

# LSE MEDIA POLICY PROJECT

## Supporting the Diversity of European Audiovisual Works beyond Quotas

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One of the paradoxes European audiences face in the audiovisual market is that while not enough European content is available overall, what is produced becomes unavailable due to (unnecessary) spatial and temporal restrictions.

These issues are of particular importance because content is often produced by direct financial contributions from the public, in the case of public service broadcasting (PSB) through fees and/or taxation, or otherwise through subscriptions to private services, and indirectly through subsidies, tax allowances and other forms of state support.

With the stated aims of ensuring diversity and a competitive, integrated industry, the Audiovisual Media Service Directive (AVMSD) requires a majority of broadcasters' transmission time to be devoted to European content. The European Commission's proposal to revise the AVMSD would extend a quota of 20% also to on-demand services.

At the moment, meeting quota requirements can be expensive and falls disproportionately to PSBs.<sup>1</sup> Access to and distribution of European works is, despite two decades of proactive engagement, still lagging behind.<sup>2</sup> We identified one problem holding back European content and suggest ways the AVMSD could be amended to rectify this.

Our investigation of 51 publicly supported pro-

grammes from across 28 member states<sup>3</sup> shows that access to publicly funded content across Europe is chaotic and inconsistent.

### Summary of results (by number of programmes)

This demonstrates that there is a clear contradiction between the aims of the scope and provision of the AVMSD, and the reality in practice:

- geo-blocking practices render audiovisual (AV) services inaccessible outside the country of origin as a result of copyright territorial restrictions;
- uneven 'catch-up' content availability across EU member states after first broadcast; and
- inaccessibility of digitised AV archives.

In all cases, there are restrictions to the accessibility of works that have been produced under the AVMSD's quota requirements, despite the 1997 Amsterdam Protocol's stipulations of cultural diversity and pluralism.

These practices effectively undermine the spirit of the policy provisions for a diverse, competitive and borderless market of audiovisual media services. They:


- lessen the plurality of media available for EU citizens;
- undermine the value of European works and the investment made by EU taxpayers and states;

Cross-border availability of live broadcasting online	Availability of catch-up services	Availability of broadcast archive online (no full access)
Full availability: 21	7-day availability: 16	7
Partial availability: 4	Selected availability: 12	

- c. undermine the perspectives of a Digital Single Market and a single AV space for PSB-derived works.

These problems are only being partially addressed by other policies, and not by the AVMSD. Geo-blocking is discussed within the copyright reform with proposals on the table to ensure that subscribers to online content services in the EU can access these services, when temporarily present in a member state other than where their subscription is based.

We propose revising the relevant rules in the AVMSD (Article 16 and 17) to require member states to ensure audiovisual works which are produced to meet quota requirements are free from territorial copyright restrictions within the EU (e.g. by their competent regulatory authorities), and are made available at an evenly set period/s of time after their first broadcasting across the EU, therefore without discriminating against citizens who lack the means to purchase them privately. The control of broadcasters over programmes was recently affirmed by the Court of Justice of the European Union (CJEU)<sup>4</sup>. Availability also implies continuous support for European content production, with a clear aim at pan-European broadcasting.

We also propose streamlining and harmonising the regulation for content production, accessibility and availability, through an expansion of the scope of AVMSD. We propose that the AVMSD should include the function of PSBs as providers of such quotas with the aim to connect the provisions of the 1997 Amsterdam Protocol on PSB to those of the single market. During the parallel, ongoing copyright reform and the review of the INFOSOC Directive, we recommend the provision of new exceptions to copyright to allow for cross-border uses of works contained in AV archives. Moreover, these provisions should allow for privileged access outside of physical premises of dedicated institutions. Finally, we recommend the introduction of a harmonised legal depository framework of public interest AV works. 

<sup>1</sup> UK Government. (2015). UK Government response to the European Commission consultation on the review of the Audiovisual Media Services Directive (AVMSD). Department for Culture, Media and Sports. London: UK Government, p. 26.

<sup>2</sup> European Audiovisual Observatory. (2015). Territoriality and its impact on the financing of audiovisual works. European Audiovisual Observatory. Strasbourg: European Audiovisual Observatory ; KEA European Affairs; MINES Paris Tech CEMA. (2010). Multi-Territory Licensing of Audiovisual Works in the European Union - DG Information Society and Media. European Commission, DG Information Society and Media. Brussels: European Commission

<sup>3</sup> We assessed the availability of fifty-one (51) broadcasted television programmes (since only audiovisual programmes are in the scope of the AVMSD) of PSBs in twenty-eight (28) EU MSs (based on EBU's database).

<sup>4</sup> Case C-607/11 ITV Broadcasting Ltd & 6 Ors v TV Catchup (TV Catchup), and the action brought by a number of British free to air broadcasters (ITV, Channel 4 and Channel 5) against TV Catchup, an internet TV streaming service, has been referred to the Court of Justice of the European Union (the "CJEU") for a second time.