



CULLEN

INTERNATIONAL

EU debate on future audiovisual regulation

CIRCOM regional annual conference
Plovdiv – May 19, 2016

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REGULATORY INTELLIGENCE

Telecoms

Media

Digital Economy

Postal

Competition Law

EU architecture - Sector-specific frameworks

Content rules
(e.g. promotion of EU
works, protection of
minors, advertising)

Audiovisual Media
Services
(AVMS directive)

Electronic
communication
services/networks
(Telecoms rules)

Information Society
Services
(e-commerce directive)

Rules dealing with transmission of signal
on networks (e.g. must-carry, access to
EPGs)

A few rules to
protect consumers
online and limited
liability of
intermediaries for
third party illegal
content

AVMS Directive – Main principles

Graduated approach

- Minimum set of rules for on-demand services (viewer in control)
- Additional/more detailed rules for traditional TV services (linear TV)

Material scope

- Principal purpose is the provision of 'TV-like' service
- Editorial responsibility
- Technological neutrality

Territorial scope

- Minimum harmonisation directive
- Country of origin
- No jurisdiction over providers not established in the EU

AVMS Directive – Main principles

IN



BBC NEWS 13:01 HEADLINES THREE MAIN PARTIES AT WESTMINSTER STR

BBC iPlayer

NETFLIX

Lighter rules

theguardian

Senate Panel Backs Force Against Syria
A key Senate panel on Wednesday backed President Barack Obama's request to strike Syria, while the Pentagon prepared to employ greater firepower to reach a shifting array of military targets.

- Obama: World Drew 'Red Line'
- Liberal Democrats Turn Up Heat on Syria Vote
- EU: Updates on Controlling Syria

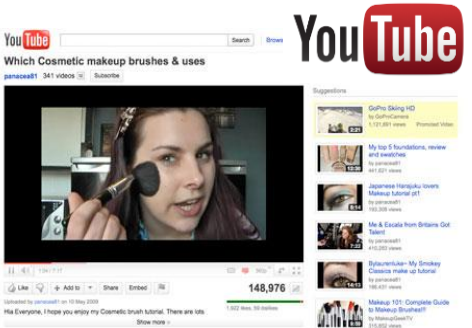
French Opposition Urges U.N. Mandate

Obama Says World Set a 'Red Line' on Syria
President Barack Obama took his case for military action in Syria to the international community as he headed to a summit of world leaders hosted by Russia, the Syrian regime's ardent Western ally.

- Highlights: 'Red Lines': Senate Panel Backs Force



Not TV-Like



YouTube

Which Cosmetic makeup brushes & uses

paraceast 341 videos

148,976

No editorial responsibility



Google play

Not in EU jurisdiction


AVMS Directive – Timeline

“Overall the directive has been effective [...] but **it needs to be tested against developments of connected devices** to ensure a consistent level of protection across different media environments while taking into account their specificities.”



A NETFLIX ORIGINAL SERIES

HOUSE *of* CARDS



The growth of global video services transmitted over the open internet (video OTTs) raises some questions on the effectiveness of the existing audiovisual EU framework

Does the increasing competition of on-demand services with TV channels challenge the graduated approach?

NETFLIX

On-demand

Adult content allowed with parental control

General obligation to promote EU works

Qualitative advertising restrictions

Linear TV

Adult content prohibited

Quotas/investment obligations

Advertising time limit

N
E
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S

BBC
ONE

Is there a need for a regulatory level playing field between services that are now available on the same screen?



Material scope - Is convergence challenging the concept of 'TV-like'?

- different interpretations of 'TV-like' at the national level
- difficulties in defining the principal purpose of a service that is part of a multimedia offer

theguardian

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Liberal Democrats Turn Up Heat on Syria Vote
Update: Confronting Syria
French Opposition Urges U.N. Mandate



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Highlights: "Red Lines"; Senate Panel Backs Force

2007 - Online newspaper with some video element: not TV-Like

AFTONBLADET TV

AFTONBLADETS SVRTSIDA
Inga sändningar för närvarande

Start Nyheter Sport Nöje KATEGORIER PROGRAM Sök

Tv-domarna
I höst fortsätter Fredrik Vrtanen ge tv vad tv tår

Mest sett på Aftonbladet TV

Heta program just nu



Kan du säta Zlatans nya bollkonst?
4 september 2013 11:02

Här landar Obama
4 september 2013 11:02

Obama hälsar på hos kungen
5 september 2013 11:22

Ekwalls reaktion - efter att ha valts bort av TV4
TV-DOMARNA På tal om

2016 - Video section of online newspapers: TV-like?

Material scope – EU Court of justice ruling of Oct. 2015

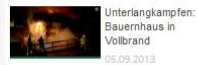
Tiroler Tageszeitung
ONLINE

ÜBERBLICK POLITIK WIRTSCHAFT PANORAMA SPORT LEBENSART IMMO JOBS MOTOR FLOHMARKT SERVICE Q

Unterlangkampfen: Bauernhaus in Vollbrand



Aktuellste Videos

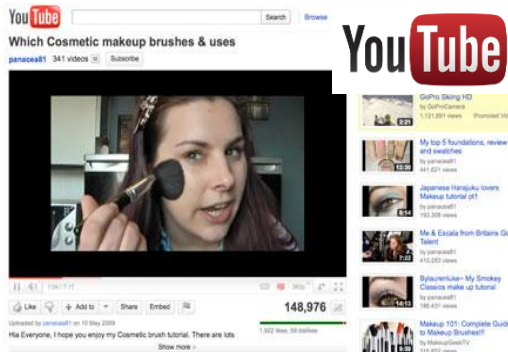


- The **short duration** of videos and the **website architecture** are not relevant
- Each service of a **multimedia** provider must be considered separately
- If form and content are a '**non-dissociable complement**' to press articles the service is out of scope

Video section of online newspapers

Material scope - Is the growth of video-sharing platforms challenging the concept of 'editorial responsibility'?

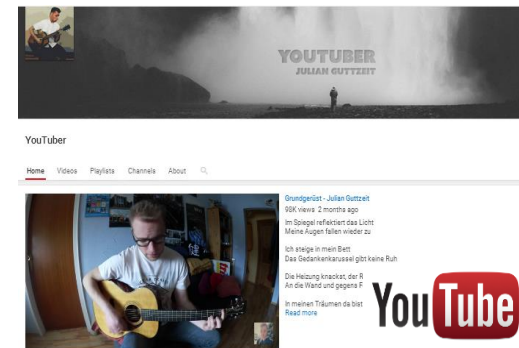
Difficulties in applying the concept of editorial responsibility when two or more actors in the value chain exercise some form of editorial decisions



2007 – User-generated-content platform: no editorial responsibility



2016 - Professional/branded services on video-sharing platforms: usually considered in the scope



2016 - What about 'influential YouTubers'?

Video sharing platforms - Draft Commission communication on online platforms (to be adopted on May 25, 2016)



DRAFT

- **No level-playing filed** between broadcasters controlling content and online platforms relying on user-generated content
- In the proposal to revise AVMS new obligation for member states to ensure that **video sharing platforms** put in place co-regulatory measures to **protect minors from harmful content** by restricting access and **protect all citizens from incitement to hatred** on the basis of full harmonisation (member states cannot put further restrictions in place)
- **No change in the limited liability regime in case of illegal content** for online intermediaries

Territorial scope - Should non-EU OTT video services targeting EU viewers comply with EU audiovisual rules?



Territorial scope - Is the low level of harmonisation of certain rules questioning the country of origin approach?

Example: A global on-demand provider chose to establish in a country with no detailed obligations to promote EU works and targets viewers of a country where providers are bound by quotas, prominence and investment obligations for EU and national works

> DIFFERENT OBLIGATIONS TO PROMOTE EU WORKS IN ON-DEMAND SERVICES (CULLEN INTERNATIONAL)

	Quotas + investment obligation + prominent display
	Quotas + investment obligations
	Quotas and prominent display
	Quotas or investment obligations
	No obligation (but tax to fund AV sector)
	Unspecified

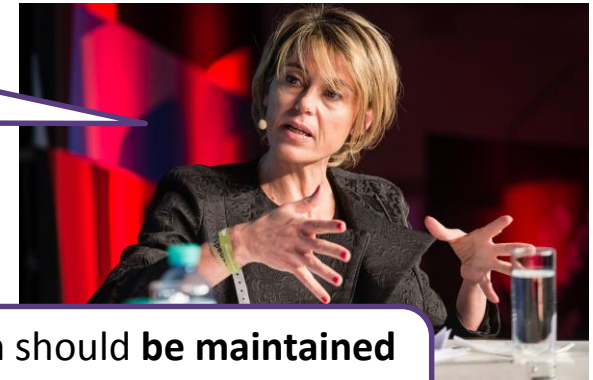


If changing the country of origin principle seems not to be an option..



The country of origin principle has **ensured unhindered cross-border transmission** of audiovisual media services within the EU

There will be no change to the principle, but there could be **adaptations to the exceptions** to the principle and on how these exceptions are **enforced between the member states**



The country of origin should **be maintained** as it is the cornerstone of the internal market.



.. extended possibilities to block services from another country and grater harmonisation could be the way forward

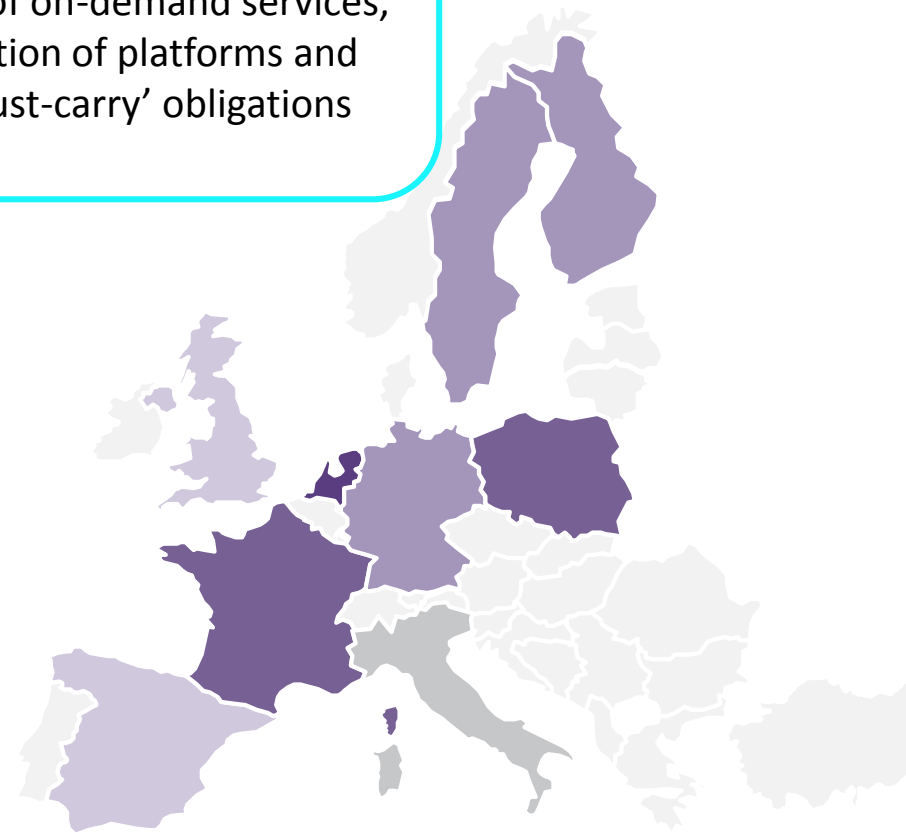
Does the proliferation of platforms still justify platforms obligations to carry PSBs TV channels?

Very contentious issue!

While PSBs call for extending the scope of EU rules to allow member states to apply obligations to all distributors and in favour of on-demand services, most telecoms operators argue that the multiplication of platforms and digitalization have decrease the importance of 'must-carry' obligations

MOST COUNTRIES REQUIRE SOME/ALL PLATFORMS OPERATORS TO CARRY PSBs CHANNELS

	No obligations
	Exists in law but not applied in practice
	Cable and IPTV
	Cable, IPTV, satellite
	All platforms

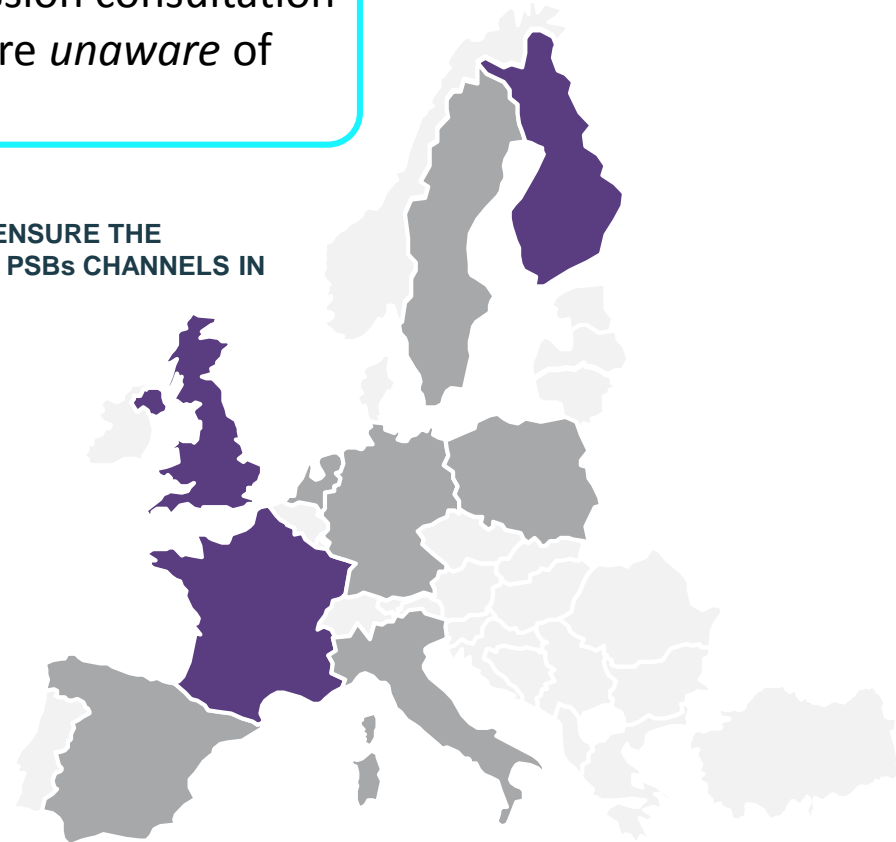


Does the proliferation of platforms and the growth of available content require new findability rules to ensure easy access to PSBs content on EPGs or other navigation facilities?

A large majority of respondents to the Commission consultation on the review of the telecoms framework are *unaware* of current problems

IN A FEW COUNTRIES RULES ENSURE THE FINDABILITY/PROMINENCE OF PSBs CHANNELS IN EPGs

Yes
No



Some predictions on upcoming Commission proposal to revise AVMS – no major overhaul

Territorial scope

- no change to the **country of origin** but **improved derogations** to enable receiving member state to block incoming services from other member states and more coordination between national regulators to achieve **higher harmonisation**
- new rules to determine EU jurisdiction

Material scope

- **clarification** of scope to extend it to some **‘not TV-like’ services** (e.g. video sections of online newspapers not linked to press content and branded YouTube channels)
- **co-regulatory rules** for **video-sharing platforms** to protect minors from harmful content and protect all citizens from incitement to hatred

Graduated approach

- simplification/relaxation of some advertising rules for linear TV channels (e.g. advertising time limit, single spots, ad breaks, sponsorship)
- new quotas and prominence requirements for EU works in on-demand services
- aligned provisions to protect minors in linear and on-demand services

..but debate in Parliament and Council could be highly contentious

POSITION OF SOME MEMBER STATES ON SCOPE OF FUTURE AUDIOVISUAL FRAMEWORKS

	Extension of material scope?	Extension to non-EU providers targeting EU audiences?	Country of destination (some rules)?	Reconsider graduated approach?
IT	Yes	Yes If significant presence	-	Yes Level up some rules
UK	No	No	No	No (except level up of rules to protect minors)
DE	Yes Set of basic provisions	-	No	No
FR	Yes	See next column	Yes When a service targets a market with stricter legislation	No
NL	-	No	No	Yes Level down rules
SE	No	-	No	No



You'll find out more

For any other questions
contact me at
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