standard Definition (SD) and a hypothetical future all-High Definition delivery of DTT content in the UK. Using the “mid-range” forecast from Real Wireless (the solid purple line), and assuming that demand for mobile data continues the growth trend shown, the demand for mobile data will not match that already delivered by the DTT network until around 2040. For 2015, the mobile broadband network needs 1200 MHz of spectrum (a target set by the RSPP), while DTT in the UK only uses 256 MHz, despite carrying around 10 times as much data. This shows that broadcast networks are far better at delivering content to large numbers of people.

37 It is to be noted that the RSPG Opinion on Strategic Challenges facing Europe in Addressing the Growing Spectrum Demand for Wireless Broadband has identified that over 1700 MHz of spectrum is already available for wireless broadband, thus far exceeding the target set by the RSPP (i.e. 1200 MHz by 2015). Any further spectrum release for mobile broadband should be based on a demonstrated consumer demand while the incremental benefits for mobile industry must outweigh the adverse impact on the existing users.
In addition, in terms of network/infrastructure costs, all broadcast platforms are independent of the size of the audience. Broadband platform costs are proportional to the number of concurrent viewers or listeners.

In summary, due to limitations of penetration, speed and capacity for multiple concurrent users of broadband networks, the Internet of today cannot serve as an adequate replacement for broadcast platforms.

Broadcast and broadband networks are complementary: while broadcast networks are optimised to deliver linear content over a large coverage area to a mass audience, broadband networks are optimised to deliver non-linear content to small audiences. Therefore, broadcasting platforms, and in particular DTT platforms, will continue to play a crucial role in delivering linear broadcast content to European citizens.

We set out in the Executive Summary above the key objectives that should underpin the European Commission’s approach to any initiatives and/or decisions which could affect the DTT platform. At the heart of these lies the importance of avoiding significant disruption for viewers and for broadcasters, while ensuring that the undoubted success of the DTT platform is sustained for the foreseeable future.

To that end, the EBU calls for policy approaches that preserve viewers’ interests whenever changes in the use of the broadcasting UHF spectrum occur.\(^38\) We also consider that it is imperative for assurances to be given, so that there is sufficient security of spectrum access to enable investment in infrastructure and technology. This will enable broadcasters to innovate; meet the evolving needs of viewers and maintain the competitive position of the DTT platform.

(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?

The spectrum allocated to both broadcast and mobile services is ‘dedicated’ spectrum (as called in chapter 2.4 of the Green Paper) assigned to a single radiocommunication service under licensed conditions. This frequency allocation model provides adequate regulatory certainty to both services to have scope for innovation and development and to continue meeting audience expectations.

Within the spectrum allocated to broadcasting services, sharing with other primary services such as Aeronautical services has been possible on a geographical separation basis.

For sharing spectrum with other non primary applications two main models can be applied: the license-exempt model and variants of the Licensed Shared Access (LSA) concept.

Both models have been used by the channels within the licenced TV spectrum that are not used for TV services in a given area, the so-called ‘white spaces’. They are used on a secondary basis (no dedicated spectrum allocation) by Programme-making and special-events devices (PMSE), in particular wireless microphones. The use of the licensed-exempt model is possible because both services (TV and wireless microphones) belong to the same industry, those devices do not interfere with the primary service (broadcasting television), and do not claim protection.

The frequency allocation model described above for broadcasting television and PMSE services should continue. It provides the regulatory clarity and certainty required to ensure further investments and innovation for a sustainable broadcasting platform.

The case of licensed use of PMSE could be considered as an example of the LSA concept. In those countries where PMSE is license-exempt it would appear that PMSE would not be protected from LSA applications. This latter case would imply a further loss of spectrum available for PMSE and in turn would seriously compromise the ability of broadcasters and related industries to provide coverage of important cultural and social events. Therefore any agreement to allow future LSA to broadcasting interleaved spectrum should ensure that there will be sufficient spectrum availability to enable long-term and peak-demand PMSE use.

Additional sharing of the TV spectrum could, as an example, be envisaged for the use of white spaces by cognitive devices. Cognitive radio has the potential to significantly improve radio spectrum use efficiency and is, notably, an option not currently made available with mobile use of spectrum. The EBU believes that cognitive white space devices should be licensed with well defined conditions (e.g. mandatory use of geo-location data bases) in order to ensure that they do not interfere to broadcasting services and PMSE. That would be another example of the LSA concept.

In the UHF band, the EBU would support the LSA concept in principle. However, considering the need for broadcasting networks to continue to develop, and to maintain coexistence of PMSE use in this band, the EBU sees little scope for its use in the UHF broadcasting band beyond its possible application for PMSE.

The case of spectrum sharing between broadcasting and mobile broadband networks requires the development of specific conditions. Those conditions could be based on a
possible future cooperation between broadcast and broadband networks and could initially include:

- integration of broadcast receivers in mobile devices such as smart phones and tablets.

- a band plan for mobile broadband services based on FDD (Frequency Division Duplexing) mobile downlink only. This mode of operation would facilitate the use of spectrum by both services in adjacent areas (e.g. in neighbouring countries). Mobile downlink-only deployment would also facilitate geographical sharing between broadcast and mobile broadband in the same country (e.g. broadcast use in urban areas and mobile use in rural areas to provide universal broadband access).

Sharing between mobile broadband services and PMSE services is only potentially possible within the duplex gap between the LTE FDD uplink and downlink. However, aside from interference issues, this might not provide sufficient capacity for higher demand use. This could be the case, for example, in the duplex gap between the LTE FDD uplink and downlink of the 800 MHz band plan in Europe (821-832 MHz). For wireless microphones approximately 5 MHz would be usable (this would enable the deployment of 5-8 wireless microphones). This represents a very narrow bandwidth to satisfy higher demand by wireless microphones users. Access to additional UHF spectrum is likely needed at national level to cover all such spectrum needs.

Sharing between mobile broadband services and other services should be explored further, covering for example the viability of technologies such as cognitive radio in the mobile spectrum. The regulatory concept of LSA could also be applied in these cases.

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

As stated in the reply to question 7, broadcast and broadband technologies are complementary and it is not realistic to think that these two media delivery platforms will converge, in the medium term, to a single platform carrying both wireless broadband traffic and broadcast media content. However we see opportunities for their cooperation and possible research areas would be:

- integration of broadcast receivers into mobile devices. This is possible from the technical point of view as it is already implemented in some markets such as Japan (ISDB-T receivers integrated in smart phones) and South Korea (T-DMB receivers integrated in mobile and smart phones). However, there might be a need for the development of specific incentives for their introduction in the European market.

39 http://www.dibeg.org/service/oneseg/oneseg.html
40 http://www.worlddab.org/country_information_/south_korea
41 With regard to radio, some mobile device manufacturers have FM-broadcast chips integrated and activated in devices for the European market. Nonetheless, more could be done to facilitate their introduction in Europe, including digital broadcast receivers. Together with leading PSM organisations in Europe, the EBU recently launched the Euro-Chip campaign in order to promote the integration of a cost-effective, interoperable and future-proof radio reception chip which can be easily installed in mobile devices and cars. These chipsets already exist. The aim is to make them the industry standard.
- **offload of broadband traffic onto broadcast networks.** While broadcast networks are optimised to deliver linear content over a large coverage area to a mass audience, broadband networks are optimised to deliver non-linear content to small audiences. However media content consumption through broadband networks is increasing with resulting increases in demand for data from the networks. Offloading broadcast-type content from broadband networks on to broadcast networks would relieve congestion on broadband networks. In this scenario, both networks would need to have a link to be able to 'talk' in order to optimise the delivery of content. The technical mechanisms to be implemented would need to be studied as well as the business models underpinning the connection between these two different models.

- **management of interference between broadcast and broadband mobile services.** Spectrum sharing between these services is limited due to mutual interference. Research might be dedicated to technical solutions to mitigate interference and enhance sharing opportunities.

- there may be scope to investigate realistic possibilities for broadcasting and broadband network technical convergence in the longer term. However these would have to replicate the key technical and public policy features of terrestrial content delivery as set out above and do so in a way that is commercially viable.

Other research areas could analyse market developments tendencies, including the evolving nature of audiovisual content consumption. Such research could focus on the consumption of linear and non-linear content from a user, receiver and network point of view.
3. VALUES

3.1. 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?

It is difficult to provide a general answer to this question. At the moment, the EBU does not see market distortions between linear and non-linear services which require an immediate revision of the EU regulatory framework for audiovisual media services. On the other hand, there is certainly a case for further monitoring and, probably in the medium term, for rethinking the suitability and sustainability of the graduated approach in its current form.

At this stage, the EBU does not believe that there is a general need to reinforce requirements for non-linear services and bring them closer to those for linear services. Conversely, the EBU would not support a "race to the bottom" and a dilution of fundamental principles, particularly as regards the protection of minors and human dignity.

In this context, it is useful to look at some key figures capturing present consumption patterns for non-linear and linear services in Europe. These make clear that the growing demand for non-linear services has not taken place at the expense of linear services’ consumption.

Key figures – audiovisual media consumption in Europe

Linear vs non-linear

- EU viewers spent an average of 3:38 hours per day watching TV in 2012, which represents an increase of 7 minutes compared to 2011. Even if viewing time is lower among youth (2:13 hours in 2012), it also increased in 2012 compared with the previous year (+ 7 minutes).42
- Linear TV continues to represent the vast majority of total TV consumption in the EU. It is expected to account for 91.4% of total TV consumption in 2013 in the "big 5 markets"43 and is forecast to retain 82% of TV viewing in 2020.
- The recent growth of non-linear consumption44 does not have a very strong eroding effect on linear TV viewing. This is due to the fact that the total time invested in TV viewing continues to grow. For radio, linear consumption remains predominant while in parallel non-linear consumption has increased over the past few years.45

42 EuroData TV Worldwide and relevant partners.
43 IHS Screen Digest.
44 In France, total non-linear consumption of TV programmes doubled for the whole TV market and tripled for France Télévisions programmes (between January 2011 and December 2012) (source: “Online TV” Barometer (GfK/NPA).
45 EBU, Media Intelligence Service (MIS).
It is of course likely that over the coming years, media consumption will gradually shift more to non-linear services, and it is possible that this process will accelerate at some stage. However, this will not automatically challenge the current regulatory distinction between linear and non-linear services, which is traditionally based on the rationale that viewers have more control over non-linear services than over linear ones.

Considering the full range of connected devices, and the respective content platforms serving them, the distinction between linear and non-linear services may to some extent become less obvious for users, and may at times even become invisible.

**Connected TV and other connected devices carry with them the promise to put consumers at the centre of the communication process and give them more control over their information and media consumption.**

However, whether this promise will always be delivered in practice depends on a number of factors - namely related to access, findability and user-friendliness - which are discussed in other parts of our response (Q. 3 and 16). In a converged multi-platform environment, broadcasters and content providers are likely to lose some of their control, but this will not automatically lead to a symmetric growth of control by the users, but may instead lead to increased control at the level of platform operators or digital intermediaries.

Although there is no immediate pressure to review the graduated approach of the Directive, such a review can be anticipated in the medium term.

Such a review should go beyond analysing the presence or absence of market distortions. **It would also be necessary to examine whether the traditional rationale for differentiating linear from non-linear services, i.e. greater consumer control with regard to on-demand services, is still valid.** If the difference in user control decreases further, it might be possible to also consider other criteria such as the impact of services on society, in particular in forming public opinion. It will also be necessary to assess whether the graduated rules of the AVMS Directive are still appropriate and effective to achieve the underlying public policy objectives. This assessment needs to be carried out separately for the different chapters of the Directive (see our responses regarding the protection of minors (see Q. 20), commercial communications (see Q. 17) and the promotion of European audiovisual works (see Q. 4)).

**Considering possible market distortion, the real threat does not come from the graduated approach of the Directive, but from the fact that, with connected devices and converged platforms, “regulated” and “unregulated” services (i.e. services which are covered by the rules of the Audiovisual Media Services Directive and those which are not) are now made available to the public next to each other on the same devices and platforms, and in direct competition.**

This raises the questions of whether certain provisions of the Directive (for example, basic principles of human dignity and the protection of minors) should be extended beyond the current scope of the Directive (see Q. 11), and whether new rules to safeguard media freedom and pluralism should be introduced for gatekeepers (platform operators and digital intermediaries), even if they are not media service providers within the meaning of the Directive (see Q. 16 and 19).

If the objective is to create a **level regulatory playing field** for all audiovisual operators competing with each other in a converged environment, two aspects need to be addressed as a priority:

- the potential distortion between operators that fall within the geographical scope of the AVMS Directive (i.e. which are under the "jurisdiction" of a Member State as defined in the Directive) and those that remain outside,

- the potential distortion between operators that fall under the material scope of the AVMS Directive (i.e. which are "media service providers" according to the definition of the Directive) and those that remain outside.

These questions are addressed in more detail under Q.11.

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

As already indicated in the response to Q. 10, there is an important issue arising from the coming together, through connected devices and converged platforms, of "regulated" and "unregulated" content or services (i.e. services which are covered by the rules of the Audiovisual Media Services Directive and those which are not).

The consequences of a situation where many new players, in contrast to European broadcasters and audiovisual media service providers, are operating in an unregulated environment, obviously need to be examined further, and it is necessary to look for ways in which this imbalance may be reduced.

The **EBU believes that in a converged media environment, the fulfilment of the public policy objectives underlying the AVMS Directive (protection of consumers and vulnerable groups, promotion of cultural diversity and media pluralism, etc.) may be put at risk**

- not only by the increasing consumption in Europe of unregulated audiovisual content (in particular, content provided from outside the EU/EEA over the Internet or through new digital platforms),

- but also by the increasing role and importance of new digital intermediaries (in particular, content aggregators and platform/gateway operators, etc.).

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47 Mid 2013, an estimate **235 non linear TV services are available in the EU but edited outside the EU, mainly in the USA.** Those data obviously do not take into consideration thousands of pure web TV that are available through the Internet from all over the world. (Source: European Audiovisual Observatory, Mavise Database)

48 Among the **3128 non linear audiovisual services identified mid 2013, more than one fourth do not fall yet under the scope of the Directive** (branded channels on video-sharing websites like YouTube, video pages portals etc.) (Source: European Audiovisual Observatory, Mavise Database)
In the EBU's view it is important to separate the discussion of these two issues. In its response, digital intermediary/gatekeeper issues are mainly dealt with in the context of Q. 3, 16 and 19.

**Before considering an extension of the scope of the AVMS Directive to other content providers, it would be useful for the Commission to provide some guidance on how the current rules, including the rules on jurisdiction and the notion of "audiovisual media service provider", should be applied in the new converged and multi-platform environment. It may well be that some of the new players, and particularly content aggregators, are already covered by the current Directive (at least as regards part of their activities).**

The EBU believes that any considerations about extending the current scope of the Directive would need to address a number of aspects which are interlinked:

a) **the definition of "media service providers"** to which the requirements of the current Directive apply

The EBU does not see a short-term need to adapt the definition of "media service provider" and would hesitate to extend the notion of "media service providers" to cover new digital intermediaries, because - at least under the current approach of the Directive - the notion of "media service provider" is intrinsically linked to editorial responsibility and the exercise of effective editorial control.

**Broadcasters and other media need to retain editorial responsibility over their content, and this editorial responsibility should not be transferred to, or shared with, digital intermediaries.**

The EBU is concerned that content platform operators may in certain cases assume an unjustified gatekeeper role by exercising editorial control or private censorship/filtering, or privileging content with which they can earn more money (to the detriment of free general interest content), or even by hijacking broadcasters' audiences for their commercial interests. The EBU therefore believes that issues linked to access to platforms, the findability of general interest content, and the protection of content integrity may at some stage require a regulatory solution at the European level to preserve public interest objectives (see our responses to Q. 3, 16 and 19).

If consideration is given to the inclusion of some kind of platform regulation in a future AVMS Directive, it would probably be necessary to create a separate category for content platform or gateway operators in the Directive rather than classifying them under the term "media service providers". (See our response to Q. 16 under d) for a possible definition.)

b) **the definition of "coordinated areas"** which are harmonised by the Directive

As indicated under a) there may indeed be a case to address some new regulatory issues which arise in a converged media environment, and thus to create new coordinated areas. (See responses to Q. 3 regarding access to content platforms/gateways, to Q. 16 regarding findability of general interest content and to Q. 19 regarding content and signal integrity.)
c) the **geographical scope or jurisdiction** of the Directive, i.e. to which extent (linear and non-linear) content services provided from outside the EU/EEA to consumers within the EU/EEA should be covered by European rules.

The situation currently differs between linear and non-linear audiovisual media services. At present, linear audiovisual services are only consumed over the open Internet to a minor extent, and as satellite television is to a very large extent covered by the current AVMS Directive (thanks to the extended jurisdiction in Art. 2(4)), European television viewers are still relatively well protected. In general, the television services they watch comply with the rules of the Audiovisual Media Services Directive. However, the same cannot be said about non-linear services, whether audiovisual or not.

The expected increase in consumption of on-demand content and the long-term prospect of distributing more linear audiovisual services over the internet is likely to **amplify the potential loss of effectiveness of European rules and the lack of protection of European consumers** unless ways are found to apply European or equivalent rules to content provided from outside the EU/EEA.

The (future) scope of the Directive, and the kind of regulatory measures covered by the Directive, may also be important for ongoing or future negotiations on **free trade agreements** by the EU. Whether the envisaged agreements are bilateral (e.g. the TTIP with the US), plurilateral (TiSA) or multilateral (GATS), it is always easier to defend cultural and audiovisual policies if these are part of the **acquis communautaire**. Moreover, the notion of audiovisual services used for regulatory purposes within the EU may also have an impact on the notion of audiovisual services used in trade negotiations (which usually exclude audiovisual services).

**To summarize the EBU position:** while in the short term we do not see a need to change the scope of the AVMS Directive, there is certainly a case in the medium term to reflect and engage with stakeholders on the above-mentioned aspects related to the scope of the Directive.

As to the **desired role of self/co-regulation**, which is raised in the second part of the question, the EBU would like to stress its **commitment to multi-stakeholder cooperation**, as it was already expressed in the EBU Principles for Internet Connected and Hybrid Television in Europe of April 2011. In many areas, it should be possible to limit legal provisions to basic rules and leave more detailed rules to self-/co-regulation (which may also be more flexible and adaptable to new developments). **Self-regulation combined with back-up powers and effective oversight mechanisms for independent media regulators** could be a viable solution for many issues.

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(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?

If the objective is to protect European consumers effectively - taking into account the fact that audiovisual services are increasingly received from outside the EU/EEA (see Q. 11) - then it is essential to limit the application of the country of origin principle to services from within the EU/EEA (as under the current Directive). Extending the benefits of the country of origin principle to external operators would not be justified, unless these are established in a country with which there is an agreement that ensures respect of the same regulatory requirements or an equivalent level of protection. Such an approach would be in line with the internal market rationale.

The EBU’s preferred approach remains the country of origin principle as it is currently defined in the Audiovisual Media Services Directive - with very limited exceptions and combined with minimum harmonisation in relevant coordinated areas.

(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?

The EBU believes that all media-specific and other media-related regulatory issues which are important for media in a converged environment should be addressed in the AVMS Directive rather than in the E-Commerce Directive or any other directive. This will reduce the risks of disregarding media aspects and dealing with the media like any other commercial commodity, in spite of their importance for democracy, cultural diversity, and the freedom of expression and information.

For the same reasons, the EBU believes that the principle in Art. 4(8), which states that as a rule the AVMS Directive takes priority over the E-Commerce Directive, should be maintained.

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

Media literacy is an essential skill which enables audiences to be active participants in a converging digital space. Understanding how to use the latest media technology and evaluate its content is fundamental to critical understanding and active participation, which are the basis of every democratic society. In a digital environment, media literacy is a tool to inform and empower for citizenship that will equip people to fully participate in economy, culture and politics. Lacking the required skills not only excludes sections of society from making informed choices, it increases the risk of being exposed to harmful, unsolicited, or unreliable content.

Public service media organisations advance media literacy every day. They have specific responsibilities to promote media literacy as part of their public service remits.
at national level. Nowadays, they use multiple platforms to create an intelligent media experience, to reach out to audiences in interactive and innovative ways.\(^50\)

The EBU welcomes the European Commission’s recent commitment to exploring concrete ways to move forward on the implementation of the assessment criteria identified earlier in two European studies. The EBU agrees with the fact that a serious commitment to raise media literacy levels at EU level will be rendered more effective if it is accompanied by a practical tool which can accurately assess the different components of media literacy: access the media/ understand and critically evaluate the media/ create communications.\(^51\)

The EBU applauds the Commission’s work so far to raise awareness about media literacy by means of the 2007 Communication, the 2009 Recommendation to Member states and the media industry, as well as specific funding schemes such as the Safer Internet programme and the MEDIA programme. Over the past few years, these funding schemes have proven to be a very effective way of promoting media literacy. The EBU calls on the Commission to ensure that the role of media literacy will be sustained, and, where possible, further strengthened in the new Creative Europe programme. It takes notes of the fact that the proposed programme will primarily focus on supporting film literacy but stresses the fundamental importance of EU media literacy initiatives that are specifically aimed at promoting a proper understanding of the converged media environment.

The EBU, as an association, reiterates its commitment to be a solid partner of the European Commission in its efforts to promote and to implement media literacy and ultimately to raise media literacy levels in Europe.\(^52\)

### 3.2. Media freedom and pluralism

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

The EBU agrees with the Commission’s analysis concerning the possibilities and risks associated with access to information and news through filtering mechanisms. On the one hand, they enable people to access information and news in a tailor-made fashion on subjects in which they are interested; on the other hand, they also demonstrate the increasingly important role played by various search engines (as well as other so called “digital intermediaries”\(^53\)) in determining what content is accessible online and how prominently it is displayed. Increasingly, this debate is affecting PSM as well, in their capacity as news providers.

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\(^{51}\) See the European definition included in the 2007 European Commission Communication - A European approach to media literacy in the digital environment, p. 3.

\(^{52}\) The EBU has been an active member in the media literacy expert group ever since 2006.

TV remains the primary source for news discovery because of the level of trust audiences place in it. Public service TV and radio schedules in particular continue to be the most popular source for access to accurate and impartial news and information. At the same time, websites are increasingly important as a secondary source for news gathering for all age groups in society, but particularly for younger people.

PSM organisations across Europe respond to new non-linear forms of news consumption. Most of them make their information and news bulletins available via live-streaming and catch-up TV services and through mobile and smart phone applications.

Search engines, and - more broadly - digital intermediaries, play an ever more important role as gateways to online news and information. According to the 2012 Reuters Institute Digital News Report, 30% of online news users mention search engines as the main way to come across news stories, while 22% use news aggregators and 20% use social media. The EBU subscribes to the analysis by a recent report by the Reuters Institute according to which activities from search engines, social media and apps have a bearing on plurality of news in four broad areas: 1) their control of what could be regarded distribution bottlenecks; 2) their judgments or policies they make about news they link or carry; 3) their role in shaping future economic models for news provision and 4) their inclination and ability to influence the political agenda.

With regard to the increasing role of these gateways, the EBU would generally welcome more transparency on how access to content is determined. It would support a dialogue with digital intermediaries and other stakeholders on whether access to information on the Internet is properly sustained in the public interest and – where necessary – how to promote it. Mapping digital intermediaries’ current practices would be very useful in this respect. If the potential risks to diversity and plurality of available news or information online are upheld by sound evidence, there may be a case for regulatory safeguards.

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(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'?

The EBU considers that in the context of access issues, it is necessary to distinguish:

- between competition aspects on the one hand and media freedom and pluralism aspects on the other,

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54 According to a recent study from the German ‘Hans-Bredow-Institut’, TV is still the most important source of information (85%) followed by newspaper (73%), radio 55% and the Internet 51%. See http://www.hans-bredow-institut.de/webfm_send/657: p. 29 and 32. See also Deloitte, "White Smoke: The new era for video news", 16.04.2013, p. 6.

55 Ibid.

56 EBU MIS, PSB TV news: trends and developments, January 2012.

57 Reuters Institute, Digital News Report 2012, p.16.

between access to transmission networks and access to content platforms/gateways, and
between access by content providers to networks/platforms, and access by users to content.

These different aspects of access issues are described in our response to Q. 3 and shown in a summarised form in Table 1 (on page 16).

a) Rules on access to networks/technical facilities on fair, reasonable and non-discriminatory terms (Art. 6 Access Directive)

It is necessary to ensure access to technical facilities which are essential for the delivery of audiovisual media services, on fair, reasonable and non-discriminatory terms. The access rules in Article 6 (regarding conditional access systems) and in Article 5(1)(b) of the Access Directive (regarding APIs and EPGs), both in connection with Annex I, have served as an important safeguard for digital radio and television services. These provisions ensure that Member States and national regulatory authorities have the necessary powers to intervene when problems occur, and this framework has played a useful role in preventing problems from occurring in the first place.

However, these provisions were introduced at the time of the former "Television without Frontiers" Directive and therefore only mention "digital radio and television broadcasting services"; they do not seem to cover (at least not explicitly) on-demand services and therefore do not include all audiovisual media services within the meaning of the AVMS Directive. As it is important for the access rules to remain fully effective in the online and converging world, clarification that they cover technical facilities for both linear and non-linear audiovisual media services is necessary at some point. In addition, of course, they should be applied in a technologically neutral way.

It should be kept in mind that the above-mentioned rules in the Access Directive apply to technical facilities but not to content gateways as such. Accordingly, they can only address the technical aspects of EPGs but not their content aspects; this is explicitly clarified in Article 6(4) of the Access Directive, which says that the provision is without prejudice to the ability of Member States to impose obligations on the presentational aspects of EPGs and similar listing and navigation facilities.

As it is necessary to clearly distinguish between telecom and media aspects, and between telecom networks/services and content platforms/gateways, the Access Directive can only play a limited role in ensuring access to new content gateways; it cannot resolve issues related to access to content gateways which fall within the scope of media law. This is also due to the different regulatory objectives (competition in the telecom market on the one hand, media freedom and pluralism on the other hand, see response to Q. 3).

Accordingly, regulatory gaps with regard to access to content gateways should primarily be addressed through media law provisions where appropriate.

b) Must carry rules (Art. 31 Universal Service Directive)

The situation is slightly different in Art. 31 of the Universal Service Directive. Whereas this provision is part of the telecom package, its purpose is clearly to serve legitimate public policy considerations of the Member States (see Recital 43). It is also for
Member States to designate the services which benefit from the must-carry status (normally based on their media law). Must-carry rules should be applied to cable networks and other managed networks which are used by a significant number of users as their principal means to receive audiovisual media services. This may apply also, in particular, to IPTV networks.

**Audiovisual media services should be carried in an unaltered and comprehensive way, with sufficient quality and including complementary services such as accessibility services and hybrid TV signalling** (see response to Q. 3 under 4. b).

Media convergence brings linear and non-linear services closer together and opens the way for hybrid offers, which combine in a seamless manner linear and non-linear content. Over time, this development will challenge the current limitation of must-carry rules to linear audiovisual media services, as laid down in Art. 31 of the Universal Service Directive. **Accordingly, it will at some point become necessary to broaden this provision so that Member States can include the transmission of non-linear audiovisual media services in their must-carry rules** (See response to Q. 3 under 4. b).

Linear and non-linear services are increasingly becoming part of the same integrated content offer. In this situation it does not make sense to have must-carry obligations solely for the linear part of the offer. It is the whole integrated offer that must be made available.

**It is important that Member States have the freedom to apply must-carry rules to managed networks/services such as cable TV and IPTV networks.** This said, there is no need or case to apply must-carry rules to the open Internet, where net neutrality rules should prevail (see response to Q. 3).

Moreover, media service providers often supply **special applications** or media players for connected devices which offer a more convenient use of linear and non-linear content in a converged environment. Access to media apps may therefore become as important for users as access to the media content itself.

**c) Findability (due prominence rules)**

The accessibility and the convenience of finding and enjoying "general interest content" on content platforms is a separate but particularly important issue.

In the converged media environment, scarcity of transmission capacity is not always the major bottleneck. A bottleneck of increasing importance is the interface through which users find their favourite programmes, since users’ attention span is limited and there is only limited space on the front screen of any user interface, portal, programme guide, etc. Moreover, media convergence and connected devices will lead users to be increasingly dependent on interfaces, portals, guides, search engines, etc. to find the content they wish to access.

As the rapporteur for the European Parliament report on Connected TV, Ms Petra Kammerervert, put it in her Explanatory Statement: "Ensuring the findability and accessibility of content will become the main issue in maintaining diversity."[^59]

Because of the limited space available, equal treatment in a formal sense of all content services is impossible, and some kind of ranking or order of priority needs to be applied. The top places can be awarded only once, and the concept of neutrality cannot fully work here.

_In this situation, citizens can legitimately expect that programme services of a particular and recognised value to society, be it for democratic, social or cultural reasons, are given due prominence on content platforms and user interfaces, and are thus "easy to find". Gatekeepers should be prevented from bearing too heavily on consumer choices and from "re-directing" consumers for purely commercial reasons. Accordingly, content services of a particular value to society should be prominently displayed and easy to access on all major content platforms._

The recent study on "PSB Prominence in a Converged Media World" by Communications Chambers for the BBC provides sound evidence in favour of regulatory safeguards.60

_Rules ensuring the findability of public service content can be seen as a logical prolongation of must-carry rules in the digital and converged environment. Just like with must-carry rules, it would be up to Member States to specify the services which should benefit from must-be-found rules._

Art. 6(4) of the Access Directive recognises that the telecom rules are "without prejudice to the ability of Member States to impose obligations in relation to the presentational aspect of electronic programme guides and similar listing and navigation facilities". Accordingly, under the current regulatory framework it is entirely up to Member States to adopt measures to ensure due prominence for content of particular value for society. This should not only apply to electronic programme guides for digital television but equally to content platforms and user interfaces in a converged media environment.

In this respect, the EBU would also like to draw attention to the European Parliament’s conclusions in its report on connected TV adopted on 4 July 2013. It invites the Commission to consider how to improve the findability of content providers which have been entrusted with a public broadcasting remit by the Member States, or which otherwise help to promote objectives in the public interest, or undertake to carry out duties that maintain the quality and independence of reporting and promote diversity of opinion.61

Since under the current legal framework it would clearly be up to individual Member States to take such measures, the foremost question for the Commission should probably be whether it should coordinate or support such measures at EU level. However, as with must-carry, it might also be helpful to introduce the recognition of such rules in an EU legal instrument, so that these measures become part of the acquis communautaire.

Finally, keeping the need for technological neutrality in mind, the EBU would also like to underline that it might be difficult to distinguish between "first-screen devices" and "second screens", as the Parliament seems to suggest. A limitation to "platforms/gateways which are used by a significant number of users for accessing

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audiovisual content” (as suggested under d) below) would probably lead to very similar results, without coming into conflict with the principle of technological neutrality.

\textbf{d) The notion of content platforms/gateways}

When addressing the questions of access to content platforms/gateways and the visibility of “general interest content”, it is of course necessary to have a clearer idea of the kind of content platforms and gateways that should be covered.

The EBU does not think that a future initiative in this area should be linked to connected TV sets or in fact to any particular device. In addition to connected TV sets, there are other connected devices on the market, for example tablet computers, which are increasingly used for media consumption, and even smartphones may be used as television devices.

Any future regulation should therefore be adapted to the multi-platform and multi-device environment, and be technologically neutral and future proof. It should ideally cover the most relevant platforms providing public access to linear and non-linear audiovisual media services. This should not only apply to new legal provisions but also to self/co-regulation (see Q. 11).

Any definition of a \textit{content platform/gateway operator} for that purpose should aim to cover operators:

- which \textit{select the content, services or applications} that are offered or made available on a given platform, and/or

- which \textit{control the user interface or the conditions for access by the public}.

\textit{Similar to the criterion retained for must-carry obligations in Art. 31 (and Recital 44) of the Universal Service Directive, findability rules (or rules on due prominence) would only need to be applied to significant platforms/gateways, i.e. those which are used by a significant number of users for accessing audiovisual content.}

\subsection*{3.3. Commercial communications}

\begin{center}
\textbf{(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?}
\end{center}

Convergence creates new business opportunities for the ad-funded radio and TV sector. To take the example of connected TV: it has the potential to inject growth back into a TV industry. Media organisations benefit from new ways of marketing programmes and are able to reach the full audience potential of their programmes.

\footnote{See also the definition proposed by Communications Chambers in their study on PSB Prominence in a Converged Media World (previous Footnote) on p. 36: “Significant content gateways would be defined as those which meet specified threshold tests and which select, aggregate and organise content from a range of different providers in the form of channels, applications or programme catalogues.”}
thanks to catch-up services. They may also benefit from new forms of advertising, better targeting what the consumer is interested in, and the further exploitation of various IT services such as cloud computing, second-screen applications, and multiplayer online gaming.

The EBU believes that some forms of advertising require special attention. Our main concerns relate to on screen advertising overlays and techniques such as scaling\textsuperscript{63}, framing and pre-roll, mid-roll and post-roll advertising; in particular when they are used without the consent of users and the media organisations which are editorially responsible for the content (see answer to Q 19). Clear safeguards are needed to protect editorial independence and integrity of audiovisual programmes and broadcast signals.

The EBU and its members are of the opinion that, today, the current AVMS Directive, including its provisions on commercial communications, is still an appropriate regulatory framework. But with the take-up and use of connected devices and converged platforms, audiences now have access to "regulated" audiovisual content and services governed by the AVMS Directive and to "unregulated" Internet content or services on the same screen. As already highlighted before (see answer to Q. 11), the practical implications of this situation need to be further examined.

Thus, there may also be a need in the longer term to reflect on the suitability and sustainability of the AVMS rules on commercial communications. In this context, there will be a strong case for exploring how a basic set of key principles based on fundamental public interest objectives such as the protection of minors and human dignity should apply to all audiovisual commercial communications (regardless of whether these services fall within the scope of the AVMS Directive) in order to safeguard editorial independence and content integrity:

- Separation principle: a precise identification of advertising and sponsorship and their separation from editorial content
- A ban on surreptitious advertising and sponsorship and on the use of subliminal techniques
- Safeguards in case of advertising directed at children, especially in programmes/products for children
- Avoidance of interference by advertisers and sponsors over content and scheduling of programmes
- Principles relating to tobacco, medical products and alcohol regarding content integrity and overlays

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

The EBU believes that there is indeed increased scope for co-regulatory approaches to address the proliferation of varied advertising techniques such as split-screen and interactive advertising. While the self-regulatory component ensures the necessary

\textsuperscript{63} A practice which consists of the reduction of the size of the broadcaster's picture and the insertion of third party content/commercial communications around it.
flexibility to adapt the rapidly evolving trends in advertising markets in the media and Internet sectors, formal insight and backstop powers by public authorities are equally essential, particularly to ensure respect for the basic principles highlighted in the answer to Q 17.

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

This is an important issue regarding the **protection of content (and signal) integrity** in general, which is broader than Q. 19 seems to indicate and which goes beyond commercial communications and commercial overlays. Content integrity needs to be ensured not only for (primary) TV screens, but also for so-called second screens, which are synchronised with the TV picture.

For the media, but also for citizens, it is **fundamental to ensure that the content delivered to the final customer is identical to the content which is made available under the media service provider’s editorial responsibility**. Therefore, content integrity must be safeguarded against any modification to the quality, format or display of the signal. In other words, no intermediary or third party should be allowed to interfere with the content or signal, without the authorisation of the media service provider in question.

This is important for the credibility and reputation of the media service provider, for the trust which individual users place in particular media services, and ultimately for the freedom of information of citizens and the protection of the rights of others.

However, it is the individual user who owns his or her screen or connected device. What users choose to do on their own screens for private consumption is up to them.

EBU Members respect the **autonomy of users**, their active and informed decisions, and in particular their capacity to arrange the screen of their connected devices according to their tastes and preferences. Users should be free to split the screen or to put different windows on top of each other. This includes the right to combine, as the case may be, public and individual communications on screen.

This user autonomy finds its natural limits in the respect of the rights of others and in mandatory rules including the law on fair competition. Accordingly, just as an authorisation given by the user cannot legalise copyright infringements by a content provider, **an authorisation given by the user cannot justify unfair commercial practices by third parties, such as the overlay of commercial advertising on a broadcaster’s programme**. An example of such an unfair business model would be a company offering services at a reduced price or for free to individual users, on condition that the user authorises the company to insert commercial communications in or around audiovisual programmes which are provided by broadcasters.

*It needs to be stressed that the problem with parasitic commercial practices cannot be reduced to the technique of overlays - i.e. overlays on the picture for a commercial purpose, in particular those consisting of commercial*
communications - but also relates to scaling, framing and pre-roll, mid-roll and post-roll advertising.

In the future, more techniques may be developed to hijack the broadcaster's audience for the commercial purposes of third parties ("détournement d'audience"). Therefore, there is a fundamental need to protect the integrity of the broadcast signal, not only in order to prevent third parties from transmitting broadcasters' content without their permission, but also to safeguard the editorial responsibility and independence of broadcasters.

Parasitic commercial practices of this kind undermine the audiovisual value chain to the detriment of broadcasters, and ultimately to the detriment of users as these practices tend to destroy the value of the broadcaster's investment (and that of other rights owners) and to weaken the revenue stream which finances the production of the original programme in the first place. These practices are likely to have an impact on the level of investment in European audiovisual production. Fighting these practices would thus help to promote media pluralism and cultural diversity in Europe.

In the case of (public service) broadcasters which do not carry television advertising or other commercial communications (or do so only to a limited extent), the impact of such parasitic commercial practices would be less financial and more reputational, as they destroy the distinctive character of the broadcaster's services. Where free-of-advertising programme services are provided, especially for children, the impact of commercial overlays may be particularly detrimental.

There is a danger that without clear safeguards, such parasitic services are de facto imposed on users via default settings in devices or by the general conditions which users have to accept to receive certain services.

Unfortunately, national laws on unfair competition (or on broadcasters' neighbouring right) currently do not draw a clear red line as to where commercial overlays on audiovisual media services or other forms of parasitic behaviour become illegal. There is therefore a risk of diverging case law developing in different Member States. In view of this, the EBU proposed some basic common principles in 2011 on content integrity and the display of broadcast signals on screen to guide market participants and regulators.

While supporting multi-stakeholder cooperation and self/co-regulatory solutions where these are feasible and effective (see Q. 11), the EBU considers that the protection of content (and signal) integrity also needs to become a legal obligation for digital intermediaries and content platform/gateway operators (see Q. 16 under (d) regarding this notion).

Accordingly, the EBU welcomes the call by the European Parliament, requesting the Commission "to safeguard by law the integrity of linear and non-linear services on hybrid platforms and, in particular, to prohibit the overlay or scaling of these services by platform providers or third parties with content or other services …"

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64 Idem.
65 Recently in Belgium (Flanders) legislation has been adopted that introduces the principle of signal integrity and protects the broadcaster's signal against functionalities and insertions by distributors without the prior authorization of the broadcaster concerned.
66 EBU Principles for Internet Connected and Hybrid Television in Europe, Principles Nr. 3-5, April 2011.
67 Paragraph 34 of the European Parliament report on connected TV, adopted in plenary on 4 July 2013. The Resolution also addresses the question of possible exceptions, i.e. cases where such practices do not
3.4. Protection of minors

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

The protection of minors and human dignity in today’s converging media environment is a special concern and represents a key challenge. They are fundamental values which need to be ensured in all audiovisual services.

The value of the protection of minors is deeply rooted in the "DNA" of broadcasters, and of PSM in particular because of their specific role as providers of trusted content. They have an outstanding track record in providing suitable content for children and for doing everything within their sphere of control to provide a safe viewing environment.

PSM ensure that children access safe and adequate age content on all platforms (e.g. TV, online). Their editorial policy and principles are the same in all cases, should the content be transmitted on television or on-line. They make no links to the open Internet unless the webpage is safe for children. PSMs also work closely with educational partners – institutions, teachers, schools, universities and parents – to encourage creativity and reflective skills in children within a trusted online space. EBU Members have achieved success through a variety of programmes that combine the potential for personal development with simple fun. Kids learn as they discover new sites, play games, write blogs and create websites that stretch the imagination.

Creating a trusted space

Hetklokhuis.nl, NPO, the Netherlands - An innovative, fun and educational website from Dutch TV station NPO, which enables children to create content for example via the tools Sketchmaker and Gamemaker. The website won the first European Awards for Best Children’s Online Content in 2011. www.Hetklokhuis.nl

Ketnet.be, VRT, Belgium – This is the website of the Flemish children’s TV channel Ketnet. Children find their favourite characters and TV-shows online, where they offer entertainment, information and education. The website aims to enable children to take action and be creative. It was awarded third place at the 2011 European Awards for Best Children’s Online Content. www.ketnet.be

Planet Schule, a joint project of WDR & SWR, members of ARD, Germany - A website that offers high-quality content to teachers, students and other citizens interested in learning through interactive games and other activities. www.planet-schule.de/

CBeebies, BBC, UK - Everything on CBeebies is made with learning in mind. While the children are playing, they are learning and having fun at the same time. All activities are adapted to different ages and needs. The site offers powerful filters to help parents, teachers to find the perfect activity, game or show for the child and its own needs. www.bbc.co.uk/cbeebies/

France TV Education, France Télévisions – An educational platform for young people, teachers and parents that offers free multimedia content in order to promote access to

require authorisation by the content provider. A flexible solution to the same question can be found in the Flemish Decree of 10 July 2013 (see Footnote 65).
culture and knowledge, to support education and to offer guidance to students. http://education.francetv.fr/

In general, the EBU and its Members do not see particular problems in protecting minors on the basis of the existing AVMS Directive's rules. The current levels of flexibility and discretion for Member States are beneficial to enable different cultural and social norms to be reflected in national regulations.

Today, linear consumption of TV programmes is still dominant. While this continues to be the case, there is a strong rationale for different regulatory approaches to be maintained. What is needed is a flexible framework which can be adapted as audience expectations change. However, the relevance of a "time to broadcast" may be questioned in the light of a new multiplatform and multi-device environment.

Moreover, from a public service broadcaster’s point of view, issues regarding media content in relation to protection of minors have to be discussed in a wider context than just regulation and prohibition. The importance of empowering children and adolescents in their role as media consumers but also contributors should be emphasized.

Account must be taken of the child’s right to participate and to have the freedom to receive and impart information as enshrined in the United Nations Convention on the Rights of the Child. This includes the right to access information and material from a diversity of national and international sources.

Other important objectives are to attract children and young people by providing content that is suitable and interesting for them and to promote media literacy among both children and adults.

(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?

Filtering systems or parental control software have so far shown only limited value in practice. Their effectiveness and reliability are questioned and are under scrutiny (in particular on the Internet). Moreover, there is a risk that they block access to suitable and valuable content.

It is all the more important to ensure easy access for consumers to trusted content, and to public service content in particular. There is also a more general risk for freedom of expression and information in particular if these systems were to be defined and managed by third parties.

It is important to note that take-up of parental control tools should not be considered as the main benchmark for online child safety. The SIP Bench project (i.e. benchmarking parental control tools for the online protection of children) funded by the Commission is the one objective and transparent measure of different parental control systems’ effectiveness. It notes that these can work well for pornography but do not work well for other content, contact and conduct issues and this may be the reason why many
parents chose not to make use of such tools. Another indicator is the awareness of parental control tools and broadcasters can (and do) take steps to drive up awareness.

As mentioned before, it is important to attract children and youth by providing content that is suitable and interesting for them in “safe” spaces and to promote the programming and inform the parents. Most PSM organisations provide exclusive online spaces for minors.

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

As mentioned earlier, PSM are seen as trusted guides in terms of content. Most of them do not use age verification systems and do not require users to identify themselves to access content. PSM content should be freely accessible for all audiences irrespective of the platform/device chosen. Moreover, they have developed high-quality appropriate content especially conceived for children which they can easily access on PSM websites.

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

While harmonisation or common rating, classification and parental control access systems across the various devices and platforms at the European level are unlikely and difficult to achieve due to the different cultural norms across Europe, there may be merit in exploring the interoperability between different existing classification systems with industry working together on a voluntary basis to explore possible options, for example common age labels.

(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?

PSM complaint mechanisms are quite well known to the public and are well functioning and appropriate. Each PSM organisation has its own system to handle viewers' comments and complaints regarding inappropriate content and works closely with the relevant national authorities to ensure any follow-up.

(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?
3.5. Accessibility for persons with disabilities

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

The EBU considers that appropriate standardisation provisions exist to facilitate access to its members’ media services. However, work is required to ensure that these are applied uniformly across different media and by all market players.

As pointed out in chapter 3.5 of the Green Paper, the proliferation of Internet connected devices promises to improve functionality and reduce barriers to the implementation of a comprehensive set of access services for consumers with disabilities. Indeed, EBU members are at the forefront of such developments and their public service remit encourages a high level of responsibility to ensure that they are at the forefront of the deployment of such services for each one of their markets.

Although the level of regulation associated with the deployment of access services has increased, and there is a good level of harmonisation between countries, there remain differences between the obligations placed on broadcasters and those providing similar services across the Internet, and differences between countries. These make harmonising services and standardising associated equipment a challenge. At the very least, the EBU encourages the industry to ensure that if a service is distributed over the Internet, it should carry the same associated access services as those available over a broadcast channel.

The EBU considers that increased regulation is not a guarantee of a more comprehensive range of access services.

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

In studies carried out on the implementation and regulation of access services, cost was seen as a major barrier to their deployment. The EBU considers that appropriate financial support for the provision of access services is an important pre-condition to a comprehensive offer.

68 BBC has chaired the DVB Project’s Subtitling group since its outset. EBU is also at the forefront of developing subtitling solutions that maximise compatibility with web technologies (https://tech.ebu.ch/groups/pdtxp).