

Supporting European AV works diversity beyond quotas

Univ.Prof. Dr. Katharine Sarikakis and Dr. iur. Krisztina Rozgonyi

Audiovisual Media Services within
the Digital Single Market | 15 June
2016, LSE and CEPS, Brussels

The problem about AV content

- Demand and need for more content by consumers
- Single Market of AV content unenforced
- Multiple subsidisation and conflict in end receipt of products
- Mobility of citizens experienced as punitive
- Only mainstream AV products remain available or affordable
- Status quo benefits exclusively publishers/producers in big countries and their collecting societies

The paradox on European AV content

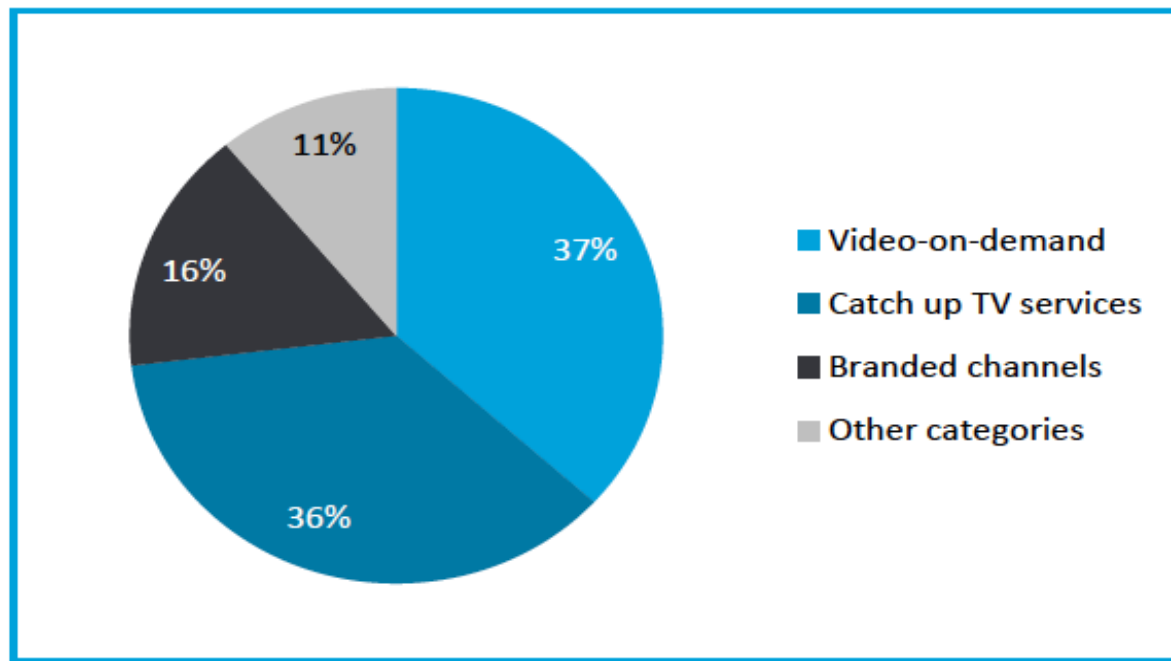
Costly and arduous production of European AV content under AVMSD quota requirements

VS.

disproportionate spatial and temporal restrictions in their on-line cross-border availability

On-demand AV media services are the cornerstone of the European Single Market

Figure 1 : Breakdown of on-demand audiovisual media services established in the EU 28 by category of services – 2014



Source: European Audiovisual Observatory

“Particular challenge lies with the promotion of cross-border circulation of European audiovisual content”

European Council, Policy debate 19 May 2016

- “On television, European works do rather well (64% of transmission time), but in the period 2009-2010 only 8% of this share consisted of non-national European works”
- “For video-on-demand, on average 27% of the films available in catalogues is European, with 19% non-national and 8% national European films”

Where are European AV works?

Cross-border availability of live broadcasting on-line	Availability of catch-up services	Availability of broadcast archive online (no full access)
Full availability: twenty-one programmes (21)	7-day availability: sixteen (16)	Seven (7)
Partial availability: four (4)	Selected availability: twelve (12)	

Fragmented regulatory context

1. Copyright and information society services (INFOSOC Directive): ‘the right to communication to the public’ as per Article 3(1) of the [InfoSoc Directive](#) (CJEU decision in 2013 (ITV Broadcasting Ltd & 6 Ors v TV Catchup, Case C-607/11))
2. AV media services as per Article 1 (g) of AVMSD: ‘on-demand audiovisual media service’
3. Competition law: potential anti-competitive practices in case of exclusive agreements and bundle of services (e.g. French Conseil Decision 08-D-10 of 7 May, 2008)
4. Licensing: “un-licensed” watching of PSBs’ programs (e.g. UK – 2016)

Conflicts:

aims and practice of the Market
scope and provision of the AVMSD

intent and enforcement in public contract

- a. geo-blocking practices render AV services inaccessible outside the country of origin as a result of copyright territorial restrictions;
- b. uneven 'catch-up' content availability across EU MSs after first broadcast; and
- c. inaccessibility of digitised AV archives ie subsidisation and withdrawal of product

Proposed policy measures

- I. **Revision of Article 16 and 17 of the AVMSD:** MSs to ensure AV works produced according to quota requirements are *free from territorial copyright restrictions within the EU* and are made *available* at an *evenly set period/s of time* after their first broadcasting across the EU;
- II. **Expansion of the scope of AVMSD:** *include the function of PSBs as providers of such quotas;*
- III. **Amendments to Article 5, 2 (c) and 3 (n) of the InfoSoc Directive:** mandatory implementation, loosening of spatial and technical restrictions and establishment of a legal deposit framework of AV works produced by PSBs.

Benefits

Social & Cultural

- Increase permanent availability of high degree of EU-made content
- Permanent source for further culture making i.e. remixing and innovation
- Permanent cost-effective source for research and development
- Small countries content provision more exposure
- Diasporic, mobile and “mixed” communities direct access
- Support for independent makers/creators through exposure

Market & Legal

- Small countries content provision more exposure
- Generation of more interest in “niche” markets and stimulation of market i.e. production and third services, ‘celebrities’
- Stimulation of associated industries electronics, software, other media
- Enhanced return on investments in the production of European works by enlarged audiences
- Clarity and equally applicable rules across EU members