Implications of the Revisions of the AVMS Directive for CEE

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European Impacts on the development of the media systems of Central and Eastern Europe
Budapest, 20-21 June, 2016

Outline

- The AVMS Directive, in CEE
- Why revising now
- Proposed changes to AVMS Directive
- Potential Implications for CEE

TWF to AVMSD

- CoE Convention on Trans-frontier Television mirrored in the EU's Television without Borders Directive
- Audiovisual Media Services Directive (AVMSD) replaced TWFD
- Supposed to be more "future proof" with non-linear "television-like" services, but maintained distinction
- Set minimums standards for content (ads, protecting minors) and quotas for European & indy works; defined jurisdiction

AVMS in CEE

- Those countries that joined the EU in 2004 & 2006 were signatories to CTT; had already adapted to TWFD during integration process
- Did not have much of a say in the AVMSD, which was adopted in 2005, implemented by 2007
- Many are small countries with unique languages
- All were undergoing extreme transformation in media markets - PSB, liberalisation, commercialisation, technology

Consequences?

- Opening of borders meant greater competition for domestic channels for viewers
- Interacted with technological change and liberalisation in other policy areas
- Requirements for monitoring and reporting on national regulators with varying capacity
- Massive growth in linear channels; majority in all but DE, ES, IT & UK were foreign channels

Happening Anyway

Consequences?

Also…

- Czech Republic among the top 4 countries of origin
- Advertising revenue for linear TV increases mostly found in CEE countries (not big, but not loss)
- European quotas meant domestic language content present on domestic television and production of original content, though of questionable quality

AVMSD didn't solve big problems in CEE media systems

Why Revision?

Problems identified...

- Imbalance - small countries disadvantaged by competition
- "Targeting" by foreign channels not effectively resolved through co-ordination mechanism -
- Restrictions and obligations on linear TV unfair in face of competition from on-demand and other new services
- Concerns about protecting minors on services not covered by AVMSD
- Lack of independence of national regulatory authorities and inconsistent enforcement

Proposed Revisions

Published by European Commission 25 May, 2016

Country of Origin

- Principle is upheld, but supposed to be easier for member states to deal with problematic "targeting"
- Origin is where most of a companies' workforce is located
- Member states contribute to database (Mavise); Commission will resolve disputes over jurisdiction within 15 days

Derogations:

Twice in 12 mos

(a) manifestly, seriously and gravely infringes Articles 6 or 12, or both;

(b) prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence; or

(c) prejudices or presents a serious and grave risk of prejudice to public health.

Scope

Video-sharing platforms:

"(i)the service consists of the storage of a large amount of programmes or user- generated videos, for which the video-sharing platform provider does not have editorial responsibility;

(ii)the organisation of the stored content is determined by the provider of the service including by automatic means or algorithms, in particular by hosting, displaying, tagging and sequencing;

(iii)the principal purpose of the service or a dissociable section thereof is devoted to providing programmes and user-generated videos to the general public, in order to inform, entertain or educate"

No more "television-like" services

Levelling playing field

- Rules about incitement, hatred, and protecting minors apply equally to linear and non-linear services
- "Video-sharing" platforms must also take measures on these things allowing for notification systems, filtering or other measures
- Rules for sponsorship and product placements are relaxed and applied equally (Maybe including "channels" on video-sharing platforms?)
- Advertising for linear services is relaxed to allow flexibility in scheduling

European Content

- Old quotas for European works and independent production are upheld for linear services

- On-demand services must have 20% of their catalogue that is European works and must give prominence to European works

"2. Member States may require providers of on-demand audiovisual media services under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contributions to national funds"

National Regulators

Article 30 is heavily expanded to include:

- regulators must be legally and functionally independent;
- they must have adequate enforcement powers;
- their heads cannot be dismissed unless they no longer fulfil legally established conditions to do the job;
- and they must have separate budgets.

There must be a mechanism of appeal for services against decisions or measures of the regulator, which should be a court

ERGA is established to "advise and assist" the Commission and for exchange of best practices and for co-ordination among national regulators.

Implications?

- More flexibility for broadcasters on advertising, product placement and sponsorship
- Simpler redress process in cases of "targeting", ability for national regulators to act on foreign channels
- Putting levies on foreign VoD services to support national content production would be allowed (threshold?)
- Might help improve independence of regulators?

Implications?

- A lot of dependence on co-regulation or self-regulatory codes that have not tended to be very effective in CEE
- High potential for significant demands on national regulators in implementation - especially if "channels" on video sharing platforms are to be covered
- Still does not solve: PSB/M sustainability and independence; many threats to media freedom and political influence over media; overall capacity for content production challenges in smaller states; and more...

What's next

- Lobbying, lobbying, lobbying
- European Parliament amendments, European Council amendments
- Trialogue

All moments to attempt to improve it