



Satellite & Cable
Broadcasters' Group

Response from the Satellite and Cable Broadcasters Group (SCBG) to the European Commission Issues Papers for the Liverpool Audiovisual Conference

The Satellite and Cable Broadcasters' Group (SCBG) is the trade association for satellite and cable programme providers. Its members are responsible for over 100 channels in the UK and in addition broadcast many more services from the UK to continental Europe and beyond. SCBG channels remain highly targeted, with audience shares ranging from less than 0.01% to 2% of digital viewers, but with a combined share of nearly 20% of UK multi-channel viewing and over 10% of total UK television viewing. They provide specialist factual and educational services to viewers interested in history, music, nature, art or science, as well as broadcasting to cultural and ethnic minorities in their own languages. They are also developing innovative enhanced and interactive services and increasingly attracting audiences migrating away from traditional channels.

Satellite and cable broadcasters operate in an extremely competitive and volatile environment, without privileged access to scarce Government-controlled spectrum or to the must-carry status afforded to terrestrial networks. They are therefore unable to attract mass advertising revenues, and do not benefit from public funding. Instead, satellite and cable broadcasters depend entirely on their own programming investments and marketing initiatives to attract and keep audiences across a range of different broadcasting platforms. Their viability depends on an ability to adapt to technological developments, respond directly to audience preferences and quickly absorb commercial pressures.

Satellite and cable broadcasting is the fastest growing sector in the UK television industry, employing over 6,000 people in the UK with revenues of nearly £5 billion. This sector produces more originated programming than the terrestrial channels combined, accounting for more than half the UK's total spend. Satellite and cable channels are also providing a huge boost to public service output, broadcasting 14,000 hours of public service programmes in a typical month.

ISSUES PAPER: RULES APPLICABLE FOR AUDIOVISUAL CONTENT SERVICES

ISSUE 1: MATERIAL COMPETENCE

The most important regulatory principles for SCBG members are certainty, flexibility, pragmatism and cost efficiency. Where these criteria are in place the regulatory framework will support investment, innovation and growth. In this context, the proposed revision of the TVWF Directive will have a significant impact on the creative and communications industries at what is a critical stage in their development. It is therefore important that the Commission continues to listen to a broad range of stakeholders in order to reach a balanced outcome and a framework that supports continued development and competition in the European market.

Regulation of non-linear services

SCBG does not support the principle of creating a new framework including all forms of audiovisual content delivery and we suggest that self-regulation (or co-regulation) is a valid regulatory tool that the Commission should consider in addressing the concerns identified in this Issue Paper.

In our experience self-regulation offers a proportionate and, if correctly implemented, effective regulatory solution. Self-regulation offers a number of advantages over externally imposed regulation and these are summarised below:

- **Self regulation provides for a necessarily dynamic regulatory framework.** As the non-linear environment is still at a nascent development stage there is a risk that externally imposed regulation would constrain the future development of the sector. Industry, working closely with policy makers, is better placed than external regulators to identify market developments that may raise regulatory concerns and to respond to consumer concerns in a timely and constructive manner. The non-linear sector is in part differentiated from the linear sector by the scale of consumer choice and the low consumer switching costs. Where there are concerns about inappropriate content, for example, any failure by the non-linear community to act will result in loss of consumers. Self-regulation allows also for the appropriate use of complementary tools, such as parental controls and filtering in a more flexible way than would be feasible under external regulation.
- **Lower regulatory costs.** In conventional linear services it is a straightforward task to identify the broadcasters who must be licensed and made subject to regulation. Their number is limited by the scarcity of the transmission media. In contrast there are many millions of citizens and companies providing content in a non-linear environment where distribution capacity does not provide a natural constraint. The practicalities of identifying and appropriately licensing all relevant content providers would make externally imposed regulation

prohibitively costly for tax payers and for industry. Existing content regulators would need to expand many times over in order to cope with additional regulatory responsibilities. Self-regulation, on the other hand, is not a burden on tax payers. Moreover, as effective self-regulation is part of an online service provider's customer proposition non-linear content providers can be expected to proactively seek to comply with self-regulatory obligations in order to enhance their proposition.

- **Promotes EU competitiveness.** External regulation can and does serve to raise both barriers to entry and to new service investment. Unlike conventional television services there are no geographic boundaries on the Internet and the consumer benefits from a free choice of content from around the world. Inappropriate regulation of European service providers will undermine European service providers' ability to compete effectively for these consumers. As self-regulation is likely to be responsive both to the interests of consumers and to the interests of industry than external regulation, it is less likely to dampen innovation and investment.
- **Facilitates effective competition.** With the growth of non-linear services and their ancillary technologies, such as rights management, there is finally a genuine prospect of effective competition to the incumbent PSBs and telecom operators. New technologies lower entry barriers, reduce the cost of competing with the established players and stimulate new and exciting business models, with the consumer as the ultimate beneficiary. External regulation would impose significant costs on new entrants.

Self-regulation does not mean no regulation. It has been proven to be an effective and responsive regulatory tool in both the European publishing and Internet sectors, as well as in advertising regulation in the UK.

The Issues Papers fail to clarify how the Commission defines non-linear services and without a clearer understanding it is difficult for the industries affected to translate proposed reforms into an impact assessment. The SCBG would welcome clarity in the next round of consultation.

A basic tier of rules

Many of the basic rights and protections proposed for inclusion in a basic tier of rules are already enshrined in existing copyright, libel and obscenity laws and the e-commerce and distance selling directives. There is an inherent risk therefore that channels will find themselves subject to two sets of rules.

It is also questionable whether additional rules such as identification of commercial content are relevant given that viewers are increasingly media literate. Today's audiences are comfortable with a huge amount of choice delivered over a variety of delivery mechanisms with different and emerging forms of commercial communication.

Furthermore, we would question whether the Commission has established a clear rationale for a basic tier of rules or properly addressed the associated implementation problems or cost burdens. The benefits of such a change to the Directive must outweigh the compliance costs and in the absence of evidence, this remains a serious concern for new and growing businesses alike.

Regulation of linear services

SCBG supports the proposal to make rules for linear audiovisual services “lighter and more modernised” but it is not clear, beyond the proposals to relax some areas of commercial communications, how this will take shape.

We would question in the first instance whether TVWF-type regulation applied to all linear services, regardless of the competitive conditions or incentives they face within their respective economic market, is appropriate. In particular, the emergence of linear content delivery over the Internet will increase market incentives to attract and keep viewers by, for example, producing local content or scheduling commercial communication appropriately.

ISSUE 2: TERRITORIAL COMPETENCE

Country of origin principle

The country of origin principle is crucially important for pan-European broadcasters, supporting the key objective of free movement of goods and services. The experience of SCBG members is that the principle works well and provides certainty for broadcasters and investors, enabling them to distribute channels efficiently across the EU. Regulatory risk and additional compliance costs would be incurred if the rules were to change in any significant way, and we do not support any erosion of this important principle.

However, we acknowledge that problems have arisen related to supposed circumvention of national rules and would therefore support greater clarity on the interpretation of the principle.

SCBG opposes any extension of Article 2a to cover “other considerations of overriding public interest than those included at present (serious harm to minors)”. In particular, the inclusion of types of advertising reflecting specific cultural or political objectives could have a serious chilling effect on the movement of programming within the EU.

SCBG also opposes any change to the Article 2 criteria that determine establishment. Many of our members have pan-European businesses developed on the basis of the existing framework and provisions, and any alteration to these definitions would affect the structure and viability of these operations.

ISSUE PAPER: CULTURAL DIVERSITY AND THE PROMOTION OF EUROPEAN AND INDEPENDENT AUDIOVISUAL PRODUCTION

SCBG opposes any increase in quotas for European or European independent productions.

SCBG members broadcast a large number of different types of thematic channels, and the ability to commission or acquire European and independent production therefore varies considerably. The “where practicable” clause remains a crucial provision to allow flexibility, in particular for start-up or specialist channels. It also fairly reflects the challenges faced by smaller channels competing with better-resourced public service broadcasters and larger commercial broadcasters.

It is in broadcasters’ commercial interests to commission local programming where that is a driver of local demand, to offer viewers a balanced and diverse range of content. In our experience a combination of market demand and the current regulatory approach is sufficient to ensure that quotas are fulfilled. This is the case for many SCBG members who have increased their proportion of European and independent production over time.

ISSUE 2: MONITORING OF THE APPLICATION OF ARTICLES 4 AND 5 IN THE MEMBER STATES

Most SCBG members are small cable and satellite broadcasters and monitoring of the application of Articles 4 and 5 is a significant and time-consuming drain on resources. For example, an operator with multiple channels can be required to compile up to 30 individual reports on an annual basis.

We would therefore support an alternative monitoring system that relied on ex-post controls, such as auditing by a competent authority.

ISSUE 4: CONCEPT OF “INDEPENDENT PRODUCER”

The strengthening of the position of independent producers in the UK, through agreement between the terrestrial broadcasters and the producers over the terms on which the producers can retain secondary rights for exploitation, has been an effective tool for capitalising the sector. However, it is important to note that it is applied only to publicly funded or designated public service broadcasters and that this distinction is crucially important. Intervention in the UK was justified on the grounds that the large broadcasters were able to exploit their buyer power in negotiations with smaller producers. The vast majority of cable and satellite channels are SMEs, so this situation simply does not arise. Similar intervention in the cable and satellite sector would stifle its ability to invest in original production, in particular in specialist genres such as animation. Cable and satellite channels should not therefore be included in provisions relating to retention of secondary rights by independent producers.

ISSUE PAPER: COMMERCIAL COMMUNICATIONS

I: RULES COMMON TO ALL AUDIOVISUAL COMMERCIAL COMMUNICATIONS

ISSUE 4: IDENTIFICATION OF COMMERCIAL COMMUNICATIONS IN GENERAL, INCLUDING SPONSORED SPOTS

The contribution of advertising revenues to the funding of television programming is crucially important and the Commission must ensure that, while editorial integrity and value are protected, television remains an attractive option for advertisers. In today's fragmented media environment, advertisers have many options to market and promote their products and television remains one of the most regulated.

SCBG therefore supports the moves by the Commission in its Issue Paper to liberalise advertising regulations, allowing broadcasters greater flexibility to maintain profitability and so ensure the availability of a broad range and number of channels and programmes. The advent of PVRs means that the industry must be enabled to move beyond traditional forms of advertising, especially given the acceptance and commonplace in other jurisdictions of alternative means of advertising such as product placement.

Product placement

SCBG strongly supports the authorisation of product placement as a new source of programme funding. It would also put EU broadcasters and producers on more of a level footing with non-EU broadcasters or other media platforms as an attractive partner for advertisers. However, we believe that the scope of product placement, in particular the genres of programming where placement should be permitted, is most appropriately addressed at the Member State level. This would allow the national regulator to apply rules in response to local policy and consumer concerns.

SCBG would seek to also give children's broadcasters the opportunity to raise funds from product placement for children's programming, which is extremely expensive in genres such as animation.

SCBG recognises the need for identification of advertising, but in the case of product placement suggests that identification could be included in a programme's end credits along with other suppliers of goods and services. This would be consistent with the current TVWF rule on identifying sponsorship.

Sponsorship

SCBG welcomes the Commission proposals to modernise rules relating to sponsorship of content. However, we would go further to suggest that as long as rules and measures are in place to ensure editorial independence sponsorship should be applicable to news and current affairs programmes.

Additionally, clarity over what is deemed to be news and current affairs programming would be a welcome inclusion in the Directive.

ISSUE 6: APPLICATION OF THE RULES

SCBG supports the proposal that Member States should take account of codes of conduct and co-regulatory schemes when implementing the Directive. In our experience of establishing a co-regulatory regime for broadcast advertising in the UK, the result is more collaborative, more practical and more flexible. We would therefore encourage the Commission to consider co- and self-regulation as a first option whenever possible.

II: QUANTITATIVE RULES ON TELEVISION ADVERTISING

ISSUE 1: HOURLY AND DAILY ADVERTISING LIMITS

SCBG agrees with the Commission that the rule on the daily amount of advertising spots is no longer justifiable and supports the proposal for its removal. We also favour the removal of the hourly maximum limit, and would argue that broadcasters will self-regulate the balance between editorial and advertising scheduling in accordance with their viewers' preferences. Consumer demand provides a natural constraint as too much advertising drives consumers to churn.

ISSUE 2: INSERTION OF ADVERTISING

SCBG welcomes the Commission proposal to modernise the rules relating to insertion of advertising. Greater flexibility for broadcasters to schedule advertising will enable them to attract advertisers more readily and to limit re-versioning costs.

However, we suggest that a general rule that advertising should be scheduled in natural breaks and should not prejudice the integrity of the programme should be all that is required. We do not consider detailed rules on breaks during news and religious programming, films and children's programming to be necessary because broadcasters will ensure that the scheduling of advertising is appropriate for their viewers' appreciation of a particular genre.