

Revisiting the AVMSD after Netflix or Amazon Prime Video



OUTLINE

1. Why the need for change
2. Change ...in what direction?
*Harmonizing Regulation Linear-Non linear
Copyright rules*
3. Change to a borderless tv market
4. Conclusions

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1. Why the need for change

Because there is a big misalignment



During peak hours, Netflix accounts for more than thirty per cent of Internet down-streaming traffic in North America.

ILLUSTRATION BY LEO ESPINOSA

THE NEW YORKER, FEBRUARY 3, 2014

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Digital content
single market

Content regulation

Copyright reform/
Geoblocking

Movies platforms

Competitiveness

Cultural quotas



1. Why the need for change

Because regulation is profoundly mismatched

Audiovisual Regulation	Content regulation (commercials, prohibited content, minors)	Company rules Editorial responsible Transparency	Quotas	Viewer's rights
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Copyright policy	Cross-border portability	Multiterritorial licenses	Movie industry rules - windows - exclusive rights	Role of Collective Management Organizations (CMOs)
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1. Why the need for change

Because we require clear definitions



Non linear



Linear

Directive 2010/13 definition (art. 1) “audiovisual media service is either a television broadcast ... or an on-demand audiovisual media service..”



1. Why the need for change

Because we require clear definitions



Non linear

***“on-demand audiovisual media service” (i.e. a non-linear audiovisual media service) means.....
the viewing of programmes at the moment chosen by
the user and at his individual request on the basis of a
catalogue of programmes selected by the media service
provider”***



2. Changes in what direction?

AVMSD moves towards new market reality

New NON-LINEAR SERVICE added (aa)

'video-sharing platform service', a service available by electronic communications networks which can consist in

- *the storage of a large amount of programmes or user-generated videos*
- *the organisation of the stored content is determined by the provider*
- *programmes and user-generated videos to the general public, in order to inform, entertain or educate"*



2. Changes in what direction?

Toward harmonized Audiovisual and Copyright policy



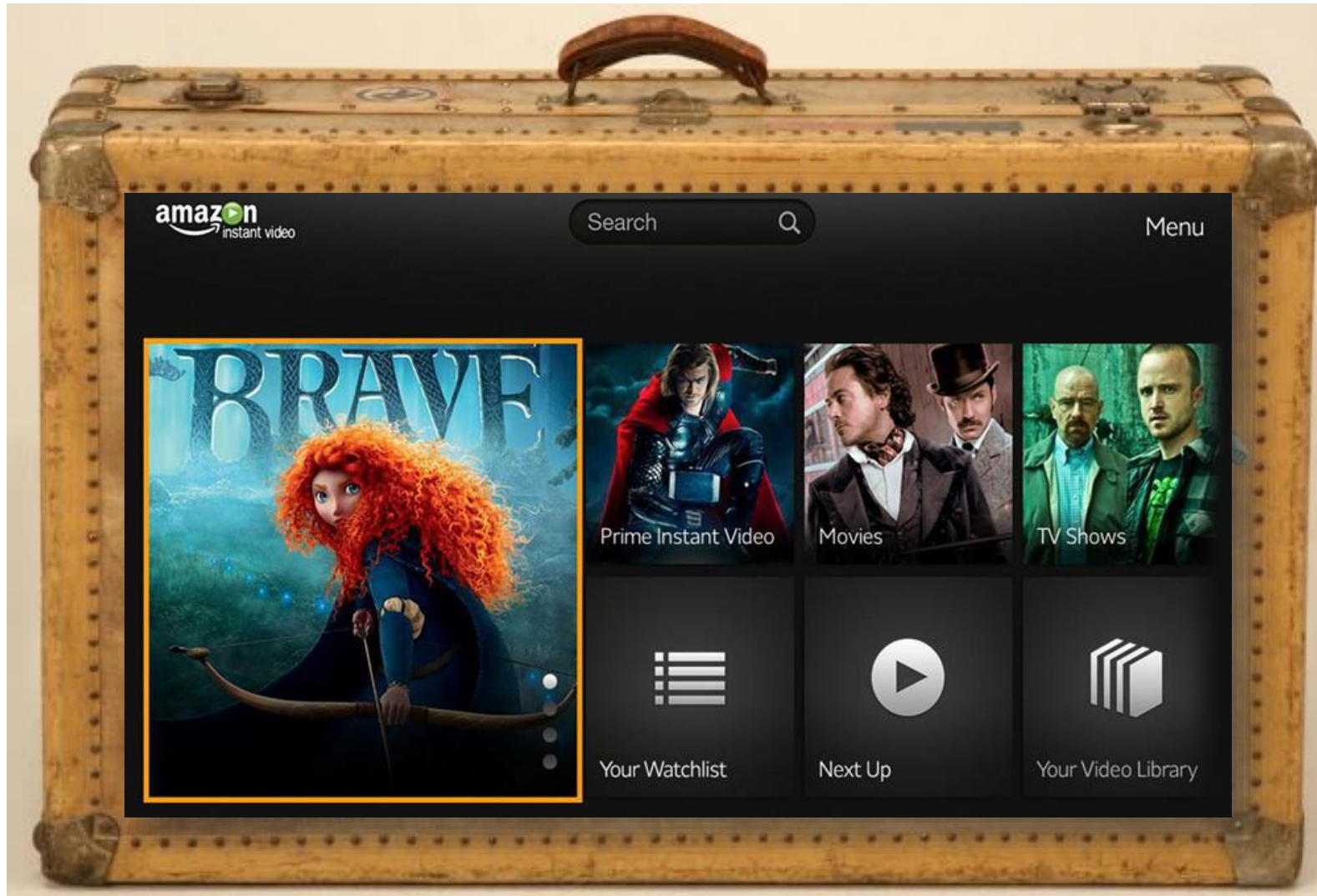
Figure 1 Audiovisual regulation under the AVMSD 2010 and changes proposed for the 2016 revision

Changes proposed for the AVMSD			
	Content regulation	Protection of minors	Cultural protection
<div>Audiovisual services regulatory areas</div> <div>Services</div>	(1) Freedom of reception (2) Advertising time limits and content rules (tobacco, alcohol, foods) (3) Prohibitions on harmful content (incit. to hatred)	(1) Porn (2) Violence (3) Harmful content	(1) Quotas for TV broadcast vs. online platforms (2) Quotas/investment requirement for independent audiovisual production
A) Linear services --Broadcasters --Pay per view	(1-3) Current AVMS Directive contains obligations related to all three areas	(1) Current AVMS Directive does not apply to PPV adult channels (2) Current AVMS Directive contains provisions to protect minors that apply (3) Current AVMS Directive contains provisions on harmful content that apply Implementation measures controlled by member States	(1-2) Current AVMS Directive contains provisions that apply related to both



<p>Audiovisual services regulatory areas</p> <p>Services</p>	<p>Content regulation</p> <p>(1) Freedom of reception (2) Advertising time limits and content rules (tobacco, alcohol, foods) (3) Prohibitions on harmful content (<u>incit. to hatred</u>)</p>	<p>Protection of minors</p> <p>(1) Porn (2) Violence (3) Harmful content</p>	<p>Cultural protection</p> <p>(1) Quotas for TV broadcast vs. online platforms (2) Quotas/investment requirement for independent audiovisual production</p>
<p>B) Non-linear services –Video on Demand</p>	<p>(1) Current AVMS Directive ensures borderless access (2) Current AVMS Directive does not have provisions that apply (3) Current AVMS Directive contains provisions that apply</p>	<p>(1-3) Current AVMS Directive contains provisions that apply</p>	<p>(1-2) Current AVMS Directive does not apply</p> <p>(1) Proposed Art. 13 Would require minimum 20% European works in catalogues with exceptions granted to small <u>VoD</u> companies or thematic channels</p>
<p>Streaming services (subscription or transactional models)</p> <p>Video-sharing sites (UGC-sites) YouTube, Vimeo, Facebook videos, <u>Daylimotion</u>,...</p>		<p>Proposed Art. 28 would require/allow measures to be taken by member States: Age verification system for porn and violence with PIN or encryption, as well as some measures for blocking these sites</p>	<p>(2) Proposed change Would allow member States to require contribute to financing audiovisual production. This would be applicable to services in the EU or that reaches EU audiences and has some subsidiary or offices or other connection within the EU.</p>

3. Change towards a borderless tv market





Copyright policy rules for audiovisual	Cross-border portability	<u>Multiterritorial licences</u>	Movie industry rules	Role of Collective Management Organizations (CMOs)
Broadcasting TV ("linear") PPV TV	Applied freedom of reception thanks to the first TWFD Directive 1989	Not applied for TV or VoD services	Applied Private agreements for exclusive rights (exceptions in sport or special events)	Applied only at national level Coordination in selling public communication rights to movie / TV industry
<u>Non linear</u> services VoD Streaming	Not applied "portability" o "borderless subscriptions"	Applied Only for Music services (Directive 2014/26) (<i>OJ L 84, 20.3.2014</i>)	Changes needed private agreements with VoD providers instead of traditional TV (Netflix, Amazon...) National laws imposing limits to non-theatrical release (windows)	Changes needed CMOs coordinating also <u>multiterritorial</u> licenses for TV, movies

Figure 3



4. Conclusions

- Freedom of communication and movements as basis to be applied to “any kind of media”
- Harmonization of linear and non linear: there is only a way to reach audience
 - To clarify what is not applied to non linear (newspapers? Cloud storage?)
 - “responsible editor”
- Convergence between future AVMSD and the cross-border content portability
 - Need of having a multiterritorial licence system to allow video-TV portability
 - Naming the cross-portability regulation explicitly (as it already does for eCommerce...)
 - To think of the “cross-border” users
- Do not extend current cultural quotas and financial support rules to non-linear services
 - 20% quota would be feasible for Netflix ...
 - Explore other measures for cultural protection
 - The US providers (Netflix, Amazon..) can be an opportunity for join inversions with filmmakers, movie industries
 - Not cultural invasion but mutual enrichment
- To be generous and foreseeing trends

Thank you!



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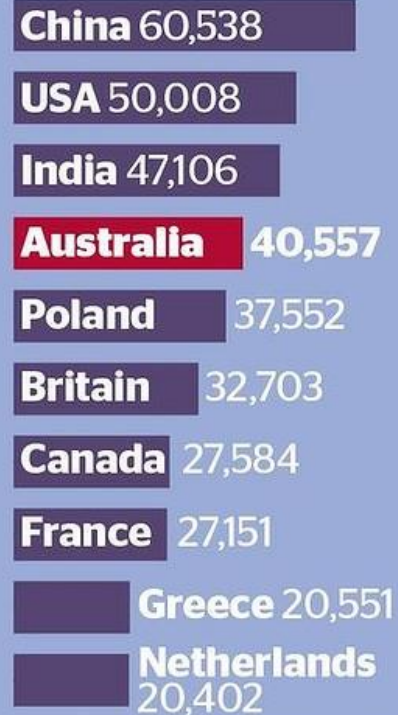
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We all pirates!

Top 5 Most Pirated Shows Globally		Downloads (5 th Feb – 6 th April 2015)	Top Countries
1.	Game of Thrones	7m	Brazil, France, USA
2.	The Walking Dead	5.7m	Brazil, Spain, France
3.	Breaking Bad	3.8m	Spain, Brazil, France
4.	Vikings	3.4m	Brazil, France, Russia
5.	House of Cards	2.7m	Italy, Brazil, Spain

House of Cards Downloads for the third season



Source: Excipio

Europeans watching Netflix



MARCH 6, 2014 | 10:00AM PT

JASON RAISH

An in-depth overview of how streaming competitors across the continent are girding for battle

Because users matter

Table: Present and future Europeans watching Netflix (Millions)

	2013	2016	2018	
UK	3,5	9	10,5	
Germany	2,7	4,6	6	
Netherlands	0,4	2,2	3,8	
Sweden	0,5	1,2	1,8	
France	0,5	1,5	3,4	

Source: Corredoira, L., Netflix website and Overseas growth potential. *Variety*

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BBC statement ABOUT portability

The [BBC](#) said: "We are interested in being able to allow UK licence fee payers to access BBC iPlayer while they are on holiday in the EU, and welcome the European Commission proposing regulation to help make this possible....Being able to offer BBC iPlayer also depends on the UK Government implementing legislation to modernise the licence fee to include VOD as well as linear viewing, something the Government has committed to do next year. That will mean users of BBC iPlayer could be verified as UK licence-fee payers while they are on holiday in the EU."

<http://www.ibtimes.co.uk/eu-wants-unlock-netflix-iplayer-sky-sports-people-travelling-europe-1532571>