



Policy Paper

Cable Europe's Preliminary Views on the Digital Single Market Strategy

22 April 2015

Cable Europe welcomes the Commission's work towards a Digital Single Market and looks forward to collaborating with the Commission and the widest range of stakeholders as an effective strategy is developed for this vitally important area of Europe's digital future.

We support the creation of a single market where citizens and businesses can access and engage in online activities irrespective of their nationality or location. We believe this will be a welcome stimulus for jobs, growth, competition and innovation within Europe's borders, which in turn encourages European success on a global scale.

A single market for goods and services will encourage many more European start-ups to emerge, and strengthen existing SMEs. Consumers can and should be able to buy any product from any European country without barriers. This will of course benefit consumers but also help to promote cultural diversity by providing the necessary scale to businesses to operate at home and across borders. A Digital Single Market will both help the European economy to flourish, and further stimulate digital take-up in Europe.

The strategy itself will by necessity be extremely wide ranging, and will cover a number of topics of interest and concern to our industry, ranging from issues of consumer trust through to cybersecurity and the treatment of data. At this early stage and before the detailed proposals for the Commission's initiative are available for discussion however, we would like to share the following in-principle thoughts about the Digital Single Market Strategy on audiovisual content and copyright, the revision of the telecom rules, and the intermediaries liabilities exemption.

AUDIOVISUAL CONTENT and COPYRIGHT

Content cannot flow across Europe without high speed broadband, and Cable Europe supports the Commission's willingness to facilitate access to digital content abroad. As such, we believe that "unjustified" geoblocking for commercial reasons should be eliminated.



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However, we understand the concerns of audiovisual rights holders, the production of whose works follow specific financing models unique to this industry. Cross-border access to content should not be at the expense of the stability of the European audiovisual sector nor have an adverse effect upon cultural diversity – exactly the opposite effects from those which were intended

Cable Europe has long advocated the simple portability of content, i.e. cross border access to subscription services already acquired.

We consider that TV channels and other content (e.g. VoD services) should be “portable” anywhere in the home, within a given country, within Europe and beyond. Amendments to the current legal framework should address these issues in order to promote an innovative and efficient market for content services within and across national borders. We believe it is entirely possible to do so without jeopardising the economic ecosystem which underpins Europe’s celebrated audiovisual sector. Content portability is a proportionate and workable solution. Cable Europe thus supports a reform of the existing EU copyright rules which supports creativity and innovation, and remains in step with consumer behaviour in the digital environment of today and beyond.

It is similarly important to the stimulation of both demand and supply of the widest variety of audiovisual content that the principle of technology neutrality be strongly recognised in the new copyright framework.

On the detail of the “exceptions and limitations” copyright regime, Cable Europe considers that some adjustments should be made. More flexibility in the use of exceptions and limitations should be introduced, while avoiding double payments for one and the same copyright relevant act.

Finally, Cable Europe supports the current refit exercise of the Audiovisual Media Services Directive. The Directive has served its purpose well, allowing a multichannel environment to grow and flourish in Europe. But a debate is now overdue as to the future role of content and app providers in a market barely recognisable from that which existed when the Directive was first implemented.



REVISION OF THE TELECOM RULES

Broadband networks are the fundamental enablers of the Digital Single Market Strategy – as the saying goes, no broadband – no app. Support for network operators' investment is therefore key the successful roll out of any digital strategy which envisages connectivity and growth. Networks are constantly evolving and are upgraded incrementally as technology advances and consumer appetites grow. Over the past decade cable operators made substantial investments in modernising their networks and continue to do so, upgrading electronic equipment and adding optical fibre into the coax infrastructure capable of providing very fast broadband services. Cable is a future-proof infrastructure capable of delivering ultra-fast broadband services. Cable operators are spurring competition by offering up to 500 Mbps services and the technology will soon allow for 10 Gbps download and 2 Gbps upload services based on the Docsis 3.1. standard.

Cable Europe supports the Commission's efforts to facilitate broadband connectivity in the EU as set out in the Digital Agenda. It is important to the success of these targets that the impetus is technology neutral – ie that any technology capable of delivering high speed broadband be it wireline or wireless is supported. We strongly believe that Fibre-coax networks (cable), Fibre-copper networks (FTTC), fibre to the building/home (FTTB/H), mobile and satellite all have a role to play in furnishing Europe with competing broadband infrastructures, and as such that no one technology should be artificially favoured over another.

As far as the Digital Agenda targets are concerned, we believe that they are the right ones. For coverage, the target is sufficiently sound in order to stay ahead of market demand without being unachievable. With respect to the Digital Agenda coverage availability objective, we would draw attention to the fact that, some 6 years ahead of schedule, Cable Europe members have already met this target, with speeds of at least 30 Mbit/s available across their entire footprint. The number of households upgraded in 2020 to at least 30 Mbps is estimated at 118 million (58% of total EU households). The number of households upgraded to at least 100 Mbps is estimated at 112 million (55% of total EU households)¹.

¹ Solon, *Broadband on Demand – Cable's 2020 Vision* - 201



Cable Europe calls on the Commission and Member States to uphold the principle of technology neutrality and to consider that any fixed and wireless broadband technology has a valid role to play. Public intervention should not distort the optimal mix of technologies that will naturally emerge in the market according to the widely diverse regional circumstances and consumer preferences across the European Union. We are also cautious about the possibility of including broadband in the scope of the universal service as it could have major impact on the competitiveness of networks. Instead, broadband roll-out policies should focus on rural/underserved regions and move away from any unintended overbuild of existing broadband networks. Close attention has to be paid to the actual effects of public intervention currently taking place. Broadband funding measures which are technology neutral and open to competition on paper may in fact be just the opposite in practice. Indeed, we believe that if policy decisions and regulatory measures are taken without appropriate and careful consideration, serious counterproductive effects on competition and private investments may occur due to promotion, implicit or explicit, of a specific technology or the favouring of certain operators.

Finally, as far as the regulatory framework is concerned, Cable Europe considers that the current system for the telecom rules (3 criteria test and SMP finding) works well, and that whilst a refit exercise is certainly supported, there should be no major overhaul of the system.

INTERMEDIARIES LIABILITIES EXEMPTION

Cable Europe is concerned by an apparent willingness to revise the intermediaries' liabilities exemptions enshrined in the Directive 2000/31/EC (the E-Commerce Directive). 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. This Directive has proven to be a key instrument for developing digital activity thanks to the "intermediary liability limitation" and the Country of Origin principle. Without being overly prescriptive, these provisions provide a secure and predictable legal base for our industry to connect European citizens to the Internet and other electronic communication platforms. Changes to this structure will bring increased burdens for legitimate commerce, and have a negative impact on the free flow of goods and services. This will in turn be counter to the goals of the Digital Single Market Strategy.



In conclusion

In developing and implementing its Digital Single Market Strategy, Cable Europe urges the European Commission to allow for a future proof framework for industry and society, which fosters innovation and stimulates competition through:

- A technology neutral approach
- The portability of content
- The encouragement of industry investment in broadband – the enabler and cornerstone of Europe’s digital future.