

## **egta response to the European Commission Green Paper “Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values”.**

egta is the trade association of television and radio sales houses that commercialise the advertising space of both private and public TV/radio channels all over Europe.

- 87 TV members and 41 Radio members
- 31 European countries including 24 EU Member States
- More than 75% of the European TV advertising market and 50% of radio advertising market in countries represented by the egta members

The television market in Europe is in a healthy, robust position. Year on year viewers are watching more and more linear TV content. One of the major reasons for this continued success is the diversity of Europe’s audiovisual offerings. Broadcasters continue to innovate by providing audiences with creative ways to enjoy content in a fashion that appeals to how consumer habits are changing.

While broadcasters are embracing this new reality, there are challenges that are presented by a converged audiovisual landscape. As a consequence broadcasters are competing for users’ attention with a whole variety of services. The use of other devices at the same time as television and the potential temporary abandonment of television services can reduce television’s unique appeal for the advertising industry and thereby result in funding problems for premium content.

The European audiovisual market has developed considerably since the publication of the Audiovisual Media Services Directive (AVMSD). While the cornerstones of that directive, such as the protection of minors and the core qualitative values, remain appropriate certain areas need to be looked at to ensure a truly competition-based regulatory framework. We believe that the Commission should assess whether the quantitative rules and the scope of the directive are still fit for purpose in this new media environment. One of the aims of the AVMSD was to afford broadcasters new opportunities in particular with regard to audiovisual commercial communications (e.g. product placement and sponsorship); however in the current viewing environment the distinction between linear and non-linear services, as included in the AVMSD, is no longer the key issue. Instead the principal concerns surround the levels of regulation that apply to content. Firstly, those audiovisual service providers subject to the AVMSD compared to those outside its scope and secondly, those subject to EU legislation in this area as the service originates from within the EU as opposed to those that fall outside the geographical reach of the directive. This has resulted in a distortion of competition in the audiovisual market.

For the purposes of this public consultation egta, as the trade body for television and radio sales houses, has chosen to focus on those questions directly related to commercial communications.

**(17) Will the current rules of the AVMSD regarding commercial communications still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete examples?**

While the AVMSD became community law in 2007, full transposition across all Member States was only realised in 2013. In most national markets the relationship between the media regulator and broadcasters regarding the rules on commercial communications as set out in the AVMSD remains a work in progress however one which is thus far satisfactory, for the most part, to the relevant stakeholders.

Nevertheless it is important to acknowledge that the increasingly converging audiovisual landscape creates certain legal challenges. The reality is that in this environment, the fact that different rules apply to the same content on the same screen is not only of concern to consumers but also to the industry whose services though offering similar content might have to abide by a set of different legal norms (for instance the 'e-commerce directive'<sup>1</sup> which states in article 6 that advertising should be clearly identifiable. However it is not clear which kind of information society services are subject to this obligation). For example, a service that does not meet all the conditions of an 'audiovisual media service' as defined in the AVMSD or whose supplier does not fall under EU jurisdiction since the AVMSD does not apply.

With regard to the qualitative advertising rules, the AVMSD often distinguishes between television services and on-demand audiovisual media services.

- For both linear and non-linear services, any type of audiovisual commercial communication (sponsorship and product placement) must be recognisable as such (Art. 9(1)(a)), while television advertising and teleshopping must also be distinguishable from editorial content (Art. 19(1)).
- Audiovisual commercial communications for alcoholic beverages that are shown in or in connection with an on-demand service must not be targeted specifically at minors or encourage immoderate consumption of such beverages (Art. 9(1)(e)). Article 22 lists more detailed rules which apply to television advertising and teleshopping.

Therefore the possibility of using audiovisual commercial communications depends on what type of service is being offered and used. If the viewer is watching a film from a VoD catalogue on a convergent device, the level of protection is lower than if the same film appears on a television broadcasting schedule.

egta believes that a similar discrepancy exists with regard to the quantitative rules on advertising (including sponsorship and product placement) such as the hourly 12 minute limitation. Our members feel that these provisions may hamper European broadcasters while our competitors (offering similar content on different devices) face no such restrictions. Basic qualitative values should remain in place and apply to all, but there needs to be a de-regulation of the quantitative rules allowing broadcasters to regain their investments.

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<sup>1</sup> Directive 200/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce.

egta was encouraged by the European Parliament resolution of 4 July 2013 on connected TV, led by rapporteur Petra Kammerevert MEP, which calls on *'the Commission to have an eye to the future challenges of Connected TV, in terms of competitiveness in the industry, by allowing greater flexibility for quantitative rules on advertising,..'*<sup>2</sup>.

What becomes increasingly apparent is that the qualitative standards applicable to the AVMSD provide high levels of consumer protection. **The challenge is to ensure that the same high levels of protection are guaranteed by all media service providers on all platforms offering commercial communications in order to safeguard the quality of the consumer experience and protect those who wish to access television like content.** egta recommends that a single set of rules for both linear and non-linear services would be advantageous to all.

One set of rules would provide more clarity in a rapidly changing converged environment where the distinction between linear and non-linear services is no longer apparent. A single regime would similarly benefit cross-border trade and the free movement of services.

Advertising is an essential source of revenue for the media, ensuring high-quality content, the independence as well as the pluralism and the diversity of the European media landscape. This revenue is necessary for the continued creation of premium European works. A prime concern moving forward is how purely national players will be able to compete on the same terms as the very strong global players that are establishing themselves in the national markets. It is imperative that policy makers promote and enhance European and local content in an even more global media environment.

**(18) What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there more scope for self/co-regulation?**

As today's audiovisual landscape continues to develop at an unprecedented rate, the regulatory instruments needed to address such change should be capable of adapting at an equal pace. egta does not believe that further regulatory restrictions should be introduced at present. As an association we support the European Parliament resolution on connected TV which notes *'that the introduction of new, or the extension of existing, advertising bans or other measures which have an impact on advertising as a source of funding should be prevented so that new business models can also be employed in the digital TV sector'*.

By avoiding the inherent complexities of a legislative process, **co- and self-regulation offer consumers a quick, uncomplicated, easily-accessible and often cost-free means of addressing challenges presented by technological progress.** Co- and self-regulation are also flexible enough to adapt to changing societal views.

egta recognises that self-regulation should not be seen as a replacement for general legislation with which it has a complementary role. It is important that the legal backstop is a real one and is adequately controlled and implemented for all players on the market.

One concrete example of what can be achieved via self-regulation is the European Interactive Digital Advertising Alliance (EDAA), launched in October 2012 by leading media and marketing trade bodies, including egta. The aim is to provide information directly to the consumer about online behavioural

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<sup>2</sup> [European Parliament resolution of 4 July 2013 on connected TV](#)

advertising (OBA) or interest-based advertising, as well as empowering Internet users across Europe by enabling an operational mechanism that provides real transparency, choice and control for consumers with regard to targeted ads across Europe. The EDAA does this by licensing the 'OBA Icon' to companies involved in OBA: by clicking on the Icon internet users are taken to [www.youronlinechoices.eu](http://www.youronlinechoices.eu) where they can find easy-to-understand information on the practice of OBA as well as the mechanism for controlling the targeted advertisements that they wish to receive. The programme has been actively welcomed and supported by the European Commission.

Co- and self-regulation therefore constitute potentially important responses in the field of audiovisual commercial communications.

**(19) Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?**

The emergence of, and interaction between, convergent devices has led to a proliferation of advertising possibilities. One such technique is overlays however there are many other varied means of brand interaction such as split screen, virtual product placement and screen crawlers.

As they invest heavily in programmes and services, broadcasters have a vital interest in ensuring that the content they provide is displayed on screen in an unaltered form, without unauthorised overlays. Preserving the quality of the broadcasting picture assures the broadcasters' services, reputation and credibility. This is equally the case for media content and media services delivered via the Internet. Broadcasters and sales houses must be protected against the unauthorised exploitation of their services by third parties, especially in cases where third parties remove or add commercial communications or use broadcaster's audiences for their own purposes which include alteration of their display. Technology means that TV manufacturers can also place a commercial message over the picture broadcast by the TV signal. Advertisers can now place commercial communications next to broadcasters' content directly, without using sales houses as intermediaries, thus profiting via association without any of the revenue benefiting the broadcasters. Another possible source of concern for broadcasters is that by placing their portals and app menus between the content and the user, device manufacturers are entering the value chain themselves. Such practices clearly undermine the broadcasters' mission and commercial revenue. For the foreseeable future this will damage the funding of media content.

egta therefore supports the European Parliament resolution on Connected TV which calls on the Commission *'to safeguard by law the integrity of linear and non-linear services on hybrid platforms and, in particular, to prohibit the overlay or scaling of these services by platform providers or third parties with content or other services...'*

egta believes that there is a distinction between overlays of personal communication (e-mails, instant messaging, LinkedIn etc.) and overlays of commercial communication where a third party monetises content clearly owned by a broadcaster.

In the first case one has to respect the personal choice of consumers and their right to accept overlays. It is their active and informed decision and therefore the final choice with regard to these overlays lies with the consumer.

In the second case as the integrity of broadcaster's programming is at stake, an authorisation given by the user cannot justify unfair commercial practices by third parties, such as an overlay of commercial

advertising on a broadcaster's programme. In this instance the agreement by the broadcaster must be required. **Parasitic commercial practices of this kind undermine the audiovisual value chain to the detriment of broadcasters and weaken the revenue stream which finances the production of the original programme. In addition they destroy the distinctive character of the broadcaster's service.** Where programme services free of advertising are provided –news programmes as required in the AVMSD for example – the impact of commercial overlays may be particularly detrimental.

Finally, egta welcomes and supports the recent decree by the Flemish (Belgium Flanders) Parliament which introduces the notion of signal integrity and requires distributors and over-the-top players to ask permission from Flemish broadcasters if they wish to add functionalities such as ad-skipping or other insertions to the broadcaster's signal.

## Conclusion

Overall broadcasters are developing their commercial communications offerings to meet the demands of a converged market. **Advertising will continue to be a vital source of revenue for media service providers and as long as the high standards that broadcasters currently adhere to are applied in a flexible manner by all providers of commercial communications, consumers will continue to receive a high standard of entertaining and informative content.** In 2011 television advertising expenditure amounted to €29 487 billion<sup>3</sup> across the now 28 EU Member States. A large proportion of this was reinvested into original content and content acquisition. By way of example a 2012 study from the e-media institute<sup>4</sup> showed that all commercial television broadcasters (large and small commercial television broadcasters) as well as public broadcasters, invest around 40% of their overall income (€84 billion per year) in such programmes. egta believes that in order to continue this virtuous circle of investment within the EU in a sustainable manner broadcasters should be able to monetise their own content.

One of the goals of the AVMSD was to allow broadcasters to remain competitive via the use and proliferation of new advertising techniques such as product placement. However, strict interpretations from national regulators can in fact have the opposite effect and hinder competition. Thus highlighting the need for an adaptable approach to commercial communications.

As has been already mentioned, egta member sales houses feel that the Commission should assess the current legislative framework for audiovisual commercial communications, paying specific attention to its scope. Clarity and flexibility is needed moving forward in order to cater for a fragmented media environment. We would welcome a regulatory framework which would enable European actors to remain competitive at a local and regional level.

egta, whose members are experts in advertising techniques, look forward to continuing our constructive and open dialogue with the Commission on these issues.

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<sup>3</sup> Source : European Audiovisual Observatory 2012 yearbook

<sup>4</sup> Source : [CREATIVE MEDIA EUROPE Audiovisual Content and Online Growth, 2012](#)