



[EU Broadcasting Regulation – Audiovisual Media Services Directive]

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■ Overview

- Audiovisual Media Services Directive
 - Scope: audiovisual media services (AVMS)
 - Two-tiered approach
 - More flexible advertising rules
- Critical remarks

■ Changing media landscape

- The market
 - Digitalisation and convergence
 - Multiplicity of platforms: terrestrial, satellite, cable, ADSL, mobile, etc.
 - Wider content choice
 - Competition between linear services on different platforms
 - Competition between non-linear and linear services
- The user
 - Less scheduled viewing
 - More choice and control
 - User-generated content
- => Regulatory approaches need to adapt

Changing media landscape

Passive viewers



- Television without Frontiers Directive (1989, 1997)

Active viewers



- Audiovisual Media Services Directive (2007)

■ Regulatory framework

- Television without Frontiers Directive (1989, 1997)
 - Scope: broadcasting ↔ on-demand services
 - Strict media regulation
- Audiovisual Media Services Directive (2007)
 - Technology-neutral regulation
 - Scope: audiovisual media services (AVMS)
 - Two-tiered approach
 - More flexible media regulation (advertising rules)

■ Scope: AVMS

- An AVMS is a service
 - 1) as defined by **Articles 49 and 50 of the Treaty**
 - 2) Under **editorial responsibility** of a media service provider
 - 3) The **principle purpose** of which is
 - 4) The provision of **programmes**
 - 5) In order to inform, entertain or educate
 - 6) To the **general public**
 - 7) Via **electronic communications networks**

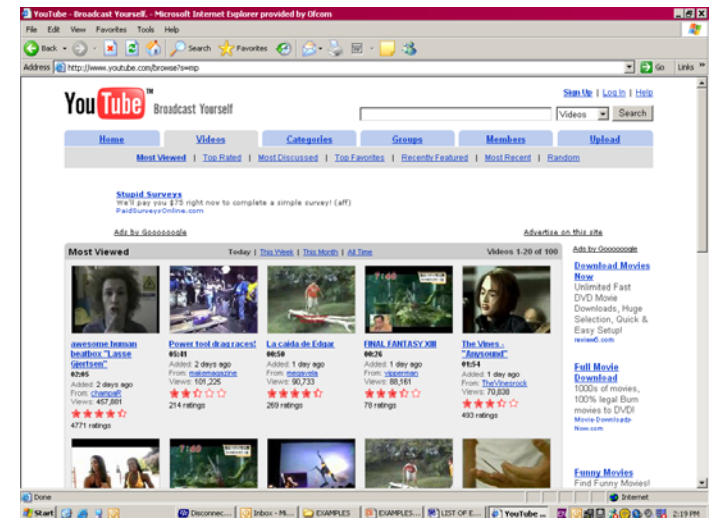
And/or audiovisual commercial communication (art. 1 (a))

■ Scope: AVMS – Economic service

- Defined by **Articles 49 and 50 of the Treaty**: economic services
- Remuneration
- ⇔ Private correspondence (rec. 18)
- ⇔ Non-economic activity (rec. 16)
 - E.g. private blogs without ads
- [<https://cast.switch.ch/>, <http://www.surfmedia.nl/index.html>, <http://tv.uvigo.es/>]

Scope: AVMS – Editorial responsibility

- Under **editorial responsibility**: effective control over selection of programmes and organisation in a chronological schedule or in a catalogue (art. 1 (c))
- *A priori* ↔ *A posteriori* (YouTube)
- [<http://www.surfmedia.nl/index.html>]



■ Scope: AVMS – Principle purpose

- The **principle purpose**
- ↔ Ancillary content (rec. 18)
 - E.g. Online versions of newspapers and magazines (rec. 21)
 - E.g. Travel sites
- ↔ Online games

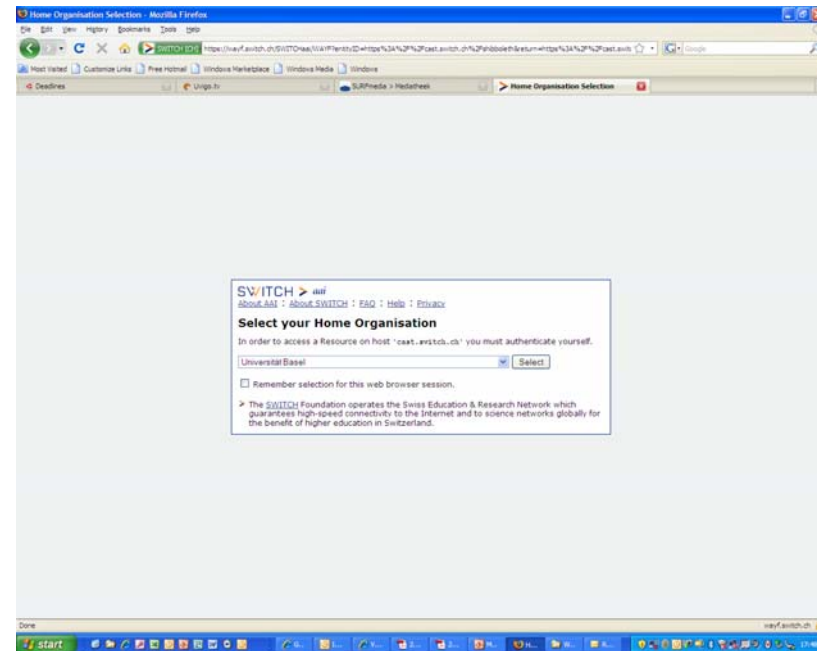
■ Scope: AVMS - Programmes

- **Programmes:** moving images with or without sound constituting individual item in schedule or catalogue (art. 1 (b))
- Films, sports events, situation comedies, documentaries, children's programmes and original drama
- ⇔ Radio
- ⇔ Text (blog)
- ⇔ Pictures



■ Scope: AVMS – General Public

- General public
- ↔ Narrowcasting
- [<https://cast.switch.ch/>]



■ Scope: AVMS – Electronic communications network

- Via **electronic communications networks**
- Transmission method is not a relevant criterion, as long as it was delivered via an electronic communications network
- => Technology-neutral approach
 - Scope: **all** audiovisual media services
 - Terrestrial
 - Satellite
 - Cable
 - ADSL
 - Mobile
 - Etc.

Which services does the proposal cover and which not?

	Audiovisual media service	Other services not covered by the proposal
Film, telefilms, serials on demand	X	
Sport events on demand	X	
Entertainment shows on demand	X	
Reality shows on demand	X	
Video reports of concerts and live arts performances on demand	X	
TV news reports on demand	X	
Advertising - other than text and still images - delivered in connection with on demand services mentioned above	X	
Advertising – pop-up clips other than text and still images– not delivered in connection with on demand services mentioned above		X
Video clips inserted in web-sites when the main purpose is not the delivery of audiovisual content but to deliver information on the activities (commercial and non commercial) of the site owner		X
Animated images inserted on press (newspapers, periodicals, agencies) web-sites – if of ancillary nature		X
Blogs for non-commercial purposes		X

Source: European Commission, "The Commission Proposal for a Modernisation of the Television without Frontiers Directive: Frequently Asked Questions", MEMD/05/475, 13/12/2005.

■ Scope: AVMS – Linear and non-linear services

- **Linear services:** AVMS provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule (art. 1 (e))
 - Push-service
 - E.g. traditional television, livestreaming
- **Non-linear services:** AVMS provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider (art. 1 (g))
 - Pull-service
 - E.g. video-on-demand

■ Two-tiered approach

- Two 'layers' or 'tiers' of rules
- Basic tier: all AVMS
- Additional (basic) rules for non-linear AVMS
- Additional tier: linear AVMS
- Reasons for differentiation
 - Degree of choice and control of users
 - Impact on society

■ Two-tiered approach – Basic tier

- Information obligation/identification of responsible editor (art. 3a)
- Prohibition of incitement to hatred based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (art. 3b)
- Ensure access for disabled people ('encourage') (art. 3c)
- Respect copyright (art. 3c)
- Basic qualitative requirements for audiovisual commercial communications (art. 3e-3g)
 - Productplacement (*infra*)



■ Two-tiered approach – Additional (basic) rules for non-linear AVMS

- Protection of minors (art. 3h)
- Cultural diversity: Promotion of European works (art. 3i)

■ Two-tiered approach – Additional rules for linear services

- Listed events of major importance for society (art. 3j)
- Short news reports (art. 3k)
- Quota for the promotion of European and independent works (art. 4-5)
- Quantitative rules for television advertising (art. 10-19)
 - Relaxation (*infra*)
- Stricter rules for protection of minors (art. 22)
- Right of reply (art. 23)

■ Advertising rules – Product placement (PP)

- TWF Directive: PP is prohibited (art. 10 (1) TWF Directive)
- **PP**: any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration (art. 1 (m))
 - ↔ sponsorship: not part of the plot (rec. 61)

■ Advertising rules – Product placement

■ AVMS Directive

- General rule: PP is prohibited (art. 3g (1))
- Exception: PP is allowed
 - in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, or
 - where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme (art. 3g (2))

■ Advertising rules – Product placement

- Strict conditions
 - Responsibility and editorial independence of the media service provider will not be influenced
 - No encouragement to purchase or rent goods or services, in particular by making special promotional references to those goods or services
 - No undue prominence to the product
 - Logo

■ PP in Flanders

- Logo:



- [De beste hobbykok van Vlaanderen.mpg](#)
- [So you think you can dance.mpg](#)

■ Advertising rules – quantitative rules

- Non-linear services: no qualitative rules
- Linear services: relaxation of (quantitative) advertising rules
 - Rules on duration
 - Remove daily limit (rec. 59)
 - Hourly limit: max. 20%/hour (art. 18 (1))
 - Rules on insertion
 - Abolishment of 20 minute rule (art. 11 (1))
 - News, children's programmes and feature films: 30 minute rule (art. 11 (2))

■ Country of origin principle

- Obligation for the home country to exercise control over its broadcasters/service providers (art. 2a)
 - Member States are free to impose more detailed or stricter rules (art. 3)
- Prohibition for receiving countries to establish a secondary control over incoming content services
- => A broadcaster only has to comply with rules of that Member State where the broadcaster is established, even if its broadcasts are received in another Member States
- Exceptions



■ Critical comments

- Content distributors
- User-generated content
- Interpretation of notions
 - Principle purpose
 - Undue prominence
 - Etc.

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