

Must be Found Regulation is Not an End in Itself

Balancing the Interests of Content Providers, Platform Operators, and Infrastructure Operators in a Future-proof Regulatory Framework for Digital Media

Digitisation and convergence offer new opportunities for content providers and grant more control to viewers

The supporting organisations – ANGA Verband Deutscher Kabelnetzbetreiber e.V. (Association of German Cable Network Operators), Bundesverband Informationswirtschaft, Telekommunikation und Neue Medien e.V. (Bitkom) (The Federal Association for Information Technology, Telecommunications and New Media), Cable Europe, DIGITALEUROPE and ZVEI – Zentralverband Elektrotechnik- und Elektronikindustrie e.V. (German Electrical and Electronic Manufacturers' Association) – do not consider it appropriate to indistinctly transfer the existing rules and regulations – especially not some very specific national regulations – into the world of digital, converging media and information. They specifically reject the introduction of a so-called “must be found” regulation.

For a few years, the amendment and revision of existing must carry regulation and the introduction of a “must be found” regulation has been discussed in Germany, especially in view of the digitisation of broadcasting and the growing use of online media. On the EU level, the creation of a digital single market is picking up pace: Traditional regulation of the media and telecommunications sector is being questioned, in part due to the differentiation of the Internet supply chain, and to companies operating globally and at various stages of the content value chain. This discussion regarding media politics in Germany has essentially split into two camps. One calls for an expansion of media regulation, both in terms of what is to be regulated and to whom the regulation should apply. The other camp rejects any undifferentiated extension and expansion of the regulation, given the variety of choices and options that exist for viewers and

users in terms of media content, reception channels, and devices. This viewpoint is what unites the authors of this paper.

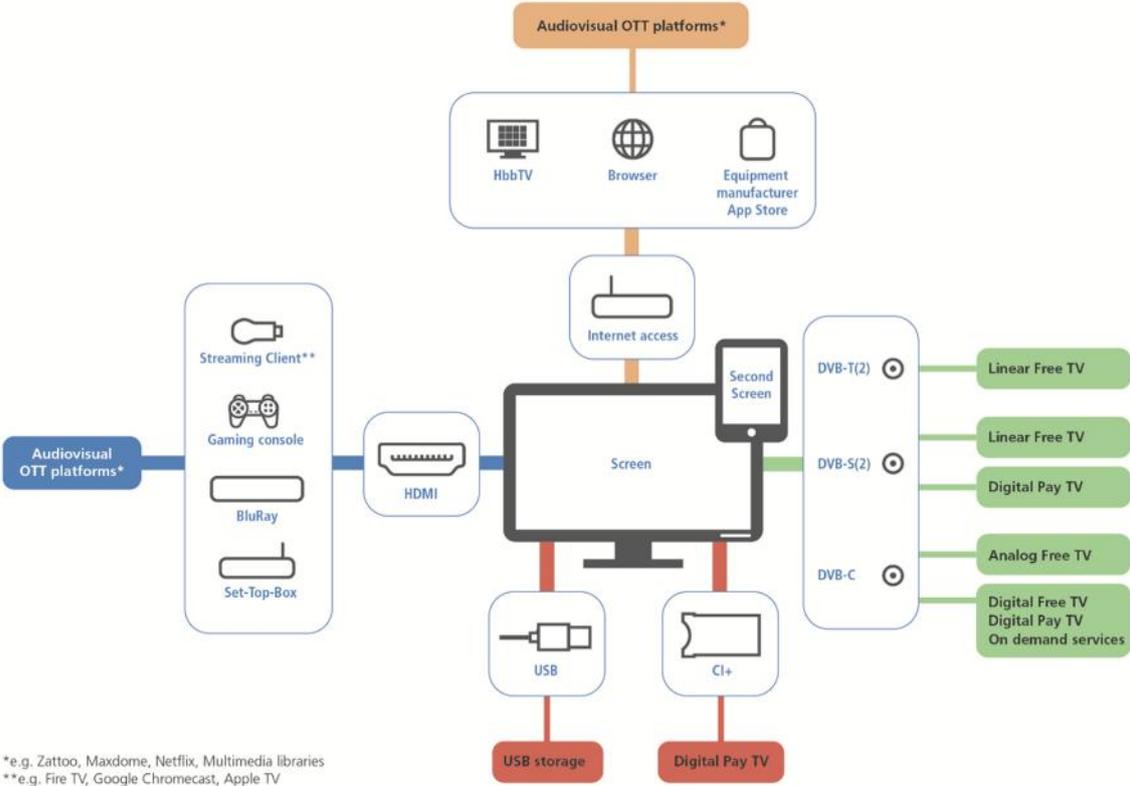
Those who favour an expansion of media regulation and the introduction of a “must be found” regulation believe that digitisation in the media sector creates risks for the user. Those proponents argue that viewers might get confused and that an increasing complexity is threatening to overwhelm the individual. This argument loses sight of the fact that users today have a variety of easy-to-use tools at their disposal that allow them to easily and reliably find any content relevant to them. Incidentally, this argument also plays into the hands of those who demand the introduction of standards for a privileged “findability”. This demand is driven by the concern of established media providers that viewers might lose interest in what these providers have to offer. However, the goal of ensuring plurality is not to safeguard the market shares of specific providers but to secure the existence of divergent and competing opinions in the media. The supporting organisations believe that this goal is supported by new providers entering the markets and by making available new and different transmission channels, distribution types, platforms, and navigation systems to users. The supporting organisations regard the viewer as a mature media user who is able to use the tools mentioned above freely and with a clear target in mind.

The supporting associations believe that the digitisation of society empowers the individual and gives him or her more control. Users have greater discretion in selecting media than they had in the age of analogue TV, thanks to content providers who supply diversified programmes both linear and as on-demand services. New online services and new consumer devices will give viewers more choices. The growing opportunities of media usage will thus lead to an increase in diversity and to more self-determination when using audiovisual media – various opportunities for connectivity and interoperability are visualised in the diagram on the next page.

In the past, infrastructure platforms were regulated because of scarce transmission capacities and the resulting bottlenecks in access for media services, thus leading to the regulatory practices of open access and non-discrimination. However, the shortages that gave rise to such must-carry regulation no longer exist.

On the supply side, media diversity has increased significantly, due to the expansion of both fixed and mobile broadband coverage. Media providers use the opportunities to offer their content on demand. Indeed, users’ freedom of choice and thus the competition among the

providers of user interfaces has never been greater than it is today. This is not only evident in the example of smart TV: Users have the option to activate any or all infrastructure(s) on their screens simultaneously. Various services provided by different suppliers may complement each other via interfaces and additional devices. And the entire range of available video content may also be displayed on all fixed and mobile user devices – anytime, anyplace, live or on demand.



Summary

-) In the interest of securing a plurality of opinions, the supporting organisations consider the privileged treatment of certain providers and content regarding their “findability” neither necessary nor appropriate.
-) The Electronic Communications Framework already imposes on carriers different types of access regulation (EPGs and must carry) in favour of broadcasters. A new regulatory approach is needed that takes into account technological and market developments as well as shifts in the value chain in favour of powerful broadcasters. In

particular, a fairer balance between already privileged broadcasters (especially those with must-carry status) and network operators should be sought.

- J The introduction of a “Must Be Found“-principle would see *user interfaces* become an explicit regulatory reference point. An additional – new and completely separate – regulation of user interfaces should only be endorsed if and when new risks to the plurality of opinions emerged. Such risks, however, would have to be proven at first, and no such proof has yet been submitted.
- J Users can choose devices, interfaces, and content freely and are masters of their screen(s). Users decide autonomously on how to configure their devices. They are self-determined and unrestricted in their usage choices. A pre-set privileging of certain contents or services, potentially facilitated by technical means, is not contemporary and additionally deprives other services of their fair chance.
- J The paradigm of limited capacities is losing its significance. The increase of media choices, distribution and reception channels promotes competition. Users today usually have access to multiple user interfaces at the same time, which they may use at their discretion. This means that a user may switch between various interfaces, e.g. between those of the consumer devices available to him (such as smart TV, Web-enabled gaming console, set-top box provided by the network or platform operator, or USB Web client), as well as the user interfaces of content providers (such as VoD or other OTT services). This ongoing competition leads to innovation and technological progress. Moreover, intense competition positively impacts price development in the consumer market.

The supporting organisations believe that these aspects should be taken into consideration in the ongoing debate about any revision of media regulation. It should be the goal of any political discourse to create a future-proof, innovation-friendly, and user-oriented regulatory framework that meets the requirements of the converging media landscape of today and tomorrow.

ANGA represents the interest of more than 190 companies in the German broadband cable industry. ANGA's cable network operators serve nearly 18 million cable subscribers. In addition to a wide range of analogue and digital television channels, interactive services – especially broadband Internet and telephony – are also available via cable. Approximately 6 million households also use their cable connection for broadband Internet access. ANGA's cable network operators are thus a decisive force in driving forth the infrastructure competition for broadband access and triple-play bundles including TV, Internet, and telephony.

Bitkom represents more than 2,300 companies in the digital industry, including 1,500 direct members. With their 700,000 employees, they generate annual domestic sales of 140 billion euro and exports worth an additional 50 billion euro. Members include 1,000 medium-sized companies, 300 start-ups, and nearly all global players. They offer software, IT services, telecommunications or Internet services, they manufacture hardware or consumer electronics, they operate in the field of digital media or in the network industry, or they are in other ways part of the digital industry. 78 percent of the companies are headquartered in Germany, 9 percent in other European countries, 9 percent in the United States, and 4 percent in other parts of the world. Bitkom particularly advocates an innovative economic policy, a modernisation of the education system, and a future-oriented network policy.

CABLE EUROPE is the trade association that connects leading broadband cable TV operators and their national trade associations throughout the European Union. The regulatory and public policy activities of Cable Europe aim to promote and defend the industry's policies and business interests at European and international level. The European cable industry provides high speed broadband internet, TV services, and telephony to more than 64 million homes in the European Union. www.cable-europe.eu

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 62 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>.

ZVEI represents the interests of a high-tech industry with a very diversified and extremely dynamic product portfolio. ZVEI champions the common interests of the electronics industry in Germany and on an international level, supported by about 160 permanent employees and more than 5,000 volunteers from the member companies. ZVEI's Consumer Electronics trade association represents the interests of well-known CE companies, whose products and solutions – from television sets via digital receivers all the way to gaming consoles, and from smartphones via tablet PCs to laptop computers – shape and enrich our (digital) lives every day.

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