

On March 10, 2016 the Belgian media regulator, CSA (French-speaking community), held in collaboration with Cullen International a conference entitled '*The platform is the message*'.

Experts from the European Commission, internet platforms, broadcasters, VOD/payTV service providers, network operators and regulatory authorities debated key topics such as the development of new distribution modes of audiovisual content and the necessary adaptation of the European and Belgian regulatory frameworks.

The conference was structured around four panels. The summary below provides an account of these panels.

Michèle Ledger from Cullen International presented the EU regulatory framework covering audiovisual platforms, some national initiatives and future EU policy options. Her presentation is available [here](#).

## Panel 1: Audiovisual media distribution in Belgium

### The distributor, a concept which does not exist at EU level

Julien Jost (CSA) introduced the panel by explaining the concept of 'distributor' of audiovisual media services, a legal category which exists in Belgium and other member states (such as France, Germany, The Netherlands and Spain - [Table](#)), but not at EU level. In Belgium, these players have 4.4m subscribers (i.e. 95% of the market) and generate revenues of more than €1bn per year. They are subject to rules stemming from the Audiovisual Media service (AVMS) Directive (e.g. creation funding, protection of minors), and the Telecoms Package (e.g. must carry, EPGs).

Mr Jost reviewed specific Belgian regulation on access to internet and television networks and debates around net neutrality and access to content. He also explained that distributors face two main challenges: how to ensure a level playing field with international players (such as Netflix), and how to handle the 'disintermediation' of the value chain by new types of intermediaries (such as Google) which exploit big data, use search engines and recommendation tools.

### Ensuring a level-playing field is a must

Jean-Paul Philippot (RTBF) said that what matters is the protection of EU core values (i.e. cultural diversity, fair competition and democracy) in a sector which is overthrown by the non/unfair application of rules. He called for a 'level-playing field' which ensures the findability of public media content, the protection of signal integrity and the respect of the country of origin principle.

Maxime Lacour (UniversCiné Belgium) shared Mr Philippot's opinion we need a level-playing field to safeguard EU diversity against the "GAFAN" (Google, Apple, Facebook, Amazon and Netflix). He also stressed the need to ensure net neutrality and to fight online piracy.

### The EU is useless

Daniel Weekers (Nethys/Be TV) painted a pessimistic picture of the market in the next five years. He predicted the continuous erosion of the financial situation of public service broadcasters, the strong market position of US VOD platforms and the unlikely ability of the Belgian stakeholders to enter into partnerships with each other to compete with these platforms.

He criticised the slow pace of adoption of EU decisions in an already globalised market (mainly made of fictions and sports). He strongly opposed net neutrality rules which, in his view, jeopardise the profitability of distributors/network operators. He also said that

access obligations imposed on Belgian cable operators will act as a disincentive to invest in white zones (i.e. uncovered parts of the territory).

## Digital is the way forward

Steven Tas (Proximus) had a more positive attitude and said that "*digital*" is the way forward to make the EU flourish again. He said it is important that the regulatory framework ensures a return on investment for operators, and called for no new additional taxes, an equal treatment between operators and an unregulated approach for networks.

Jean Marc Harion (Mobistar) called for an integrated EU industrial policy allowing investment and the promotion of strong infrastructures and good local content production. To regulators, he recommended taxing (US) online platforms for their use of bandwidth and to ensure reciprocal must carry/must offer rules.

Answering Alexandre de Streel's question (Université de Namur/CRIDS/CERRE) why Europe has failed to create digital champions, Mr Philippot said that this could come from a lack of ambition linked to a feeling of national protectionism (which is our "*local DNA*", he said).

On the question about whether the creation of an EU-wide regulator would be a solution, Mr Philippot and Mr Tas agreed that it is not a priority.

## Panel 2: "It's not me, it's my algorithm!": what are the roles and responsibilities of online platforms?

### CSA asks YouTube to self-declare its activities as a distributor

Geneviève de Bueger (CSA) presented a slide listing the internet platforms that have been notified to the CSA and the other platforms with which the regulator is discussing the situation.

She called for a clarification at the EU level of the concept of editorial responsibility, in particular in relation to channels that are automatically generated by platforms' algorithms. She gave examples of YouTube auto-generated channels, arranged in a collection of videos on a given topic, identified by YouTube's algorithms as having a significant presence.

One of these examples does not appear to differentiate itself from a traditional VOD service with videos classified under distinct themes. According to the CSA, it is difficult to argue in these cases that YouTube does not play any role on programme selection and organisation.

Mrs de Bueger therefore invited YouTube's representative on the panel to complete a declaration form to register these activities with the CSA.

She also called for some obligations to be imposed on digital intermediaries to meet specific goals of audiovisual regulation such as fair competition, pluralism and access to information.

### YouTube and Ericsson argue they have no editorial role

Thierry Geerts (Google/YouTube) and Xavier Grégoire (Ericsson) strongly opposed any editorial logic in their platform and technologies. They both emphasised the need to embrace changes in consumers' behaviours stemming from the digital revolution rather than to have a protectionist attitude.

Mr Geerts insisted that consumers are increasingly viewing content on the internet where they are no longer passive. They actively look for content on YouTube and become content creators by posting videos (400 hours of video posted every minute). He added that YouTube and broadcasters are complimentary, proposing different types of content.

Mr Grégoire presented Ericsson technologies as supporting broadcasters and

platforms, while enriching consumers' experience by aggregating various types of information to make them the best recommendations. Technology is an accelerator of knowledge, quality and content, Mr Grégoire said.

### Different views on the impact of new platforms on content creation

Massimo Papa (RMB - the sales house of the Belgian public service broadcaster) explained the disruptive effects of the business models of market players like Google. He stressed that the monetisation of content on Google was diminishing as the value of content itself was decreasing because Google's model is mainly based on the value of users' data. In his view, the key challenges to address are how to ensure fair competition, investment into content by new market players, and protection of minors from inadequate content. Mr Geerts agreed with Mr Papa that protection of minors is a key challenge, going well beyond YouTube, and requiring a global answer.

On content funding, Mr Geerts explained that more than 50% of the advertising revenues generated by YouTube are re-distributed to content creators who also benefit from the platform to penetrate new markets without the need for a distributor. He referred to the Content ID system of YouTube that allows content owners to protect their videos by preventing a video uploaded (in breach of copyright) on the platform that would match their own video from being viewed. Content ID also allows them to track their video's viewership statistics and to monetise them by running ads.

## Panel 3: Material jurisdiction

### No 'one size fit for all' solution

Madeleine de Cock Buning (Commissariaat voor de Media/ERGA) admitted that new players are gatekeepers have an impact on the availability of content and how it is delivered. But, she highlighted the difficulty to define rules for these players because of their "multifaced" activities (distribution, production...).

As to whether a specific set of rules should apply to platforms, she asked which rules to apply and to what type of platforms? There is probably no 'one size fit for all' solution, she said.

She concluded by recommending a holistic approach (i.e. achieving public policy goals) based on the exchange of best practices and cooperation between the EU and national regulators.

Representing ERGA, Ms de Cock Buning recalled the publication of two recent reports, one on [material jurisdiction](#) and one the [protection of minors](#) in a convergent environment. See [Flash](#) for a detailed account of the reports.

On the protection of minors, she explained that the protection of minors should be more consistent across linear and non-linear services and that there should be more harmonisation of the age groups and content categories in the EU.

### Belgian and German regulators call for large audiovisual platforms to be regulated at EU level

Bernardo Herman (CSA) set out the proposal that a special category (platforms distributing audiovisual media services) should be created at the EU level and be subject to the obligations of the AVMS Directive. These should be subject to rules on access to platforms, findability of EU works, and investment obligations into local content. However, only for platforms with turnovers that exceed a certain threshold, reflecting a significant market position, would be subject to these mandatory obligations. Mr Herman also regretted that the Electronic Commerce Directive is not formally up for review.

Thomas Langheinrich (media broadcasting authority of Baden Württemberg in Germany and DLM, the Director's Conference of the German Regulatory Authorities for Broadcasting) explained the current regulatory regime covering platforms in Germany. He also called for separate rules at the EU level for audiovisual platforms, but not for

general search engines. Like the CSA, the proposal is only to cover platforms with a significant market presence.

Mr Herman also explained that as a regulator, differences in regulatory treatment are creating uncomfortable situations.

This is especially true for the TV-like criterion of the directive. According to the CSA, more and more high quality short forms of content are appearing on audiovisual platforms which can have a high impact on the public opinion and they are competing with the same audience as TV broadcasts. This criterion should therefore be dropped, the CSA argued.

### TFI calls for extended scope of AVMS Directive to cover famous 'YouTubers'

Anna Bigot (Bouygues Europe) spoke as TFI, one of the main TV channels in France. She argued that the scope of the directive should be extended to cover influential YouTubers who in her view have editorial responsibility. She also said that the Content ID tool of YouTube, which serves to identify pirated content, is not efficient.

### European Commission fully coordinated and proposals due before the summer break

Lorena Boix Alonso (Head of Unit, DG Connect) did not give away much in terms of the Commission's plans on the review of the AVMS Directive.

She recalled that the Commission has [published](#) a number of studies commissioned in view of the review of the AVMS Directive.

Prompted by a question from the moderator, Laura Sboarina (Cullen International) she stressed that the Commission is well coordinated on the reforms that are covering many directives and on which sometimes similar questions are being raised (e.g. must carry/findability which are raised in the context of both the review of the AVMS Directive and of the telecoms package).

She said the Commission will adopt a pragmatic approach and will only change the rules if there is a specific problem to address.

On the 'TV-like' criterion of the directive, she said that it sounded like an 'old fashioned' criteria, and recalled that the 'principle purpose' criteria had been interpreted by the European Court of Justice ([Flash](#)). The Commission will take this into account, she indicated.

On the review of the country or origin principle, there will be no change to the principle, but there could be adaptations to the exceptions to the principle and on how these exceptions are enforced between the member states.

On the notion of editorial responsibility and the possible extension of scope of the directive to platforms, the Commission has received mixed views she said, and that a conclusion is impossible at the moment.

## Panel 4: Territorial jurisdiction

### Country of origin principle not efficient

In his introductory presentation, Paul-Eric Mosseray (CSA) explained that the country of origin (CoO) principle is not working well. He referred to several monitoring exercises, and raised strong doubts about the regulatory compliance with EU harmonised obligations by a significant proportion of linear TV channels in Europe based outside their country of reception and representing an important audience in several targeted countries. A large number of VOD service providers are also targeting EU countries without any footprint in the EU. In Belgium and several other members states, this leads to an unequal treatment of stakeholders and has a negative impact on advertising, quotas, creation funding, etc.

Mr Mosseray said that ERGA is currently working on analysing whether the territorial jurisdiction regime of the AVMS Directive is still fit for purpose, and what could be the

solutions (including for example clarifying jurisdiction criteria or simplifying derogations to freedom reception principle and anti-circumvention procedures). The report will be published in the coming weeks.

### Minimum level of harmonisation creates asymmetries

According to Nathalie Sonnac (CSA France), the lack of fair competition comes from the minimum level of harmonisation of the AVMS Directive, which allows member states to adopt stricter rules. This creates fiscal asymmetries and has negative effects on the protection of minors/viewers, pluralism, cultural diversity and accessibility.

On the question of how to fund creation in this context, she explained the French CSA's position, which is that every actor in the value chain who earns revenues from audiovisual content should take part to its financing. She also said that with the emergence of algorithms, business models are no longer based on a logic of the offer but instead on a logic of demand. In her view, platforms should therefore be subject to a duty of fairness/loyalty (on the results of a search or a recommendation) towards consumers.

### Jurisdiction over non-EU established players?

For Michaël Wagner (EBU), the CoO principle (supported by the Cable and Satellite Directive) has been successful for traditional TV services but not for on demand services. This is because the principle is used by new global players for non-intended purposes (forum shopping).

He called for maintaining the CoO principle but for a review of the exceptions regime and the anti-circumvention procedure. He also explained that regulators should exercise jurisdiction over non-EU established players, which provide audiovisual media services, as in this case, the country of origin principle does not apply, and member states should enforce their national rules vis-à-vis these players.

### AVMS Directive failed on quotas

Frederic Young (SACD) said that the directive has successfully met some objectives but failed on others such as quotas. Only 30% of EU works can be found in VOD service providers' catalogues, and the situation is getting worse, he said.

He complained about the detrimental effects of some decisions the Court of Justice of the EU (CJEU) (i.e. *Svensson* and *SBS* cases) which are contrary to the practice of traditional players.

On the question of how to fund EU original creation, he said that the problem comes from the diminishing value of works whereas there is a need to fund an increasing number. He denounced the absence of action from telecoms operators in the fight against piracy, the lack of contribution to the funding of creation by platforms such as Google and the price of streaming service subscriptions, which are far too low.