

VIEWS ON THE REVISED AUDIOVISUAL MEDIA SERVICES DIRECTIVE

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INTRODUCTION

DIGITALEUROPE welcomes the European Commission's proposal for the revised Audiovisual Media Services Directive (AVMS-D) presented on May 25th 2016.

DIGITALEUROPE believes that the new legislation must reflect the dynamic changes in content delivery and use of media and allow for growth for further developments within a fast changing market. Both technological innovation and user demand drive the development of new, personalised, and exciting audiovisual services in Europe. Our vision is that European users are placed at the centre of the (audiovisual) media experience - with full control over the content, where, when and how they want to access it.

SPECIFIC COMMENTS

Scope of the AVMS-D

We agree that the scope of the AVMSD should continue to focus on the service and remains technology neutral and device agnostic, since today's audiovisual media can be assessed by any connected device (TV, tablet, game console etc.). Relating to the scope of the AVMSD (new Art 1 AVMS-D), DIGITALEUROPE sees no need to amend the distinction between linear and non-linear services in the new text, as per the currently applicable framework.

Market developments are not showing signs of distortion but rather of disruption - which is positive for the end-user as it allows more choice, new entrants, and innovative services. The currently applicable directive correctly recognizes that a right balance between regulation of a service and the amount of control which the user can exercise over it is crucial – hence the proportionate approach for linear and non-linear services. Online services extend the diversity of media services and have actually created a more open and level playing field, because they allow anyone to reach out online: creators and traditional creative industries can reach a global audience, on multiple devices, in a much easier way than before. New creators compete with traditional players, as they avail themselves of those opportunities.

Thus, connected devices and services extend media pluralism and significantly augment, rather than limit, the richness of access to content. They greatly contribute to the goal of media pluralism, cultural diversity and the free flow of information in the European Union.

The country of origin principle as a cornerstone

DIGITALEUROPE welcomes that the country of origin principle remains at the heart of the proposal. The country of origin principle is the cornerstone of the AVMS-D and has played a vital role in the creation and the functioning of the single market.

For European viewers, the enhanced competition between content providers resulting from the enforcement of the country of origin principle offered a quantum leap as regards the choice of content available for them to consume. For content providers, the country of origin principle has opened up unrivalled access to new audiences that would have been out of reach otherwise.

We strongly believe that any consideration given to water it down would move the EU backwards and lead to legal uncertainty.

Promoting European audiovisual content

The proposal published by the European Commission introduces in Art 13 Para 1 AVMS-D a minimum quota obligation of 20% share of the audiovisual offer of on-demand services as well as an obligation to give prominence to European works.

Digital technology and services support media pluralism and the creation of EU content, however, as a principle, DIGITALEUROPE is not in favour of the introduction of quotas to promote EU works. We believe that they are not an effective way of protecting local content providers and would have a detrimental impact on the sustainability of existing and new business models which provide European consumers with the ability to access a wide variety of European and international content. If quotas were to be included in the proposal, they should not exceed 20%.

Discoverability provisions are neither necessary nor appropriate

We welcome, that the Commission did not see the necessity to include provisions regarding discoverability within the AVMS-D proposal., Those are neither necessary nor appropriate. However, recital 38 of the proposal refers to the ability of Member States to “impose obligations to ensure discoverability and accessibility of content of general interest under general interest objectives such as media pluralism, freedom of speech and cultural diversity”. We fear the Commission did underestimate the seriousness this recital can take, and fiercely recommend to delete this recital. .

Device manufacturers and digital service providers compete by offering access to as many applications and as much content as possible.

As it is in everyone’s interest to ensure that search tools are user-friendly and efficient, we strongly believe that the pre-eminence in content offers and search results (“must be found”) do not need to be forced by legislation. The demand for discoverability is mainly driven by the concern of already established media providers that viewers might lose interest in what they offer, in short they fear the competition of new market entrants. To anticipate these worries, enriching content such as TV broadcast services are and will continue to

be easily found without any further regulation. It is against the interest of digital service providers to frustrate consumers by complicating their access to popular services.

Specific rules on „findability“ of content, for example the (non-neutral) ordering and prioritisation of existing content which some broadcasters exaggerate, risk to result in reduced media diversity. Such rules entail partially pre-defining what the audience gets to see and influence over the choices users makes. Thus, certain content will receive a disproportionate share of public attention. Prescribed findability is a route creating publicly-mandated filter bubbles.

Any regulation laying down principles how to search or organise content on connected devices does hinder the development of new, not-yet-thought-of, searching tools and design features and impedes competition in a volatile and fast changing market.

Accessibility: coherence between provisions for services and devices

The Commission proposal suggests to delete Article 7 of the current AVMS-D as the proposed European Accessibility Act (EAA) sets stricter rules for media service providers. At the same time, the draft opinion of the CULT Committee on the EAA recommends to include accessibility requirements in the revised AVMS-D to ensure a sector-specific approach, taking into account the special cultural characteristics inherent in the AVMS Directive.

DIGITALEUROPE believes that it is of utmost importance to ensure legal certainty and consistency of EU legislation. Accessibility is the outcome of a wide array of inter-dependent products, services and technologies - device manufacturers are dependent on content providers like broadcasters to deliver the necessary access services. Regulations must therefore be mindful of the roles entities play in this ecosystem and delineate obligations accordingly in order to be effective.

Instruments: Use of self and co-regulation

DIGITALEUROPE welcomes that the proposed Directive recommends the use of co- and self- regulation as instruments, as we believe that they can ensure the necessary flexibility.

We believe that self and co-regulatory approaches are better suited than regulation as they have the support of all stakeholders and can offer quicker solutions via less complicated means.

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ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 62 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

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