



Kulturdepartementet

E-post: [postmottak@kud.dep.no](mailto:postmottak@kud.dep.no)

Deres ref.:  
13/2626 ME/M3 HHO:MK

Vår ref.:  
A 2013/89 – ONYH/Myhr

Dato:  
19. august 2013

## Høring – EU-kommisjonens grønnbok om konvergens

Viser til departementets brev avg 3. juli 2013 der departementet ønsker høringsinstansenes synpunkter på de spørsmål som EU-kommisjonen stiller i sin grønnbok «Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values».

Norsk rikskringkasting AS (NRK) har følgende kommentarer og innspill til ovennevnte grønnbok. Etter avklaring med departementet (v. Ulrik Fredrik Thyve) er vårt høringssvar på engelsk.

## 1. GENERAL COMMENTS

NRK welcomes the initiative by the EU Commission to take a closer look on the consequences media convergence may entail.

Convergence brings tremendous opportunities to audiences and the audiovisual industry. The capacity to choose when and where to enjoy a huge range of content is significantly enhanced. Naturally, audiences need to be equipped with skills to use this range of platforms. The promotion of media literacy should therefore be a part of audiovisual media convergence policies. For the audiovisual industry, the numerous opportunities created by convergence open doors for new services and innovative ways of reaching audiences.

The trend is quite clear the audience's access to content over the internet – both as linear and non-linear - is growing and will continue to grow. However, traditional television broadcasting will still be the major channel through which the audience accesses media content in the medium term. Traditional television broadcasting is still by far the most economic favorable way to reach a large audience. Internet cannot at the present time in an efficient way handle the distribution of high technical quality content (HD and 5.1 sound etc.) to a large group of people. This will be further elaborated on in the answers to the questions below.

Convergence generates some new challenges from a public policy perspective. At the same time, the primary goals and values of the current audiovisual regulatory framework (protection of minors and vulnerable groups, promotion of cultural diversity and media pluralism etc.) remain just as relevant. But the practical implications of a situation with many players – who, in contrast to European audiovisual media service providers, are global and operate in an environment not necessarily covered by EU-regulation – need to be examined further. It is, however, important not to overemphasize the impact convergence may have on existing regulation. Should new regulation be deemed necessary, the regulation should as a general principle be made technology neutral to ensure that the regulation is durable when new technical inventions and/or services emerge, with the aim to ensure a level playing field for market players.

To obtain all these aims it is vital for public policy bodies to have an overview of all relevant regulation with a focus on convergence. It might be a correct assessment by the EU Commission to not “cover in depth” the ongoing work on the redrafting of copy right regulation in this Green Paper. However, it is important to ensure that the convergence perspectives are made part of said redrafting process. The same

applies to other legal areas such as electronic commerce, electronic communication etc. and legal issues like must-carry, child protection, due prominence, EPGs, net neutrality etc.

As already mentioned one should aim at creating a level playing field for competing market players established within EU/EEA. At the same time regulatory bodies need to ensure that new regulation does not create an imbalance between EU/EEC market players and for example USA market players, which could give the latter economic, legal and/or other competitive advantages.

## 2. GROWTH AND INNOVATION

### 2.1 Market considerations

#### Question #1

What are the factors that enable US companies to establish a successful presence in the fragmented EU market despite language and cultural barriers, while many EU companies struggle? What are the factors hindering EU companies?

There is no doubt that many USA based companies have entered the EU market, i.a. different platforms (Apple TV, Google TV, Facebook etc.) and media content providers (Netflix, HBO etc.). Some have been more successful than others, and the market penetration varies. As an example one can compare Netflix and HBO Nordic. They both started up their services about the same time here in Norway, and after about 10 months Netflix has a penetration of about 20% of the Norwegian market and HBO Nordic 2%.<sup>1</sup> Thus, it is not easy to identify one or a few decisive factors that can explain why some USA based companies have had such a success in the EU market. The picture is many-faced. In trying to identify some of the factors we would like to point out the language barrier. Netflix content is (almost) only in the English language and thus has a more international appeal than if the content was in Norwegian. Another factor is that most of its content is already known to the public and gives the audience the possibility to consume content over again or catch up on ongoing TV-series. A third factor could be that the regulatory framework for international business may give USA based companies a competitive advantage.

However, in connection to the discussion on the EU market as a whole, NRK wants to emphasize that in the Norwegian market (and this probably applies to the majority of national markets within EU/EEA) the audience to a very large extent

---

<sup>1</sup> Cf. Dagens Næringsliv 16<sup>th</sup> August 2013,

watches national channels, where the content is in the national language and based on national values. Even though NRK's linear and non-linear services are accessible in neighboring countries NRK's main focus is on the Norwegian audience. NRK has no aspiration of becoming a major cross border actor in the EU market. This is also in line with NRK's by-laws regarding the purpose of the corporation. Article 3 of said by-laws states the following: "The purpose of the NRK is to provide public service broadcasting for the entire population of Norway by means of radio, television and other media platforms."

Thus, it is important that the EU Green Paper does not only focus on the cross border issues in the EU media market. National services and content will still play an important role in a converging media market, and it is equally important to ensure an environment where national quality content – especially public service content - can thrive.

It should also be mentioned that existing copy right regulation may hamper cross border services, but as mentioned in the Green Book this needs to be further discussed in the already ongoing redrafting of EU copyright regulation.

Question # 2

What are the factors affecting the availability of premium content? Are there currently practices relating to premium content at wholesale level which affect market access and sustainable business operations? If so, what is the impact on consumers? Is there a need for regulatory intervention beyond the application of existing competition rules?

Premium content, whether films (eg. latest Hollywood movies) or sports (eg. football World Cup or the Olympics), generate potentially high audience shares and high advertising revenues. Its availability is characterized by complex legal and factual conditions, including competition and copyright law.

Buying the rights to the most popular content is also highly competitive, and this can lead to very high prices for the most valuable content being paid mainly by pay-tv broadcasters who are able to pass on the costs to pay-tv subscribers downstream, potentially in triple play bundled services (eg. broadband, content and phone). This can lead to the social exclusion of certain classes of consumers from important national sporting events.

Consumers should not be denied the opportunity to access premium content, which in the case of major national sporting events in particular plays an important role in social and cultural cohesion. For this reason, and as recognized in numerous

EU cases, decisions and standards, the public remit of public service broadcasters is both broad and diverse. It should ensure universal free access to a wide range of content and services in the public interest on all platforms, including the more popular content as well as content for minority tastes.

Article 14 of the AVMS Directive lays down framework conditions to enable Member States to ensure that certain events (cultural as well as sports) of major importance for society (reflected in a national list, known as "Listed Events") are available universally to all viewers free-to-air. The conditions should be interpreted as platform neutral and thus preventing certain events from being made available to the public on an exclusive basis by pay-tv broadcasters or any other pay service provider on any platform (ie. including telecoms operators and/or internet services providers) in such a way as to deprive a substantial proportion of the public the possibility of following such events on a free to view basis. In this way, it can be ensured that the rules are "future-proof" and that they take into account different platforms and modes of consumption.

In the converged media world, where free-to-air audiovisual media may face not only competition from traditional pay-tv operators but also from vertically integrated pay-models of telecommunications and technology conglomerates (sometimes vertically integrated global media groups), these provisions may become even more vital to ensure universal access to major national events for all.

Question # 3

Are there obstacles which require regulatory action on access to platforms?

NRK understands the notion of "platforms" in a broad sense, covering not only technical networks used for the transmission of audiovisual content but also additional facilities for making audiovisual content available, which may include software and hardware elements, navigation systems and aggregated content offers.

Pursuant to its by-laws NRK "shall be available to the whole population" and "shall attempt to provide the broadest possible distribution of its remaining programme provision." To be able to fulfill these obligations it is of vital importance for NRK that its programs and services are made available on (at any given time) prevailing platforms. Subsequently, it is important for NRK to be able to make its content available on any new platform where the public would find it natural to find/access NRK content.

NRK has already taken the consequences of media convergence and makes digital content and services available on a multitude of platforms. Cooperation between media organizations, on the one side, and platforms operators and digital intermediaries, on the other side, is thus of an ever increasing importance. While the proliferation of the different ways of accessing content represents a huge potential for opening up an ever more diverse and plural offer to the audience, the economic players behind new platforms have the potential to become indispensable gateways between content providers and the public.

With the new forms of distribution of content over the internet new actors will appear such a platform gatekeepers and content gateways. These actors could make it difficult to find NRK content. They could also control, restrict or bar access to media content which could lead to a limitation of plurality. So far this has not happened, and NRK cannot see a need for regulation in this area at the present time. However, it will be important to follow the development of these services and see if these gatekeepers will ensure easy access to public media content. In relation to the question of gatekeepers issues such as net neutrality, CDN-services and due prominence will also become relevant.

Net neutrality ensures openness and non-discriminatory features of the Internet, and thus is a key driver for innovation, economic efficiency and the freedom of information. As a general principle, providers of electronic communications to the public should not be allowed to apply any traffic management practices which would block, throttle or degrade any content services. Non-discrimination is important to prevent providers from privileging their own content, services or applications (also in terms of quality of service), or those for which they have concluded commercial arrangements. In addition, it is important to ensure that the development of managed services/networks (such as IPTV) by providers does not detriment the open Internet.

Prominence rules ("must-be-found" rules) are specifically designed to ensure that as many citizens as possible can easily access media content of public value. Given their increasingly important roles in selecting and guiding content and information, digital intermediaries and their decisions may inherently impact on the "findability" of content with a public value or with a particular function for a democratic society. Thus, convergence raises the challenge that existing prominence regimes could fail to fully reach the public policy objectives for which they were originally designed.

## 2.2 Financial models

### Question #4

Do the current AVMSD requirements provide the best way to promote the creation, distribution, availability and market appeal of European works?

As already mentioned, a high proportion of NRK's audience has a strong preference for audiovisual content which is rooted in national language and culture. There is no indication that this strong appeal is likely to diminish. The best way to ensure the creation and market appeal of European audiovisual programs is to support a well-functioning audiovisual media value chain and to ensure that European media companies have the economic strength to produce or commission such content.

Any requirements on a minimum quota for European/national works ought to be platform neutral and the quota should be based on the collected content offered by the individual media service provider, and not on eg. individual channels.

### Question #5

How will convergence and changing consumer behaviour influence the current system of content financing? How are different actors in the new value chain contributing to financing?

Convergence brings many opportunities for audiences to access and engage with content in a variety of ways. Even though linear consumption on traditional TV sets remains hugely popular, non-linear services are becoming more and more popular. Convergence has also unleashed the potential for additional investment in content. Some new players, such as video-on-demand platforms, have recently started investing in content. Despite the stark initial growth rates in investment by new players, the level of commitment to invest in original works is still nowhere near the level of investment by media organizations in the broadcasting sector.

One of many obligations for a public media service provider is to take responsibility of program areas that are of great public interest, and that are educational and important for the democratic participation. This means that a public media service provider will not only focus on programs that are relevant for the majority of the audience, but also on programs with a specific content that are directed to a limited audience. In a converged media environment it is of great importance that all types of content are made accessible on various platforms, and here public media plays

an important and unique role. Through the trust of the audience and a stable economic situation public service has a unique possibility to produce programs that no one else can or dare to invest money in. As an example from NRK we can mention the “minute-by-minute” program series where NRK i.a. filmed the whole boat trip of “Hurtigruten” along the Norwegian coastline. It is the longest TV-program ever, 134 hours (sic!). The program was sent linear at the time, and is now available on the net. The program has been a success not only in Norway but also abroad. To be able to continue to make such programs it is important that the public media is granted a stable and foreseeable environment, i.e. when it comes to the financial situation.

NRK cannot see that it is crucial to keep existing value chains unaltered. The most important is that existing value chains does not hamper underlying public policy objectives. To achieve this it might be necessary to require a transparency on the value chains.

### 2.3 Interoperability of Connected TV

#### Question #6

Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market?

In a media world where many different content services compete between each other to get the attention of the audience there is always a risk that smaller broadcasters – with a “smaller language” – will have to use more money and resources to reach the audience. Larger broadcasters producing programs in an international language will here have an advantage. It is much easier for them to reach their audience, and their potential audience is normally much larger. In a fragmented media world smaller broadcaster may struggle to reach their audience and may have to reallocate money and resources initially allocated for production to distribution. It is thus necessary to find a way to reach the audience efficient and at a low cost.

With a fragmented technical situation which hampers interoperability, not only cross border but also on a national level, it will be difficult to reach the audience efficiently and at a low cost. This needs to be solved in order to be able to achieve a functional and economic sustainable pan-European market, and thus lowering the distribution costs. The market is in a dire need of a standard (with limited opening



for variations) that would coordinate at least the European market. Such a standard will have to be updated frequently. It is not unlikely that the HbbTV-standard - an ETSI standard based on a conglomerate of sub-standards and which is already mentioned in the Green Paper – would be the most suited candidate.

Use of standards should as a general principle not be forced through legal regulation, but should instead be based on a consensus between relevant market actors. Thus, NRK feels that the Commission's endorsement of the interoperability provisions and continued dialogue within the industry is the best mechanisms of addressing these issues.

NRK, as many other broadcasters, is still sitting on the fence regarding the use of the HbbTV-standard due to the fact that it is unclear whether it will be the de-facto standard and also that it is not deemed final at the present state.

Even with a de-facto standard one has to remember that the evolution of services shall not be governed by new technology and standards as such, but by the audience and their use of media content.

## 2.4 Infrastructure and spectrum

### Question #7

How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations?

The broadcasting platforms (terrestrial, cable and satellite) are optimized for the delivery of linear content to large screens in a stationary environment. Mobility can be mainly served by terrestrial platforms (broadband and broadcasting). Terrestrial broadcasting platforms would be able to serve even mobile devices such as smart phones and tablets if they would have radio and TV tuners integrated like in other countries (e.g. Korea, Japan).

In terms of consumer experience, all broadcasting platforms offer a predictable and guaranteed quality of service. The full capacity of the platform is available to all concurrent viewers, thus the quality is independent of their number. Mobile broadband platforms, in contrast, are based on best effort service and quality cannot similarly be guaranteed. The capacity of the platform is shared between

concurrent users, thus as their number increases, the capacity available to individual users is reduced (congestion) and ultimately leads to loss of quality or even signal all together. This is also reflected in existing contracts which include a volume cap, rendering the mobile internet connection useless when exceeding the limit. Fixed-network broadband platforms offer best effort internet connection of over-the-top content. Managed networks (IPTV) offer a guaranteed video quality. However, they are only available by network operators that control the network end-to-end and integrate the service delivery platform.

Terrestrial broadcasting platforms are unique as they offer a combination of characteristics and benefits that cannot be replicated by any other single distribution platform. What makes the terrestrial broadcasting platform unique is that it has a universal coverage of free TV and radio, which does not require any form of registration. However, the different broadcasting platforms are complementary to each other and are all needed to ensure that the public service content is available for the audience.

Broadcast networks are superior for large concurrent audiences and live broadcast, whereas broadband is needed for on-demand services. At present, no single technology or distribution platform is capable of delivery of all types of services to all users on all devices. Taking into account limitations of penetration, speed and capacity for multiple concurrent users, the internet will not serve as an adequate replacement for broadcast platforms in the medium term. Many market actors, including NRK, will combine these different ways of distribution of content. To ensure best possible quality of the content that is distributed through the internet NRK has entered into agreement with CDN service providers to alleviate the traffic on the internet.

*A complementary approach to devices, networks and technologies is therefore required.*

**Question #8**

What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?

As already mentioned regular television broadcast is (at the present state) the cheapest and most reliable way to make linear audiovisual media services available to the public. The internet would collapse should we “broadcast” the same content

over the internet. This will not change in the medium term. Thus, it is important that necessary frequencies are made available for the DTT-net.

Even if it has positive effects, it is our experience that frequency sharing is still in an experimental stage and such sharing creates many problems, such as frequency interference and bureaucracy. We can give the following example: Without frequency sharing it is possible to use the same frequency for microphones within the whole region. With frequency sharing the issue of interference arises and it will be necessary to determine in a case by case situation what frequency can be used for the microphones.

Question #9

What specific research needs with regard to spectrum have to be addressed to facilitate such development?

As already mentioned in our answers to Question #8 there is a need for further research and development regarding the use of shared frequencies.

### 3. VALUES

#### 3.1 Regulatory framework

Question #10

Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?

It is difficult to provide a general answer to this question. NRK does not see market distortions between linear and non-linear services which require an immediate revision. However, there is a need for further monitoring and, probably in the medium term, for rethinking the suitability and sustainability of the graduated approach in its current form.

Over the coming years media consumption will most probably gradually shift more to non-linear services, and it is possible that this process will accelerate at some stage. This will not automatically challenge the current regulatory distinction between linear and non-linear services, which is traditionally based on the rationale that viewers have more control over non-linear services than over linear ones.

However, with a whole range of connected devices, and the respective content platforms serving them, the distinction between linear and non-linear services may to some extent become less obvious for users, and may at times even become invisible. This distinction is far from obvious for a viewer using a “start-over” service where he can start from the beginning of an on-going linear service or make a short pause in the linear program. Nor is it obvious that these services should be regulated differently than linear services.

Although there is no immediate pressure to review the graduated approach of the Directive, such a review will inevitable have to take place in the medium term.

The review should go beyond the issue matter on market distortion. It would also be necessary to examine whether the traditional rationale for differentiating linear from non-linear services, i.e. greater consumer control with regard to on-demand services, is still valid. If the difference in user control decreases further, it might be necessary to also consider other criteria. It will also be necessary to assess whether the graduated rules of the AVMS Directive will still be appropriate and effective in achieving the underlying public policy objectives. These policy objectives may also differ between different actors and their roles.

Considering possible market distortion, the real threat does not come from the graduated approach of the Directive, but from the fact that, with connected devices and converged platforms, "regulated" and "unregulated" services (i.e. services which are covered by the rules of the Audiovisual Media Services Directive and those which are not) are now made available to the public next to each other on the same devices and platforms, and in direct competition.

This raises the questions of whether certain provisions of the Directive (for example, basic principles of human dignity and the protection of minors) should be extended beyond the current scope of the Directive, and whether new rules to safeguard media freedom and pluralism should be introduced for content gatekeepers (digital intermediaries, platform operators) even if they are not media service providers within the meaning of the Directive

Since the general objective is to create a level regulatory playing field for all audiovisual operators competing with each other in a converged environment, two aspects need to be addressed:

- the potential distortion between operators that fall within the geographical scope of the AVMS Directive (i.e. which are under the "jurisdiction" of a Member State as defined in the Directive) and those that remain outside, and

- the potential distortion between operators that fall under the material scope of the AVMS Directive (i.e. which are "media service providers" according to the definition of the Directive) and those that remain outside.

These questions are addressed in more detail in our answer to Question #11.

Question #11

Is there a need to adapt the definition of AVMS providers and/or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?

The consequences of a situation where many new players, in contrast to European broadcasters and media service providers, are operating in an unregulated environment (not covered by EU regulation), obviously needs to be examined further, and it is necessary to look for ways in which this imbalance may be reduced. Cf. our answer to Question #10.

Given the fact that the implementation of the AVMS directive is fairly recent, the examination on the effect of the directive should as a primary goal be limited to evaluate how the directive influences the market and how the new rules have been put in practice. In addition we would like to point out that one should as a general rule be cautious and restrictive in adding new regulation on content since there always is a risk that such regulation may limit the fundamental principle of freedom of speech.

In a converged media environment, the fulfillment of the public policy objectives underlying the AVMS directive (protection of consumers and vulnerable groups, promotion of cultural diversity and media pluralism, etc.) may be put at risk i.a. through the increased role and importance of new digital intermediaries (in particular, content aggregators and platform/gateway operators, etc.).

It may well be that some of the new players, and particularly content aggregators, are already covered by the current Directive (at least as regards part of their activities). Thus, before considering an extension of the scope of the AVMS directive to other content providers, it would be useful if the EU Commission could provide some guidance on how the current rules, including the rules on jurisdiction and the notion of "audiovisual media service provider", should be applied in the new converged and multi-platform environment.

NRK is concerned that content platform operators and intermediaries in certain cases may assume an unjustified gatekeeping role, by exercising editorial control or private censorship/filtering. It is therefore important that broadcasters retain sole editorial responsibility over their content, and this editorial responsibility should not be transferred to, or shared with these digital intermediaries. To ensure this even further one could consider whether the non-liability rules in the Directive on Electronic Commerce, or similar regulation, should also cover said content platform operators and intermediaries.

NRK is in favor of self-regulation, both regarding content and services. Legal regulation should only be considered when the development leads to a situation where market actors do no longer safeguard fundamental principles.

**Question #12**

What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?

If the objective is to protect European consumers effectively also with regard to audiovisual services which are increasingly received from outside the EU/EEA, it is essential to limit the application of the country of origin principle to services from within the EU/EEA (as under the current Directive). Extending the benefits of the country of origin principle to external operators would not be justified, unless these are established in a country with which there is an agreement that ensures respect of the same regulatory requirements or an equivalent level of protection. Such an approach would be in line with the internal market rationale.

NRK wants to point out that it supports - as its preferred approach - the country of origin principle as it is currently defined in the Audiovisual Media Services Directive, with limited exceptions and combined with minimum harmonization in relevant coordinated areas.

**Question #13**

Does increased convergence in the audio-visual landscape test the relationship between the provisions of the AVMSD and the E-Commerce Directive in new ways and in which areas? Could you provide practical examples of that?

Cf. our answers to Question # 11 and #12.

Media-specific and other media-related regulatory issues which are important for media in a converged environment should be addressed in the AVMS directive

rather than in the Directive on Electronic Commerce or any other directive. This will reduce the risk that media aspects are disregarded and that the media are dealt with like any other commercial commodity, despite their importance for democracy, cultural diversity, and the freedom of expression and information.

For the same reasons, should the principle in Article 4(8), which states that as a rule the AVMS directive takes priority over the Directive on Electronic Commerce should be maintained.

Question #14

What initiatives at European level could contribute to improve the level of media literacy across Europe?

NRK has no comments to this question.

### 3.2 Media freedom and pluralism

Question #15

Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to public intervention at EU level?

Search engines, and - more broadly - digital intermediaries, play an ever more important role as gateways to online news and information. In view of the increasing role of these gateways, NRK would generally welcome more transparency on how access to content is determined, in order to ensure a free and open access to information on the Internet. Should there be a potential risk that free and open access to information is not upheld, there may be a case for regulatory safeguards.

It is important to ensure the audience's access to information and content of importance to the society. Such access should not be hampered by digital intermediaries. Thus, it may be necessary on a national level to regulate access, due prominence or findability for specific services or specific content.

Question #16

What should be the scope of existing regulation on access (art. 6 Access Directive) and universal service (art. 31 Universal Service Directive) in view of increasing convergence of linear and non-linear services on common platforms? In a convergent broadcast/broadband environment, are there specific needs to ensure the accessibility and the convenience to find and enjoy 'general interest content'?

In the context of access issues, it is necessary to distinguish between

- competition aspects on the one hand and media freedom and pluralism aspects on the other,
  - access to transmission networks and access to content platforms/gateways, and
  - access by content providers to networks/platforms, and access by users to content.
- a) Rules on access to networks / technical facilities on fair, reasonable and non-discriminatory terms (Article 6 Access Directive)

As it is necessary to clearly distinguish between telecom networks/services and content platforms/gateways, the Access Directive can only play a limited role in the field of connected TV and other converged media. This is also due to the different regulatory objectives (competition in the telecom market on the one hand, media freedom and pluralism on the other hand).

Therefore simply extending the scope of the access rules in the Access Directive would hardly provide a complete solution. This consideration applies to both Article 5(1)(b) and Article 6 of the Access Directive, which cover certain technical facilities for digital radio and television. Possible regulatory gaps should primarily be addressed through media law provisions where appropriate.

- b) Must carry rules (Article 31 Universal Service Directive)

The situation is slightly different with regard to Article 31 of the Universal Service Directive. Whereas this provision is part of the telecom package, its purpose is clearly to serve legitimate public policy considerations by Member States (Cf. Recital 43 of the directive). It is also for Member States to designate (normally based on their media law) the services which benefit from must-carry status. Must-carry rules should be applied to cable networks and other managed networks which are used by a significant number of users of these networks as their principal mean to receive audiovisual media services. This may apply also, in particular, to



IPTV networks. Cf. Norwegian Act on Broadcasting where the legal basis for regulation of must carry obligation is made platform neutral, Section 4-3.

Audiovisual media services should be carried out in an unaltered and comprehensive way, with sufficient quality and including complementary services such as accessibility services and hybrid TV signaling.

Media convergence clearly challenges must-carry rules limited to linear audiovisual media services. Article 31 of the Universal Service Directive in its current form is therefore no longer fit for purpose. Linear and non-linear services are increasingly becoming part of the same integrated content offer. In this situation it does not make sense to have must-carry obligations for only the linear part of the offer. To ensure that democratic, cultural and social aims are met it is important that a must-carry obligation can be imposed on the whole integrated offer. However, must-carry obligations would need to be applied to managed networks only, such as cable TV and IPTV broadband networks, and not to the open Internet, where net neutrality principles should prevail.

Moreover, media service providers often supply special applications or media players for connected devices which allow users a more convenient use of linear and non-linear content in a converged environment. Access to media apps may therefore become as important for users as access to the media content itself.

c) "Must be found" rules (due prominence)

The accessibility and the convenience of finding and enjoying "general interest content" on content platforms is a separate but particularly important issue.

In the converged media environment, scarcity of transmission capacity is not always the major bottleneck. A bottleneck of increasing importance is the interface through which users find their favorite programs, since users' attention span is limited and there is only limited space on the front screen of any user interface, portal, program guide, etc. Moreover, in the converged media environment and with connected devices, users will be increasingly dependent on interfaces, portals, guides, search engines, etc. to find the content they wish to access.

Because of the limited space available, equal treatment in a formal sense of all content services is impossible, and some kind of ranking or order of priority needs

to be applied. The top places can be awarded only once, and the concept of neutrality cannot fully work here.

In this situation, citizens can legitimately expect that program services of a particular and recognized value to society, be it for democratic, social or cultural reasons, are given due prominence on content platforms and user interfaces, and are thus easy to find. Gatekeeper intermediaries should be prevented from bearing too heavily on consumer choices and from "re-directing" consumers for purely commercial reasons. Accordingly, content services of a particular value to society should be prominently displayed and easy to access on all major content platforms.

### 3.3 Commercial communications

#### Question #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 example?

NRK is of the opinion that current rules on commercial communication will still be relevant in a converged world, probably even more so. Any such regulation should be made in the AVMS-directive.

#### Question #18

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

Cf. our answers to Question #17 and #19. It would probably be beneficial if commercial communications and overlays (content and signal integrity) are co-regulated in the same legal document.

#### Question #19

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

The protection of content (and signal) integrity in general is an important issue, and is broader than this question seems to indicate and which goes beyond commercial communications and commercial overlays. Content integrity needs to be ensured not only for (primary) TV screens, but also for so-called second screens, which are synchronized with the TV picture.

For the media, but also for the audience, it is fundamental to ensure that the content delivered to the audience is identical to the content which is made available under the media service provider's editorial responsibility. Therefore, content integrity must be safeguarded against any modification to the quality, format or display of the signal. In other words, no intermediary or third party should be allowed to interfere with the content or signal, without the authorization of the media service provider in question. This is important for the credibility and reputation of the media service provider, for the trust which individual users place in particular media services, and ultimately for the freedom of information of citizens and the protection of the rights (including moral rights) of others.

At the same time NRK acknowledges that it is the individual user who owns his or her screen or connected device. What users choose to do on their own screens for private consumption should be up to them. NRK acknowledges their active and informed decisions, and in particular their capacity to arrange the screen of their connected devices according to their tastes and preferences. Users should be free to split the screen or to put different windows on top of each other. This includes the right to combine, as the case may be, public and individual communications on screen.

This user autonomy finds its natural limits in the respect of the rights of others and in mandatory rules including the law on fair competition. Accordingly, just as an authorization given by the user cannot legalize copyright infringements (including the protection of moral rights) by a content provider. Nor can an authorization given by the user justify unfair commercial practices by third parties, such as the overlay of commercial advertising on a broadcaster's program. An example of such an unfair business model would be a company offering services at a reduced price or for free to individual users, on condition that the user authorizes the company to insert commercial communications in or around audiovisual programs which are provided by broadcasters. There is a danger that without clear safeguards, such parasitic services as mentioned above are de facto imposed on users via default settings in devices or by the general conditions which users have to accept to receive certain services. This should be deemed as an unlawful circumvention of the de fault rule stating that use of overlay shall at least require the user's free and voluntary consent.

The problem with parasitic commercial practices shall not be limited to the technique of overlays - i.e. overlays on the picture for a commercial purpose, in particular those consisting of commercial communications - but should also cover *scaling* (where the size of the broadcaster's picture is reduced and the insertion of

third party content/commercial communications is inserted around it), framing and pre-roll, mid-roll and post-roll advertising.

The impact of such parasitic commercial practices would be detrimental to NRKs reputation and reliability. For the children the impact of commercial overlays may be particularly detrimental.

In relation to this question NRK wants to mention that the EBU proposed some basic common principles in 2011 on content integrity and the display of broadcast signals on screen to guide market participants and regulators.<sup>2</sup>

### 3.4 Protection of minors

#### Question #20

Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?

The protection of minors and human dignity in today's converging media environment is a special concern and represents a key challenge. They are fundamental values which need to be ensured in all audiovisual services.

In general, NRK does not see particular problems in the possibility of protecting minors on the basis of the existing AVMS Directive's rules. The current levels of flexibility and discretion are beneficial to enabling different cultural and social norms to be reflected in national regulations and opens up for the dynamic development of what is deemed to be harmful content for minors. What is needed is a flexible framework which can be adapted as audience expectations change.

However, it is important to closely follow the development of new services and content to see if additional regulation will be necessary.

We would also like to mention that in Norway there is an ongoing redrafting of existing regulation to provide protection for minors against harmful content, covering both linear and non-linear services.

---

<sup>2</sup> EBU Principles for Internet Connected and Hybrid Television in Europe, Principles Nr. 3-5, April 2011, see: <http://www3.ebu.ch/cms/en/policies/initiatives/hybrid>

Question #21

Although being increasingly available on devices and platforms used to access content, take-up of parental control tools appears limited so far. Which mechanisms would be desirable to make parents aware of such tools?

NRK has a "parent control system", along with many other broadcasters. This system enables parents to prevent their children to watch certain programs available on NRKs net player. The age limitation can be set to 15 and/or 18 years. Even though the control system works only on the computer where the system has been made active, it is still deemed to be a sufficiently effective system and has been well received by the public.

The decision on what content NRK offers to its audience, and any age limitation, is and should be deemed as an editorial decision made exclusively by NRK.

Question #22

What measures would be appropriate for the effective age verification of users of online audiovisual content?

NRK do not think that there should be a mandatory age verification systems for normal access of audiovisual media services. It must be possible to access content without any requirements of identification. Cf. answer to Question #23.

Question #23

Should the AVMSD be modified to address, in particular, content rating, content classification and parental control across transmission channels?

NRK has no comments to this question.

Question #24

Should users be better informed and empowered as to where and how they can comment or complain concerning different types of content? Are current complaints handling mechanisms appropriate?

NRK is of the opinion that existing systems for comments and complaints are functional and well known to the public. NRK cannot at the present point see any need for additional systems.

Question #25

Are the means by which complaints are handled (funding, regulatory or other means) appropriate to provide adequate feedback following reports about harmful or illegal content, in particular involving children? What should be the respective roles/responsibilities of public authorities, NGO's and providers of products and services in making sure that adequate feed-back is properly delivered to people reporting harmful or illegal content and complaints?

Cf. reply to Question #24.

3.5 Accessibility for persons with disabilities

Question #26

Do you think that additional standardisation efforts are needed in this field?

NRK has no comments to this question.

Question #27

What incentives could be offered to encourage investment in innovative services for people with disabilities?

NRK has no comments to this question.

---

Ta kontakt med undertegnede dersom dere har noen spørsmål til NRKs svar eller om dere ønsker ytterligere kommentarer på spørsmål som ikke er omhandlet ovenfor.

Med vennlig hilsen



Olav A. Nyhus  
juridisk direktør