



**2015/2147(INI)**

16.11.2015

# **OPINION**

of the Committee on Culture and Education

for the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection

on Towards a Digital Single Market Act  
(2015/2147(INI))

Rapporteur (\*): Petra Kammerevert

(\*): Associated committee – Rule 54 of the Rules of Procedure

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## SUGGESTIONS

The Committee on Culture and Education calls on the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection, as the committees responsible, to incorporate the following suggestions into their motion for a resolution:

- having regard to Article 167 of the Treaty on the Functioning of the European Union (TFEU),
  - having regard to the Protocol on the system of public broadcasting in the Member States annexed to the Amsterdam Treaty amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts,
  - having regard to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) on 20 October 2005,
  - having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive))<sup>1</sup>,
  - having regard to its resolution of 4 July 2013 on Connected TV<sup>2</sup>,
  - having regard to its resolution of 12 March 2014 on Preparing for a Fully Converged Audiovisual World<sup>3</sup>,
- A. whereas digitisation affects all aspects of the lives of European citizens; whereas the cultural and creative industries, especially the audiovisual industry with its increasing offers of attractive and complementary online services creates an important cultural and economic value, employment, growth and innovation in the EU; whereas one should support this industry more amply in its efforts to take advantage of digital opportunities, to expand its public and to promote growth; and whereas copyright-intensive activities account for a significant part of the cultural and creative sector;
- B. whereas, by acceding to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, the EU, in addition to all of its Member States, has committed itself to ensuring by effective means that media diversity does not only depend on economic market opportunities;

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<sup>1</sup> OJ L 95, 15.4.2010, p. 1.

<sup>2</sup> Texts adopted, P7\_TA(2013)0329.

<sup>3</sup> Texts adopted, P7\_TA(2014)0232.

- C. whereas technical media convergence has now become a reality – particularly for broadcasting, the press and the internet – and whereas European policies concerning media, culture and networks urgently need to adapt the regulatory framework to the new conditions and ensure that a uniform level of regulation can be established and enforced, including as regards new entrants to the market from the EU and third countries;
- D. whereas the Audiovisual Media Services (AVMS) Directive is important in terms of EU media regulation and for the promotion of European works; whereas it should be based on the principle of technological neutrality and should ensure a level playing field as well as better access to, and improved findability of, digital content and digital services;
- E. whereas in some Member States the implementation of Article 13 of the AVMS Directive on the promotion of European works by on-demand services is not prescriptive enough to meet the cultural diversity objective spelled out in the Directive;
- F. whereas the cultural and creative industries depend on copyright that requires a consolidated regulatory framework to ensure the vitality, distribution and diversity of European culture: whereas the increasing power and sometimes dominant position and limited liability of internet intermediaries can jeopardise a sustainable value creation for authors and artists, and has a negative impact on their creative potential; whereas the study ‘Territoriality and its impact on the financing of audiovisual works’ underlines the important role of territorial licensing regarding to refinancing European films;
1. Welcomes the Commission’s proposals to accelerate digitisation in the EU and its initiatives to simplify cross-border access to digital content; stresses the important role that public broadcasters and digital services play for the population, in particular to people in peripheral regions and to vulnerable<sup>1</sup> people; calls on the Commission to identify in a better way the specific needs of the creative sector with regard to different types of content, creative works and business models used, and to take these into account when proposing modifications and solutions;
  2. Stresses the dual character of audiovisual media as a cultural and economic asset; observes that the need for future European media regulation arises not from a shortage of avenues of communication, but primarily from the need to ensure diversity, and insists that access to diverse, high-quality media and cultural and linguistic diversity and quality should not depend on the economic means of the individual;
  3. Urges the Commission, in the upcoming review of AVMS Directive, to take into account technological changes and new business models in the digital world, as well as changing viewing patterns and new ways of accessing audiovisual content, by aligning linear and non-linear services and by setting out European-level minimum requirements for all audiovisual media services, with a view to ensuring their consistent application in the EU by all players operating with audiovisual media services, except where such content is an indispensable completion of other than audiovisual content or services; believes that this review should focus on social, cultural and economic objectives as well as on high standards for the protection of minors and consumers and personal data, as well as for the

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<sup>1</sup> As defined in the Tunis Agenda and the Geneva Declaration of Principles of the World Summit on the Information Society.

promotion of cultural diversity; believes that it should also aim at incentivising investments in audiovisual content and platforms in the EU and at disseminating that content, thereby promoting accessibility of European works, in line with current copyright legislation or potential future reforms of the same;

4. Stresses that the ‘country of origin’ principle enshrined in the AVMS Directive is a necessary prerequisite for the provision of audiovisual content across borders and a milestone on the way to a common market in services; emphasises that it does not prevent the achievement of social and cultural objectives and that it does not preclude the need to adapt EU law outside the AVMS Directive to the realities of the internet and the digital environment, nor the need to pay special attention to companies offering audiovisual content on line or on demand that try to evade taxation and audiovisual regulation in certain Member States by basing themselves in countries with a very low tax rate or weak audiovisual regulation;
5. Calls once again on the Commission and the Member States to develop the concept of media services defined in Article 1 of the AVMS Directive in such a way that, while the Member States retain an appropriate degree of discretion, more account is taken of the potential socio-political impact of services and of specific features of that impact, particularly their relevance to opinion-forming and to diversity of opinion, as well as the question of editorial responsibility;
6. Calls on the Commission and the Member States to implement equally, and to treat efficiently, the prohibition of any audiovisual media service in the EU in the case of violation of human dignity, incitement to hatred or racism; calls for measures to be taken to ensure that audiovisual media services are made accessible to vulnerable people, that any form of discrimination, as set out in Article 21 of the Charter of Fundamental Rights of the European Union, across all types of audiovisual media services are avoided, and that a right of reply is guaranteed by all audiovisual media services under editorial responsibility;
7. Notes that intermediaries, online platforms and user interfaces, while facilitating access to content, increasingly have the means to influence diversity; concludes, therefore, that, alongside competition policy and regulatory aspects, the democratic political objective of securing diversity requires special consideration; calls on the Commission to define the terms ‘online platform’ and ‘user interface’, as well as to adjust the role of other intermediaries, without undermining their innovative potential and taking into account their active or passive role; believes that everyone, including providers of online platforms and user interfaces, should be subject to the AVMS Directive as far as it concerns an audiovisual media service; underlines, in this regard, the importance of applying rules aimed at enhancing the findability of legal content and information in order to strengthen media freedom, pluralism and independent research, and to guaranteeing the non-discrimination principle, which is essential to safeguard linguistic and cultural diversity;
8. Calls for measures to ensure that audiovisual media services are made accessible for people with disabilities and that any form of discrimination as set by Article 21 of the Charter of Fundamental Rights of the European Union is avoided;
9. Emphasises, in this regard, that the Commission should be guided by the overarching objectives of non-discrimination, freedom of contract, accessibility, findability,

technology and net neutrality, transparency and the establishment of a level playing field;

10. Demands that audiovisual media services of public interest or impact on the public opinion-forming process be easily accessible and findable for all users, especially if they are confronted with content predefined by device manufacturers, network operators, content providers or other aggregators in a manner that does not respect the users autonomy to set / install their own order and priorities; stresses that to ensure the idea of findability of audiovisual content of public interest, the Member States can introduce specific rules that aim to preserve cultural and linguistic diversity and the variety of information, opinions and media, the protection of children, young people or minorities and the protection of consumers in general;
11. Underlines that an adaptation of the AVMS Directive should create a decrease of regulation, fair conditions for competition, more flexibility regarding quantitative and commercial communication rules, and a strengthening of co- and self-regulation by bringing into balance the rights and obligations of broadcasters, through a horizontal and cross-media regulatory approach, with those of other participants of the market; considers that one should give the principle of clear recognisability and differentiation between advertising and programme-content priority over the principle of separation of advertising and programme across all media forms;
12. Stresses that in order to fight the ‘forum shopping’ practice, the country of origin of the advertising profit, the language of the service and the targeted public of the advertisement and content should be considered part of the criteria to determine the audiovisual regulation to be applied to audiovisual media services or to contest the initial determination of the competent Member State;
13. Regrets that the requirements of Article 13 on the promotion of European works by on-demand services have been implemented in different manners by many Member States, which has resulted in the absence of clear obligations and monitoring, thereby encouraging a forum shopping for on-demand services; calls, therefore, on the Commission to strengthen Article 13 by introducing a combination of clear requirements, including a financial contribution, and monitoring tools for the promotion of European works by on-demand services; urges the Commission to stimulate the legal offer of audiovisual media content by favouring independent European works;
14. Believes that the Member States should be obliged to introduce lists of major events, including sports and entertainment events, that are of general interest, and recalls that it is mandatory to notify these lists to the Commission; listed events should be accessible and in line with prevailing quality standards;
15. Calls on the Commission to check, when the AVMS Directive is being revised, whether it is still useful and pertinent to adhere to section 6.7 of its communication on the application of state aid rules to public service broadcasting;
16. Underlines that the legal audiovisual online offer should be developed further in order to enhance consumers’ accessibility to a wide and diverse content, with various language and subtitle options;
17. Calls on the Body of European Regulators for Electronic Communications (BEREC) to

examine more closely the distribution channels and types of marketing used by content delivery and/or distribution networks in the EU and how they affect media diversity;

18. Supports, from a cultural perspective, the Commission's aim of hastening the roll-out of broadband, particularly in rural areas, and calls for the promotion of public WLAN networks in both large and small municipalities, as this approach provides an indispensable infrastructure for their future operation in the interests of social and cultural integration, modern educational and information processes, and tourism and the regional cultural economy;
19. Notes the conclusion of the Marrakesh Treaty, which will facilitate access for the visually impaired to books, and encourages swift ratification thereof;
20. Calls on the Commission, in order to improve access to information and cultural goods, to present without delay a proposal to reduce VAT rates for the press, digital publishing, books and publications online in accordance with the commitments made;
21. Calls on the Commission and the Member States to safeguard by law the integrity of digital content, and in particular to prohibit the overlaying or scaling of these services by third parties with content or other services, unless the latter have explicitly been initiated by the user and, in the case of content which is not covered by the definition of individual communication, have been authorised by the content provider; points out that unauthorised interference by third parties with the content or broadcast signals of a provider, and the unauthorised decryption, use or dissemination of such content or signals must likewise be prevented;
22. Stresses that copyright is an important economic basis for creativity, employment and innovation, as well as the guarantor of cultural diversity, and that it is essential to enable Europe's creative and cultural industries to compete on a global scale; stresses that further efforts are needed in the field of copyright to strike a balance between all key actors, and that any revision of copyright law should ensure adequate protection that fosters investment and growth in the creative and cultural sector, whilst removing legal uncertainties and inconsistencies that adversely affect the functioning of the Digital Single Market (DSM); urges the Commission to review, where necessary, the regulatory framework for copyright in order to achieve a better access to creative content for European citizens, and to stimulate European researchers, educational establishments, cultural heritage institutions and the creative sector to adapt their activities to the digital world; underlines that appropriate remuneration must be paid by those who profit from the exploitation of copyright-protected works, and that any solutions in this regard should not discourage the use of legal providers; recalls that digital technologies have redefined the value chain in the cultural sector, mostly to the benefit of intermediaries and often to the detriment of creators; asks the Commission to investigate the extent and impact of such changes and to propose measures to improve the remuneration of authors and artists at European level; stresses that any revised provisions should be future-proof and technologically neutral, evidence based and carefully assessed in line with the Commission's objective of better regulation, while taking into account the differences between the digital and analogical environments;
23. Welcomes the Commission's ambition to improve cross-border access to digital content by facilitating the easier clearing of rights, taking into account new possibilities of

remuneration because of digitisation and creating more legal certainty; emphasises that minimum standards for exceptions and limitations and, where appropriate, further harmonisation are key aspects to improve legal certainty, and should, whenever possible, take cultural specificities into account; stresses that cross-border accessibility should not hinder the financing process for content or services, and that it should respect cultural and linguistic diversity as an asset; stresses that the audio-visual industry needs to be encouraged to develop innovative licensing solutions to adapt their financing models to the digital age;

24. Stresses that professional activities or business models based on the violation of copyrights are a serious threat to the functioning of the Digital Single Market, and calls for an EU-wide approach to ensure that no one benefits from an intentional breach of copyright;
25. Calls on the Commission to encourage portability and interoperability in order to stimulate the free circulation of legally acquired, and legally made available, content or services throughout the whole EU, as well as the accessibility and cross-border functionality of subscriptions, while respecting that some economic models are based on the territoriality of rights in Europe, particularly regarding the financing of audiovisual productions and especially pre-funded film productions, which allows for strong cultural diversity; stresses that there is no contradiction between the principle of territoriality and measures to promote portability of content; believes that pan-European licenses should remain an option, should be introduced on a voluntary basis and preceded by an impact evaluation; stresses that such licenses cannot replace territoriality and that funding models for audio-visual works are based on national licensing models tailored for the national markets' characteristics; calls, with regard to Article 118 TFEU, for EU-wide rights management to be developed further and made more attractive;
26. Considers that a clarification is needed on what constitutes 'unjustified geo-blocking', taking into account the consultation; recalls that there are configurations which make geo-blocking necessary, especially with the aspect of cultural diversity in view, in regard to which it is often a tool for preventing monopolisation of the market; notes that a territorial limitation seems necessary where the costs for offering content or services across borders are not covered and where refinancing is not available;
27. Calls on the Commission to optimise, through consultation with stakeholders, media release windows to accelerate the availability of audiovisual content, while maintaining a sustainable first and second window of diffusion deriving from the financing schemes of audiovisual content;
28. Calls on the Member States to extend the scope of the quotation exception, without prejudice to authors' moral rights, to short audiovisual quotations for non-advertisement and non-political uses, provided that the work used is clearly credited, that the quotation does not conflict with a normal exploitation of the work and that it does not prejudice the legitimate interests of the authors;
29. Calls for further dialogue between creators, right holders and intermediaries in order to foster mutually beneficial cooperation whereby copyrights are protected while enabling, allowing and encouraging innovative ways of creating content; calls on the Commission to take further steps towards the modernisation of copyright law with a view to providing

and developing innovative new licensing forms that are more efficient with regard to the use of creative content online and, therefore, also take possibilities of collective licensing into account;

30. Considers that the legal concept set out in Directive 93/83/EEC, after a further assessment is conducted, could improve cross-border access to legal online content and services in the Digital Single Market without questioning the principles of freedom of contract, an appropriate remuneration of authors and artists and the territorial character of exclusive rights, and welcomes the initiative of the Commission to conduct a public consultation on Directive 93/83/EEC;
31. Stresses the need to address the problematic boundaries that exist between the right of reproduction of works and the right of communication to the public; underlines the need to clarify the concept of ‘communication to the public’ in light of the recent case law of the Court of Justice of the European Union; highlights the need for a common definition of ‘public domain’ so as to ensure the widespread dissemination of cultural content across the EU;
32. Urges the establishment of mandatory limitations and exceptions provided for in existing copyright legislation, such as those in the field of education, research, libraries and museums, to allow for the more widespread dissemination of content across the EU, while taking into account the freedom of expression and information, freedom of the arts and sciences, religious and linguistic diversity;
33. Stresses that, in order to achieve a true Digital Single Market in Europe, and to enable citizens – including vulnerable people – to make full use of new digital technologies, further efforts to improve media literacy are needed; encourages, therefore, the Member States to recognise the importance of media education, to integrate the acquisition of digital skills into school curricula and to improve the necessary technical equipment; underlines, in this context, the importance of proper training for teachers on digital skills, on the way to teach these skills efficiently, and on how to use them to support the learning process in general;
34. Stresses that the ability to use media independently and critically represents a lifelong learning task across generations, which is subject to constant change, in parallel with the development of the media and understood as a key qualification; stresses that the adaptation of education and training systems is vital to improve the level of ICT professionalism in Europe and to meet the increasing demand for digitally skilled professionals in the EU; encourages, in this regard, the Commission and the Member States to create the basis for mutual recognition of digital skills and qualifications by setting up a European certificate or grading system, following the example of the European common framework of reference for language learning and teaching; stresses that further efforts are needed in the field of improving media literacy among citizens, and calls on the Commission and the Member States to promote media literacy for all EU citizens, in particular vulnerable people, through initiatives and coordinated actions; suggests that internet literacy be added permanently to the scope of efforts to increase media literacy;
35. Considers it necessary for the Commission and the Member States to adopt a two-way approach to the issue of competence and digital skills by investing in digital education and

digital infrastructures, as well as in the integration of digital content and methods in existing scholar programmes; recommends a continued focus on improving how children are protected online, through transparent self-regulatory measures in accordance with existing national and EU legislation, where appropriate; calls on the Commission and the Member States to make offers for all generations in order to mediate an appropriate and autonomous handling of information overload, as well as to invest more in the creation of European networks for the teaching of media literacy, to promote the exchange of best practice and to ensure the European visibility of national, regional or even local initiatives;

36. Calls on the Commission and the Member States to step up research into the effects of digital media on cognitive skills, effective methods of self-control, and the success of play-based digital learning;
37. Stresses that the living diversity of languages and growing multilingualism form a crucial cultural basis of the European Digital Single Market; takes the view that digitally supporting linguistic diversity, increasing its accessibility and promoting and securing the relevant skills will be an essential precondition for enabling a DSM to develop in a socially sustainable way; expects, in terms of a productive handling of multilingualism, that the Commission steps up its efforts towards a productive interaction with multilingualism, so as to permit speedier implementation of the technological basis for the active support and productive application of European multilingualism in education, film, cultural heritage, research and public administration, as well as in everyday working and business life;
38. Underlines the importance of the territoriality principle for Europe's film culture, for example, and calls for financing models for audiovisual works based on national licensing models not to be destroyed by binding, pan-European licences; stresses that the cross-border portability of legally-acquired content should instead be promoted;
39. Calls on the Commission to ensure compliance with the principles of internet neutrality, which is vital where media convergence is concerned;
40. Stresses that as extensively ensuring net neutrality is a key part of a socially-just DSM strategy, this should not be partially sacrificed for the goal – necessary in the short term – of abolishing roaming fees;
41. Recalls that a fair balance of rights and interests between the different categories of rights holders and users of copyright-protected subject-matters must be safeguarded;
42. Welcomes the initiative of the Commission to conduct a public consultation on Directive 93/83/EEC on satellite broadcasting and cable retransmission, with a view to exploring the possibility to extend the directive's scope to online communication of audio-visual works via streaming and video-on-demand, which would significantly benefit the ability of public broadcasting services to fulfil their public interest mission in the digital age and contribute to the completion of the DSM;
43. Looks to the Commission, in the DSM strategy as elsewhere, to step up its efforts towards a productive interaction with multilingualism, so as to permit speedier implementation of the technological basis for the active protection and productive application of European

multilingualism in education, film, cultural heritage, research and public administration, as well as in everyday working and business life;

44. Welcomes the Commission's thoughts on constructing new knowledge storage systems for the public sector by means of cloud technologies and text and data mining that are certified and secured under data protection law; takes the view that using such technologies in educational establishments, public libraries and archives calls for special training efforts in the library, archiving and documentation professions, and for corresponding multilingual accessibility for users;
45. Urges that more efforts be made as part of the DSM strategy to verify the implementation of free and open software in educational establishments and public administration, as the accessibility and visibility of source codes enhances the resource-saving participation of the public authorities in decisions on the use of collaborative innovations; takes the view that more open software may make it possible to certify the digital skills of users, particularly within educational establishments;
46. Calls for digital forms of collaborative work and communication – using and developing CC licences – to be taught and applied across national and linguistic borders in education and training, and in public research establishments, and promoted in public procurement procedures.

## RESULT OF FINAL VOTE IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	12.11.2015
<b>Result of final vote</b>	+: 19 -: 6 0: 3
<b>Members present for the final vote</b>	Isabella Adinolfi, Dominique Bilde, Andrea Bocskor, Nikolaos Chountis, Silvia Costa, Mircea Diaconu, Damian Drăghici, Angel Dzhambazki, Jill Evans, Giorgos Grammatikakis, Petra Kammerevert, Andrew Lewer, Svetoslav Hristov Malinov, Stefano Maullu, Fernando Maura Barandiarán, Luigi Morgano, Momchil Nekov, Michaela Šojdrová, Bogdan Brunon Wenta, Bogdan Andrzej Zdrojewski, Milan Zver, Krystyna Łybacka
<b>Substitutes present for the final vote</b>	Santiago Fisas Ayxelà, Sylvie Guillaume, György Hölvényi, Ilhan Kyuchyuk, Ernest Maragall, Emma McClarkin, Martina Michels, Elisabeth Morin-Chartier, Michel Reimon, Hannu Takkula
<b>Substitutes under Rule 200(2) present for the final vote</b>	Julia Reid