

## EDiMA positioning on AVMS

EDiMA<sup>1</sup> would like to support the view that the Audiovisual Media Services Directive (AVMSD) has and continues to be a solid basis for existing and new companies to provide audiovisual content both across the EU and globally. As the European Commission confirms, the audiovisual sector in Europe has “substantial cultural, social and economic significance and shapes identities, projects values and can be a driver of European integration by contributing to our shared European identity.”<sup>2</sup> Despite obstacles such as complex and cumbersome licensing requirements, digital media and services are already driving growth in the creativity sector to a large extent.<sup>3</sup>

Digital services allow consumers to discover and access creative content anytime, anywhere, increasing choice, access and opportunities.<sup>4</sup> Digital technologies also reduce production and distribution costs for content,<sup>5</sup> as well as allowing producers of content to reach global audiences almost instantly. VOD services, for example, have grown significantly in the recent years, with a growth rate of 59% in Germany and 12.7% in France in 2011 alone, and total revenue generated by video-on-demand (VOD) services in Europe are expected to grow from EUR 850 million in 2011 to EUR 1.5 billion in 2017.<sup>6</sup>

Therefore, when examining what areas still pose issues for the EU audiovisual sector, EDiMA would like to emphasise that it is important to define in more concrete terms where the problems with the current framework lie and if there are problems with, for example, child protection, advertising or fostering of EU content, these should be the focus of the reform proposals.

### 1. Country of origin

AVMSD does set clear minimum standards for linear and non-linear broadcasters and in order to maintain those clear standards, the country of origin principle must remain at the core of the AVMSD. The country of origin principle has been a cornerstone in developing innovative, cross-border services which serve the needs (and foster the spirit) of the Digital Single Market. Legal certainty should be maintained and this principle should not be “chipped away” by carving out certain issues or exceptions (such as levies,<sup>7</sup> or local rules on financing or prominence) for a different approach, particularly where the promotion of EU works is involved.

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<sup>1</sup> EDiMA is the European trade association representing online platforms whose members include the Allegro Group, Amazon EU, Apple, eBay, Expedia, facebook, Google, King, LinkedIn, Microsoft, Netflix, Nokia, Twitter, Yahoo! Europe and Yelp.

<sup>2</sup> Communication: [European film in the digital era, Bridging cultural diversity and competitiveness](#). (May 2014)

<sup>3</sup> From 2001 to 2011, all growth in the creative sector has been digital (30bn Euros) (Booz & Co 2013).

<sup>4</sup> 62% of consumers go online to find unique content that they do not find elsewhere, and two thirds or more of consumers value the diversity of information and opinion they find online (BCG, 2013)

<sup>5</sup> For example, in the music sector, around 66% of revenues from a digital download now go to the artist and label, compared to around 32% for a CD sale (Booz & Co, 2012).

<sup>6</sup> European Audiovisual Observatory, Yearbook 2012.

<sup>7</sup> Levies posed on external VOD providers/services are contradictory to aim of AVMS Directive to simplify cross-border AVMS by introduction of the country of origin principle (as evident in recital 34, art. 2, art. 3, art. 4) “one Member State should have jurisdiction over an audiovisual media service provider” (34th recital), namely the Member State, in which the provider is established (Art. 2 AVMS Directive). Those Member States, in which the service can merely be accessed, but in which the provider is not established, may not prevent the further distribution of the services (Art. 3). The Member States can principally only impose stricter regulations than envisaged in the Directive upon domestic providers (Art. 4).”

## **2. Linear/Non-linear**

There is little evidence of market distortion caused by the differentiation between linear and non-linear services. Producers of linear services may also provide non-linear services. They are often in a good position to do so, insofar as their existing structure allows to scale their linear activities into online markets and as their reputations and brands are considerable, including online. The difference between linear and non-linear content has given clear guidance and the ability to create new and attractive services, which should be maintained. The reason for the graduated approach is closely linked with the amount of control the viewer has over the content they consume, and this difference in levels of control allows for a proportionate approach in regulating services. This observation is still valid, perhaps even more so now that audiences are well used to dealing with (and personalising, filtering and controlling) online platforms and content.

Furthermore, ensuring a truly competitive and innovative marketplace, where content is made available to all distributors in a non-discriminatory fashion, will serve consumers and contribute to financing of content far better and more sustainably than any burdensome rules.

## **3. Promotion of creation, distribution, availability of European works**

Digital and online services continue to serve as key actors in broadening the promotion and distribution of European creations throughout the EU and the world. For example, European shows and feature films can be exported and viewed by a global audience allowing for more viewers than when a show would be restricted to a national broadcast - or VOD service.

EDiMA supports the aim to promote the visibility and discoverability of European works and the stimulation of the European audiovisual sectors but, views the initiatives presented within the AVMSD to better promote the access to and promotion of European works using quotas and prominence<sup>8</sup> as detrimental to the sustainability of existing and new business models and personalisation of services that allow European consumers the ability to access a wide variety of European and international content.

### **3.1. Quotas**

Rigid numerical quotas risk suffocating the market for on-demand audiovisual media services, and in particular, the VOD market segment. An obligation to carry content to meet a numerical quota may cause new players to struggle to achieve a sustainable business model, causing distortions as such players may have to spend resources on content in excess of its economic return. For example, hours-based or titles-based numerical quotas risk creating a perverse incentive for VOD service providers to license more of the least expensive European titles and fewer premier European titles. This undermines what should be the goal of promoting European works: ensuring that European content producers that succeed in Europe and internationally are rewarded for their success, creating a positive feedback cycle for high-quality and internationally competitive European content production.

Also, there is no real need for the imposition of strict numerical quotas to ensure the promotion of European works by on-demand audiovisual media services. On-demand audiovisual media services, not being constrained by the limited “shelf space” of programming hours, inherently offer

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<sup>8</sup> Article 13 ‘Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.’

opportunities for the promotion of European works. It is also essential to bear in mind that VOD catalogues are built to provide customers with what they want to watch. In the EU, culture, tastes and languages differ, so to be successful it is important to offer a selection of exclusive movies and series across all genres, languages and countries of origin.

Finally, VOD service providers provide a mix of licensed and original European content, contributing to the promotion of European works not only within Europe, but also internationally. For example, Netflix has produced, in association with NRK1, the series “Lilyhammer”, while Amazon stepped in to help finance the continued production of the BBC series “Ripper Street”. At the same time, VOD service providers offer high-quality European content outside the EU, such as “The Artist” or “Downton Abbey”.

### **3.2. Prominence**

When watching content via a VOD service, subscribers already control their own viewing experience and the titles surfaced to them are highly personalised. There is, therefore, no need of any regulatory measures that would interfere with a VOD company’s “personalised” approach to providing their services.

The domestic content producers are best positioned to benefit from the increased consumer choice enabled by VOD service’s large catalogue of titles. Content producers working in the same linguistic, cultural, and artistic context as potential consumers have an inherent advantage in producing works that attract those consumers, but the limited “shelf space” of linear TV has diminished the value of that advantage.

This mixture of global and local content is driven by a desire to delight European consumers and competition from a number of different distributors including other Internet-delivered services, public and private broadcasters and other pay-tv operators. This is not driven by regulation; it is driven by competition to deliver the best service possible. In a world of increasing choice, the services best positioned to respond to consumer demand will continue to distribute a certain amount of local content.

The consumer personalisation approach taken by many VOD services allows for more European works to be available to consumers in Europe, and helps those members find those European works. In effect, promoting them.

## **4. Protection of Minors**

VOD service providers have built a variety of means to ensure that parents can protect their children from inappropriate content.<sup>9</sup> Varying from age rating information to specific children’s sections and PIN protection measures, VOD service providers aim to create an environment that is safe for minors and that give parents suitable options to find appropriate content for younger children.

In order to allow VOD service providers to scale and serve users in multiple member states, EDiMA supports the development of flexible self-rating tools. Such tools should respect local cultures and initiatives while allowing companies to rate new content quickly without having to submit to a rating board in all 28 Member States of the EU.

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<sup>9</sup> For example, Apple (<https://support.apple.com/en-us/HT201659>); Amazon (<http://www.amazon.com/gp/help/customer/display.html?nodeId=201423070>); Google Play (<https://support.google.com/googleplay/answer/1075738?hl=en>); and Netflix (<https://help.netflix.com/en/node/264>) to name a few.