



# THE PROPOSAL FOR AN UPDATED AUDIOVISUAL MEDIA SERVICES DIRECTIVE: WHY IT'S HARMFUL TO THE VIDEO-ON-DEMAND INDUSTRY

## INTRODUCTION

The video-on-demand (VOD) industry is a recent addition to the audio-visual sector. Companies and services such as Netflix and Amazon Prime Video were launched in Europe only a few years ago – respectively in 2012 (UK, Ireland and Scandinavia) and in 2014 (UK, Germany and Austria). Numerous European VOD services have also been recently created, such as Canal Play (2011 - France), Wuaki (2009 - Spain) and Maxdome (2006 - Germany).

The VOD industry is also highly competitive, with the European Audiovisual Observatory listing more than 3,000 VOD services in Europe in 2013<sup>1</sup>. To become or stay competitive in the European market, VOD services must invest heavily in European content. Since 2012, Netflix has invested over €1.5 billion in European content for more than 80 European projects in various stages of development and launched in 2016 European originals such as *Marseille* (FR), *The Crown* (UK), *7 anos* (ES) and *Divines* (FR). Whilst Amazon's growing catalogue of European content on Prime Video, which includes *The Grand Tour*, *Ripper Street* and *The Collection*, will premiere the first VOD German language series, the thriller *You Are Wanted* on 17th March. Amazon Studio's recent Oscar wins also show the potential for VOD services to produce top quality content.

Any regulation of an industry both recent and highly competitive must be very carefully thought-out. Unfortunately, the proposal for an updated Audiovisual Media Services Directive (the AVMSD proposal) introduces measures strongly detrimental to the growth of the European VOD sector.

## THE UNRAVELLING OF THE DIGITAL SINGLE MARKET

The key provision of the current European audio-visual rules is the “**country of origin**” (COO) principle - a provision authorizing audio-visual and media service providers to abide only by the legislation of their Member State of establishment when operating across the European Union. This principle has allowed **all actors in the audio-visual ecosystem to flourish** and to experiment both in terms of content's forms and delivery methods – as evidenced by the existence of “over 10,000 pan-European, national, regional or local television channels broadcast in Europe and over 3,000 on-demand audio-visual services”<sup>2</sup>.

**Article 13.2** of the AVMSD proposal goes back to a “**country of destination**” (COD) principle for VOD services on the financing and production of European works. This COD principle gives the possibility, to all Member States, to **impose levies on VOD services** – when a VOD service is targeting audiences in a Member State's territory without being established in it.

This move from a COO to a COD principle for VOD services is introducing **further fragmentation** within the European Union at a time when the creation of the Digital Single Market is a priority.

<sup>1</sup> Press Release, European Audiovisual Observatory, 16/05/2013

<sup>2</sup> see footnote 1



Furthermore, a study from Communications Chambers<sup>3</sup> reveals:

- That recent European consultations found a clear **majority of stakeholders** supporting the COO principle;
- That there is **little evidence** that VOD services have material competitive impact on traditional TV – thereby underlining the **weakness** of the “level playing field” argument used to justify this move;
- **Unintended consequences**, such as higher levies, barriers to entry and fragmentation of the single market (esp. to the detriment of small European players);
- **Substantial implementation challenges**, such as determining whether a VOD service has targeted audiences in a Member State and determining the revenue earned in a Member State (for example, how should pan-European sponsorship deals be handled?)

▶ **Recommendation:** CCIA urges the European Parliament and the Council of the European Union to enforce a **strict application of the COO principle** to VOD services by removing this provision from the AVMSD proposal. In addition, CCIA recommends that, where VOD services contribute to national film schemes when producing content locally, VOD services should have similar benefits as any other contributor to the scheme.

## QUOTAS: AN OUTDATED SOLUTION

As explained in introduction, to include European content in their catalogues is crucial for VOD services to become or stay competitive in the European market. Therefore, quotas are unnecessary.

Quotas risk suffocating the VOD market, as new players may struggle to achieve a sustainable business model. They place the focus on quantity instead of quality programming, when the best way to promote EU content is to ensure the production of quality content, easily exportable across the world. By placing the focus on quantity, quotas could harm the growth of VOD services, as consumers regularly confronted with lower-quality European content would very likely unsubscribe from the service.

Quotas do not create a “level playing field” - the quotas provision in the AVMSD proposal is binding, while the respective rule for linear services (e.g. TV channels) leaves a degree of discretion to national implementation.

▶ **Recommendation:** CCIA urges the European Parliament and the Council of the European Union to remove this provision from the AVMSD proposal

<sup>3</sup> « An unravelling of the Digital Single Market – A review of the proposed AVMSD », November 2016, Communications Chambers: <http://www.commcham.com/pubs/2016/11/8/the-new-avmsd-an-unravelling-of-the-digital-single-market.html>