

IAB Europe response to the European Commission's public consultation on Directive 2010/13/EU on Audiovisual Media Services (AVMSD) - A media framework for the 21st century

The Interactive Advertising Bureau Europe (IAB Europe) welcomes the opportunity to provide feedback on the European Commission's public consultation on Directive 2010/13/EU on Audiovisual Media Services (AVMSD).

IAB Europe is the voice of digital business. Its mission is to protect, prove, promote and professionalise Europe's online advertising, media, market research and analytics industries. Together with its members – companies and national trade associations – IAB Europe represents over 5,500 organisations. IAB Europe is part of the Transparency Register¹.

Advertising is essential to the success of the European digital market. It has a key role in helping fund digital content, services and applications, making them widely available at little or no cost, as well as driving growth in the digital sector. Digital advertising is a major lever for a successful digital economy.

In 2006, the value of the EU market stood at €6.6 billion, versus €30.7 billion in 2014. This is an increase in spend of €24.1 billion and translates into a compound annual growth rate of 21.2%, or an average €3.0 billion per year². With a growth rate of 11.8% in 2014 compared to a 1.3% increase in overall EU GDP³, the digital advertising sector continues to outperform the overall EU economy⁴.

IAB Europe welcomes the Commission's initiative and aim to make Europe's audiovisual media landscape fit for purpose in the digital age. Such an initiative must pursue the joint objectives of serving European consumers as well as supporting the development of the digital economy and new business models.

IAB Europe is limiting its response to questions that contain aspects which could bring opportunities or pose challenges to the European online sector and online advertising industries.

¹ 43167137250-27

² [AdEx Benchmark report - the state of online advertising in Europe. IAB Europe. 2014.](#)

³ [eurostat](#)

⁴ [AdEx Benchmark report - the state of online advertising in Europe. IAB Europe. 2014.](#)

1. Ensuring a level playing field

Set of questions 1.1

Are the provisions on the services to which the Directive applies (television broadcasting and on-demand services) still relevant, effective and fair?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS

IAB Europe supports the view that the provisions on the services to which the Directive applies (television broadcasting and on-demand services) are still relevant, effective and fair.

1. The AVMSD has effectively achieved its objectives, which are still relevant for today's society.
 - 1.1. The Audiovisual Media Services Directive (AVMSD) aims to ensure the free circulation of audiovisual media services as an internal market instrument reflecting the right to freedom of expression and information enshrined in Article 11 of the Charter of Fundamental Rights of the European Union while at the same time ensuring the protection of important public policy objectives.
 - 1.2. As concluded in the Commission's First report on the application of the Directive: *"Altogether the European regulatory framework for audiovisual media services has served citizens and businesses well."* The AVMSD has ensured the free circulation of audiovisual media services and enabled the European market to grow from a very small amount of service providers, to more than 7,500 broadcasters and 650 video-on-demand (VOD) services in 2012⁵. VOD services have shown a particularly significant growth. In 2011, VOD services grew by 59 and 12.7% respectively in Germany and France. Total growth in Europe is expected to rise from EUR 850 million in 2011 to EUR 1.5 billion in 2017⁶.
 - 1.3. At the same time, the AVMSD has succeeded in properly reflecting the right to freedom of expression and information and protecting key policy objectives such as the promotion and distribution of European works. The AVMSD enables digital and online services to facilitate an unprecedented exchange of ideas. According to Eurostat, in 2012, over 83 million Europeans uploaded self-created content to a website. Netflix, iTunes, DailyMotion (France), Vimeo, ClipFish (Germany), MyVideo (Germany, started in Romania), SoundCloud (Germany), Youtube all provide a wealth of choice for European consumers. Digital and online services also continue to service as key players in the promotion and distribution of European creations, enabling them to reach global audiences throughout the world. The European film and television sectors have also been growing steadily for the past 10 years. Subscription revenues, for example, have grown by nearly EUR 17 billion

⁵ Commission's First report on the application of Directive 2010/13/EU Audiovisual Media Service Directive.

⁶ European Audiovisual Observatory, Yearbook 2012.

since 2003, nearly doubling their size. Pay revenue for usage hour have also increased by 25% for film and television between 2003 and 2013⁷.

2. The AVMSD at present guarantees a strong degree of fairness in the way the effects of the Directive are distributed across the different stakeholders. However, all audiovisual services compete for the same audience and for the concept of “TV like” services to remain relevant, effective and fair it should be regularly revisited and dynamically interpreted.
- 2.1. The AVMSD is part of a structured regulatory framework for the online environment whose effects are logically distributed across stakeholders.

The structure of the European legal framework for the online environment is based on three regulatory layers: due to their specificities, three different categories of services are respectively regulated by three different regulatory tools:

- The E-Commerce Directive regulates information society services including intermediary services as providers of “applications”.
- The Electronic Communications Package regulates electronic communications services as transmitters of signals.
- The Audiovisual Media Service Directive regulates audiovisual media services as providers of content on which they have editorial responsibility.

This layered framework currently forms a clear basis for the digital environment to develop as it takes into account the specificities of each service: information society services are regulated under the e-commerce directive and where “television-like” content is uploaded by a VOD service provider exercising editorial control, that service provider comes under the scope of the AVMSD.

Regulating online services and intermediaries under the AVMSD would neglect the very structure of the European legal framework for the online environment. It would also ignore the distinction made between online services that exercise editorial control and online services that do not exercise editorial control by forcing the provider of an application that enables users to share or host content to become, through legislative intervention, a content providers. This situation would entail practical difficulties and huge costs, hampering digital innovation and entrepreneurship. It would force online players to control the content hosted or shared on their platforms, making it harder for companies to enter the business. This situation could only create legal uncertainty on the Digital Single Market and hamper the growth of the online economy. In 2014, the EU’s App Economy generated EUR 17,5 billion and is forecast to reach €63 billion in the next 5 years while the EU app-developer workforce is expected to grow from 1 million in 2013 to 2.8 million in 2018.

Are you aware of issues (e.g. related to consumer protection or competitive disadvantage) due to the fact that certain audiovisual services are not regulated by the AVMSD?

YES – NO (If yes, please explain below)

COMMENTS: N/A

⁷ PWC, The digital future of creative Europe, 2013.

Preferred policy option:

a) **Maintaining the status quo**

PLEASE EXPLAIN YOUR CHOICE: N/A

2. Providing for an optimal level of consumer protection

Set of questions 2.1

Are the current rules on commercial communications still relevant, effective and fair?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS

IAB Europe is of the opinion that the AVMSD rules governing commercial communications do not show any particular gap or flaw that would require changing the rules.

Where “television-like” content is uploaded by an online VOD service exercising editorial control, the service comes under the scope of the AVMSD. Given that consumers have greater control over what they watch with on-demand services, a continued difference between such services and non-linear services remains justified.

Coupled with the Unfair Commercial Practices Directive, the consumer Rights Directive, the Unfair Terms Directive, the Misleading and Comparative Advertising Directive and the e-Commerce Directive, the AVMSD provides strong content protection for European consumers both online and offline.

Are you aware of issues (e.g. related to consumer protection or competitive disadvantage) caused by the AVMSD's rules governing commercial communications?

YES – NO (If yes, please explain below)

COMMENTS N/A

Preferred policy option:

a) **Maintaining the status quo**

PLEASE EXPLAIN YOUR CHOICE

IAB Europe welcomes the approach taken in the AVMSD, which consists in encouraging self and co-regulation. As today’s cross-border digital landscape continues to develop at an unprecedented rate, the regulatory instruments needed to address such changes should be able to adapt at an equal pace.

Fast, flexible, proportionate and cost-effective regulation involving all stakeholders remains well adapted to meet public interests and values in rapidly growing cross-border innovative environments.

1. The advertising industry has a long and widely recognised track record of setting standards for commercial communications by means of effective self- and co- regulation.

The general code of advertising practice of the International Chamber of Commerce (ICC) is the foundation of national self-regulatory codes. The ICC Code's basic principles require that advertising be legal, decent, honest and truthful as well as have due respect for the principles of social responsibility. Each country has its own set of national self-regulatory rules on advertising, which, based on the principles of the ICC Code, take into account cultural, economic as well as societal particularities in each market. When national rules do not exist, the ICC Code continues to apply.

Some specific sectors such as alcohol advertising and food and beverage advertising have set up sectorial European rules, guidelines or principles. The ["EU Pledge"](#) for instance, has achieved, under the close scrutiny of the European Commission, significant results in reducing the exposure of children under 12 years old to ads promoting certain food and beverages. In 2012, leading producers from the beer, wine and spirits industries also launched the [Responsible Marketing Pact](#), an extensive initiative to strengthen advertising self-regulatory schemes for alcohol beverage marketing across the EU.

2. Through its network of 26 independent advertising Self-Regulatory Organisations (SROs) coordinated by the European Advertising Standards Alliance (EASA), the advertising sector is able to guarantee that such rules are properly enforced. Self-regulatory organisations also provide a complaints handling service for consumers. Most SROs also monitor ads in more sensitive areas such as advertising to children, or ads related to food or alcohol.
 - 2.1. The Commission's Community of Practice for Better Self- and Co-regulation has in fact been taking inspiration from the advertising industry's best practice to set key requirements in this field and encourage their dissemination.
 - 2.2. The precise requirements that advertising self-regulation must meet in order to be effective have been set in the European Commission report of the EU Advertising Roundtable, a stakeholder initiative organised by the European Commission in 2006. These include:
 - Being endorsed and embraced by a critical mass of the industry;
 - Containing clear and precise rules which effectively address consumers concerns;
 - Being designed in a transparent way, in collaboration and consultation with interested stakeholders;
 - Being pertinent, up-to-date, and meaningful;
 - Being respected in spirit and letter;
 - Being enforced by a self-regulatory organisation (SRO) which is independent, sufficiently resourced and able to deal with complaints in a fast, impartial and efficient manner. Meaningful sanctions must act as a deterrent and rulings must be regularly published.
 - 2.3. This strong self-regulatory framework has allowed the advertising industry to effectively adapt to technological changes. In 2008, EASA adopted a Best Practice Recommendation on [Digital Marketing Communications](#) clarifying how advertising self-regulation should be applied to digital marketing. The 2012 [Responsible Marketing Pact](#) includes standards for

alcohol marketing communications on social media.

- 2.4. IAB Europe's cross-European [self-regulatory Framework for Online Behavioural Advertising \(OBA\)](#) provides a good example of successful advertising self-regulation specifically built for the online world. Launched in 2012 with leading media and marketing trade bodies, the framework seeks to inform consumers about online behavioural advertising or interest-based advertising while providing them with more transparency, control and choice. All OBA-based display advertisements made by signatory companies contains an icon that signifies to consumers that OBA is used. When the icon is clicked on, the consumer is directed to a pan-European website, www.youronlinechoices.eu, that provides further information on OBA as well as a tool to manage data preferences, including turning off OBA with just a few clicks. The initiative has been actively welcomed and supported by the European Commission.

3. User protection and prohibition of hate speech and discrimination

Set of questions 3.1

Is the overall level of protection afforded by the AVMSD still relevant, effective and fair?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS

IAB Europe holds the opinion that the overall level of protection afforded by the AVMSD is still relevant, effective and fair.

1. IAB Europe welcomes the approach taken in the AVMSD, which consists in encouraging self and co-regulation. As today's cross-border digital landscape continues to develop at an unprecedented rate, the regulatory instruments needed to address such changes should be able to adapt at an equal pace. Fast, flexible, proportionate and cost-effective regulation involving all stakeholders remains well adapted to meeting public interests and values in rapidly growing cross-border innovative environments.
2. The advertising and online industries have developed a wide array of self and co-regulatory instruments to protect consumers against hate speech and discrimination.
 - 2.1. In the advertising world, Article 4 of the Consolidated ICC Code of Advertising and Marketing Communication Practice states that "*advertisements should respect human dignity and should not incite or condone any form of discrimination, including that based upon race, national origin, religion, gender, age, disability or sexual orientation*". All the European national codes of advertising practice incorporate article 4 of the ICC Code and many of them go further with regards to the portrayal of gender. In 2001 for example, the French Autorité de Régulation Professionnelle de la Publicité (ARPP) drew up the Recommendations on the portrayal of human beings.
 - 2.2. Platforms of user-generated content also have clear policies requiring videos containing hate speech, discrimination, gratuitous violence or incitements to commit violent acts to be removed when flagged by users.

Are you aware of issues (e.g. related to consumer protection or competitive disadvantage) stemming from the AVMSD's rules?

YES – NO (If yes, please explain below)

COMMENTS: N/A

Set of questions 3.2

In relation to the protection of minors, is the distinction between broadcasting and on-demand content provision still relevant, effective and fair?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS

IAB Europe believes that in relation to the protection of minors, the distinction between broadcasting and on-demand content provision remains well adapted.

Given that broadcasters can effectively control what content is available to consumer on their channels, the AVMSD requires that content which might seriously impair minors not be included in any programme for linear services. For non-linear services, where users have more control over what they watch, content can logically only be made available in such a way as to ensure that minors will not normally hear or see such on-demand content.

Has the AVMSD been effective in protecting children from seeing/hearing content that may harm them?

YES – NO – NO OPINION

COMMENTS

Thanks to the approach taken in the AVMSD, which consists in encouraging self and co-regulation, the advertising and online industries have developed a wide array of self and co-regulatory instruments that protect children and minors.

1. The International Chamber of Commerce (ICC) Consolidated Code of Advertising and Marketing Communication Practice (2006) contains rules regarding advertising to children. The majority of European SROs have incorporated these rules into their national codes, and some have introduced additional rules regarding advertising to children.

The ICC Code rules provide that:

“Special care should be taken in marketing communication directed to or featuring children or young people. Such communications should not undermine positive social behaviours, lifestyles and attitudes. Products unsuitable for children or young people should not be advertised in media targeted to them, and advertisements directed to children or young people should not be inserted in media where the editorial matter is unsuitable for them. Material unsuitable for children should be clearly identified as such.” (Article 18).

Specific rules apply for minors, including in the digital environment:

“...Websites devoted to products or services that are subject to age restrictions such as alcoholic beverages, gambling and tobacco products should undertake measures to restrict access to such websites by minors...” (Article D5).

IAB Europe’s cross-European [self-regulatory Framework for Online Behavioural Advertising \(OBA\)](#) also contains rules specifically aimed at protecting children.

Under Principles IV of the Framework:

“Companies agree not to create segments for OBA purposes that are specifically designed to target children. For the purposes of this provision, ‘children’ refers to people aged 12 and under.”

2. Platforms where user-content-generated content can be shared enforce bans on any content that might seriously impair minors. Industry players have developed Community Guidelines that describe the type of content that is and is not allowed on their sites. Community flagging is also used as a technological solution to help identify and hide inappropriate content. These tools both empower and responsibilities users with regards to the content that they make available. Most user generated websites also comprise a “safety mode”, which disables inappropriate content for video search or suggestions.
3. Other initiatives involving online players and specifically dedicated to the protection of children and minors include the [Better Internet for Children Coalition](#) and the [ICT Coalition for Children Online](#).

Are you aware of problems regarding the AVMSD's rules related to protection of minors?

YES – NO (If yes, please explain below)

COMMENTS: N/A

Preferred policy option:

a) **Maintaining the status quo**

b) **Complementing the current AVMSD provisions via self- and co-regulation**

The status quo would be complemented with self-/co-regulatory measures and other actions (media literacy, awareness-raising).

PLEASE EXPLAIN YOUR CHOICE

IAB Europe welcomes the approach taken in the AVMSD, which consists in encouraging self and co-regulation. As today's cross-border digital landscape continues to develop at an unprecedented rate, the regulatory instruments needed to address such changes should be able to adapt at an equal pace. Fast, flexible, proportionate and cost-effective regulation involving all stakeholders remains well adapted to meeting public interests and values in rapidly growing cross-border innovative environments.

4. Promoting European audiovisual content

Set of questions 4

Are the AVMSD provisions still relevant, effective and fair for promoting cultural diversity and particularly European works?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS

IAB Europe believes that the AVMSD provisions are still relevant, effective and fair for promoting cultural diversity and particularly European works.

Communication technologies have allowed increased access to content from cultures of all over the world and the promotion of European works on a global scale.

Advertising plays a central role in ensuring creativity remains sustainable. In 2014 digital advertising powered the European internet economy to the tune of €30,7 billion (+11,6% year to year growth).⁸

Digital has become the primary way of consuming media for a growing part of the population – mostly younger demographics that are “digital natives” but also early digital adopters from other age categories.⁹ There is a rich literature demonstrating that uptake of the Internet is driven by the massive value European consumers receive from educational, informational, and entertainment web services that are supported by advertising. A McKinsey¹⁰ study released in 2010 estimated that value at € 69 billion.

The same study concluded that those services generate more net value for consumers than is generated by any other sector. If internet users were required to fund these services instead of advertisers, an estimated 40% of them would not be able to afford to access the Internet. In addition, user benefits arising from digital services are significantly greater than the advertising revenues earned from providing those services: the value for consumers is more than three times revenue from ad-based services.

⁸ [AdEx Benchmark report - the state of online advertising in Europe. IAB Europe. 2014.](#)

⁹ [Marketing to millennials. Comscore. February 2014.](#)

¹⁰ [Consumers driving the digital uptake. The economic value of online advertising-based web services to consumers. McKinsey & Company. 2010.](#)

Preferred policy option:

a) **Maintaining the status quo**

PLEASE EXPLAIN YOUR CHOICE: N/A

5. Strengthening the single market

Set of questions 5

Is the current approach still relevant, effective and fair?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS

The country of origin principles has been a cornerstone in developing a cross-border market for audiovisual media services and must remain at the core of the AVMSD. Changing the geographical scope of the Directive would negatively impact the availability of content in the EU, media pluralism, innovation and the development of new products, as providers would become subject to multiple, potentially conflicting requirements and may as a consequence choose not to serve the EU market.

Are you aware of problems regarding the application of the current approach?

YES – NO (If yes describe and explain their magnitude)

COMMENTS: N/A

Preferred policy option:

a) Maintaining the status quo

PLEASE EXPLAIN YOUR CHOICE: N/A

6. Strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities

Set of questions 6.2

Is the current regulatory framework effective in providing access to certain 'public interest' content?

Effective? YES – NO – NO OPINION

COMMENTS

The current regulatory framework is effective in providing access to certain 'public interest' content. As demonstrated by the United Nations "[Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#)", the Internet provides citizens with a greater access to news and information than ever before. Consumers are able to access diverse news sources, use a broad variety of online tools to find, discover, access news and legacy brands remain strong and trusted. Risks of a "filter bubble" or "new gatekeepers" have failed to materialise for "public interest" content such as news.

Preferred policy option:

a) Maintaining the status quo, i.e. keeping in place the current EU rules on must carry/ EPG related provisions (i.e. no extension of the right of EU Member States to cover services other than broadcast).

PLEASE EXPLAIN YOUR CHOICE: N/A

If you have any questions or comments, please contact IAB Europe:

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The member countries are: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Norway, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and United Kingdom.

The corporate members include: 21st Century Fox, Adform, AdRoll, ADTECH, AdTruth, Aegis Media, Affectv, AGOF, AOL Advertising Europe, AppNexus, AudienceScience, BBC Worldwide, CNN, comScore Europe, Criteo, Daily Motion, Deutsche Post, DMA Institute, eBay International Advertising, ePrivacy, Expedia Inc, Exponential, Gemius, Goldbach Media Group, Google, GroupM, Improve Digital, Integral Ad Science, Improve Digital, IPG Mediabrands, Koan, MediaMath, Meetrics, Microsoft Europe, Millward Brown, Nextplora, Nielsen, nugg.ad, OMD, Orange Advertising Network, OpenX, PHD, Prisa, Publicitas, Publigroupe, PubMatic, Quantcast, Retailmenot, Rocket Fuel, Sanoma Digital, Selligent, SpotXchange, StickyADs.tv, Teads, The ADEX, The Exchange Lab, The Trade Desk, Triton Digital, TrustE, Turn Europe, United Internet Media, Videology, White & Case, Widespace, WebSpectator, Xaxis, Yahoo!
