



Association of Commercial
Television in Europe

Presentation to JURI Committee

Public Hearing on the Broadcasters' (aka SatCab) Regulation

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May 4 2017, Brussels

Commercial Television: central to the lives of Europe's citizens as the motor of media plurality & cultural diversity

- Our TV channels reach over 200 million European households in 28 EU member states and beyond
- Our online TV services are available in over 150 million European homes connected to the internet and are central to Europe's broadband story
- Our member companies deliver content to a range of devices and platforms in response to consumer demand, going from television to total vision





1710-2017 AD

2016 AD

2017 AD

2018 AD ???



To invest in original content the AV sector needs territorial exclusivity as an incentive. Exclusivity is enforced via geoblocking. Geoblocking rests on two pillars: territoriality of copyright and contractual freedom

- ↑ Media plurality / Cultural diversity
- ↑ Consumer choice
- ↑ Affordable content
- ↑ Exclusivity = geoblocking



The proposal takes away the territorial nature of copyright by applying the Country of Origin principle to the online arena

Buy 1, get 27 for free



The Pay-TV case challenges the contractual freedom of broadcasters and rightholders to agree on geoblocking (legal basis, Article 101, Primary law, supersedes any language in regulations)

Geoblocking clauses may become void



**AV JOBS
CULTURAL DIVERSITY
MEDIA PLURALITY
AFFORDABLE CONTENT**

The combination of both the Pay-TV case and proposal would lead the audiovisual sector in Europe to ruin by taking away the two legal means necessary to uphold investment in AV

- ↓ CoO + restricted contractual freedom
- ↓ End of geoblocking / pan-EU licenses
- ↓ No content for broadcasters
- ↓ No Rol to invest in news/local content

Deconstructing the SatCab Proposal

Misleading Claims - Overview

- 1** The proposal only facilitates cross border access, but doesn't mandate it
- 2** Contractual freedom is safeguarded. Pay-TV case only applies to parties in the case
- 3** More cross-border access will lead to less piracy

Deconstructing the SatCab Proposal

Misleading Claims – Claim 1

CLAIM

1

The proposal only facilitates cross border access, but doesn't mandate it

Contractual freedom is safeguarded. The pay tv case only applies to the parties in the case

More cross-border access will lead to less piracy

REALITY

- Irrelevant argument. The problem is that one broadcaster not geoblocking undermines exclusivity of all other EU broadcasters.
- In such a scenario, the only way to sell real exclusivity is by selling to only one broadcaster/distributor on a pan-EU basis
- At the expense of all other broadcasters and consumers everywhere:
 - No access to attractive content for BC
 - No RoI to invest in news/local fiction
 - Less content available to consumer and at higher prices

Deconstructing the SatCab Proposal

Misleading Claims – Claim 2

CLAIM

The proposal only facilitates cross border access, but doesn't mandate it

2

Contractual freedom is safeguarded. The pay tv case only applies to the parties in the case

More cross-border access will lead to less piracy

REALITY

- If geoblocking clause are restrictive “by object” (“by their very nature”) than similar agreements concluded by broadcasters and content providers could be found null and void too
- The EC could decide to start similar enforcement cases involving other rightholders and broadcasters and apply the same principles. But the principles would also be applied by national courts and competition authorities.
- The only safeguards the EC could give are
 - a ‘finding of inapplicability’ or
 - a set of Guidelines
- Competition law has priority over the Regulation which is secondary law. It is therefore impossible to guarantee contractual freedom and the possibility to agree on geoblocking within the Regulation

Deconstructing the SatCab Proposal

Misleading Claims – Claim 3

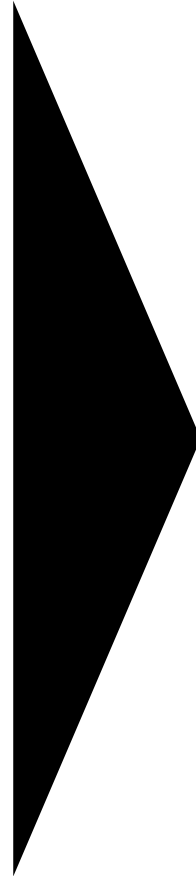
CLAIM

The proposal only facilitates cross border access, but doesn't mandate it

Contractual freedom is safeguarded. The pay tv case only applies to the parties in the case

3

More cross-border access will lead to less piracy



REALITY

- No evidence for this claim – completely unsubstantiated myth!
- Most pirated content is American content that is available in all EU MSs
- Piracy of EU content regards domestic content. Estonians do not search for Portuguese series on pirate websites
- CoO will in fact lead to more piracy, because
 - ❑ Local broadcasters will no longer be able to acquire and offer premium content
 - ❑ Premium content that is on FTA today will move to pan EU-pay and unwillingness to pay is main reason for piracy

Concluding remarks

1

Signing up to CoO
as currently set out in
the proposal

2

Less EU content being
produced
Less premium content
being available and at
higher prices
More piracy

3

**Own goal for the
DSM**

Irremediable damage to
jobs, growth, cultural
diversity and media
plurality

*Is that what
we want for
the 1M jobs in
AV and the
EUR 97bn per
year it
generates for
the EU
economy?*