

ETNO Response to European Commission Green Paper: Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values



September 2013

Introduction

ETNO welcomes the European Commission's Green Paper '*Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values*' as a timely initiative aimed at better understanding the current developments in the audio-visual sector and the likely trends. ETNO thanks the Commission for the opportunity to contribute to the public consultation and the debate launched by DG Connect on the right way forward, in particular in relation to the eventual need to revise the current regulatory landscape in order to better adapt to new and innovative products/services.

ETNO notes that the current Green Paper seems particularly focused on the changes and challenges that Internet-based services are bringing to the traditional broadcasting sector and devotes less attention to the impact that the dramatic increase in traffic growth is registering on broadband networks. The Internet ecosystem is undergoing huge change due to the increase of video traffic on broadband networks (a number of studies report that by 2016, video traffic will amount to 55% of total Internet consumption), which raises questions about current capacity levels. New players have emerged in the Internet value chain and, in particular, 'Over the Top' players (OTTs) who come from unregulated sectors or different regions of the world but who compete in the same market as European telecoms operators. These OTTs have the flexibility to provide similar services, often for free or at significantly lower tariffs, as they do not contribute to the underlying networks and so the playing field is not level.

The ongoing migration towards an all-IP environment correlates with the shift of value from telcos to OTTs. Between 2008 and 2012, European telcos lost nearly €70 billion in aggregate market capitalization while OTT digital service providers, device manufacturers and cable companies gained more than €200 billion. This process was accompanied by a substantial value migration from European to foreign players¹. Additionally, revenues are decreasing sharply and are expected to continue to contract over the next decade by up to 2 percent a

¹ BCG/ETNO Study: *Reforming Europe's Telecoms Regulation to Enable the Digital Single Market*
http://www.etno.be/datas/publications/studies/BCG_ETNO_REPORT_2013.pdf

year, representing a cumulative decline of €70 billion to €190 billion². This leads to a loss in telcos' competitiveness and investment capacity in high speed networks and innovative services. In this asymmetric market context, European network operators are still called upon by the European institutions to heavily invest in broadband network deployment and upgrades, in order to support the video traffic increase requested by users and to meet the ambitious EU Digital Agenda goals. If one wants to meet users' expectations (users require new service features such as interactivity, ubiquity and multi-device use), the market structure with its newly shaped value chain needs to be reconsidered. We need to rethink the traditional paradigms which were developed when the Internet was still in its infancy and symmetric data flows were a feature.

There is general agreement about the need to guarantee a sustainable Internet ecosystem. However, there are still opposing views on how best to achieve this goal. We strongly believe that if we wish to pursue the European Digital Agenda goals, the needs of those European players that contribute the most to EU growth should be heeded. As such, ETNO believes that the European Commission should take a much more holistic approach when considering the impact of convergence on EU competitiveness and consider in its analysis the following areas (beyond the specific and most directly related legislation, such as the AVMS Directive):

- The IP interconnection field. Operators must have the freedom to be able to explore new relationships with those players who send large amounts of traffic into the network. The volume and sometimes network sensitive nature of these services may require a reassessment of the commercial realities in these relationships.
- Privacy and data protection. Telcos are regulated through a binding EU Directive while digital services players are not and yet both are providing functionally equivalent services. The particular nature of the digital services (provided by global operators active in a cross-border market) requires the establishment of a level playing field among players also at geographical levels. The current proposal of EU regulation on data protection goes in the right direction to address this need.
- Switching and data portability. Again, these areas are regulated for telcos, not for OTT players.
- Taxes. As new entrants, OTTs often have more flexibility than telcos to maximize tax savings by choosing where to have their European headquarter operations.
- Identification and safety-related measures. Telcos are subject to strict, country-specific rules for electronic communication services that do not apply to OTT providers offering services that represent reasonable alternatives from the consumer's point of view.

ETNO believes that the Commission should seize any occasion to re-balance the strength of the EU industry and to re-establish its competitiveness. ETNO has recently voiced its position in the context of the public consultation on the EU-US Trade Agreement, stating that in the context of ICT services, it is of particular importance for European companies that the Transatlantic Trade and Investment Partnership (TTIP) ensures a level playing field, providing for equal access of EU service companies to the US market and at the same time ensuring that service providers from the US have to respect the same rules applicable to EU

² BCG/ETNO Study: *Reforming Europe's Telecoms Regulation to Enable the Digital Single Market*
http://www.etno.be/datas/publications/studies/BCG_ETNO_REPORT_2013.pdf

companies when providing services in Europe or to European customers. Different regulatory regimes have put European companies at a disadvantage, leading to unhealthy asymmetries in the EU-US relationship. In particular, this situation has led to the dominance of OTTs in the digital economy value chain, leading to imbalances that need to be addressed. In conclusion, we believe that the EU Commission should take a holistic view when addressing the digital single market issue, starting from a full understanding of the market dynamics and looking at all relevant aspects of convergence.

Specific Responses

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?

The establishment of US companies in the European market is not a novelty for audio-visual media services. Many US TV Channels have already settled in European countries and these audio-visual media services compete directly with European TV channels.

US presence in the EU territory takes a number of forms. First, the US industry enters through its content production. In general, so-called Hollywood majors (dominating US production studios together with their distribution and marketing branches) benefit from securing financing of their products (particularly films [“blockbusters”] and series) in their home market. Exportation of these productions to EU markets is considered an “add-on”, perhaps not even requiring adaptation to local languages in those cases where audiences in Member States either speak the same language (UK, Ireland) or are not requesting costly translation. The marketing of US productions has a competitive advantage due to the fact that European audiences – through prior reporting on US premiers – have already acquired awareness. In cases where adaptation to local language requirements (translation, subtitling, dubbing) is needed, the necessary costs will more likely be easily covered from exploitation revenues because the latter do not have to contribute to the financing of the initial production budget. Output deals concluded (even when upfront production has been finished) between US majors and European TV broadcasters add to the overall income – a source of financing that is rarely available for production companies based in the EU which mainly or exclusively target a single national market. As regards making content available, to date US companies have not placed a major emphasis on exclusivity, monitoring market developments in Europe or offering different business models in the area of VoD services. Any additional income generated in this sector again adds to the overall revenues without clearly involving either related specific costs or any genuine risk-taking.

The entry of US players into the EU territory is increasingly done via the OTT channel, i.e. distribution platforms of content, be they digital or physical. If we focus on the digital content side, the US industry entry has been facilitated not only by its natural capacity to build its services on a universally known language but also by the use of proprietary content and technical/commercial standards that have allowed them to leverage their market power held in those markets and naturally expand on neighbouring markets also outside their domestic territory. If we consider the content industry, while the US industry considers

distribution in the EU territory as a natural target, things are substantially different for the EU content industry in respect of distribution in the US territory.

Also, the US industry establishment strategy in the EU territory depends on regulatory asymmetries within the EU. These are due to a number of factors, among which are the a) un-harmonised implementation of the Audiovisual Media Services Directive (AVMSD) throughout Europe b) the Data Protection Directive rules, which are currently under revision, whose application within the EU territory creates competitive advantages for foreign players and c) the application by different Member States of different tax regimes.

Such a fragmented situation allows US players to provide audio-visual media services from the Member States where the rules are the most advantageous amongst the EU countries. In addition to this, there are no technical restrictions for the provision of services, since the distributor, within the new Internet context, no longer needs to have a local presence to provide TV services as no local infrastructure is needed for the reception of audio-visual media services.

More in particular, today it is evident that certain EU countries are more attractive countries for US companies, including OTT. The current tax system is an obstacle to an efficient and competitive development of the media services industry in the EU because of the application by different Member States of different tax regimes. This generates difficulties for the countries of destination for US audio-visual media services, which, in most cases, are unable to levy a tax on those companies. Following the OECD model for tax treaties, the country of destination cannot claim withholding taxes on OTT-players' income for local sales of their products in the countries of destination. Indeed, in practical terms a Member State can levy a tax on a company turnover only if its distributor is established in its territory (alternative methods for ensuring local taxation are not always easily enforceable). US companies can escape high tax obligations by distributing audio-visual media services from other Member States where the rules are more liberal. This phenomenon, which is part of the wider discussion - what is known as the Base Erosion Profit Shifting (BEPS) - grants a substantial economic and competitive advantage to non-EU companies providing services and goods in Europe.

In general, we can say that EU companies cannot benefit from the same flexibility as US companies as most of them are submitted to more stringent rules. To overcome such a difficulty, the only solution for a national editor is to establish an undertaking in each country of destination of the service, which is costly and not workable in practice.

In consideration of the negative impact that this phenomenon produces on the economy, the OECD has recently published its Action Plan on BEPS where it recognises that *"the spread of the digital economy also poses challenges for international taxation"* and that *"it is important to examine closely how enterprises of the digital economy add value and make their profits in order to determine whether and to what extent it may be necessary to adapt the current rules in order to take into account the specific features of that industry and to prevent BEPS"*.

Additional tax considerations

The issue of the different applicable tax rates and the subsequent unbalances among players has been partially addressed by Council VAT Directive n.2008/08/EC, which provides (from 2015 onwards) that the VAT place of supply and (accordingly) rate, even in Business to Consumer transactions, should be set by the place of consumption, making irrelevant the place of the provider's country of establishment. The implementation of the European principle of taxation in the country of consumption from 2015 will be a first important step to improve the situation. In addition to the 2015 place of supply VAT rules, the implementation of a harmonised European VAT for online content would reduce the costs of managing cross-border trade.

The current tax system is also an obstacle to the development of online content offers due to different VAT levels applicable to different goods and services, in particular online and offline products. By way of example in Italy, while the paper version of a newspaper is subject to a VAT rate of 4%, the VAT applied to the digital version amounts to 21% (the current VAT rate applied in Italy).

It is ETNO's view that today the application of two different VAT rates, the standard one and the reduced one, to products which are fundamentally the same but are delivered, as a result of technological development, to the customer in different ways, i.e. on a physical support vs. electronic means, has a distorting effect on competition. The principle of neutrality implies that the same rate (i.e. the reduced rate), when applicable to the off-line product, should be applied to products that serve the same customer's needs, regardless of the physical means of support.

This is also consistent with the guiding principle identified by the Communication on the future of VAT (COM (2011) 851), under which: *"Similar goods and services should be subject to the same VAT rate and progress in technology should be taken into account in this respect, so that the challenge of convergence between the on-line and the physical environment is addressed"*.

ETNO believes that a reduced VAT rate should be applicable to any kind of supply of audio-visual services through an electronic communication network irrespective of the technological platform in order to fully apply the technological neutrality principle and achieve the same VAT treatment for traditional broadcasting and on line broadcasting.

Specifically, ETNO believes that a reduced VAT rate should be allowed not only for on-line radio and for Internet-protocol TV (quite comparable to "traditional" broadcasting), but also for video-on-demand as well, since this last alternative represents a new opportunity for the enjoyment of video content (from this same perspective, the presence of a programme schedule does not seem to be so relevant, with reference to the determination of an appropriate, fair level of VAT)³.

³For further details about ETNO position on this matter, please see the ETNO-GSMA Tax Policy Committee's contribution on the European Commission's consultation on Review of existing legislation on VAT reduced rates.

ETNO therefore supports the opportunity to apply a harmonized reduced VAT rate to the online and physical versions of the same content as well as to linear and non-linear services.

(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?

The availability of premium content is key to ensure the attractiveness of audio-visual media services, which in turn is critical to facilitate the development of the digital market. However, so far, new and convergent platforms face difficulties to access premium content at affordable conditions and with a reasonable delay.

Availability of premium content is affected by some practices that, applied within an analogic context, no longer have a *raison d'être* in a digital environment, where new and convergent platforms represent a huge opportunity in terms of business. Acquiring licences from rights-holders (producers) may become difficult for newcomers or economically less strong competitors and wholesale access to channels delivering premium content may prove difficult for service providers attempting to establish a new platform either on an infrastructure which is already used for the distribution of relevant services (Pay TV on cable networks, for instance) or by using a competing infrastructure (e. g. DSL versus terrestrial and/or satellite TV networks). In principle, competition law instruments provide adequate remedies in a number of related situations; however, disadvantages related to a preference for behavioural over structural remedies in some Member States have recently come to the fore. Often these practices are the result of protectionist intentions of some traditional players both in the field of content production and distribution, who consider broadband and Internet in general as a big threat to their business.

This fear is felt primarily by the content industry. In this respect, it is important to stress again that ETNO fully supports the need for the rights-holders to receive a fair compensation for their works. However, when it takes the form of protection of premium content, it should be balanced with the need and right to conduct a business.

Often the content industry and the majors in particular have a high bargaining power and unilaterally impose conditions for the availability of premium content: minimum guarantees, upfront fees, windows, limited catalogues, mandatory providers for security issues⁴, licenses for fragmented territories and technologies, imposition of geo-blocking practices (making almost impossible the provision of pan-European services) and exclusivity clauses. These clauses result in the foreclosure of access to premium and quasi-premium content by providers of innovative (mainly on-demand) services, with the consequence that consumers are often deprived of the possibility to access that content on converging platforms. In some cases, in particular with regards to quasi-premium content, consumers are completely foreclosed from accessing that content. Also, the marketing strategies for the majors' film releases influence the development of new business since the major studios focus 100% of their marketing budgets in the first window associated with the theatre/cinema showing.

⁴ By way of example, the publication of an App on the Apple Apps Store or on Smart TV Samsung is conditional upon the certification of the App by the platform provider, on the basis of criteria defined by the platform provider, which may include minors protection, privacy protection, but also the prohibition to realise functionalities that may compete with the ones offered by the platform provider.

It is also the case for the release windows⁵, which undermine editors and distributors' capacities to offer premium content. In most member countries, the windows length is too long when it comes to traditional platforms and distribution channels, while windows for online on-demand distribution are delayed and restricted. This results in an unfair and disproportionate penalisation of online channels and the subsequent un-availability of the related content opens the door to digital piracy.

With holdback practices, broadcasters can obtain from rights-holders the holding back of VOD rights during TV exploitation. Generally, holdback periods are not regulated and depend on contractual negotiations (this is a usual practice both in Pay TV Channels and Free TV Channels) which have important drawbacks for VoD editors, as it strongly impacts the availability of premium content.

In France for example, holdback practices oblige VoD editors to withdraw movies from VOD platforms during lengthy periods of time (1 year during the Pay TV exploitation; 18 months to 36 months during the Free TV exploitation, and sometimes longer when the movie is bought to be distributed by another network distributing for free). In some member countries, a worsening in the practice of holdback periods can be seen: holdbacks periods used to be restricted to co-producers players (Free TV channels who had put money in the film prior to the production), but today Free TV broadcasters tend to demand holdbacks for their affiliated TV channels (i.e. the new channels of Digital Terrestrial Television) even though such channels have not participated in the production of the movie. This may lead to holdback periods that may also last a maximum of 5-years (Pay + Free tv holdbacks), during which no chance to access that content is allowed to other interested players, with a subsequent lack of revenues. The French Government created a Commission to launch a debate on culture in the digital age. The resultant "Lescure Report"⁶ was released on the 13th of May 2013 with some recommendations on release windows. ETNO supports in particular the following recommendations:

- VoD editors should be allowed to offer audio-visual works on their platforms three months after the theatre release (instead of the four months applied today);
- the introduction of shifting release windows for films with less than 100 copies in the theatres;
- the prohibition or limitation of "holdback practices" during the free TV exploitation.

The opportunities offered by the new online platforms represent a threat also for the traditional distributors, who try to keep exclusive relationships with the dominant content rights owners, thus distorting fair competition in the retail market.

This is particularly apparent in the case of cable operators who have historically strong links with the content industry, but it can also happen when a dominant pay TV operator becomes an important player in the retail triple play access market as a result of unbundling. A further element that may negatively impact on the emergence of new convergent audio-visual services is the situation regarding collecting societies. Even though the issue is not addressed within the context of the current Green Paper and consultation, we believe that the lack of competition amongst collecting societies, the lack of clarity about the licensable rights and the related conditions and the lack of transparency and accountability creates serious obstacles to the realisation of a digital single market. In summary, ETNO believes

⁵ Release windows were created to maximise the revenues of films and to prevent the different exploitations of a movie from competing with each other, allowing the movie to take advantage of different markets (cinema, home video, TV, etc.) at different time.

⁶http://www.culturecommunication.gouv.fr/var/culture/storage/culture_mag/rapport_lescur/index.htm#/

that real competition between collecting societies must be introduced as well as multi-territory, multi-repertoire licence (on a “one-stop-blanket-licence” basis), which could significantly simplify the current clearance system.

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

Distribution platforms have always had a strategic role for audio-visual media service providers. They represent a great tool to reach and develop the audience. The issue of access is still relevant for nonlinear services and has increased since the take-up of worldwide platforms and Connected TV.

However, access to platforms by content providers has been not regulated at EU level and ETNO considers there is no objective justification for any additional regulatory intervention. Access to platforms takes place in the context of a two-sided market. On the one hand, the broadcasters need access to platforms and on the other hand, distributors need access to content. Precisely because of this dual character of the market, access regulation risks to be disproportionate.

In addition, the number of access platforms is proliferating as TV becomes smart. The evolution of mobile handsets and available broadband speeds favour new distribution channels for content throughout the Internal Market. This implies that (Home) TV at some point in time will no longer be the main (or only) device to consume audio-visual media content. New devices (e.g. Set-Top-Boxes, Gaming Consoles), the evolution of existing devices (smart OS-run TV) and “software TV” (Apps) have led and will further lead to a wide variety of receiving paths. In particular, the smartphone will become more important as the prices for smart handsets fall and the deployment of high-speed wireless broadband services continues.

In this respect, ETNO considers that a recent legislative initiative of the Flemish Community in Belgium, more precisely the decree on signal integrity adopted in July by the Flemish Parliament, raises i.a. fundamental issues of proportionality. The text foresees that, among others, distributors of TV signals have to obtain prior approval from each broadcaster in the Flemish Community in respect of each “functionality, which allows watching linear TV programs in a way that is delayed, shortened or altered.”

This shift in the commercial balance between players, to the advantage of the broadcasters and to the disadvantage of the distributors, may negatively affect the potential of innovative services and induce higher costs for end users.

We believe that the freedom to choose which content provider can access platforms is a fundamental basis of audiovisual media services distribution activity. It grants platforms the possibility to create their own content offers and to introduce elements of differentiation compared to their competitors. The freedom to choose content is an important tool for efficient competition between players in the market. Indeed, according to articles 101 and 102 TUE, agreements and the abuse of dominant positions are sanctioned in cases where there is a restriction of competition.

In addition, creating an “a priori” right of access to platforms would be detrimental for EU players as it would distort competition in the EU market. EU providers of audiovisual media services would have no means of differentiation compared to US players. Conversely, the access of US players to national markets would be facilitated when applying the liberal rules

of the country where they are established. This would directly compete with EU players on an unfair basis.

While ETNO thus considers that there is no objective justification for any future ex-ante regulatory intervention of platform access for content providers, any right of access should be granted on a case-by-case basis, once competition aspects are carefully assessed, in particular when specific platforms are to be considered as dominant in the provision of content, as the case may be within the Internet context. In this case, fair and non-discriminatory conditions to access the dominant platforms should be guaranteed, both at economic (ex. the revenue sharing mechanisms) and technical level (in terms of “discoverability” of the related content through appropriate search and discovery solutions).

Generally speaking, we believe that non-discriminatory access to content, hardware and software will allow innovative platforms to develop. However, we strongly believe that fair competition between these platforms will make the regulation of access to those platforms unnecessary.

Commission intervention should also focus on a close monitoring of market developments to avoid new bottlenecks in the value chain. Given the context of device diversity, the “front-end-layer” or user interface will become significantly important for controlling the content / services delivered, as well as the way they are received by the user. Built-in operating systems – independent from the device - will determine the display and choice of the content which is presented by (self-designed, maybe proprietary) interaction layers (e.g. OS for mobiles⁷ or gaming consoles). These layers will provide for control of the content delivered to the user. While usually these layers are adaptable by the user to some extent, market distortions can arise out of proprietary or “closed” interaction-layers directly or indirectly blocking or hindering services to be delivered to the customer.

As mentioned before, once the dominant distribution platforms reach a critical mass and popularity, they are in the position to define unilaterally the business models and associated revenue mechanisms, such as revenue sharing models. Often the global platforms providers are vertically integrated. This characteristic, which is often considered as a potential source of competition restrictions when it comes to telco operators, allows other platform providers to control the different layers of the value chain. This may represent a competitive risk in the market for the service provision to the end customers since they may be tempted to favour their services/content.

In consideration of the above, the Commission should ensure that EU distribution platforms are not jeopardized by anti-competitive behaviours of other dominant players in the market. In conclusion, we believe that when considering access to platforms by content providers and to content by platform operators, the principle of fair competition should be followed. The emergence of undue competitive advantages should be prevented in situations where new market players exercise similar or equivalent functions as a provider of a (technical and/or marketing) platform but are not subject to the applicable rules simply because their role is less service-oriented but rather hardware (terminal equipment) based.

⁷For example, according to the International Data Center (IDC) the market share of only two competitors in the market of mobile operating systems accumulated to 91,1 % in the fourth Quarter of 2012 (<http://www.idc.com/getdoc.jsp?containerId=prUS23946013>).

Financing Models

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

The goal of fostering European works is important and remains valid despite technological changes. However, it remains to be seen whether the means to achieve this goal should not be reviewed due to changing circumstances and the evolving technology environment. ETNO believes that more appropriate forms of promoting European content creation should be fostered so that a level playing field is defined and European players do not face disadvantages towards non-EU players. These financing forms should aim at guaranteeing the development and launch of innovative services and should not allow any external and artificial support for specific industries by other sectors.

Promotion of European audio-visual works is one of the main objectives of the AVMSD. National authorities have huge discretion in defining financing schemes. By way of example, the recently proposed Flemish Decree on signal integrity foresees that revenues received by broadcasters (as result of their 'approval right' with regard to any functionalities offered by distributors to their end users in relation to TV services), need to be spent (entirely) on Dutch spoken European productions. This approach is not necessarily followed in all countries.

Taking into account the current scenario and current trends, ETNO believes that the Commission should look for other ways to promote European works based more on market forces and competition. Audiovisual media providers will be willing to promote those European works from which they obtain benefits. At the same time, this will have a positive impact on content creators because being interested in receiving support and so they will strive to create high quality European content.

(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?

ETNO members are seeing a big change in consumer behaviour and consumption patterns. As more players emerge (portals, device manufacturers, operating systems, application stores etc), responsibilities are diluted and shifting across the value chain. All new entrants desire to have a share of the business but are not necessarily contributing to financing of the industry.

It has already been pointed out that to date, content financing in relation to non-linear services differs from established patterns in the field of linear audio-visual media. In the latter case, ideally income from exploitation that takes place subsequent to the initial release in theatres (Pay TV, DVD, Free TV) will be regarded a substantial part of the overall production budget. Following this approach, a logic is applied which emphasises the importance of the "home-market-first" model, considering theatrical release as a necessary pre-condition for success in subsequent windows. There is therefore little room, according to the approach taken so far, for enabling immediate access of consumers from other EU Member States.

The necessity of offering legal ways to access such content increases in importance, not least for the sake of avoiding that recourse is being had to illegal platforms offering such content. “Day-and-date”⁸ release patterns for on-demand exploitation models might therefore overall prove more beneficial for the European audio-visual market. In any event, media chronology (exploitation windows) should in its (their) entirety become a matter of commercial transaction, rather than being tied to the provision of means from cinematographic funds or equivalent support schemes.

The rapidly changing environment with the development of media services by OTT players will inevitably lead to changing viewing behaviours of the TV audience. These new habits will lead to a reduction of traditional advertising income for established broadcasters. However, broadcasters have opportunities to adapt to this new environment and by doing so to search for new revenue sources, for example by launching TV services over the Internet in an OTT-like way or by entering into partnerships with such OTT players, with telco operators, etc. Commercial market forces should drive this process and not legislation.

(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?

ETNO advocates for open standards versus proprietary or non-standardized solutions. Today there is an immediate need for Europe to promote open and interoperable standards also for the convergence business. This being said, the European Commission should refrain from mandating any standard which has not proven to be widely accepted by the market in terms of market share and sales figures. Mandating standards can hinder further innovation in this area. However, the promotion of standards via bodies such as ETSI could foster market penetration of standards on a voluntary basis and thereby help to achieve more interoperability.

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?

New Internet protocol (IP) based media services are being developed, refined and made accessible over fixed and mobile broadband networks. These services are providing both traditional and a new variety of content to consumers, which is also including social media, texting and chatting which is engaging and entertaining a growing audience. Particularly the younger and middle-aged consumers groups are establishing these new behaviours where media content, in addition to the living room based television set, is also consumed on desktop computers, laptops, tablets or smartphones. Whatever the case may be in terms of future consumption, access to radio and television based content over broadband networks is an essential requirement.

While still covering a significant consumer base, as well as large geographical areas, the current analogue or digital terrestrial broadcasting technologies are still the primary means of delivering television services to living room based sets using a fixed rooftop antenna in

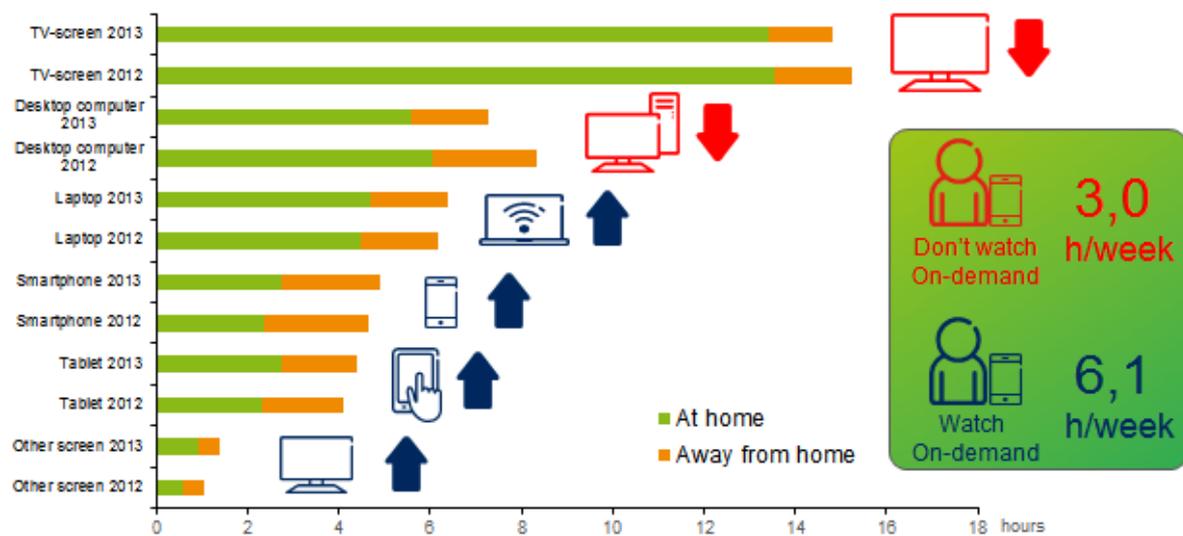
⁸Films are released both in theatres and VOD (video-on-demand) on the same day.

numerous countries in Europe. It is certainly understood that it therefore would be exceptionally demanding to substitute these technologies for the purpose of modernization and adaptation to the new behavior of consumers and the new variety of content provisions. Progress towards reaching the EU 2020 broadband [targets](#) is essential to allow mobile and fixed broadband networks to cater for the growing consumer demand for on-demand audiovisual content. Hence, policies that effectively allow investment in fixed broadband development and the timely release of new spectrum for mobile use are essential.

Otherwise, the possibility of new IP-based technology to be rolled out may neither be available in sparsely populated areas for a considerable period of time, nor may the radio frequency spectrum be available in sufficient amount to provide for a possible transition. It is therefore expected that the current terrestrial broadcasting technologies will remain vital for years to come, both for broadcasting radio and television services.

Notably, in some countries in Europe the increase of viewing time is now becoming more flat, or even having a somewhat negative trend with regard to linear television viewing, particularly with regard to the younger consumers. The European societies have already entered a new era in television; on-demand and other offerings are being embraced by the consumers, new technologies, applications and services not only improve viewing experiences, they also change the fundamental ways in which the consumers approach multimedia.

FIGURE 7 AVERAGE NUMBERS OF HOURS SPEND WATCHING AUDIOVISUAL CONTENT PER DEVICE AND WEEK



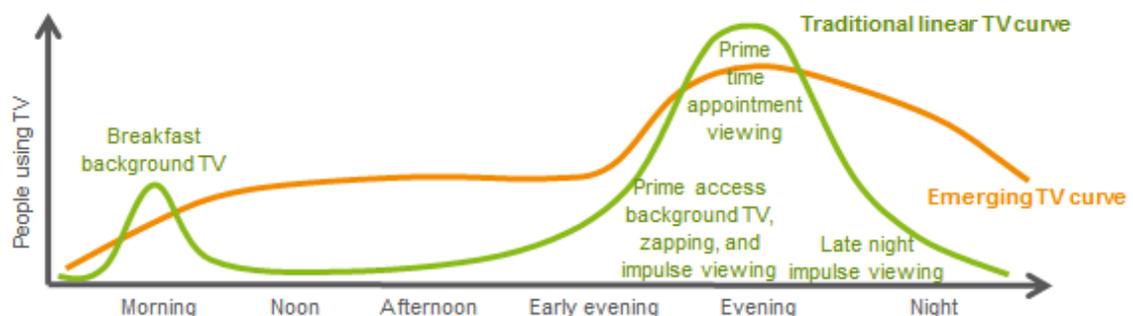
SOURCE: ERICSSON CONSUMERLAG 2013 TV AND VIDEO STUDY

Currently, consumers are beginning to move away from viewing purely linear television and slide into new on-demand behaviour (see figure 7). As consumer expectations of television and video change, fresh opportunities are being created. The average home entertainment setup is moving away from using separate screens in each room. A growing number of households instead use a large main screen, supplemented by a number of mobile devices that provide access to services from all over the home. The so-called “tablets” and “smartphones” in particular, have grown to become a popular mobile device for viewing content in the home, despite the fact that the technology is relatively new. This is partly due

to the favourable conditions for mobile viewing both within home environments as well as in public locations. Another reason is that many consumers are looking to modernize their viewing experience, yet are unwilling to invest in more than one new television set or add set-top boxes to their old television sets in order to access new services.

The impact of smartphones and other mobile devices that facilitate on-demand interactive media consumption leads to a changing pattern of a typical TV-day versus traditional viewing (see figure 8). Mobile devices are distributing TV/video viewing more evenly over the whole day, meaning that TV/video viewing is becoming a 24-hour activity rather than an evening event only. The trend, with an increasing mix of private and professional life both at work and at home, also strengthens this type of consumption behavior.

FIGURE 8 CHANGING DISTRIBUTION OF TV AND VIDEO VIEWING



SOURCE: ERICSSON CONSUMERLAG 2013 TV AND VIDEO STUDY

An essential question to consider when satisfying the new demands of media consumers is how to provide access to linear and non-linear content while using different devices and different sized screens:

- broadcasting television networks are suitable for linear content, typically large screens (non-portable) and receivers are now being equipped with broadband access, thus already shifting towards a converged fixed broadband/broadcasting access to TV/media.
- fixed and mobile broadband networks are suitable for linear and non-linear content with interactive use, and the devices are highly flexible with regard to usage and mobility as well as being interactive, though not equipped with terrestrial broadcasting television receivers.

Finally, there is a synergetic opportunity for the Commission to seize. As noted earlier, the realization of the transformative economic impact of broadband and ICT is pre-conditioned by supply-side broadband policies e.g. the roll-out of broadband and availability of mobile spectrum. In this context, the EU broadband targets and spectrum policy are essential. However, to reap the benefits of the EU Digital Agenda, the adoption of broadband services required as well as mere rollout is not enough. Increasing the availability of digital content is the key to stimulate consumers' demand for high-speed broadband services and hence is an essential consideration for this paper. But even more, the increased availability of broadband and audiovisual works will also result in a decreased cultural gap in the EU as high-speed broadband networks and digital content can tear down current cultural divides between urban and rural EU citizen.⁹

⁹<http://www.ericsson.com/res/docs/2012/consumerlab/consumerlab-tv-video-changing-the-game.pdf>

(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?

Current television broadcasting media networks are using “high-power” and “high-tower” structures, whereas the mobile broadband networks are based on a “low-power” and “low-tower” infrastructure. The technical properties of the “high-power” and “high-tower” structure are such that the inter-site distance between the broadcasting stations is significant and is in some countries in the order of 100 km. In comparison to the cellular mobile broadband infrastructure, it may use an inter-site distance in the order of 1 km. Studies performed so far in the CEPT and ITU-R have demonstrated that these two architecture models cannot coexist in the same geographical area in the same frequency band. This conclusion has led to the regulatory provisions allowing the introduction of mobile broadband networks in the upper part of the UHF band. Similar conclusions are envisaged for the rest of the band as the technical characteristics are the same.

Mobile broadband networks provide interesting opportunities for programme-making in the domain of electronic newsgathering and outside broadcasting (ENG/OB) for programme-making. LTE networks enable transmission of high definition (HD) video streams from live cameras with the low latency and high quality required for studio feeds. This has been demonstrated in several events, for example:

- the Swedish Crown Princess' Royal Wedding in 2010, where Swedish TV companies broadcasted live from the celebrations in Stockholm
- the Japanese Nippon TV reporting from the Nobel press conference in Stockholm 2010
- the Danish public service TV station reporting from the country's national parliamentary election night in 2011

Compared to using satellite uplinks for ENG/OB, LTE networks incur a lower setup overhead and expenses. The LTE quality of service framework ensures priority for the ENG/OB services above other types of traffic in the LTE network, thereby providing carrier-grade performance.

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

The studies referred to in the previous answers show that the possibilities of co-existence in the same frequency band are very small, as the potential risk of interference between transmitting mobile devices in the vicinity of a television receiver is high.

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?

There are still good reasons for the regulatory differentiation between linear and non-linear services: as a matter of fact the two different categories of services are still not substitutable due to the substantial difference in the user's ability of choice.

Five and a half years after the introduction at EU level of the regulatory differentiation between linear and non-linear services, it is still premature to deliver any fact-based evidence for market distortions between these services, not least given the late transposition and implementation of the relevant legal frameworks at national level. It is rather in the medium term that the technical differences will be increasingly reduced and the take-up of services and the blurring of boundaries from a consumer perspective might lead to a situation where market distortions could occur. What is clear is that there is growing convergence between linear audio-visual media and non-linear services.

Irrespective of the question regarding market distortions, the differentiation made between the forms of audio-visual media services might be challenged by technological development and usage patterns. This might lead to a paradigm shift in the way in which services covered today by the AVMSD are described.

In its Green Paper, the Commission has signalled that general interest content is in the focus of regulatory attention, bearing in mind its importance for media freedom and diversity. The European Parliament has also put forward this idea in its Resolution on Connected TV adopted recently. This criterion would limit the more stringent regulation of linear content to those (relatively) few services, which are of particular importance due to the nature of the transmitted content, as for instance news, and which additionally have a significant audience due to their market share. This understanding would be more future-proof and could limit eventual market distortions.

Therefore, ETNO believes that the country of origin principle should remain the fundamental basis for ruling the internal market (since it guarantees the application of one precise legal framework) and the application of the country-of-destination principle remains necessary only for those services clearly targeting users in an EU Member State from outside the EU, in order to ensure a coherent level of protection and to safeguard the shared values throughout the European Union as well as to avoid competitive disadvantages¹⁰.

(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?

As mentioned above, many new players have emerged in the EU market also thanks to Connected TV services and devices. In order to establish the right conditions for a competitive EU digital market, a comprehensive evaluation of the current regulatory regime should be carried out by assessing, by means of empirical studies, the impact of different audio-visual services on society and the risk they may pose to the main objectives of the AVMSD (freedom of information, media pluralism, protection of minors, consumer protection), taking into account the users' ability to exercise control over these services. Such an evaluation should be carried out in a technologically neutral manner and regardless

¹⁰ Orange is in favor of the country-of-destination model which it sees as being the only regime granting a truly level playing field today at national level

of the current classification of services as linear or non-linear and regardless of whether the audio-visual service is covered by the Directive today.

ETNO is of the opinion that a forward-looking analysis should evaluate whether and to what extent the current form of regulation is still appropriate and proportionate in the current global context and in light of regulatory objectives enshrined in the AVMSD. Taking into account increasing transmission capacities, more competitive market circumstances and increased user control over the service provided, the current form of media regulation might no longer be the most adequate tool to address those objectives. ETNO therefore believes that an eventual rethinking of the obligations imposed on EU players by the AVMSD needs to be grounded on the consideration of the emergence of other services that are found to be functionally substitutable, have a similar or even greater impact on society and which may pose comparable or even greater risks for regulatory objectives. ETNO strongly believes that the services should be treated equally in terms of regulation, irrespective of the service provider's position in the value chain or its prior regulatory status. Lighter regulatory instruments should be applied with regard to services that are provided by a number of competitive players and may have a lower societal impact, implying a lower risk for regulatory objectives and/or which offer users a higher degree of autonomy.

To ensure this level playing field between audio-visual services, it is furthermore necessary that non-EU based audio-visual service providers providing services to European citizens are subject to the same rules as EU providers in order to ensure fair competition in the EU and the same standard of protection to EU users. Moreover, enforcement of the AVMSD provisions to all players in the value chain is crucial for ensuring a level playing field amongst EU and non EU players.

ETNO is convinced that self and co-regulation can generally be an effective regulatory option for a variety of areas (e.g. marketing obligations, protection of minors) and should therefore be extended further. In particular, self-regulatory initiatives in the area of minor protection should be further encouraged.

When deciding on the kind of instrument to adopt (statutory regulation, co-regulation or self-regulation), the respective potential benefits and disadvantages of the solution favoured must always be borne in mind. For example, statutory regulation may show greater advantages in terms of clearly defining the content and boundaries of obligations which service providers have to observe and of providing for an adequate system which secures monitoring and enforcement. Self-regulation has its merits in flexibility and ability to adapt more rapidly to technological and market developments compared to a legislative processes. Self-regulation guarantees the response of the solutions to market needs and their effective implementation and they may also be seen as preferential in order to close gaps in the exhaustive pursuit of policies. Moreover, it would allow for the inclusion of players which are highly relevant in view of the public interest objective concerned, but who are outside of regulatory reach. ETNO believes that in any event, incentives for establishing a self and/or co-regulatory system must be ensured, since these solutions may guarantee flexibility and predictability of inherent burdens, while providing the possibility to further develop general guidelines.

(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?

From an Internal Market perspective, the country-of-origin is the core principle of the AVMS Directive and, according to the majority of ETNO members¹¹, should continue to ensure an internal market for audio-visual media services, in line with the original objective of the legislation.

However, as the European Commission states, the AVMSD does not apply to providers who do not come under the jurisdiction of a Member State and does thereby not cover content delivered over the Internet from countries outside of the EU. This situation can lead to competitive distortions for European companies abiding by European legislation. In order to ensure a level-playing field, we share the opinion of the European Parliament in its Resolution regarding Connected TV that this situation needs to be addressed.

(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?

ETNO believes that the scope of the two Directives is clearly defined by their respective provisions and that so far the increased convergence among services has not tested the relationship between their provisions, which, if they are correctly interpreted and applied, do not imply any overlap or confusion. ETNO fully supports the Commission's decision not to open up the e-Commerce Directive. As already stated under question 11, and keeping the e-commerce Directive provisions unchanged, ETNO believes that a lighter regulatory approach would be suitable which also takes into account the impact on society of the different audio-visual media services.

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

ETNO members are involved in many related initiatives aimed at improving ICT literacy. Regarding the improvement of minors' media literacy, there is already a broad variety of initiatives established. Also, within the self-regulatory framework of the "ICT Coalition for the Safer Use of Connected Devices and Online Services by Children and Young People in the EU", companies commit to voluntarily further education and awareness regarding Internet usage. Similarly, within the CEO Coalition, the industry and the Commission are evaluating voluntary measures to improve collaboration with teachers and the schools.

Measures to further media literacy have to take into account national differences and specific needs. Therefore, such measures genuinely have to differ across Europe and there is no one-size-fits-all approach. This being said, in some cases cross-border coordination may leverage synergies and best-practice-sharing.

Where funding should be provided by European Institutions, attention should be drawn to the fact that not only content providers but also platform operators may be well-placed to communicate with users and implement awareness-raising measures.

¹¹ Orange is in favor of the country-of-destination model which it sees as being the only regime granting a truly level playing field today at national level

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?

As noted above, ETNO is of the opinion that OTT services with editorial responsibility controlling selection and access to audio-visual media services could also be covered by the AVMSD. Other than that, we believe that no additional obligations are necessary.

In order to protect freedom of access to information and cultural diversity, it should be enough to apply ex-post current competition rules in such cases in which an Internet player has a dominant position in the search or filter mechanism markets.

It is important to promote service innovation. In that respect, we criticize the above-quoted legislative initiative of the Flemish community (“Flemish decree on signal integrity”) to restrict the freedom of distributors to offer functionalities in relation to broadcasting services to their end-users by subjecting this to the approval of the broadcasters.

(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'?

ETNO believes that there is no need to expand the scope of existing platform access regulation by content providers in view of media convergence. We believe that convergence will lead to a greater service offer: traditional broadcasters may start providing linear or non-linear TV services over the Internet (as if they were OTTs), OTT players will also start providing linear or non-linear TV services (type “Netflix”), and traditional distributors may re-distribute their signals on a broadband circuit in addition to a TV circuit. In this context, increasing access obligations seems over-conservative, certainly at a point in time when most stakeholders recognize that the traditional telecoms package should be reduced rather than extended.

Instead, ETNO believes that regulators should limit their activity to creating a level playing field by promoting competition and subjecting all services to the same regulatory obligations, particularly concerning “gate keepers”. Concretely, the rules could be rearranged in a service-oriented manner in situations where new market players exercise similar or equivalent functions as a provider of a hardware-based platform but are not subject to the applicable rules.

In the same way, must-carry rules should not be extended to additional infrastructure/platforms; the national application and particularly the review of imposed obligations should be assessed more stringently to focus the obligations on content of general interest, and at the European level this should continue to be monitored carefully. In addition, an extension of related obligations to forms of media services other than specific linear audio-visual media services is not regarded as necessary. In particular, scarcity considerations cannot be applied to those platforms that are relevant in the case of access to on-demand services, particularly not when there are different infrastructures among which the user can choose.

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?

Currently the regulatory regime for commercial communications differs between linear and non-linear services. The introduction of a less stringent regime for on-demand services was justified at the time by the difference in terms of choice and user control and this justification remains valid today.

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

The European regulation process is lengthy and therefore, in a very rapidly changing environment, runs the risk of being outdated soon after adoption. As a consequence, ETNO believes that any regulation in this area should focus on high level principles and leave room for self-regulatory approaches spanning the entire value chain.

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

As suggested by the Commission, advertising techniques are dynamic. It is therefore crucial not to impose any rules that would prevent the development of new business models that could favour the interests of the viewer. As ETNO, we believe that self-regulation is the best way to address the rapid changing nature of advertising techniques and to ensure a quick update of the applicable rules. Players of the sector have already successfully chosen this option with the adoption of the Online Behavioural Advertising Framework (OBA) by Interactive Advertising Bureau (IAB).

In practice, we see that traditional distributors generally and largely respect the decision right of the end-users with regard to commercial overlays. This is, again, in sharp contrast with OTT players whose business models are built on revenues from advertising, and who exploit this, very often without free choice of the end users. Not surprisingly, ETNO pleads strongly for fully equivalent treatment between traditional distributors on the one hand and OTTs on the other.

Protection of Minors

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

Convergence can lead to a situation where linear, non-linear and other audio-visual content can be viewed simultaneously on the same screen, although they are not subject to the same regulation with regards to the protection of minors. However, the graduated regulatory regime remains justified due to the remaining difference concerning possible user control between on-demand content and traditional television.

In contrast to linear audio-visual content, access to non-linear can be easily restricted through the provider of the content or platform (e.g. through age verification systems. According to art. 12 of the AVMS Directive, such measures have to be undertaken through the provider in order to ensure that minors do not normally have access to content which might seriously impair their health.

Additionally, there is a broad range of available parental control tools for non-linear and other audio-visual content, which are voluntarily offered by the providers of content or platforms and also by third parties. These tools include filtering solutions (software, apps, optional network based filtering) which are voluntarily provided by e.g. Internet access providers or manufacturers. It is the parents' responsibility to activate such tools to protect their children.

These technical solutions can be supplemented by awareness raising measures, connected to non-linear and other audio-visual content. Warning signs, reporting tools and clear terms of use provide guidance and advice to parents and children.

The Information and Communication industry has effectively established self-regulatory frameworks, in which they commit to provide such safeguards. Besides GSME's "European Framework for safer mobile use by younger teenagers and children", ETNO members are committed to the "ICT Coalition for the Safer Use of Connected Devices and Online Services by Children and Young People in the EU". Signatories of this self-regulatory framework commit to further child online safety in a broad range of areas, including safety content, reporting of misuse, parental controls, fighting illegal content, privacy and awareness raising. The compliance of signatories is regularly reviewed. Also, as recognised by the Green Paper, the Commission launched the CEO Coalition to make the Internet a better place for kids. In this initiative, a number of ETNO members agreed on several concrete steps for child online safety.

We believe that in consideration of the continuing additional efforts that the main players are voluntarily implementing in order to effectively improve minors' protection, the rules of the AVMS Directive remain valid also in an increasingly converged media context and do require any revision.

(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?

Users' trust and confidence is in the main interest of all ETNO members, which, each in their respective products and services, offer parental control tools and support the adoption by users. Usually, they provide their customers with a number of parental control solutions, both within the fixed and mobile environment, enabling parents to control and eventually block access to inappropriate content and in particular to block specific inappropriate sites for children, such as e-commerce, pornographic material, online gaming sites, etc. According to the AVMS Directive, Italy has adopted national rules aimed at guaranteeing the protection of minors, in particular preventing them from viewing content which can be potentially or seriously harmful ((Leg. Decree n. 177/2005 (as modified in 2012). By a co-regulation process, AGCOM has recently adopted measures (Order n. 51/13/CSP and n.52/13/CSP) on the classification of TV programmes which might seriously impair the physical, mental or moral development of minors, and technical measures that on-demand

audiovisual media services have to adopt – independently from the network or platform of access to that content – to prevent minors from viewing such content. The obligation on non-linear audiovisual media service providers requires the adoption of a technical mechanism which requires a secret code to be composed at each access stage to the service or upon each purchase by the customer. For that content, a parental control system based on a PIN code must therefore be provided for by providers. The information related to the use and functioning of this PIN code is specified in the general conditions of the contract and, in case of specific services (such as IPTV) personally explained by Telecom Italia's technicians at the customer's premise. A parental control system that requires the use of a PIN code for the viewing of free content is available within a catalogue (VOD, catch-up TV), and for paid content (VOD, PPV, SVOD) has already been implemented for all types of services and content distribution platforms (such as IPTV, Cubovision, Web TV, Cubovision device, Connected TV,...). Also, in other EU-markets providers have established similar pin-code solutions for IPTV which effectively restrict minors' access to inappropriate content.

In Belgium, the implementation of the French Community Media Decree also foresees a range of measures to protect minors against programmes that might hurt their physical, mental or moral development (rating system and parental control with 2 PIN codes). Furthermore, a new amendment to the French Media Decree (March 2013) imposes on the distributor two strong communication obligations, by introducing a warning message before accessing channels dedicated to children under 3 years old and generally on all the communication tools of the provider. Belgacom TV is thus provided by default with parental control which the user can adapt according to its own preferences. In this way, the parents may choose which types of films and programmes their child can watch. Moreover, the user always has to enter a PIN code when renting a film on demand. This code is different to the parental-control code and is activated by default.

Today, hardware and software manufacturers as well as service providers and infrastructure operators offer numerous possibilities to exercise parental control. For example, appropriate freeware tools for parental control are available for different operating systems. In addition, all operating systems today possess elaborate features to limit access to content for minors. Parental control tools can be promoted and provided in a number of ways, both off- or on-line – e.g. in shops, for download on the web or pre-installed on devices. The variety of channels provides a wide and dynamically changing range of possibilities for effectively promoting parental control tools. As also recognised in industry discussions with the European Commission and NGOs within the ICT-Coalition or even the CEO Coalition process, there is no one-size-fits-all approach in relation to the adoption of parental control tools, since, by way of example, it makes a difference who provides such tools. A vendor of a parental control tool has a commercial interest to reach as many potential customers as possible. Other companies might consider parental control tools first of all as a service to their own customer base and effectively promote them through the already established customer relationships.

As generally recognised, a necessary pre-condition for any take-up of parental control tools is that users (i.e. parents, teachers, guardians) are duly informed about the modalities and tools available to face the potential risks existing in the web. Therefore, awareness raising campaigns aimed at educating parents and other guardians about their responsibility are an essential element to guarantee a fair and safe use of the technology.

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

The AVMS Directive already provides for age verification systems in Arts. 12 and 27 para. 2 although without explicitly requiring such systems. Regardless of the transposition of this rule throughout the Union, it is important that reliable age verification mechanisms are put in place. In some member countries, there are age verification systems already implemented. In Italy, by way of example, the law provides that when offering an audiovisual media service, a PIN code for access to the adult content is addressed directly and individually to the subscriber (which must be of majority age). Moreover, a further control layer has been implemented through the “acquisition PIN” for which the operator’s technicians verify the client’s age and explain how to use the PIN, which has to be inserted at the moment of the first registration to the service. Other equally effective age verification systems are established in many more EU Member States. However, due to the fast-changing technological environment, detailed rules set out formally in law would soon be outdated.

When dealing with this matter, it is of key importance to understand that any specific system cannot provide for absolute safety. Requirements for effectiveness have to be balanced with the usability of any such age verification systems. For example, face-to-face requirements and PIN codes may lead to higher effectiveness but may lead to lower usability for the user. Whatever mechanism is put in place by players, attention is to be paid to the increasing usage of circumvention techniques or an alternative, not always legal, provision of adult content.

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

A more harmonised classification of content and age-groups would facilitate cross-border content provision. There are a number of self- voluntary initiatives dealing with this issue..

(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?

ETNO members are working on the minor protection policies to be implemented in all countries in which they operate. Most countries have well established notice mechanisms where users can complain about content distributed and accessed through their services. The kind of complaint mechanism offered and the way in which complaints are effectively dealt with vary between the wide range of products and services and amongst members. Generally, they are transparent and easy to use. It is to be noted that in the framework of the commitments that members have voluntarily taken, in particular within the ICT Coalition but also within the CEO Coalition, they are also developing and/or updating the current systems in order to make them more efficient.

One open issue relating to user generated content which is not controlled prior to being uploaded and shared with other users, is the potential risk of minors accessing such content easily. Therefore, reporting mechanisms are particularly important in social media. The debate, however, must take into account that the definition of which kind of content should

be considered as inappropriate differs between cultures and Member States and that in any case, inappropriate content needs to be clearly distinguished from illegal content. For the latter, the e-Commerce Directive provides rules for take-down mechanisms.

In general terms, we encourage a fruitful cooperation framework between regulators and industry representatives, to discuss possible actions and exchanges of best practices in order to achieve a comparable and effective level of protection of minors and human dignity in general.

Finally, a close relationship with INHOPE Hotlines and InSafe has been established and there are awareness nodes in all Member States. Internet service providers strongly support the work of these institutions by integrating links and buttons that refer to their service. A great variety of customer information from companies, NGOs and Hotlines empower the user in the EU to find support, if it is required.

(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?

Harmful or inappropriate content must be clearly distinguished from illegal content, since they have different consequences and must be treated differently. For illegal content (the identification of which is provided by the law), law enforcement authorities are responsible for prosecution. Private entities, such as EU-wide networks with the support of the industry, can help but must not be charged with prosecution. In particular, the definition of harmful content differs between cultures and Member States. In this context, INHOPE guarantees an important and independent work. The European Commission should continue funding the EU-wide INHOPE network¹², which is currently under threat of budget constraints.

Concerning the handling of complaints and the possibility to provide feedback to the complainant, this is treated differently in the different ETNO member countries (in some member countries, the operator deals with the complaint, while in others the operator has just to inform the competent authority which has the obligation to treat the case). Generally speaking, we believe that if a provider is to give feedback to the notice provider, the user must not stay anonymous and needs to provide contact data. Evidence that the notice has been correctly received is generally given. In some countries, where in particular it is the judicial authority that is the only body empowered to treat the case, no specific and regular feedback can be given by the operator. Moreover, depending on the number of received reports, individual feedback is not feasible.

In this matter, the Commission is considering the possibility to adopt a measure on Notice and Action. We will provide the Commission with other relevant considerations when/if the proposal is published.

Concerning the complaints of inappropriate or harmful content, there are specific proceedings in place at national level. In Spain, the processing and feedback system of complaints in the INHOPE network turned out to be very efficient and effective. The national

¹²<http://www.inhope.org/gns/home.aspx>

hotlines are very well linked with the ICT industry and even receive funding from ICT companies. The Commission should ensure that future public funding for INHOPE and national hotlines is made available after the expiration of the Safer Internet program. The successful development of compliant offices for child abuse content and child endangering content should be continued in the future.

Accessibility for Persons with Disabilities

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

The digital world is constantly innovating. For example, speech recognition software (e.g. Apple SIRI) has been made a standard part of any operating system for computers and mobile phones in the past months. The same has been true for text-to-speech applications, which have been available, mostly at no additional cost, for some years now. Some video-streaming platforms have already introduced automatic subtitles.

Any effort to standardize is unnecessary and might even impede technological evolution and limit solutions.

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

ETNO members consider disabled people as actual or potential customers to be protected and helped. Therefore, they are already taking a number of initiatives (often in collaboration with Public Administrations and associations of disabled people) with the aim of meeting their needs with terminals, products and services adapted to their specific requirements, quite in the same way as they do with all other customer segments. These initiatives are proving favourable for all parties: companies in the industry are increasing their customer bases and stimulating their innovation skills, and many disabled people are obtaining services that facilitate their integration in the Information Society.

However, it is doubtful if incentives for innovative services bring an added value to people with disabilities. In the past, services specially designed for the needs of the disabled have resulted in low take-up by this group, e. g. voice and video relay services. Such services come at high operational cost while innovations in the audio-visual media sector, especially in the mobile environment, have provided innovative paths to ensure the effective inclusion of disabled persons.

Therefore, we believe the active involvement of Government is essential through subsidies, tax incentives or similar measures. In this sense, it is interesting to note the initiatives that exist in other countries such as Sweden, Finland or Switzerland where through government budget improvements in accessibility to services are being made.

Governments should rethink their efforts on behalf of people with disabilities in the light of technological evolution. The best incentive would be not to restrict the ability of platforms to innovate. In the few cases where the market still does not provide solutions, the possibility to publicly finance services for people with disabilities should be considered.

