



# Position Paper

## Cable Europe position paper on the review of the AVMS Directive

### Executive Summary

The on-going transformation of the audiovisual media landscape is bringing convergence and with this, increasing competition between a fast growing number of distribution platforms and devices. In turn, this brings more opportunity for consumers.

The fully converged audiovisual world should not be viewed as simply enabling the delivery of TV content over the internet. It should be regarded as a means by which multiple sources of audiovisual content, services and applications can be delivered to, and consumed via, a multitude of different devices and platforms, in many different ways.

The further development of converged audiovisual services has great potential to deliver additional benefits to citizens and consumers and indeed to the economy as a whole. However, if this potential is to be realised, regulation and policy must allow a competitive, market-driven approach to prevail and should avoid the promotion of a single technology or platform. Factors such as the availability of content across multiple devices/platforms and the fostering of privately funded platforms as well as distribution infrastructures must also be recognised and addressed. Suitable tools must be created in order to prevent the abuse of content monopolies. The regulatory regime should encourage innovation and investment, and ensure that the overall regulatory playing field does not discriminate against technologies or services offering comparable services. With respect to audiovisual media services, Cable Europe advocates lowering regulation to allow European providers to compete with external players. The rules should also be complemented with self-regulation initiatives to protect children. And the viewer's choice should always be centric in any policy orientation taken.

### AVMS and e-Commerce Directives

The AVMS and e-Commerce Directives, with their respective foci on audiovisual media services and information society services, work well together and complement each other.

In Cable Europe's view, the e-Commerce Directive, which covers services that do not fall under the scope of the AVMS Directive, does not need to be revised. This Directive is key for our business to work and succeed, especially the "mere conduit" principle. Electronic communications providers are able to provide innovative services in an affordable and competitive manner because of the legal framework created by the e-Commerce Directive. The Directive has proven to be a key instrument for developing digital activity thanks to the "intermediary liability limitation" and the Country of Origin principles. Without being overly prescriptive, the provisions in question serve to provide a secure and predictable legal base for our industry to connect European citizens to the internet and other electronic communication platforms. Any interference in this delicate status will bring with it an increase of burdens for legitimate commerce, creating a negative impact on innovation, distorting competition and undermining consumers' fundamental rights to privacy and



free flow of information. Moreover, it will certainly impede providers in fulfilling their role in the creation of a vibrant and effective Digital Single Market.

With respect to audiovisual media services, Cable Europe advocates lowering regulation to allow existing European providers to compete on equal foot with new players. The main perspective of the European lawmaker should be in that case to prevent the discrimination of European players compared to international OTT players. Fewer rules for all players would certainly be the most efficient answer.

A better clarification of the definition of information society services and audiovisual media services is needed in this context of increased competition.

### **Deregulation of commercial communications - advertisement**

Cable Europe believes the rules on commercial communications should be deregulated, rendered more flexible, in order to enable the European audiovisual distribution sector to be competitive and in order to promote economic sustainability of EU content investment. This way the customer would benefit from more channels and European audiovisual media content. Funds flowing into content will increase quality, regardless of how this content is consumed.

### **Viewers' protection**

Cable Europe supports the current Directive's minimum harmonisation rules aimed at protecting viewers/users, minors, people with disabilities, prohibiting hate speech and discrimination.

The protection of minors is one of the most sensitive issues addressed by the AVMS Directive, and we believe that the current provisions existing in the Directive appear to be the best balance in the matter.

Cable Europe's members have invested in child protection measures on their platforms for licensed TV channels and on-demand services. These are subject to the AVMSD and enforceable by National Regulatory Authorities or self-regulatory bodies. Among those are child protection apps, age verification systems, parental control software and family features or particular kids sections. We believe that a self-regulatory approach encourages investment in these value adding features, directly benefitting end users.

We advocate complementing the current rules at stake in the Directive with self-regulation initiatives to protect children. This kind of approach would allow all platforms offering audiovisual content to develop child protection specific tools, like parental control codes, security systems in the STBs or content labelling. Such initiatives may also be very positive for the market as it could stimulate competition. However, it is important that these initiatives are not prescriptive as this will damage competition in the provision of these services.



Finally, the provision of content across borders may benefit from better harmonisation of classification systems. However, there should not be any further provisions at European or national level on the technical implementation of protection systems, as these are most efficient and customer friendly if tailored to suit the individual platform. Advancement of parental tools within IPTV/Cable services allow for more self regulatory measures that helps competition plays its role.

### **Promoting European audiovisual content**

Cable Europe considers that some of the current provisions of the Directive continue to be relevant for the promotion of European works.

Cable Europe considers that the graduated regulatory approach of the Directive – distinguishing linear from non-linear services - works well in that area and still fits the converged audiovisual world. Although linear and non-linear services will increasingly compete on the same screen, they remain different in essence as the customer control element remains a significant differentiating feature for users. A better distinction between non-linear and information society services is nevertheless needed.

Cable Europe believes however that, regarding distribution platforms, the most effective and fair system is the one which is entirely based on tax/fiscal incentives supporting European production and more importantly its distribution such as streaming and VOD services, facilitating European works' circulation.

Moreover, demand for European content is growing and content providers and VoD platforms react accordingly by offering and promoting more and more European content, i.e. in specific genres in their catalogues. Thanks to digital technologies, European content can be exported and viewed by consumers on a pan-European level. Instead of (additional) quotas, we believe that a modernised copyright framework and more efficient licensing procedures would be more beneficial for the distribution of European works.

### **Strengthening the single market**

Cable Europe considers that the country of origin principle should be safeguarded and strengthened. The country of origin principle is one of the cornerstones of the AVMSD, providing the legal certainty needed to foster business innovation and investment and should not be amended. It also underpins a number of other key directives as well as being a key enabler of the European single market by ensuring freedom of movement of European content. Derogations to this principle would undermine both the main aim of the Directive to create an internal market as well as the free flow of information. It is the country of origin principle which allows the unhindered distribution of AVMS throughout the EU.



## Must carry

For end users, the growing offering of audiovisual content – be it linear TV, video-on-demand (VoD) or content made available “over the top” (OTT) – enables them to access content in new ways and to select from the content so offered. Due to the increasing convergence in the media sector and the ever growing availability of content, scarce resources like transmission frequencies – which were the reason to implement a must-carry rule in the first place – are less and less a problem.

On the other side, the must carry provisions are laid down in art. 31 of the Universal Service Directive and should therefore be examined in the course of the Telecoms Framework review. Any discussion in the course of the AVMSD REFIT exercise and Review touching on the must-carry regime has to be closely aligned with the discussions taking place within the telecoms review.

Cable Europe believes that the must carry provisions laid down in art. 31 of the Universal Service Directive should be revised. As the bottleneck justifying must-carry obligation more and more ceases to exist, we believe that it is worth investigating whether the said rules must be replaced with some that are more adequate to the current situation. The balance of power is shifting dramatically towards broadcasters, who are using their must carry position to enforce distribution agreements at non-commercial rates. As long as the legislator sees must carry rules relevant in order to grant pluralism and cultural diversity, an obligation to must carry should be aligned with an obligation for broadcasters to pay an adequate remuneration for this transport. Today, the must-carry regime does not include an obligation to pay for transport. This has led to the situation that broadcasters refuse to pay for the transmission of their signals via cable networks. A fairer balance between privileged broadcasters and content distributors must be sought.

## Findability of content

Must carry rules should be separated entirely from the discussion on how easy – or not – content is found by viewers on their device’s user interfaces.

In order to enable consumers to find the content most relevant for them, cable network operators no longer just offer mere program lists to their customers, providing current channel numbers and, as needed, categories – increasingly, they are putting in place search and recommendation engines that deliver recommendations for the content available on the platform. Such recommendations are aligned with customer behaviour or searches performed previously. These search and recommendation tools are non-discriminatory and include OTT content in addition to linear television and VoD offerings. Eg: Ziggo carries the HbbTV signals of several commercial and public channels. It is up to the customer to choose the recommendation he/she wants to follow.

All content is hence “findable” for users. Therefore, there is no need for a regulation on content findability – neither regarding non-discriminatory treatment of content or a positive discrimination of certain (public-interest) content. “Findability/Must-be-found”-type of obligations would not only



limit this choice, but also discriminate against content that is not granted “preferred visibility”. Moreover, these types of rules would be unfair, unenforceable and unsuitable to achieve the promotion of public value content as long as only some platforms, namely those based in Europe and with own infrastructures, are subject to this regulation. This would deter investment in European markets, ultimately undermining the very premise of some content provider’s desire to ensure their content is found.

If content cannot be found by users the reason might be that the given platform does not own the rights to make the respective content available to their customers. This often occurs in case of important sports events but also with blockbuster movies. In order to achieve the best user experience, providers of premium content could be obliged to offer such content to any platform operator under the same conditions they have already sold it to another operator (“must offer”).

Moreover, network operator’s recommendations are dependent on metadata received from the content providers. Content providers might be requested to provide these metadata to the network operator.



Cable Europe