



Re: Creative Content in a European Digital Single Market: Challenges for the future

A Reflection Document of DG INFOSO and DG MARKT

Comments to the document from the association Tevefolket, Sweden

Introduction

The undersigned association, Tevefolket, has as its goal to promote pay-tv in Sweden by increasing the public knowledge of the services and by improving the conditions of the market, specifically the protection of the services. The members of Tevefolket are listed in the attachment. They are the main TV-platform operators, commercial broadcasters in the Swedish market and certain Swedish collecting societies. The association, previously named the Stop Association, has been active for more than ten years and has played an important role in the protection of television broadcasters' and distributors' rights in Sweden.

In Sweden, as in the other Nordic countries, all with relative small local populations, various cross-border pay-tv services play an important role since the beginning of commercial broadcasting in the territory. The satellite platforms operate throughout the Nordic countries and the main cable and ISP operators are active in several of the countries. The bouquets of pay-tv and on demand services are similar throughout the territory, with subtitles in the national languages and certain local adaptations.

The Cable and Satellite directive (93/83/EC), the Television without Frontiers directive (89/552/EEC), now Audiovisual Media Services directive (2007/65/EU) and the Conditional Access directive (98/84/EC), have all played an important role in developing this cross-border market.

Television Programs as *Content Online*

Various television programs are among the items frequently downloaded by or streamed to the consumers over the internet. Yet the Reflection Paper does not acknowledge broadcasters among the content providers. On p. 9, however, it is mentioned that

consumers have frequently sent letters concerning the non-availability of i.a. sports events, which typically are television programs.

The television programs as *Content Online* deserve a thorough analysis taking into consideration the various kinds of productions (sports events, TV-series, entertainment programs etc.) and the special conditions in this market.

Exclusive television program licenses for defined territories

The issue of the territorial boundaries of the television broadcast services is under constant discussion within the EU.

It is important for the Nordic pay-tv services to be able to acquire and maintain exclusive rights to popular programs from other countries, mainly countries which have larger populations and consequently more resources, like the US and UK. The national film production in each of the Nordic countries is limited, and the interest in the sports competitions is mainly national, whereas e.g. the international football top leagues and Hollywood films are popular everywhere. The understanding of English is very good. Thus the availability of pay-tv services from strong foreign broadcasters in the territory, without taking into account the protection of exclusive rights of the Nordic broadcasters, could be threatening for the existence of Nordic pay-tv services and their resources to offer customized services. It is also in the interest of the right holders to be able to license their rights to selected territories as they deem best.

Right holders and broadcasters agree that the existing system in Sweden and the other Nordic countries, with territorially limited licenses of television content, offers the best environment for the existence of the Nordic pay-tv services. The possibility to acquire television content on an exclusive basis is key in order to finance all pay-tv operations. If exclusive program licenses for defined countries cannot be sustained, the only way to be exclusive is to acquire pan European exclusive rights, which is neither possible for the Nordic broadcaster nor beneficial to anyone.

The weakening of the Broadcasters exclusivity by opening for e.g. online services providing other broadcasters' services with similar content, but with rights primarily acquired for other countries, could have even wider consequences. The financial backbone of the local services is provided to a large part by the popular international programs, which enable the service to reinvest in both local and international new programs. The potential new international pan-European service will be less interested in investing in local sports, films and other productions with no attraction outside the country or territory. The financing of the local film and TV-production industry could be at risk.

Consequently, what at the first sight looks to be for the benefit of the consumers, could become the opposite. This is a common concern for all small European countries.

The Cab/Sat directive

It is very important that also in the future program rights must be cleared on commercial terms for the sake of fair competition. At least as regards pay-tv in the Nordic countries, all rights to the audiovisual content are acquired commercially with the producer for all the countries in which the broadcasts are available. Only the music performance rights are cleared for satellite transmissions with a CMO in the uplink country, and for cable re-transmissions with CMO's in all the receiving countries. In addition, the CMO's in the uplink country now apply the "tariffs of destination" also for satellite transmissions which means that the applicable tariff in each of the receiving countries are applied to the pay-tv revenues that stem from such country. With this practice, we do not understand the statement on p. 17 in the paper, which would indicate that a license in one of the EU countries would cover all Community territories.

Promotion of new online services

We agree with the intention of the paper to facilitate for new legal online services. The most serious threat and obstacle is at present obviously the widespread illegal services. Although this problem is not the in the focus of this paper, it should be noted that as long as all the European countries do not provide effective means and resources to deal with illegal activities, there will be substantial problems.

To deal with the problem by "legalizing" it by introducing a system of remuneration is not a solution as regards television programs. The right holders must continue to have the right to decide when and where their works are made available for the public.

Stockholm, January 5, 2010

For Tevefolket

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The members of Tevefolket:

Boxer TV Access AB

Canal Digital Sverige AB

C More Entertainment AB

Com Hem AB

Kanal 5 AB

MTV Networks AB

SAMI

STIM

Turner International

TV4 AB

Viasat AB