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Publishers
Council

CONTRIBUTION FROM THE EUROPEAN PUBLISHERS COUNCIL TO THE GREEN PAPER

*“Preparing for a fully-converged World: Growth Creation and
Values”*

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01. Introduction

The European Publishers Council (EPC) brings together 26 Chairmen and CEOs of Europe’s leading media groups representing companies with newspapers, magazines, online publishing, journals, databases, books and broadcasting. We communicate with Europe’s legislators since 1991 on issues that affect freedom of expression, media diversity, democracy and the health and viability of media in the EU. Publishing industries as a whole constitute a major economic sector in the EU employing more than 750,000 people in 64,000 companies. The EU newspaper and news media publishing sector generated total revenues of €36 billion in 2011. A list of our members is here: www.epceurope.eu

The EPC welcomes the opportunity to comment on the questions set out in the Green Paper. Individual companies, members of EPC, may also contribute directly to the consultation.

The press and publishing industry plays a vital societal role in facilitating access to news and information, culture, sport and entertainment. Through our reporting and analysis, we offer understanding and enjoyment. Through scientific, technical and medical publications, our industry contributes to the advancement of science and education. Through our books, newspapers, magazines and journals, widely available online throughout the EU, we are contributing significantly to Europe’s digital economy.

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It should not be forgotten that professional journalism fulfils a unique role. A free and plural press is a pillar of any democratic system and of the ‘knowledge society.’ It is essential to the public interest and safeguards a wide diversity of independently financed content and opinions.

The publishing industry has already proven itself to be at the forefront of business innovation and experimentation, with a range of online offerings across the different sectors of the industry. However, all EPC’s members face similar and significant challenges in developing sustainable models for online content services. Some of those challenges derive entirely from structural shifts caused by the migration from analogue to digital production and distribution; however, others result from a range of unauthorised or insufficiently controlled commercial uses of our intellectual property rights. Hence, it is essential that the incentive to invest is ‘carried forward’ into the digital age in preparation for a fully converged and competitive world.

02. Executive summary

EPC’s interest in this consultation stems from our belief that any online press and news media activity must be free to continue to operate according to standards and conditions that characterise the free press, online as off-line, and notably, free from government interference.

Even though the consultation is mainly directed at the audiovisual sector at large, it touches upon issues that may directly or indirectly impact online publishing and in particular the freedom of the press. EPC therefore requests that any initiative by the European Commission in this area continues - as in the past - to defend the free press from disproportionate regulatory intervention, mainly by ensuring that:

- a) the press delivered online continues to be **excluded from the scope of application** of legislation affecting linear and non-linear audiovisual services, should the AVMS Directive be revised, or should a deregulation occur, and
- b) any provisions on advertising do not negatively affect the online press business model and thus the sustainability of the press in a fully converged world.

In particular EPC supports the reference in the consultation to the importance of openness of platforms to support media plurality¹ and the **role of self-regulation** in media regulation.

¹ Section 3.2 of the consultation «*the availability of various platforms providing valuable content to users, as well as the openness of those platforms, is an important condition for a thriving media landscape*»

The current AVMS Directive rightly excludes the press from its scope². This exclusion is still valid and will continue to be so for the future. The press, whether it is consumed off-line, online, on a device or platform on which a consumer can also watch a TV programme, needs to fulfil its role as an unlicensed media enterprise, upholding the values of democracy, and that reporting and investigating those in power.

The EPC welcomes the reference to **self and co-regulation** in the Green Paper. This may be of particular relevance for an audiovisual market that is currently in an enormous state of flux and evolution, and it may indeed be too early to revise the Directive, at least at this stage. At the same time it is necessary to remain vigilant regarding new players entering the audiovisual content market, to ensure that there is some symmetry and a clear level playing field between rules applying to competing services. The viewer who will access content through a connected TV set, mobile device or by using various platforms may not necessarily differentiate from the mode of delivery, whether the content is provided by means of terrestrial transmission, according to a schedule, by the internet and/or on demand.

03. Observations on the questions asked in the consultation

Please note that EPC will not respond to all of the questions in the consultation but will focus its contribution on the points of relevance for its membership.

Growth and Innovation:

a) Market considerations and financing models

<i>Questions from the Commission on Market Considerations and financing models</i>
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(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?

(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

² Recital 28 of the AVMS Directive ensures that electronic versions of newspapers and magazines, which cannot be assimilated to any other type of media or audio-visual content or services, linear on non-linear, are not covered by the Directive.



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?

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

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

(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?

A **new media ecology** is emerging, characterised by disruptive trends which create real challenges and some opportunities. This has created huge value for mainly non-European distributors and technology companies, and huge value destruction for some European media and creative content companies. The EU Media Futures Forum identified various trends which are relevant to this consultation³.

The consultation asks us to compare success factors with US companies; EPC feels that this is less relevant than looking instead at what conditions are necessary to promote European businesses whether they are pan-European, national or local.

It is axiomatic that many types of US companies benefit from a scale at national level that allows them to reap a return on investment not only in their home market but in Europe too with a minimal financial or regulatory risk. The first factor then is that the US market is the largest and most developed market for content in the world attracting talent, financing and new technology. The second factor is language, taking advantage of English being widely spoken beyond the USA, notably in the UK, South Africa, India and Australia. These factors combine to produce worldwide distribution channels creating price advantages difficult to beat. The third factor to consider is the combined unassailable advantages of the world's largest content producing market to what Silicon Valley represents in terms of technological innovation, financial power, influence on consumer behaviour and advantage from dominant positions. EU content companies, with the exception perhaps of some UK companies, are mainly producing for local markets in local languages with high production costs which they are unable to amortise across multiple markets inside or outside the EU. This produces low returns on investment which in turn makes it difficult to attract financing except in some specific but limited scenarios when specialisation in certain types of content, (Netherlands in general entertainment, live shows and formats, or the Brazilian and Mexican novellas) has been a winning strategy.

³ Access here the [Final Report](#) and the [Executive Summary and Recommendations](#) of the EU Media Futures Forum.



More often than not it is the global (non-European), companies that are taking over the central platform roles in Europe. They have large resources and capabilities to innovate fast, test effectively and roll out new services globally which influences and then captures the business models. The growing influence of these technology/ICT-driven companies may have a particularly devastating effect on European media companies whereby small players such as the nationally organised media companies disappear with disastrous consequences for media pluralism and quality. Further consolidation of and cross-media mergers of existing media will probably be needed to enable the EU content industry to compete globally.

Europe may overall be larger in population than the United States, but the EU is not a single market in terms of language, culture, tastes or consumption patterns. This poses a conundrum for the regulators of how to drive growth across EU28 without destroying the very essence of what makes our media special and popular, country by country. This diversity has in the past always been viewed as a favourable feature of Europe's rich cultural heritage. Instead of comparing EU businesses and markets with success factors that apply to a market that is very different from the EU market, we suggest the EU could concentrate on strengthening the possibilities to develop European businesses.

Such conditions may not be regulatory, but could include better access to financing, improved e-Payment systems and an end to market segmentation by e-Retailers and payment card operators, which often seems to be disregarded as market players, have however an ability to shape the market.

In particular we see that access to finance and incentives for co-productions that have the capacity to travel successfully within Europe but also beyond the EU28 states could be improved. Furthermore, EPC believes that the implementation of identifiers and the labelling of content with metadata according to common and interoperable ways will help new business models to thrive, impact positively the availability of the audio-visual offer on the market, including cross -border and will create the right conditions to facilitate more efficiently the remuneration of the creators and those that invested in the content production.

Let us not lose sight of the fact that Europe has a strong and creative content sector, which plays a significant role in successfully selling content to their national audiences with new multi-media, multi-device consumer offers and services coming to the market all the time and contribute to build value, jobs and growth in the digital economy. Content is naturally increasingly travelling across borders according to demand and it is worth noting that new multi-national markets in the EU are in constant evolution. These issues are also addressed

in the Licensing for Europe dialogue.

Nevertheless concern clearly exists that Europe will fail to capture global opportunities offered by the new media ecology. But we must be careful for what we wish for. A digital single market constructed by regulatory intervention may favour distributors and platforms over content producers and lead to an even stronger position of the non-EU global players in Europe. Until now, EU legislation has nurtured European companies' interests in the media sector, through quotas and financial support for European works and strict territorial copyright licensing arrangements to maximise potential for re-investment in content creation. This sustains diversity and national characteristics, including language. Global licensing could lead to a dive to the lowest common denominator to the detriment of European creation and production, and thereby damaging cultural diversity.

We know that content aggregators, often USA-based, are pushing for an end to the territorial sale of TV, film and music so they can buy these more cheaply in order to build their pan european distribution chains. The European Commission must ask itself whose interests fundamental changes to our long-standing regulatory model and copyright protections will serve in the long run and whether they risk creating new gate keeping chains in the EU where the originators of content lose control of their distribution channels, ceding control to others to extract value from our investment.

If the last fifteen years show us anything about content on the internet, it is that the development of new online business models for the content industries is dependent on competitive markets as well as the continued existence of and respect for copyright. A plural news sector has always depended on a mix of subscription and advertising revenue. This mix is critical going forward. Everyone recognizes – no one more so than the media themselves – that new business models are required for a new age of information dissemination. But the creation of those new business models is constantly and continually undermined by those who undermine them by providing the content which others have invested in for nothing. Quite simply, systematic expropriation of intellectual property is the ultimate predatory practice in that it unlawfully destroys the value of any creative endeavour, undermines or worse destroys any innovation or advantage a competitor may have. This is true of all intellectual property including trademarks, copyrights, patents, trade secrets, contact lists as well as personal data. Not only does this create a huge distortion in the market it drives standards of behaviour downwards in a vicious spiral to perpetuate the free-riding model. This misleads and harms consumers, as well as undermining incentives to invest and innovate in content production.

As regards premium content, sport rights, and particularly soccer rights, continue to follow certain market practices which can hinder market access. We note that in the UK there was regulatory intervention and we suggest that similar measures could be needed in other

countries.

In terms of access to platforms: it will be necessary to avoid market dominance by any single platform operator. It is also necessary to regulate to make distribution platforms as neutral as possible for operator services and outside services. When it comes to Smart-TVs for example, consumers appear to have no choice over which online services they might access, but rather the choices are seemingly made in an un-transparent way by the TV manufacturers. Consumers should be provided with a menu of choices that they can opt-into.

Overall, EPC members believe that regulatory intervention is needed to create a level playing field between all players who ultimately compete on the same market whether they be European or non-European based; not only broadcasters but including all non-linear platforms operating in Europe. This could be on the basis of a de-regulation to simply the regime but based on principles of fairness. For example, if quotas are retained, the same rules on quotas and financing should apply to new platforms as well as traditional broadcasters to eliminate unfair competitive advantage of new platforms by comparison to the established European broadcasters. This is particularly important to preserve local European production recognising that the USA has both scale and a global language which allows US companies to set up distribution channels worldwide benefiting from a large, well financed talent pool.

b) Interoperability of connected TV

Question from the Commission on Interoperability

(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?

On this point EPC believes that the EU may have a role to play to encourage the development of industry standards that will best ensure and deliver the consumer experience of connected TV. We have already seen the frustration of consumers in the eBook market arising from lack of interoperability of proprietary device standards and closed platforms.

However an EU standards agenda does not only need to apply to the delivery and device part of the television market, but it is also important that the EU supports and encourages the audiovisual industry to develop and implement open and interoperable standards in the

field of identifiers and rights expression language, allowing content to be found and licensed, to be more accessible while at the same time ensuring remuneration to the rights holders.

There are currently too many local standards, and barriers. HbbTV standards should be implemented as a top priority.

c) Spectrum availability

Broadcasters need a stable legal framework and transparency in allocation of frequencies in order to support their investment decisions. There are a range of technical issues raised by our members including: 4G frequencies are released too fast for the industry to be able to provide value; the need to reserve frequencies for broadcasting HD channels; compatibility of 4G with broadcasting should be required (using DVB-T Lite); increase efficient spectrum usage by TDT and 4G (DVB-T Lite); improve uplink capacity for production environment for broadcasters (live productions and field coverage)

Values:

Questions from the Commission on the Regulatory framework

*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?*

*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**?*

European media and the ways they are consumed have changed radically over the last decade, but the Audiovisual Media Services Directive dates back to 2007 and many EU regulatory provisions go back further to 1989. Some of the original provisions remain valid today, notably the **Country of Origin Principle**.

Taking these two questions first, since the adoption of the AVMSD as foreseen there has been further blurring of the boundaries between linear and non-linear audiovisual services



as more and more online services are made available by broadcasters and VOD platforms causing a distortion of competition. Today it is largely up to the viewers when, where and on what device they consume the audiovisual content available where they live. Consumers are well served: they continue to have an increasing choice between a growing number of services, some broadcast-based, some internet-native.

In our view, the most logical step is to **de-regulate the AVMSD**. But not at the cost of a free press and here the EPC would like to reiterate the point made in the executive summary of the necessity, should there be a future reopening of the Directive, to maintain its exclusion of the written press and the online delivery of written press. It would not be appropriate to create a new harmonised “media services Directive”, encompassing all media content including that of the press online which has a different origin and purpose, with different regulatory traditions and constitutional protections. It would be better for innovation and growth in the EU to reduce the burden on TV Broadcasters, rather than increase the burden on non-broadcast services just because they share the consumers’ screens and devices. Any other approach requires major amendment of definitions, and clear exclusions for the press and many other new media services on internet and mobile platforms to minimise the impact of the Directive on non-licensed new media services.

Some rules for TV lose their relevance like ad insertion rules, whereas some may become more relevant depending on what kind of converged audiovisual market we want in the future. For example, the protection of minors remains valid, as does the promotion of EU originated creative works. New regulatory approaches may be needed to prevent illegal and/or harmful content.

But this is not only a question of how to regulate competing audiovisual services, whether linear or non-linear, because most of the current regulatory obligations, which apply to linear and non-linear broadcasters and VOD services do not apply to Internet platforms that are dominating media consumption outside traditional broadcasting markets. So any de-regulation of the current services within the scope of the AVMSD would need to look at the growing asymmetry between media companies and the media platforms and aggregators in both the regulatory and fiscal playing fields. It is at this juncture that an evaluation of the cross-over between AVMSD and the e-Commerce Directive would be necessary.

EPC believes that self and co regulation has a clear role to play in protecting values, and self-regulatory initiatives have proven to work well in areas such as advertising (see questions later in the document dealing with commercial communications). The AVMSD provided incentives for self and co-regulation and this could be expanded in the future,

particularly if this comes hand-in-hand with deregulation of the primary regulatory framework.

Country of Origin, the Media and Advertising

*(12) What would be the impact of a change of the audio-visual regulatory approach on the **country of origin principle** and therefore on the single market?*

*(13) Does increased convergence in the audio-visual 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?*

EPC supports the country of origin approach as established in the Directive, which provides with a possibility for national authorities and the European Commission to react should Service Providers wilfully circumvent the rules. However these procedures do not apply to providers that are established outside the European Union and it would be valid to have a discussion on how to deal with cases when services established outside the EU have a significant market share and or specifically target the EU market or specific Member States. It is clear that cases like the above create unfair competition for EU operators.

The “Country of Origin” principle has always loomed large in all reports and plans to revise the regulatory framework for broadcasting. This principle formed the cornerstone of the original Television without Frontiers Directive and subsequent amendments and guarantees the freedom of movement of services, the freedom of establishment for service providers and the freedom of consumers and businesses alike to access services originating in other Member States. Likewise the e-Commerce Directive is based on the same principle and as we move towards a fully converged world it is essential that these two Directives work hand-in-hand and provide a firm basis of freedom to provide services according to the Treaties.

For EPC members, the Country of Origin principle means that “service providers”, including the media (press, TV, radio, internet) and the advertising they carry, are subject only to the law of the country where they are established, and that Member States may not restrict services from a provider established in another Member State who comply with their home country rules.

Without this principle, the Single Market cannot thrive: small and medium-sized enterprises in particular are discouraged from exploiting opportunities afforded by the Single Market because they do not have the means to evaluate and protect themselves against legal risks

involved in cross border activity or to cope with the legal complexities. Consumers and other users of services are thereby not able to benefit from a larger choice of competitively priced and potentially better quality services that would otherwise be available; often refused service by service providers unsure of their legal position when providing the service from other Member States; or because of restrictions by payments providers (i.e. credit cards) when supplying services across borders.

From a publisher's perspective, newspapers, magazines and journals are cross border and all publishers now have web-based and mobile apps that are accessible to readers throughout the EU and beyond. For us, as with any business likely to cross border, what is essential is legal certainty. Legal certainty that whatever we distribute will be legally acceptable wherever it ends up; legal certainty that we will not be subject to 28 different legal systems in the 28 different Member States of the European Union – and potentially liable for a panoply of legal actions differing from one country to another.

This is especially relevant for the media sector, which bases its business on the dissemination of professional journalistic and quality content, without fear of either prior control or restrictions to free circulation. To prevent any such attempts at restriction, all EU regulation which touches on the media sector, even indirectly, should:

- always in a very clear and straightforward way stress that it cannot in any way be used to limit freedom of expression;
- as regards the provision of media services, always be based on the country of origin principle, so that no EU member state government is able to impede the dissemination of the media which is legally compliant at the country of origin; and
- pass the proportionality test favouring on self-regulation rather than statutory regulation when possible.

If the European Commission considers de-regulating the AVMSD, perhaps in tandem with a review of the e-Commerce Directive, the application of these three principles above would significantly limit the likelihood of new regulatory barriers for media businesses by either the EU or its member state governments. This is crucial for digital media businesses, where traditional free-to-air television has ceased being the sole method of disseminating audiovisual content and as mentioned above, new players are prominent in the market for AV content services which have **no editorial responsibility for the content they disseminate.**

Questions of spectrum scarcity and high barriers to entry no longer apply to convergent media. Therefore the regulatory framework should adapt, leaving the provision of new

media services subject to minimum regulation. For example, the free circulation of such services is already assured through the e-Commerce Directive, which is based on sound internal market principles. Important European laws of Data Protection and Unfair Commercial Practices will also apply to these services, together with the general laws of defamation, obscenity and racism etc., as well as in many cases sector specific self-regulation.

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

The need to increase media competence among young people and adults alike has never been greater. The technologies and the fusion of the different forms of the media and media providers are making it more and more critical and necessary for everyone to be skilled in the area of media literacy. As such, adults as well as children need to have the proper tools in understanding and interpreting the technologies, the sources and messages that are generated in order to be responsible and competent in their consumption of the media. Media literacy needs to focus as well on the responsibilities of the user, for example on issues related to piracy and intellectual property rights infringement.

Essential skills to finding your way around a vast choice of content are: curiosity, flexible thinking, powers of evaluation and a generous sprinkling of cynicism and scepticism but overall the ability to differentiate between fact and fiction and between analysis and opinion. This is of paramount importance when it comes to news and documentary type content. The new digital generation skims its news from favourite portals, bookmarked websites and search engines which throw up headlines, brief descriptions, un-confirmed sources, facts and fictions. Media literate citizens have a higher degree of freedom because they are able to choose and evaluate their sources and actively participate in the information society.

Information in this media-rich society will need to be clearly branded to build and maintain trust. It is critical therefore that the owners of quality brands maintain not only the accuracy of information on the web but also the depth and range we expect from the press and broadcasters.

Publishers themselves are engaged in many media literacy programmes, focused on schools, but also adults. Programmes such as “Newspapers in Education” have been very successful and replicated in many EU members states.

The European Commission for its part could continue to promote the exchange of good practices and continue building on existing activities based on the different MEDIA programmes and indeed the AVMS Directive. It is important also to continue reporting on "media literacy levels" in all Member States.

We note that in order to facilitate this debate, the Commission in 2011 created an expert group focusing on media literacy in schools. This group is composed of representatives of all EU Member States and the EFTA countries. Its objective was to examine the current place of media literacy in schools in all the countries represented and to debate, with respect for subsidiarity, its possible inclusion in formal education. We would be very interested to be informed on the progress of the work and the possible conclusions of the group.

Question from the Commission on 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?

(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'?

The consultation asks if there should be specific measures to guarantee that general interest content is available on all platforms, especially as manufacturer and platform operators may make decisions on the content available delivered to the consumer. This would seem to mirror the current must carry obligations that Member States may decide to impose on network operators in certain circumstances.

The rationale behind this seems to be that viewers may in the future be in an online and connected environment where a multitude of services and content may be available and will have difficulties in finding the general interest channels.

On this point EPC would ask the European Commission to remain vigilant to avoid any unfair competition. Indeed connected TV platforms may propose services that will also include access to press online: any prominence to general interest channels such as public service broadcast channels may have an impact on the online press viability as increasingly

in the online environment PSBs are competing with the online press. In this case unfair competition could potentially have a double effect:

- In cases where the general interest broadcast media receive public funding
- If general interest broadcast media and would be given prominence/platform access.

Openness of platforms should be the main objective, to avoid gatekeepers channelling viewers to specific content. This is particularly important as Connected TV sets and platforms have the potential to become the main access gate to internet and to what we know as traditional broadcasting, whether it is delivered through satellite, cable or terrestrial. As mentioned above, at present it seems consumers have no choice over which services are provided via their Smart-TV interface. The viewer should be able to make an informed choice on the content he/she would like to have available subject to any provision that may apply in relation to rights. In a converged broadcast/broadband environment gatekeepers will increasingly have the possibility to block the signals of additional services of content providers such as subtitles, Teletext programs, red button applications etc. Indeed, this issue has a strong link with interoperability (industry standards) and the respect of intellectual properties rights of the content providers, including the integrity of the broadcast signal.

Finding general interest content in a multichannel environment is a big challenge for viewers. With respect to EPG its presentation, other types of listings and navigation facilities, it might be needed to impose certain set of rules or obligations.

Questions from the Commission on 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?

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

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

Convergence, competition between established and new players and increasing time-shifted media consumption, including on the go, put into serious doubt the existing, strict regulatory framework for advertising. As argued elsewhere, the new reality of multi-channel, multi-platform, EU and global players should lead to an overhaul of the framework to provide at the very least a level playing field for those competing for the same viewers. For example, subscription based YouTube could put the current pay tv platforms at significant competitive disadvantage while different rules apply.

Advertising remains a vital source of revenue for all media. In the case of newspapers and magazines it helps keep their price low and accessible to a wider possible audience. The same applies to television and indirectly to movies. Regrettably, advertising is often attacked disproportionately, either because it is an easy target –the results of any ban are immediately visible- or because of political and sometimes anticompetitive motivations. Legacy advertising bans should be re-considered in the light of fundamental changes to the media landscape. Any opportunity the Commission can explore to initiate discussions which might lead to both de-regulation and self-regulation would be welcomed by the EPC. Some categories of advertising are banned or restricted in all media by European or national laws; unlike in the United States, where for example, direct to consumer advertising of pharmaceuticals is a major category of advertising revenue for the media.

More co/self regulation is appropriate especially in an environment where techniques evolve fast, where regulatory intervention would take too long and could stifle market expansion. The European Advertising Standards Alliance (EASA) is now well established across the EU and has shown that the industry and self-regulatory organisations deliver trusted, effective and accountable self-regulation of advertising. The EASA members and SROs have already extended all national advertising self-regulatory codes to cover the content of new forms of digital advertising as well as agreeing a framework for the self-regulation of interest-based advertising techniques such as online behavioural advertising⁴. This will be followed by adaptations of codes and processes to deal with mobile commercial communications.

With regard to commercial overlays, and other new advertising techniques, as mentioned earlier, content and signal integrity are key elements in determining who has control over how additional services should be used and paid for to eliminate free-riding on investments in the original production.

⁴ <http://www.easa-alliance.org/page.aspx/386>

Questions from the Commission on Protection of Minors

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

(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?

The current rules to protect minors in the AVMSD may be considered appropriate in terms of their objectives but are less and less enforceable when it comes to a converged world with multiple points of access to content where parents and guardians are no longer the sole and safe gateway to what content those in their care have access to. It is therefore absolutely essential that the European Commission does not rely solely on the ability of a harmonized set of rules to deliver child protection when it comes to what content minors might be exposed to.

The wide range of content produced and acquired by established broadcasters, and other trusted brands, whether entertainment or factual programming, including advertising carried alongside that content is quite frankly the least of the European Commission's problems when it comes to protecting minors online. Programme guidelines, advertising rules and where appropriate scheduling restrictions can easily be delivered through a co-regulatory framework.

Members States have their own Broadcasting and Advertising Codes, which are reviewed regularly in order to ensure whether changes or updates to the rules are required. The standards set by the Codes are often stricter than the AVMSD, in particular with regard to the protection of minors. Furthermore, Codes are more flexible, can adapt to the cultural differences of members states and can be updated more easily in order to reflect the respective reality.

As regards advertising, in addition to the Codes, advertisers themselves have developed multiple initiatives for the protection of minors at national as well as at European level. High sensitivity is shown particularly for HFSS food as well alcohol. Similar platforms with regard to those issues exist also in European level, coordinated by the European Commission, with proven record of results.

But these subjects of traditional regulation are no longer the most important targets when it comes to tackling serious harm and threats to minors today where all too easily they may come across seriously violent, mind-distorting, morally harmful or age-inappropriate

content, or be subjected to sexual predators or cyber bullies. These challenges require new governance models and multifaceted enforcement mechanism combining statutory, self-regulatory and technological solutions.

We support the European Commission's "Coalition to make the Internet a better place for kids" where leading technology and media companies are developing commitments and technical solutions that aim to the protection of children online. Indeed parents' awareness about the existence and use of such control tools is of paramount importance especially in the short-to-medium term where today's parents are not digital natives.

There is far too limited an uptake of parental control tools: parents are simply not aware they exist, or controls are not user-friendly. A key mechanism would be to oblige users to set up the parental controls when they first install a tv set, computer or digital mobile device for the first time, and to force regular updates and re-installations of controls along with soft-ware updates for example.

In addition, the European Commission could consider better **age verification measures including** a personal digital certificate and ID.

A major pan-European effort is required to bring together teachers, parents, technology companies and the media to build on the existing initiatives to inform parents, guardians about the tools they have at their disposal for the better protection of children online.

(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?

Online media can easily facilitate simple routes for consumers to comment or complain, and importantly, to alert the authorities of illegal or harmful content online. Already there are examples of hotlines for such alerts and these should be encouraged. When it comes to more formal complaints, users want simple and effective complaint handling mechanisms in their own language. With the expansion of the number of channels, platforms and sources of content, the European Commission should review the various complaints handling mechanisms and perhaps streamline them to help users navigate the plethora of possible routes to complain or comment.

A robust system exists today for complaints about advertising in most EU28 countries, coordinated by the European Advertising Standards Alliance (EASA) which could serve as a best practice model for other sectors. National advertising Self-Regulatory Organisations

offer a “one stop shop” for all advertising regardless of its country of origin under the EASA Cross-Border Complaints (CBC) system. This is an agreement by all self-regulatory organisations that are members of EASA to handle cross-border complaints under the same conditions as national complaints. The system was established immediately after setting up EASA in 1992 and is still widely used.

Closing remarks

There is much at stake in shaping the European converged media market. If the right steps are taken, a mutually beneficial environment can be created in which the creative industries will thrive and citizens, consumers and business users will have access to the full range of content they want, including new categories and models not yet devised, across a range of fixed and mobile devices.

The Members of the European Publishers Council, pioneers of innovation in their field, play a vital societal role in facilitating access to news and information, culture, sport and entertainment. Through our reporting and analysis, we offer understanding and enjoyment. Through scientific, technical and medical publications, our industry contributes to the advancement of science and education. Through our books, newspapers, magazines and journals, widely available online throughout the EU, in all platforms, we are contributing significantly to Europe’s digital economy and intellectual advancement.

Professional journalism fulfils a unique role. A free and plural press is a pillar of any democratic system and of the ‘knowledge society.’ It is essential to the public interest and safeguards a wide diversity of independently financed content and opinions.

The media industry has already proven itself to be at the forefront of business innovation and experimentation, with a range of online offerings across the different sectors of the industry. **The press is not subject to licensing regimes** and there is no spectrum scarcity or barriers to entry as there have been in the broadcasting field but this too may be changing.

However, the industry’s different sectors all face similar and significant challenges in developing sustainable models for online content services. Some of those challenges derive entirely properly from structural shifts caused by the migration from analogue to digital production and distribution; however, others result from disruptive technologies and companies that do not create or take legal responsibility for content. What is essential is that the incentive to invest in quality content is ‘carried forward’ into the fully converged audiovisual world.