

## ACT VIEWS ON THE MEDIA AND AUDIOVISUAL ACTION PLAN

### OVERALL REMARKS

This paper aims to provide input on key actions foreseen for the audiovisual sector in the Commission's Europe's Media in the Digital Decade Action Plan (MAAP) and to outline the Association of Commercial Television in Europe's initial views as regards the following actions:

1. ACTION 3 – NEWS
2. ACTION 4 – A European media data space
3. ACTION 6 – Towards a climate neutral audiovisual sector
4. ACTION 7 – Towards a broader availability of audiovisual content across the EU
5. ACTION 10 – Ensuring the functioning of the European media market

Commercial Broadcasters welcome the opportunity to engage with the MAAP. The proposal has at its heart the desire to sustain and grow Europe's media ecosystem, an objective shared by broadcasters and the European creative economy as a whole. Broadcasters invest heavily in the audiovisual ecosystem and digital transformation; financing this drive on our own revenues while facing severe and unprecedented anti-competitive conducts in the online environment. As fully regulated businesses, we have made significant contributions to enriching media pluralism and diversity, developing trusted news and respecting the drivers of investment in European content.

To do this requires an ecosystem of services. This is not fragmentation but a value chain that produces and distributes work to cater for cultural diversity. This complex balance is vital to the success of the Creative and Cultural Industries, a priority industrial ecosystem. The expectations is therefore for a coherent set of policies across and within the various forthcoming proposals. The objective should be to deliver the industrial strategy the Commission has called for and the ACT supports: [A Robust, Reliable and Responsible policy framework](#).

While financial support and subsidies at European and national level are important and needed, such instruments are insufficient in and of themselves to provide for a comprehensive, growth oriented, industrial policy for the Creative and Cultural Sectors. Delivering recovery and sustainable stimulus will require a set of comprehensive and complementary actions in the MAAP that, in particular, uphold:

- Legal certainty and a commitment to support the fundamental business drivers such as territorial exclusivity that allow for (re)investment, and thereby support plurality and diversity in the AV chain (see Action 7)
- A holistic approach for the AV sector to tackle an often disconnected policy and legislative approach with strict and (over)specific sector regulation that would take into account all relevant policy area, from taxation to sectoral quotas, to encourage investments in the sector (see Action 3, 10)
- A commitment to a liberalisation agenda that phases out outdated prohibitions and limitations on commercial communications and balances online and broadcast regulatory regimes (see Action 3)

- Ambitious voluntary sustainability goals and exchange of best practices encompassing audiovisual activities in a broad sense, including the whole production and distribution process, and all means of distribution (see Action 6)
- A focus on how data can be accessed equitably from gatekeepers (see Action 4)

Consistency of drive and purpose in the MAAP actions is therefore fundamental and will also be judged in how it fits and complements other legislation and approaches proposed and defined by the EU legislators.

Transposition/Review of existing Directives & Regulations

- Geo-blocking regulation: ensuring justified geo-blocking is upheld and the AV sector is kept outside the scope of the Regulation so as to guarantee (re)investment in content
- Copyright: ensuring the political goal of leveling the online playing field and upholding intellectual property rights is upheld, particularly as regards guidance on the best efforts required by online content-sharing service providers
- AVMSD: ensuring an application of rules to avoid further regulatory burdens on broadcasting, leveling up of rules to ensure a balanced competitive environment, a playing field and equal level of protection for viewers
- Creative Europe/Covid Recovery plans: ensuring covid recovery recovery instruments deliver effective relief to the broadcasting sector by bring about the necessary incentives (eg tax credits) and protections (production insurance, worker circulation)

Consistency will also be needed for ongoing and new proposals:

- EDAP: ensuring platforms deliver tangible commitments to tackle disinformation, protect citizens and journalists, whilst preserving a healthy democratic/political discourse with equivalent rules and safeguards
- ePrivacy: defining rules that avoid collateral damage on media companies' advertising revenues and ability to reinvest in European content. Focus on measures that address the behaviour of large global online platforms; moving increasingly use privacy (and data monopolisation) as a competitive tool
- DSA: delivering a liability regime that provides effective accountability online and ensures that what is illegal offline should be illegal online, with mechanisms that support a high level of liability and effectively tackle the propagation of illegal and harmful content online.
- DMA: addressing anticompetitive practices from large online gatekeeping platforms that limit media's ability to access the full potential of the online economy whilst limiting consumer choice throughout Europe
- European Data Strategy / Data act: ensure that broadcasters have access to and can use the data generated from the use of their services and content to improve and monetise their services

## REFERENCE DOCUMENTS

- The European Commission's [Europe's Media in the Digital Decade Action Plan](#) (or Media and Audiovisual Action Plan - MAAP) – [press release](#)
- [Broadcasters call for Media/Democracy Action Plans to ensure investment in content, media pluralism & trustworthy news](#)
- [ACT Blueprint for EU Media Policy 2019-2024](#)
- [ACT Feedback on Roadmap on European Democracy Action Plan](#)
- [The case for change to the AVMS Directive](#)
- [ACT sees AVMSD Review as a missed opportunity](#)
- [ACT Perspectives on the Digital Services Act](#)
- [Film/Audiovisual Sector welcomes EC review of unjustified geo-blocking in line with latest studies supporting territoriality](#)

## ACTION 3 – NEWS

ACT commends the Commission's intention to place the onus on the heart of the news, namely journalism and the safety of journalists. Hate campaigns targeting journalists and media organisations are particularly present and shared online. This continues to be the case despite the revised AVMSD Article 28(1) which specifically calls on MS and national authorities to act against incitement to hatred on Video Sharing Platforms. The physical safety of journalists is dependent on digital safety. In this regard, the ACT would support measures to ensure the safety of journalists, including funds for on-site security when they are not provided at national level, as well as measures to grant journalists access to additional research tools to get more data and information from online platforms (ie. to find out more about the societal relevance of certain topics, the quantity of search enquiries etc.). It is also essential that the development of AI systems safeguard the integrity of journalists' sources and source material and that journalistic data assured robust security from all third parties.

We welcome the opportunity to exchange with the European Commission on the future of the media sector. The News Media Forum should be an opportunity to discuss the broader transformation of the industry. In this context, it is essential that broadcasters with news operations, whether thematic channels or not, are included in the forum discussions. It should be an opportunity to discuss concrete measures to allow the media sector to reinvest in news.

Producing and distributing news has a cost. Each year broadcasters invest millions in professional and fact checked news disseminated across our thousands of generalist channels and dedicated news channels in Europe (a majority of which are operated by commercial entities). They invest magnitudes more than the different EU programmes. We therefore play a major part in informing the public, offering diverse opinions and editorially responsible content. This role is crucial towards ensuring media pluralism and a healthy democratic discourse in our societies.

Regulators have duly recognised this is placing heavy regulatory requirements on broadcasters. The media landscape has changed and with it a number of regulatory asymmetries have appeared, notably online.

The News Media Forum should be an opportunity, with other instruments such as the DSA, to achieve a regulatory level playing field while ensuring European citizens are equally protected no matter what distribution means they choose to access content and information.

As such, we call on the Commission in the implementation of its Action Plan to put more emphasis on the economics of the media sector and focus on the main disruptive factors, such as the spread of disinformation on and competition from global online platforms. It should adopt a broader view, and not just focus on EU financial support and explore other means to ensure the sustainability of the sector.

As outlined above, there is a clear link between the economics of the sector and the sustainability of the democratic discourse in Europe. Advertising policy is a big part of the solution. Online platforms are the publishers of the advertisements they display and should take responsibility for the content and placement of these advertisements on their networks. The lack of equivalent rules in the online environment is creating economic and social harm; fueling a wider public trust crisis with online disinformation threatening not only to drown out quality news and democratic debate, but also threatening the safety of our journalists. Europe can act at several levels including extending AVMSD measures and tackling disinformation by regulating online political content and ads that are not already subject to editorial control rules. Commercial communications obligations applied to online platforms will help drive incentives for compliance, protecting advertisers and viewers in the process.

There also needs to be a commitment to a liberalisation agenda that phases out outdated prohibitions and limitations on commercial communications for regulated media to balance online and broadcast regulatory regimes. Commercial broadcasters invest heavily in quality news while many other players do not contribute investment but yet attract a large share of advertising spend, in part due to the drastic regulatory imbalance between the different medium. A level playing field should be ensured with those companies that directly compete with us for revenues: online platforms.

Finally, in the context of the Recovery and Resilience Facility (RRF) 20% expenditure to support the digital transition, we welcome the State aid guiding template on digitalisation of news media recently published by DG COMP. We agree that national strategies to support news media should include incentives and call on Member States to recognize the central role that commercial broadcasters play in developing innovative and reliable editorial content for electronic publishing.

## **ACTION 4 – A EUROPEAN MEDIA DATA SPACE**

ACT welcomes the opportunity to engage on the creation of a European media data space. It is true that there is an issue of data access in the media and AV sector. However, the true issue is access to data from gatekeeper platforms related to the content we produce. Broadcasters increasingly face difficulties on getting access to data generated from the use of our services or content on systemic platforms such as app stores, smart TV and phone operating systems social media, or user-generated content platforms. These monetise consumers' consumption of our content without allowing us to do the same.

This is very problematic from a competition perspective. Using the value generated from the content we create, platforms are able to not only reinforce their dominant positions on their respective markets, but

also to create offers that compete directly with ours. ACT therefore supports additional rules granting access to data generated from the use of the broadcasters' services or content on platforms, without prejudice to data protection regulations.

As such data access discussions should be focused on how data from these gatekeepers can be accessed equitably by others. From our perspective, this is an issue that can and should be tackled in the context of the Digital Markets Act and Data Act, but a media data space is unlikely to solve this. Beyond privacy issues there are some competition concerns with this initiative. As outlined above, There is definitely a data access issue, but it is not within the media ecosystem itself, it is in relation to online platforms. Therefore, the added value of this initiative is unclear to us at this stage as are the reasons why broadcasters would want to share sensitive customer data with competitors.

On the Media Data Space as proposed in the MAAP:

- The MAAP says that actual content may be shared on the Media Data Space. It is not clear why broadcasters would want to upload their content on a common media data space for everyone to use as this would severely undermine the content's value. However, we would like to point out that such an initiative already exists in the area of news: [ENEX](#) is an association of the world's leading commercial TV broadcasters. ENEX members share their news content and their news production resources.
- Where we potentially see a use-case for a media data space is when it comes to content meta-data for the purpose of handling intellectual property rights.
- As outlined above, broadcasters already have issues acquiring audience and behavioral data from platform about their own content. Indeed, this data is very useful to create content better tailored to consumer needs and distribute it more efficiently. But it is not clear why and how broadcasters could / would want to share this data with their competitors.

## **ACTION 6 – TOWARDS A CLIMATE NEUTRAL AUDIOVISUAL SECTOR**

As a founding signatory of the United Nations' [Global Media Compact](#), ACT welcomes the opportunity to engage on the Commission's initiative to achieve a climate-neutral audiovisual sector and are supportive of ambitious sustainability goals. Many ACT members have ambitious carbon net-zero strategies in place which aim to both reduce own emissions and offset remaining carbon emissions through projects (eg. on renewable energy). Broadcasters take sustainability seriously and increasingly have in place processes to minimize the impact of their activities on the environment at every step of the process (eg. project development, planning and pre-production, production and de-commissioning). There are various ways to do so, from limiting single use plastic on set to limiting travels and dealing with suppliers. To summarise, our members have focused their environmental efforts in two main areas: changing behavior by raising awareness (amongst both viewers and employees) and taking action to reduce greenhouse gas emissions from our businesses.

ACT supports sustainability goals encompassing AV activities in a broad sense, including the production and distribution process, but also the footprint of production studios in general. We support the development of best practices encompassing the whole value chain, including both green production and

VoD streaming. A number of our members have developed best practices, such as green media contracts, that we would be happy to share.

Tackling emissions from VoD streaming is crucial to fight climate change as VoD streaming is increasing. As a result we see more energy consumption, and global energy-related CO<sub>2</sub> emissions will increase even more. The focus should be how we as industry partners can work together and influence the whole value chain, in particular the ICT sector for more data (CO<sub>2</sub> emission & energy) transparency. In this context, the Commission could consider launching a study to compare the relative impact of the different distribution models (e.g. linear/non-linear, one-to-one vs. one-to-many).

ACT would also welcome a dialogue with companies producing products used by the end users and give advice to the end users of how to use them. Internal studies on CO<sub>2</sub> emissions from our streaming services have shown that a significant part of CO<sub>2</sub> emissions related to VoD are from the devices used by our customers in their own homes.

However, any future initiative and targets should duly take into account the severe impact the pandemic has had on the AV sector. Any new initiative and targets need to remain voluntary and consider the absolute necessity of ensuring a level playing field between all actors operating on the European market.

## **ACTION 7 – TOWARDS A BROADER AVAILABILITY OF AUDIOVISUAL CONTENT ACROSS THE EU**

Territorial and exclusive licensing of rights are crucial for the film and audiovisual sector in order to guarantee its creativity, financing and sustainability as well as development of existing and new business models. Legal and business certainty, and regulatory consistency are absolutely essential on this matter, as these principle are fundamental to the whole audiovisual industry. For this reason, ACT and 52 other organisations representing key stakeholders in the film and audiovisual creation, production and distribution value chain [supported](#) the Commission conclusions set out in the first review of the so-called Regulation on unjustified Geo-Blocking. Indeed, the conclusions of this Review – namely keeping film/AV content and services out of scope of the Regulation – are in line with the findings of several [studies](#) on the role of territoriality in the film and audiovisual sectors.

Recent studies have [confirmed](#) these findings and shown the production and distribution effects of eroding territorial exclusivity. Amongst the key findings, the study demonstrates that territorial exclusive licencing remains key to diversity in content produced and the range of distribution models deployed, ultimately to the benefit of European consumers. It confirms that territorial exclusivity continues to underpin the financing of new film and audiovisual content production in the EU, in particular by enabling presales and preserving the value of future distribution rights. It also addressed why a 'requisite rights' limitation on the use of geo-blocking or a model of 'language exclusivity' would be unsuitable as an alternative to exclusive territorial licencing. As a result, territorial exclusivity remains fundamental to development, financing, production, and marketing/distribution of film and AV content across the EU, a conclusion supported by the wider film and audiovisual sector.

Another [study](#) undertaken by the strategy consultancy Oliver & Ohlbaum Associates concludes that the exclusion of audiovisual services, including sports, from the scope of the Geo-blocking Regulation should be maintained to avoid significant damage to the level of consumer access to sports across Europe and to the sports themselves. If the ban on geo-blocking were extended, then European sports licenses would effectively become pan-EU, leading to a shift in the competitive landscape for acquiring sport rights in the EU and up to 103 million citizens across 11 territories facing higher prices to access top tier sports coverage than they do today. Furthermore, 69% of the current value of European sports rights could be at risk if the ban on geo-blocking were to be extended.

Supporting the freedom to engage in exclusive territorial licensing is critical especially in the wake of the COVID-19 pandemic and its dire consequences on the ecosystem. We therefore support boosting the circulation of content in Europe by focusing on mechanisms to facilitate cooperation on production and distribution, namely via co-productions and incentivizing pre-sale of future distribution rights and ensuring the freedom to agree territorial and exclusive licensing of rights is preserved.

Policies that support territoriality and deliver circulation of works through market-led solutions such as co-productions and incentivizing pre-sales are a key lever to support the film and audiovisual sector's ambition to grow diversity of content and distribution options in each EU Member State territory to the benefit of consumers. Such solutions, based on the freedom to exercise exclusive rights are indeed the pre-condition for cultural diversity in content produced and distributed. Co-productions allow the sharing of financial risk in production, favour greater multi-territory incubation and increased circulation/distribution that will in turn ensure local marketing and tailoring – ultimately driving content awareness and demand. As a result, European consumers gain access to a culturally diverse offer both in terms of content and in distribution opportunities and services resulting in a win-win for audiences and for the European film and audiovisual sector itself.

This has been recognised by EU Member States, including in the 2019 Council conclusions on improving the cross-border circulation of European audiovisual works, with an emphasis on co-productions, and more recently in Council Conclusions on safeguarding a free and pluralistic media system adopted on 27 November 2020<sup>1</sup>.

## **ACTION 10 – ENSURING THE FUNCTIONING OF THE EUROPEAN MEDIA MARKET**

ACT would like to recall that the AVMSD, which is still being implemented in a number of member states, already deals with issues underlined in this action. Thus the focus should first be put on its correct implementation, rather than trying to go beyond the scope of the directive. Fostering diversity in video on demand catalogues requires as a starting point to ensure that multiple video on demand providers, amongst which European providers, continue to exist. In a highly globalised world it is vital that the EU considers how best to sustain a thriving, dynamic and creative European content industry, where EU

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<sup>1</sup> there is a need to recall the importance of the key principles of financing media content which underpin the whole value chain and safeguard media pluralism. For example, territorial and exclusive allocation of licensing rights can often be crucial for the audiovisual media sector. The development of new innovative business models is also of great importance.” Council Document 12814/20 adopted in written procedure 27 November 2020

consumers are able to continue to enjoy a wide choice of high-quality European content including the plurality of news.

If original content investment is to be sustained, a more level commercial playing field is vital. Commercial broadcasters invest in original European content. Many other players do not contribute investment but yet attract a large share of advertising spend. The European Audiovisual Observatory has reported that these same players are competing more intensively for advertising revenue against content rich AVMSD services. This is why ACT saw the AVMSD as a [missed opportunity](#). However, the European institutions are taking the first step in the right direction with the Digital Markets Act, which should help ensure fairer competition by forbidding business practices, such as bundling often adopted by gatekeeping platforms to promote the uptake of their own services and offering.

The voluntary nature of discussions on the diversity of VOD catalogues will therefore be key in this context. We would not support a further reinforcement of a quota system, namely via an additional layer of non-binding requirements which, coupled with the AVMS quota obligations, could lead to confusion and legal uncertainty. The promotion of European content, including non-national European content, should be market driven rather than quota based. European content is at the heart of scheduled and on-demand services of ACT members for one reason: viewer demand. Mature viewers need not be guided by the legislator. This in no way impedes the Commission and national governments from investing in public initiatives to further promote European content (e.g. MEDIA programme, Lux Prize...). Furthermore, the non-national nature of a work is a too narrow and specific interpretation of diversity. In our view, non-national does not equal diverse. Content in Frisian, Breton or Gaeilge shown by a Dutch/French/Irish provider is certainly diverse but is not non-national.

The proposal should be in line with AVMSD approach and focus on European audiovisual works as defined in the [European Convention on Transfrontier Television](#). We would therefore caution against approaches that would shift the focus away from European Works to non-domestic works.

However, we would welcome support measures to incentivise co-production. Those could take various forms, such as tax breaks, and would need to ensure the respect of territoriality which is meant to preserve European cultural diversity and help European players get access to content to keep offering rich, diverse and pluralist content promoting European values. Without territoriality, only very large players will be able to acquire the rights on a pan-European or worldwide basis.

European broadcasters, through their numerous co-productions and the export of their programmes to various territories, have demonstrated that it is possible to circulate European content without calling into question the territorial financing of works. The Commission should encourage and support the efforts of European players to go further in this direction, by setting up a strong industrial audiovisual policy for the export and dissemination of European culture within and outside the borders of the EU. This may involve strengthening and expanding the MEDIA programme, setting up aid for dubbing and subtitling, or other means. ACT Members are always keen to increase the diversity in their offering when there is a business case for it. Offering local content is key to many broadcasters' business strategy, increasing the share of non-domestic works may not be reconcilable with these. Offer mirrors demand, this has shifted in the last decades and our offer has evolved with it.

Finally, we would welcome a discussion on “Diversity” that goes beyond the EU work/co-productions line to a more granular level on diversity in terms of representation of ethnic groups, gender and linguistic diversity. For example, we would like to point to the BFI diversity standards, adopted by the UK government in partnership with the AV sector, including some of our member companies, looking at voluntary commitment the sector has taken to ensure greater diversity in AV production and content (<https://www.bfi.org.uk/inclusion-film-industry/bfi-diversity-standards>).