

Speech by Magnus Brooke¹ to the European Parliament JURI Committee

20 April 2016

I'd like to begin by thanking the Committee for this invitation to speak here today.

I am chair of the Board of Directors of the Association of Commercial Television in Europe but also Director of Policy and Regulation at ITV plc. ITV is the one of the largest commercial free to air broadcasters and one of the largest commercial TV producers in Europe.

Many of the questions and challenges the current Commission portability proposal raises are common to free content providers across the EU, however the examples and perspectives I can share today are from ITV.

The idea that European citizens should have the ability to access online content they have paid for when they travel outside their home state around the EU goes to the heart of the Digital Single Market and we support efforts to realize this ambition. To be clear, ITV offers both a paid subscription and a free online service, and so we are very keen to try to help get the details right in this Regulation so as to avoid any unintended consequences. In particular, it is vital that the final form of the Regulation gives service providers, consumers and rights holders legal certainty.

It is hard to deny that the Regulation will help overcome some formidable co-ordination challenges and bring real consumer benefit.

But we need to be careful that by delivering additional short run benefits to some, this regulation does not lead to many other consumers, who perhaps don't travel, being worse off, particularly in the longer term. This would be a real own goal.

I would therefore like to focus my comments on two key points: the services that we believe should be covered by the regulation and the importance of getting verification right.

The underlying aim of the portability proposal is to give people who pay for an online service in a particular Member State access to that service when they travel abroad. There is little debate that such paid for services will and should be covered by the new Regulation. So our *ITV Hub Plus* service, which offers all of the ITV online content from our free service but without adverts for £3.99 a month, would under this Regulation, offer users a portable option.

¹ Magnus Brooke is Director of Policy and Regulatory Affairs at ITV plc. and Chairman of the Board of Directors of the Association of Commercial Television in Europe (ACTE)

However, it has also been suggested that other non-pay content services that “verify” the residency of their users ought also to be obliged to offer portable access to their content. If this is the approach then the definition of verification will determine the scope of the Regulation. However some imprecise definitions of verification run the risk of forcing free AV services to offer portability in a way that could disadvantage **all** users of that free service in future, regardless of whether they travel. Let me explain.

ITV delivers a free online catch up TV service called *ITV Hub* which offers an extraordinary choice of free content for consumers. So, for example, if you miss an episode or even most of a series of *Downton Abbey* you can catch up for free. Not surprisingly, it’s a very popular service. We had over 15 million requests to catch up on episodes of *Downton Abbey* last year, as part of nearly one billion requests for programmes.

We are offering for free things which in the recent past people had to pay for, for instance by buying a DVD box set. And make no mistake, the *ITV Hub* service and many others like it in Europe is free (provided you are willing to watch a few adverts); users don’t part with any money. The expansion of choice here is remarkable.

In addition to offering choice, free providers also believe the consumer experience on free online services should be as close as we can make it to free to air television. In other words, we want access to be as easy and seamless as possible. Unlike pay services, we don’t, for example, collect bank or credit card details because we know that puts many people off – not unreasonably, they don’t believe the service will ultimately be free if they surrender that information.

What *ITV Hub* and many free services like it do is collect a few bits of data from people the first time they want to use the service. This is very basic stuff --- principally postcode, name and e-mail address. We try to use publicly available sources to see if we can identify people but this is not always possible. Candidly, we have a reasonable idea who many of our users are but by no means all of them. This is simply not comparable to bank or credit card details.

Why do we collect this basic data? Two main reasons. The first is to make sure we give people by default the services that are likely to be of most interest to them. Whether it is the Scottish football or the right regional news service. The second reason is to try to deliver some advertising to people that might be a bit more suitable and interesting to them. In other words, a slightly better service overall.

Our concern is that on some possible versions of the Regulation our free service might be thought to be verifying the habitual residence of our users. Why is this a problem?

In short we aren't verifying to a reasonable level of certainty in relation to all our users. We do our best but there are a range of challenges that we, as free to air service providers, face. For example we have had:

- 6,000 users claiming to live in Buckingham Palace; or
- 13,000 users claiming to be older than 110

These are illustrations of some extreme examples of identification that can be resolved, though it takes time and resources. What is trickier is where users share basic data for example the same name and date of birth (for instance, several John Smiths aged 25). This issue is further complicated as one postcode in the UK can cover 700 households.

Why does this matter? Very simply, in order to get the rights to include the highest value and most popular content such as *Downton Abbey* on our free catch-up service we need to guarantee that this programme will only be available to UK residents. By allowing broader access we would put at risk the programme makers ability to secure non-UK revenue from the exploitation of a very valuable programme. This revenue is vital to cover the original production costs and deliver future investment in content.

As a result, if we had to offer portable access to our free service and yet we can't guarantee that our users are in the UK, then in the medium term the highest value content could disappear from our free online service in the UK. This would be to the ultimate disadvantage of everyone, not just those who travel outside the UK. Everyone would then have to pay real money to get this programme online in the UK, whereas previously it was free. This would be unlikely to go down well with consumers.

So how might we best ensure that people have portable access to paid for subscription services and continued free access to the highest quality free services?

We believe that the clearest approach, which will deliver maximum legal certainty, would be to set out explicitly in the proposal that free to view services are not automatically covered but have the freedom in future to opt-in to the Regulation. If they choose to opt in then they would be able to take advantage of the legal fiction but would clearly only opt in when they were in a position to verify residence to a comparable standard as every other provider.

Any approach to verification has to work for consumers, service providers and for the holders of rights in the most popular content that audiences in Europe currently enjoy for free. Above all, it would be a great pity to undermine the continued attractiveness and viability of free online TV services across the EU. These services have delivered an enormous expansion of choice for millions of consumers in recent years, perhaps most critically, regardless of people's ability to pay.

Thank you