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Growth, Creation and Values**

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## **GREEN PAPER**

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

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## GREEN PAPER

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

#### 1. INTRODUCTION<sup>1</sup>

The objective of this Green Paper is to open a broad, public discussion on the implications of the on-going transformation of the audiovisual media landscape, characterised by a steady increase in the convergence of media services and the way in which these services are consumed and delivered.

Convergence can be understood as the progressive merger of traditional broadcast services and the internet. This results in viewing possibilities extending from TV sets with added internet connectivity, through set-top boxes delivering video content ‘over-the-top’ (OTT)<sup>2</sup> to audiovisual media services provided via PCs, laptops or tablets and other mobile devices. Consumers use tablets or smartphones while simultaneously watching TV, for instance to find out more about what they are watching or to interact with friends or with the TV programme itself.

Lines are blurring quickly between the familiar twentieth-century consumption patterns of linear broadcasting received by TV sets versus on-demand services delivered to computers. Moreover, with every smartphone enabling converged production as well as consumption, there might be a future shift from ‘lean-back’ consumption to active participation.

It is expected that connectable TVs will move from 40.4 million devices end of 2012<sup>3</sup> to a presence in a majority of EU TV households by 2016<sup>4</sup>.

As regards usage of the functions enabled through added connectivity to the internet, the reported rate in the UK in 2012 – which is the highest in the EU - as 11% of the installed base, in comparison with 44% in China, 18% in Korea and 17% in India<sup>5</sup>. In the US, an increase from currently 22.5% of US households using connected TVs including OTT connections and game consoles to up to 43.1% is foreseen by 2016<sup>6</sup>.

While linear general viewing times are still around 4 hours a day across the EU<sup>7</sup>, the converged experience progressively becomes a reality and market players develop and adapt business models. Technology already allows the user to create, distribute and access all types of content irrespective of time, place or device. The Commission’s vision is to seize the opportunity of this changing technological environment to ensure the widest possible access to European diversified content for all Europeans and, the widest choice of high quality offers. The technological ability to deliver content to be legally accessible to viewers throughout the EU could also incentivise market players to create new types of content.

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<sup>1</sup> For a glossary of relevant terms see <http://ec.europa.eu/digital-agenda/en/connectedTV>.

<sup>2</sup> Over-the-top players provide audiovisual content online without themselves being electronic communications services and network providers.

<sup>3</sup> IHS Screen Digest.

<sup>4</sup> IHS Screen Digest.

<sup>5</sup> <http://www.pnewswire.com/news-releases/western-viewers-fall-behind-in-the-web-connected-tv-revolution-168126616.html>.

<sup>6</sup> Source: e-marketer.

<sup>7</sup> Yearbook of the European Audiovisual Observatory, Volume II, page 171.

The need for private economic actors to further innovate and for policy makers to ensure the right framework conditions, and to reflect on possible public policy responses, results in the following questions:

- How to transform the process of convergence in a larger European market into economic growth and business innovation in Europe (chapter 2)?
- What are the implications of convergence for values such as media pluralism, cultural diversity, and the protection of consumers, including specific groups such as minors (chapter 3)?

As convergence will become gradually more tangible over the next decade, it might have an impact in future on a number of legal instruments including the Audiovisual Media Services Directive (AVMSD)<sup>8</sup> – focus of this paper –, the E-Commerce Directive<sup>9</sup> and the electronic communications framework<sup>10</sup>. The consultation does not presuppose any specific outcome. Nonetheless, it may pave the way towards possible regulatory and other policy responses in the longer term, in particular linking up Commission initiatives such as the Better Internet for Kids Coalition<sup>11</sup>, possible activities to follow up the report of the High Level Group on Media Freedom and Pluralism<sup>12</sup>, as well as work on self-regulatory initiatives.

## 2. GROWTH AND INNOVATION

In 2012, 22% of EU citizens used a mobile device to access the internet<sup>13</sup>. By 2016, the majority of consumer internet traffic in volume is expected to be video and the majority of IP traffic to be channelled mainly through WI-FI and mobile devices<sup>14</sup>.

### Key figures — audiovisual content consumption moving online

Consumer spending on digital video (movies and TV series delivered over the Internet) reached €364.4 million in 2011 (+41,8% vs. 2010) in Europe within a market of physical and digital videos amounting €9493.8 million (-4.6% vs. 2010)<sup>15</sup>.

The unmet demand for VoD services from pay-TV operators from other Member States is estimated to be in the range of €760 million to €1,610 million annually<sup>16</sup>.

Internet video users are expected to increase globally to 1.5 billion by 2016, up from 792 million in 2011<sup>17</sup>.

306 video-on-demand (VoD) services in the EU in the third quarter of 2012<sup>18</sup>.

72 hours of video are uploaded to YouTube every minute.

<sup>8</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (AVMSD), OJ L 95, 15.4.2010, p. 1–24.

<sup>9</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), Official Journal L 178 , 17/07/2000, p 1- 16.

<sup>10</sup> E.g. Article 31 Universal Services Directive, spectrum policy, Article 6 Access Directive.

<sup>11</sup> <http://ec.europa.eu/digital-agenda/en/creating-better-internet-kids>.

<sup>12</sup> [http://ec.europa.eu/information\\_society/media\\_taskforce/doc/pluralism/hlg/hlg\\_final\\_report.pdf](http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/hlg/hlg_final_report.pdf).

<sup>13</sup> Eurostat 2012 Individuals - Mobile Internet access (isoc\_ci\_im\_i).

<sup>14</sup> [http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white\\_paper\\_c11-481360\\_ns827\\_Networking\\_Solutions\\_White\\_Paper.html](http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-481360_ns827_Networking_Solutions_White_Paper.html).

<sup>15</sup> International Video Federation Yearbook 2012.

<sup>16</sup> [http://ec.europa.eu/internal\\_market/media/docs/elecipay/plum\\_tns\\_final\\_en.pdf](http://ec.europa.eu/internal_market/media/docs/elecipay/plum_tns_final_en.pdf).

<sup>17</sup> <http://newsroom.cisco.com/press-release-content?type=webcontent&articleId=888280>.

For equipment manufacturers and technology developers, opportunities exist to serve a growing market with innovative devices including user-friendly interfaces and accessibility solutions. Network operators will see increased demand for bandwidth with a positive impact on investments in high-speed networks. Content creators can find new ways to maximise their audience, monetise their works and experiment with creative ways to produce and offer content. Broadcasters can find more platforms<sup>19</sup> to distribute their content and enhance their interactive offerings.

The key elements for this potential to materialise are familiar: a big enough market to grow, a competitive environment, a willingness to change business models, interoperability and an adequate infrastructure. To shape the future of media driven by the internet, Europe needs to put those elements into place while fostering the values underpinning the regulation of audiovisual media services.

## 2.1. Market considerations

The EU is characterised by cultural and linguistic diversity which is a potential competitive advantage on the world market, but has also been considered a challenge in an environment characterised by network effects.

Network effects in the media and internet world may lend a significant comparative advantage to operators and providers who operate legally in a borderless market enabling them to raise sizeable budgets and take advantage of economies of scale. Entrants who offer audiovisual content online without territorial access restrictions can turn the over 368 million EU internet users<sup>20</sup> into potential viewers and thus challenge the position of traditional players. This is often the case of US players who address the EU's fragmented market successfully.

In Europe, the consumer experience with audiovisual media services delivered online still remains often one of limited choice and of disabling access based on often geographical delimitations. Applications in smart TV sets are often restricted by national settings and manufacturers' pre-selected choices and access to content from other EU countries is often blocked.<sup>21</sup>

Technology will help to overcome these obstacles. Content producers, subtitle providers and researchers have started to create alliances to share the available language resources (e.g. the subtitle *corpora*<sup>22</sup> held by producers) and tools<sup>23</sup>.

Consumer experience of the future
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<sup>18</sup> European Audiovisual Observatory; all platforms considered: pure internet, electronic sell-through, videogame consoles, cable, IPTV, dedicated STB, smartphones, smart TVs, Push VoD (satellite, DTT) except apps in iTunes and in the Google Play App Store. Does not include: archives, trailers, TV series, adult, training, catch-up catalogues of film channels.

<sup>19</sup> Platforms can be integrated in the device by manufacturers or provided by other players such as electronic communications and cable operators, over-the-top (OTT) players or broadcasters.

<sup>20</sup> <http://www.internetworldstats.com/stats9.htm>.

<sup>21</sup> Study on the economic potential of cross-border pay-to-view audiovisual media services TNS opinion, Plum, the futures company - Study prepared on behalf of the European Commission – January 2012 [http://ec.europa.eu/internal\\_market/media/elecpay/index\\_en.htm#maincontentSec1](http://ec.europa.eu/internal_market/media/elecpay/index_en.htm#maincontentSec1).

<sup>22</sup> Subtitling companies or film producers/distributors hold large corpora (databases) of subtitles, often in many different languages in parallel. This is very valuable raw material to develop customised machine translation systems.

<sup>23</sup> E.g. SUMAT ([www.sumat-project.eu](http://www.sumat-project.eu)) and SAVAS ([www.fp7-savas.eu](http://www.fp7-savas.eu)) and the ICT Work Programme 2013, page 47 <http://cordis.europa.eu/fp7/ict/docs/ict-wp2013-10-7-2013-with-cover-issn.pdf>.

- a) A Polish student spending her Erasmus year in London can access all the audiovisual offers from Polish operators with her Polish credit card — just the same way she used to do in Kraków, as Polish services are provided to London.
- b) Her flatmate is from the UK and is writing a thesis on works by Portuguese directors. He can easily access material from Portuguese audiovisual content providers. The flatmates frequently watch together sports events from various EU countries.

The Green Paper on the online distribution of audiovisual works sought to shed more light on issues mainly related to copyright<sup>24</sup>. The Commission will publish the results of that consultation in 2013. In December 2012<sup>25</sup>, the Commission re-affirmed its commitment to work for a modern copyright framework and agreed on two parallel tracks of action: a structured stakeholder dialogue in 2013 to address a number of issues (including cross-border portability of content and access to audiovisual works) where rapid progress is needed; and the completion of market studies, impact assessments and legal drafting work, with a view to a decision in 2014 whether to table the resulting legislative reform proposals<sup>26</sup>. Copyright matters will therefore not be covered in depth by this paper.

From the supply point of view, the media world today is one of competition for the attention of consumers. Market players (e.g. pay-TV operators, free to air public service and commercial broadcasters, VoD distributors and device manufacturers) try to differentiate their offers by providing premium or attractive content, including on an exclusive basis or user-friendly interfaces. Increased content offer in terms of quantity and diversity is changing the entertainment landscape.

In 2009<sup>27</sup>, EU broadcasters invested around one third of their revenues in content. Out of the €34.5 billion programme spend in the EU by broadcasters approximately €15.6 billion was spent on acquiring rights – €5.8 billion on sports rights and €9.8 billion on film and TV acquisitions<sup>28</sup>. Premium content (major sport events and successful recently released films, so-called blockbusters) generates a high demand and significant revenues in the audiovisual sector. BT's participation in the Premier League's tenders for the television rights to its football matches over the three seasons commencing in 2013/14 resulted in a record £3 bn, a 71% increase<sup>29</sup> over the previous three-season deal. In the US, Netflix spend an estimated \$4.8bn buying streaming content in 2011/12.

Success may depend on the ability to consistently offer such content to viewers. While exclusive deals between platform operators and content providers have formed the basis for content producers to amortise their investments, they may also restrict the possibilities of third parties to provide such content to their audiences. These may constitute barriers to entry for new players.

<sup>24</sup> Green Paper on the online distribution of audiovisual works in the European Union: opportunities and challenges towards a digital single market, COM(2011) 427 final.

<sup>25</sup> Communication from the Commission on content in the Digital Single Market, COM(2012) 789 final.

<sup>26</sup> The following elements will be addressed: territoriality in the Internal Market; harmonisation, limitations and exceptions to copyright in the digital age; fragmentation of the EU copyright market; and how to improve the effectiveness and efficiency of enforcement while underpinning its legitimacy in the wider context of copyright reform

<sup>27</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. First Report on the Application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2009-2010: Promotion of European works in EU scheduled and on-demand audiovisual media services, COM/2012/0522.

<sup>28</sup> Final study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of European works in audiovisual media services, 13 December 2011.

<sup>29</sup> <http://www.guardian.co.uk/media/2012/jun/13/premier-league-tv-rights-3-billion-sky-bt>.

Moreover, when platforms reach a high popularity among users and become a key channel for content providers to reach audiences, the concern may arise that these platforms could favour certain companies or their own services, in the case of vertically integrated companies. In addition, these platforms' access to a wide range of user data may give them an additional competitive advantage<sup>30</sup>. Certain Member States such as the UK have assessed the need to impose *ex ante* wholesale release obligations for access to live top-flight sports and first-run Hollywood movies, considered essential for competitors to be viable in business.

EU competition rules are used at national and European level to address possible abuses of market power in circumstances where a company holds a dominant position in a relevant market. In that context there is a need to ensure that a quick and effective market is possible in an increasingly converged world.

The Commission has intervened on several occasions to ensure competition in the joint selling of sports media rights<sup>31</sup>. It has accepted remedies in the context of merger cases to ensure that premium films and sports rights content remain accessible<sup>32</sup>. In this context, case law of the Court of Justice of the European Union (CJEU) on refusals to licence can be noted<sup>33</sup>. The refusal by a right holder enjoying a dominant position to give access to a product or service indispensable for carrying on a particular business may be abusive if that refusal prevents the emergence of a new product for which there is a potential consumer demand, that it is unjustified and such as to exclude any competition on a secondary market. Finally, in the Premier League case, the CJEU held that while EU competition law does not preclude a right holder from granting to a single licensee exclusive broadcasting rights over a sporting event in one or more Member States, a right holder cannot prohibit the exclusive licensee from effecting any cross-border provision of services that relate the broadcasting of such a sporting event<sup>34</sup>. This is because such a prohibition would enable the licensee to be granted absolute territorial exclusivity in the area covered by its licence, thereby eliminating all competition between broadcasters and partitioning the internal market in accordance with the scope of the exclusive broadcasting rights.

Competition-related considerations also arise with regard to the financing of public service broadcasters. Public service broadcasters often extend their activities to the online world with applications or webpages. While some actors welcome this extension, others perceive this as a direct competition with their commercial offers, which do not benefit from public funding. In 2009, the Commission adopted a Communication on the application of state aid rules to public service broadcasters in the light of new technological developments, including the multiplication of distribution platforms and technologies. The Communication requires the introduction of an *ex ante* test. This involves a public consultation regarding significant new services launched by public service broadcasters, thus allowing the Member State to assess the impact of a new service on the market and to balance it against its value for society.

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<sup>30</sup> See also 3.1 on data protection.

<sup>31</sup> Case COMP/38.173 — Joint selling of the media rights to the FA Premier League Case, COMP//37.214 — Joint selling of the media rights to the German Bundesliga, and COMP/37.398 — Joint selling of the commercial rights of the UEFA Champions League.

<sup>32</sup> Case COMP/M.2876 Newscorp//Telepiù.

<sup>33</sup> Case C-418/01 IMS Health, C-418/01, GmbH & Co. OHG v NDC Health GmbH & Co. KG [2004] ECR I-5039.

<sup>34</sup> Joined Cases C-403/08 and C-429/08 *Football Association Premier League Ltd & Others v QC Leisure & Others - Karen Murphy v Media Protection Services Ltd*, judgment of 4 October 2011. See also Commission Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions 'A coherent framework for building trust in the Digital Single Market for e-commerce and online services' dated 11 January 2012, page 7.



## QUESTIONS FOR PUBLIC CONSULTATION:

- (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?

### 2.2. Financing models

Progressive convergence, changing consumer behaviour<sup>35</sup> and emerging new business models impact the financing of audiovisual production.

The formats of TV programmes and series<sup>36</sup> are increasingly traded within Europe — sometimes adjusted to local tastes — and exported to other parts of the world<sup>37</sup>. There seems to be a potential for more cooperation on productions where language barriers are lower, e.g. programmes for children or documentaries. In addition to TV shows developed by professional producers, user-generated content can also reach significant audiences, possibly integrated by broadcasters in their linear schedule. In addition, OTT players might offer their own series and live TV shows and acquire rights to premium content.

Member States have developed various ways of promoting European works including diverse ways of facilitating their production, financing and distribution to a wider audience. The AVMSD sets mandatory percentages of European and independent works to be broadcast by EU broadcasters. For non-linear audiovisual media services, the obligation to promote European works is formulated more flexibly with the possibility to require financial contributions from broadcasters and on-demand service providers in order to support the production of European works. However, while Member States are broadly fulfilling the current legal requirements, they are concentrating efforts on domestic productions. Non-domestic European works only make up 8.1 %<sup>38</sup> of broadcasting hours in the EU.

The trend for VoD platforms to invest in original content shows that these new players are potential new investors in audiovisual content. With the dynamic rise of VoD services and given the current contribution of broadcasters to the production of European works, there are discussions in some Member States regarding the contribution to financing of content by internet-based new players directly involved in its exploitation. This might raise specific issues regarding contributions from non-European players.

<sup>35</sup> Declining consumer expenditure on DVDs, -7.7% from 2010 to 2011, with consumer spending on VoD growing by 20.1% to a total of € 1.2 bn. The European Video Yearbook, 2012, p. 7. Between 2008 and 2010, UK online video viewing time more than doubled to 31 minutes per day; in France it grew by 104% to 24 minutes/day. Source: Cimscore.

<sup>36</sup> See footnote 28: According to the study on the implementation of the AVMSD on promotion of European works, during the period 2006-2008 the export of formats from Europe to North America, South America and Asia represented 5 084 broadcast hours and the intra-European trade in formats amounted to 19 995 broadcast hours. The export of formats from Europe to North America amounted to 2 213 hours compared to 8 363 hours from North America to Europe.

<sup>37</sup> Examples of formats exported globally and adapted locally include programmes such as ‘Who wants to be a Millionaire’ and ‘Deal or no deal’ and series such as ‘The Killing’ and ‘The Bridge’.

<sup>38</sup> See footnote 28.

QUESTIONS FOR PUBLIC CONSULTATION:

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

### 2.3. Interoperability of connected TV

Connected TV devices and services depend on a variety of standards in the broadcasting, IT and telecom sectors<sup>39</sup>. Convergence reopens the question which approach should be taken towards standardisation, bearing in mind both its advantages (allowing scale economies and interoperability) and its drawbacks (risk of freezing innovation).

**HbbTV** is an ETSI standard applied by a number of broadcasters, content providers, networks and consumer device manufacturers in Europe<sup>40</sup> to link broadcast and broadband content. One<sup>41</sup> functionality of HbbTV is to trigger broadband content through the broadcast signal. Another approach is a complete platform solution where broadcasters and network operators cooperate, such as in the UK example of YouView<sup>42</sup>. In Italy, mainly for historical reasons, the MHP<sup>43</sup> standard is used for connected TV.

It appears that a connected TV set bought in one Member State frequently does not allow modification of its settings to receive services from other Member States<sup>44</sup> and cannot respond to the trigger in a broadcast signal legitimately transmitted from another Member State.

Some manufacturers may configure their devices to limit the range of services and applications that can be accessed. Some Member States have developed national specifications based on HbbTV. In some cases, applications following those national specifications are not fully compatible with devices in other countries. Moreover, in some cases specific technical mechanisms (such as Digital Rights Management) are included in devices to respond to expectations of national players. For application developers, different standards mean that they need to re-author their products to different devices<sup>45</sup>.

QUESTIONS FOR PUBLIC CONSULTATION:

- (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?

<sup>39</sup> These include the DVB broadcasting standards and the internet protocol for the delivery of content. Others such as MPEG 25 and HTML-5 for content presentation may play an increasing role in future.

<sup>40</sup> According to the information available at the time of writing, HbbTV is already in regular operation in CZ, DK, FR, DE, NL, PL, ES and CH. AT, FI, NO, SE and TR have either announced plans to introduce HbbTV or are carrying out trials. There is also interest outside Europe.

<sup>41</sup> There are also network operator portals and manufacturer portals based on HbbTV as well as independent applications.

<sup>42</sup> YouView was launched in July 2012 with its own eco-system of several companies working together. Like other vertical market platforms, it does not have a fully standardised architecture.

<sup>43</sup> MHP, or the Multimedia Home Platform, can be described as a set of instructions that tell the operating system on a digital TV receiver how to deal with an interactive TV application it has received. [http://www.dvb.org/technology/fact\\_sheets/DVB-MHP\\_Factsheet.pdf](http://www.dvb.org/technology/fact_sheets/DVB-MHP_Factsheet.pdf).

<sup>44</sup> Discussed in meetings with stakeholders.

<sup>45</sup> Several players aim to address this issue e.g.: <http://www.smarttv-alliance.org>; Open IPTV Forum.

## 2.4. Infrastructure and spectrum

Delivery of multiple audiovisual content streams in ultra/high-quality definition, including parallel usage and 3D, is expected — even with improved compression technology — to increase the bandwidth required to watch content over the internet up to 100 Mbps and beyond. The Commission has set out a comprehensive policy to foster the development of broadband in the Digital Agenda for Europe<sup>46</sup> and proposed the Connecting Europe Facility to promote targeted infrastructure investment at European level<sup>47</sup>. Moreover, the Commission recently carried out a public consultation on specific aspects of transparency, traffic management and switching in an Open Internet<sup>48</sup> and intends to provide further guidance on this matter.

Dedicated spectrum has provided broadcasters with a valuable public resource to enable their own and others' programme-making activities. However, a significant net benefit was identified in reallocating part of the digital dividend realised from switching off analogue broadcast signal transmission — the 800 MHz band — to develop wireless broadband access in outlying regions. This was confirmed by the Radio Spectrum Policy Programme<sup>49</sup>, which set a target of 1200 MHz of spectrum for wireless broadband, putting even greater pressure on available spectrum resources. Spectrum resources can facilitate terrestrial and satellite-based delivery of audiovisual content as well as the interactive functionality necessary for content delivery and supplementary services. Convergence raises the issue of the future role of terrestrial broadcasting in the provision of such services. Industry actors are increasingly exploring hybrid models combining the advantages of broadband in delivering individual choice of on-demand content with the efficiency of broadcasting in making content (e.g. live sports or entertainment events) simultaneously available to a large audience.

### QUESTIONS FOR PUBLIC CONSULTATION:

- (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?

## 3. VALUES

The values that underpin the regulation of audiovisual media services in Europe have resulted in rules supporting freedom of expression and media pluralism, the promotion of cultural diversity<sup>50</sup> protection of personal data as well as the protection of consumers, including vulnerable groups such as minors and persons with disabilities. The challenge is to foster respect for those values in a converged environment, via the appropriate policy choices.

<sup>46</sup> <http://ec.europa.eu/digital-agenda>.

<sup>47</sup> <https://ec.europa.eu/digital-agenda/en/connecting-europe-facility>.

<sup>48</sup> <http://ec.europa.eu/digital-agenda/en/line-public-consultation-specific-aspects-transparency-traffic-management-and-switching-open>

<sup>49</sup> <https://ec.europa.eu/digital-agenda/node/118>.

<sup>50</sup> This is an intrinsic value to be safeguarded in line with Article 167 TFEU.

### 3.1. Regulatory framework

The main rationale for the regulation of audiovisual media services at EU level has been the Internal Market, with the country of origin principle at its core. This ‘single European TV market’ has entailed a minimum set of common rules covering aspects like advertising, protection of minors and promotion of European audiovisual works.

The technology-neutral approach of the AVMSD means that the same services are regulated in the same manner irrespective of the device on which they are consumed. However, the AVMSD makes a distinction between linear (television broadcasts) and non-linear (on-demand<sup>51</sup>) services, based on the much higher degree of consumer control in on-demand services, justifying less stringent regulation in certain areas.

The AVMSD rules apply only to media service providers. The definition of this concept is based on the notion of editorial responsibility<sup>52</sup>. For as long as a provider has responsibility for the choice of the content and determines the manner in which it is organised, its services are subject to the AVMSD even if the content is delivered over the internet.

Linear and non-linear services will increasingly compete on the same screen, sometimes even offering over two delivery channels the same content for the attention of the same audience. With new forms of on-demand content that seem more like ‘lean-back’ linear content, the difference between linear and non-linear services from the consumer’s point of view might blur. If, in a converging world, linear and non-linear provision of similar content were to be treated as being in competition, then the current differences in regimes could clearly distort that relationship. On the other hand, if the degree of customer control remains a significant feature for users, then differentiated regulation would retain a certain logic. This requires policy makers to reflect on the ways in which these changes will affect both, consumers’ perceptions of the received service and the effectiveness of current tools.

The AVMSD applies only to providers under EU jurisdiction. When delivered via satellite, audiovisual media services fall under the jurisdiction of a Member State if the satellite up-link is located in the Member State or the satellite capacity used is ‘appertaining to that Member State’<sup>53</sup>. Those rules do not extend to content delivered over the internet from countries outside the EU, but targeting the EU.

With media services from outside the EU increasingly accessible via the internet and satellite, efforts to establish jurisdiction over those services would imply an assessment of the need to address overlapping jurisdiction. Similar issues are under discussion in the field of data protection.

The provision of non-linear services is also subject to the E-Commerce Directive. In a converging environment the relationship of this Directive with the AVMSD becomes more visible<sup>54</sup>. This is also the case for data protection legislation, as the processing of personal data is often the prerequisite for the functioning of new services, even though the individual is

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<sup>51</sup> AVMSD Article 1.1.g: "on-demand audiovisual media service" (i.e. a non-linear audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider.

<sup>52</sup> This means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of an audiovisual media service and determines the manner in which it is organised (Article 1(1)(d) AVMSD). This excludes natural or legal persons who merely transmit programmes for which editorial responsibility lies with third parties.

<sup>53</sup> Art. 2(4) AVMSD.

<sup>54</sup> See in particular the “internal market clause” in Article 3 as well as Article 4 and Articles 6 – 8.

often not fully aware of the collection and processing of personal data. The moment data generated during the consumption of audiovisual media services relates to an identified or identifiable natural person, it is personal data, and as a consequence falls under the scope of the EU Data Protection Directive (95/46/EC)<sup>55</sup>. Another relevant regulatory area is consumer protection<sup>56</sup>.

Given the global and complex nature of the internet, self-regulation seems an appropriate complement to the regulatory approach. In 2012, the Commission launched a process<sup>57</sup> with enterprises and other stakeholders to develop a code of good practice for self- and co-regulation exercises. This has led to the drafting of principles for better self- and co-regulation aiming at ensuring a greater effectiveness<sup>58</sup>.

They should be considered as a benchmark for self- and co-regulation processes which are already mentioned in the AVMSD<sup>59</sup>.

In a progressively converging world, media literacy becomes also important for audiences, irrespective of their age. The Commission has developed several policy strands for media literacy, beyond those included in the AVMSD<sup>60</sup>. Media literacy is understood as the ability to access the media, to understand and to critically evaluate different aspects of the media and media contents and to create communications in a variety of contexts<sup>61</sup>.

#### QUESTIONS FOR PUBLIC CONSULTATION:

- (10) Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?
- (11) Is there a need to adapt the definition of AVMS providers and / or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?
- (12) What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?

<sup>55</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data OJ L 281, 23.11.1995, p. 31–50

<sup>56</sup> E.g. Directive 2005/29/EC on Unfair Commercial Practices protects consumers from misleading or aggressive marketing, and ensures that any claim made by traders in the EU is clear, accurate and substantiated; and the Directive 2011/83/EU on Consumer Rights regulates several areas of consumer rights, harmonising some of them. Information on digital products to be downloaded or viewed online, for example, will have to carry clear information on interoperability and functionality.

<sup>57</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU strategy 2011-14 for Corporate Social Responsibility, COM(2011) 681 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>.

<sup>58</sup> <https://ec.europa.eu/digital-agenda/en/news/principles-better-self-and-co-regulation-and-establishment-community-practice>.

<sup>59</sup> Article 4.7.

<sup>60</sup> Article 33.

<sup>61</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "A European approach to media literacy in the digital environment" COM(2007)833final.

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| (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?   |

### 3.2. Media freedom and pluralism<sup>62</sup>

Media freedom and pluralism are enshrined in Article 11 of the Charter of Fundamental Rights of the European Union. The AVMSD<sup>63</sup> and competition rules, at both EU and national level, contribute to sustaining media pluralism.

Through the internet, citizens have access to an unparalleled amount of information and content beyond national offerings and can participate in opinion making. This facilitates freedom of expression and enhances pluralism of opinions.

At the same time, ways how people relate to information change. Filtering mechanisms, including personalised search results, make it more likely for people to receive the news in their area of interest, and from a perspective with which they agree. On the one hand, such filtering and personalisation mechanisms have a clear potential for empowering citizens, by allowing them to navigate efficiently through the information overload that characterises the digital environment and to receive tailor-made services corresponding to their individual needs. On the other hand, this may decrease the role of the media as editors in the public sphere and strengthen the role of platform providers, for example online companies. The latter may not only determine what content is accessible but can also impact choices, e.g. by varying the prominence with which certain content is displayed, limiting the citizen's ability to change the menu or restricting certain applications. This could influence the *de facto* choice for citizens to access media offerings representing a plurality of opinions and can lead to a situation where citizens potentially find themselves in a vulnerable situation without realising it. The availability of various platforms providing valuable content to users, as well as the openness of those platforms, is an important condition for a thriving media landscape.

Member States may impose reasonable must-carry obligations on network operators, for the transmission of specified broadcast channels to the public, if a significant number of viewers use such networks as their principal means to access these channels<sup>64</sup>. In circumstances, where the ability to reach audiences is dependent on scarce transmission resources, this is a way to ensure the provision of specified channels when the availability of content is considered by Member States to be necessary for general interest objectives. In the broadband environment, transmission capacity is less of a constraint on the choice of content available to viewers.

The accessibility of 'general interest content', including in the online environment, might be limited in practice by business decisions, such as those of equipment manufacturers and/or by

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<sup>62</sup> Please note also public consultations regarding media freedom and pluralism <http://ec.europa.eu/digital-agenda>.

<sup>63</sup> The AVMSD supports media pluralism by allowing audiovisual media services to freely circulate within the single market, based on the country of origin principle and e.g. through article 14. This — together with the specific rules on the promotion of European works — supports media pluralism.

<sup>64</sup> Art 31 of the Universal Service Directive 2002/22/EC as amended by the Citizen's Rights Directive 2009/136/EC.

the operators of the platforms that can be accessed via this equipment or indeed by content providers themselves<sup>65</sup>.

Member States may also specify digital broadcasting services to which access must be ensured and National Regulatory Authorities can impose obligations on operators to provide access to electronic programme guides (EPGs)<sup>66</sup>.

Even if content is accessible, finding 'general interest content' in an enhanced multichannel environment can be a potential challenge for viewers. Therefore Member States have also the possibility to impose obligations in relation to the presentational aspects of electronic programme guides and similar listing and navigation facilities<sup>67</sup>.

#### QUESTIONS FOR PUBLIC CONSULTATION:

- (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'?

### 3.3. Commercial communications

The AVMSD sets limits in transmission time for broadcast advertising, such as 12 minutes per hour, and lays down criteria relating to the advertising of certain products as well as advertising in relation to minors. Qualitative rules apply similarly to both linear and non-linear services, while quantitative rules apply only to linear services. In view of the increasing competition between linear and non-linear services and the fact that non-linear services might be provided by providers not subject to EU jurisdiction, European broadcasters fear that such an asymmetry puts them at a disadvantage.

In the context of convergence, some innovative advertising techniques put existing rules to the test. The Commission was informed about concerns regarding commercial overlays<sup>68</sup> over broadcasters' linear services and the question whether this could challenge the essential purpose of advertising regulation, in particular whether such overlays could be shown with or without the consent of users and broadcasters. Disguised commercial communications in the online environment could also present challenges.

Personalisation of content offers can benefit consumers and advertisers, but may depend on tools posing challenges for personal data protection. European data protection rules<sup>69</sup> can increase consumer trust in innovative business models which is the stated objective of the Commission proposals for a reform of the EU regulatory framework submitted in January

<sup>65</sup> In the case of digital television equipment, Article 24 of the Universal Service Directive could be used to ensure interoperability. Annex VI currently ensures e.g. that signals transmitted in the clear are displayed on devices capable of descrambling scrambled broadcasts.

<sup>66</sup> Art 5 (1b) of the Access Directive 2002/19/EC as amended by Directive 2009/140/EC.

<sup>67</sup> Art 6 (4) of the Access Directive 2002/19/EC as amended by Directive 2009/140/EC.

<sup>68</sup> Visual elements that appear on the screen during a broadcast.

<sup>69</sup> ePrivacy Directive and the proposed Data Protection Regulation amending the current Data Protection Directive.

2012<sup>70</sup>. The advertising industry has introduced a self-regulatory<sup>71</sup> system for online behavioural advertising, which in the future might be extended to cover video adverts in addition to display adverts. Industry standardisation initiatives such as Do Not Track (DNT)<sup>72</sup> should also be taken into account.

QUESTIONS FOR PUBLIC CONSULTATION:

- (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?

### 3.4. Protection of minors

The continuum of content across the differently regulated linear and non-linear transmission channels weakens the impact of the current regulatory regime for linear on children's access to content. Effective age verification, also for adolescents' access to content, remains a challenge. Differences in the regulatory approach to different types of content on screen might moreover make it difficult for users to determine which authorities to complain to<sup>73</sup>.

In 'A European Strategy for a Better Internet for Children' launched in May 2012<sup>74</sup>, the Commission argues that more quality content should be developed for children and that children should also be protected when they go on the internet. 31 leading companies across the value chain have signed up to a Coalition to develop, through a self-regulatory process, appropriate measures for five key actions: i) simple and robust reporting tools for users; ii) age-appropriate privacy settings; iii) wider use of content classification; iv) wider availability and use of parental control; and v) effective removal of child abuse material. Some of these actions relate to the AVMSD and could be supported by amending the legislation. Collective results and engagements were made public, including recommendations for best practices. Companies have produced individual statements regarding the implementation of those recommendations. The Commission will continue to engage with the Coalition as a platform for discussing progress through 2013.

QUESTIONS FOR PUBLIC CONSULTATION:

- (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?

<sup>70</sup> COM(2012)11 – Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation).

<sup>71</sup> A cross-European self-regulatory Framework for Online Behavioural Advertising (OBA): <http://www.iabeurope.eu/news/self-regulation-framework.aspx>.

<sup>72</sup> A global DNT standard would describe the technical details of a 'signal' that users can send to providers via their online equipment, including their web browser. The signal indicates their preferences regarding tracking. <http://blogs.ec.europa.eu/neelie-kroes/donottrack/>.

<sup>73</sup> An example where this issue is addressed is ParentPort.

<sup>74</sup> <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/445>.



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| (22) | What measures would be appropriate for the effective age verification of users of online audiovisual content?  |
| (23) | Should the AVMSD be modified to address, in particular, content rating, content classification and parental control across transmission channels?  |
| (24) | Should users be better informed and empowered as to where and how they can comment or 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? |

### **3.5. Accessibility for persons with disabilities**

Technology offers more possibilities to assist visually, hearing and cognitively impaired persons than ever before. However, these opportunities may be lost if accessible content, i.e. subtitles, sign language or audio-description, is not produced or not made available to end users.

The AVMSD already obliges Member States to encourage media service providers to make their services gradually accessible to people with visual or hearing disabilities. The implementation of this provision by Member States varies considerably. Accessibility services can be included in 'must carry' obligations imposed by Member States.

The Commission has presented a proposal for a Directive on web accessibility<sup>75</sup> and is exploring how to further improve the situation of accessible goods and services in the EU market and establishing general accessibility requirements in the forthcoming European Accessibility Act. The adoption of a European Standard covering also audiovisual issues related to accessibility is expected by the end of 2013.

QUESTIONS FOR PUBLIC CONSULTATION:
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| (26) | Do you think that additional standardisation efforts are needed in this field?                                |
| (27) | What incentives could be offered to encourage investment in innovative services for people with disabilities? |

## **4. NEXT STEPS**

All interested parties are invited to comment on the ideas raised in this Green Paper, including by responding to the specific questions listed, to the following address:

CNECT-CONVERGENCE-AV@ec.europa.eu

European Commission

Directorate- General for Communications Networks, Content and Technology

Unit G1

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<sup>75</sup> Proposal for a Directive of the European Parliament and of the Council on the accessibility of public sector bodies' websites COM(2012) 721 final.

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B- 1049 -Brussels

In this context, the Commission may organise or participate in meetings with stakeholders, including industry, consumers, investors, Members of the European Parliament and the Council.

Please submit your comments by 31/08/2013. Contributions received will be published on the DG CONNECT website unless a contributor requests otherwise. It is important to read the specific privacy statement attached to this consultation for information on how your personal data and contribution will be dealt with.