

**NEW SERVICES AND SCOPE:
WHAT'S IN, WHAT'S OUT REVISITED**

AVMS SCOPE

CSA
CONSEIL SUPERIEUR
DE L'AUDIOVISUEL

THE BELGIAN CSA RECOMMENDATION

EPRA
ORTOROŽ 2012

30 MAY - 1 JUNE 2012

WHY

LEGAL SECURITY AND PREDICTABILITY
FAIRNESS AMONG COMPETITORS
RELEVANCE OF REGULATION

CSA

**CONSEIL SUPERIEUR
DE L'AUDIOVISUEL**



**AVMS DIRECTIVE
NATIONAL LEGISLATION
INITIATIVES BY OTHER EPRA MEMBERS (CVD, ATVOD)
WORK OF THE EUROPEAN AUDIOVISUAL OBSERVATORY**

FIRST DRAFT

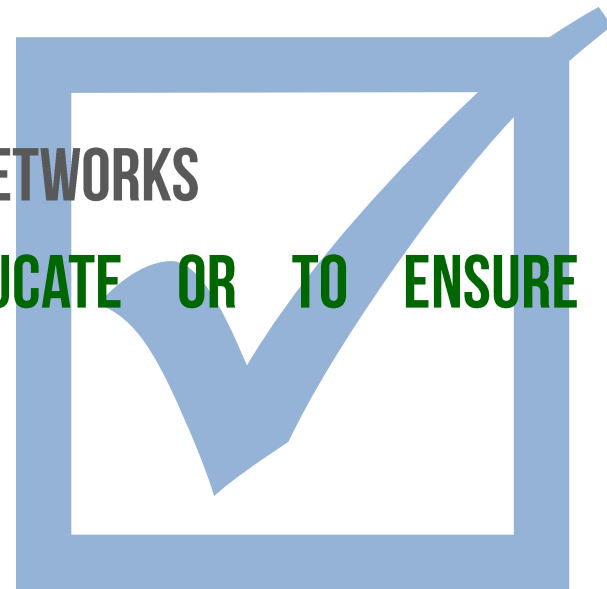
**PUBLIC CONSULTATION
FORUM WITH PARTICIPANTS TO THE CONSULTATION**

RECOMMENDATION ON AVMS SCOPE ADOPTED MARCH 2012

“A SERVICE AS DEFINED BY ARTICLES 56 AND 57 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION WHICH IS UNDER THE EDITORIAL RESPONSIBILITY OF A MEDIA SERVICE PROVIDER AND THE PRINCIPAL PURPOSE OF WHICH IS THE PROVISION OF PROGRAMMES, IN ORDER TO INFORM, ENTERTAIN OR EDUCATE, TO THE GENERAL PUBLIC BY ELECTRONIC COMMUNICATIONS NETWORKS .”

7 CRITERIA

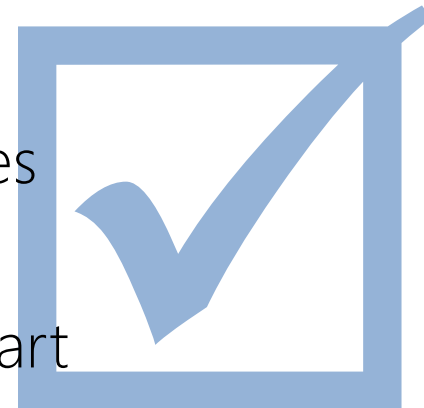
- 1) ECONOMIC SERVICE
- 2) EDITORIAL RESPONSIBILITY OF A PROVIDER
- 3) PRINCIPAL PURPOSE
- 4) PROVISION TO THE GENERAL PUBLIC
- 5) PROGRAMMES
- 6) ELECTRONIC COMMUNICATIONS NETWORKS
- 7) TO INFORM, ENTERTAIN, EDUCATE OR TO ENSURE COMMERCIAL COMMUNICATION



1 ECONOMIC SERVICE

As defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union. => Implies 2 elements:

- A counterpart:
 - Direct retribution of the service
 - Doesn't need to be pecuniary
 - Doesn't need to give profit to the provider
 - Can come from anybody (audience, advertisers, public authorities,...)
- An economic aim/competition with other services
 - Can evolve in time
 - Decisive element if doubt about the counterpart



2. EDITORIAL RESPONSIBILITY

The provider must have effective control (concrete possibility to perform a control) over

The **selection** of programmes (what will be in the service)

And

The **organisation** of programmes (when and how will it be offered to the public)

WHAT IF THE SELECTION AND ORGANISATION ARE CARRIED ON BY DIFFERENT PERSONS?



Position of CVdM: the person controlling the *selection* is responsible because the most able to put an end to infractions.



Position of CSA: the person controlling the *organisation* is responsible because the respect of the most important remaining regulations are technically in his hands: ads, protection of minors, promotion of European works.

3. PRINCIPAL PURPOSE

An AVMS has to have the provision of audiovisual programmes as **principal purpose**.

⇒ 2 possibilities when faced to a service with audiovisual and other contents:

- 1) The audiovisual contents can be isolated as an independant service => OK
- 2) The audiovisual contents can't be isolated as an independant service => **Hybrid service** whose principal purpose must be identified

3. PRINCIPAL PURPOSE

Various criteria will be used to identify the principal purpose of a hybrid service:

- Proportion of audiovisual content
- Ergonomy of the service
- Finality/business model/core business of the service (most attractive contents to the public, perception of the service by the public)



ABONNEMENT

La Libre Belgique

Le journal en pdf

Les newsletters

Contactez-nous

Nos coordonnées

Syndication

CULTURE

Série TV

Cinéma

Musique

Arts visuels

Livres

Médias/Télé

Scènes

Politique

People

Sélection culturelle

MÉTÉO

Bruxelles

 10° 22°

Météo en Belgique

MULTIMÉDIA

Vidéos

Galleries photos

Semaine en images

Infographies

L'effroyable accident de Stéphane Rotenberg en plein tournage

Rédaction en ligne

Mis en ligne le 18/05/2012

VIDEO Le tournage date de janvier et l'animateur est rétabli depuis lors.

Ce mercredi soir était diffusé sur M6 (France) l'épisode de Pékin Express au cours duquel Stéphane Rotenberg a eu un incroyable accident de la route. Le tournage date de janvier et l'animateur est rétabli depuis lors - il avait même repris le tournage le lendemain - mais les images diffusées à la télévision sont impressionnantes.

Alors que la prise venait de se terminer, l'animateur a perdu le contrôle du side car qu'il conduisait et a violemment percuté une voiture qui venait de face.

L'accident de Stéphane Rotenberg à Pékin [partager](#) [More info](#)



La vidéo de l'accident de Stéphane Rotenberg

15,830 personnes aiment **Lalibre.be**.

 Daniel
  Denis
  Xavier
  Nadine

 Babou
  Albert
  Benoît
  Cécile

NOUVELLES DÉPÊCHES

17h05 Révision du budget 2012: la Cour des comptes appuie là où ça fait mal (AFP) [mise à jour](#)

17h03 Guerre civile en Sierra Leone : Charles Taylor condamné à 50 ans de prison (AFP) [mise à jour](#)

17h02 Le PS rejette le nouvel appel européen à revoir l'indexation des salaires (BELGA)

16h55 Karachi: ouverture d'une information judiciaire pour blessures involontaires (AFP) [mise à jour](#)

16h55 Syrie: session spéciale du Conseil des droits de l'homme de l'ONU vendredi (BELGA)

[Les dernières 24 heures](#)

Redécouvrez

Les plus belles histoires de

Père Castor

THE DIRECTIVE'S PROVISIONS EXCLUDE CERTAIN SERVICES BECAUSE THEY *GENERALLY* DON'T FULFILL THE « PRINCIPAL PURPOSE » CRITERION ***BUT***, IN CASE THEY DO, THE CRITERION MUST PREVAIL.

EX.: NEWSPAPER WEBSITES IF THEY ARE MORE THAN A SIMPLE « ELECTRONIC VERSION » OF THE CLASSIC NEWSPAPER

DEBATE ON THE REGULATION OF HYBRID SERVICES

MUST ALL CONTENTS OR ONLY THE AUDIOVISUAL CONTENTS BE REGULATED?

CSA DECIDED THAT THE PROVIDERS MUST BE EDITORIALY RESPONSIBLE FOR ALL THE CONTENTS DISPLAYED IN THE SERVICE

MORE COHERENCE & MORE PROTECTION

LOGIC: PROVIDERS ALSO SELECT/ORGANISE OTHER CONTENTS



4. GENERAL PUBLIC

An AVMS has to be provided to the **general public**.

⇒ Criterion to use = **intention** of the provider
(potential audience)

⇒ Criterion not to use = concrete use of the
service by the public (real audience)

**IF INTENTION IS TO AIM A GENERAL PUBLIC, THE
CRITERION OF « GENERAL PUBLIC » IS FULFILLED
EVEN IF ONLY VERY FEW PEOPLE EFFECTIVELY
USE THE SERVICE.**



DEBATE ON THE REGULATION OF VERY SMALL SERVICES

2 OPTIONS:

GRADUAL REGULATION (= LIGHTER REGULATION FOR « SMALLER » AVMS):
NEEDS NEW LEGISLATION

« DE MINIMIS » RULE (= NO REGULATION FOR « SMALLER » AVMS): SECTOR
WAS AGAINST IT BECAUSE OF UNFAIRNESS AND OF THE DIFFICULTY TO SET A
THRESHOLD BETWEEN « SMALL » AND OTHER SERVICES



CSA DECIDED TO ONLY REGULATE SMALL SERVICES:

- **IF THEY NOTIFY**
- **OR IF THEY ACTUALLY AND EFFECTIVELY COMPETE WITH OTHER SERVICES (IF THEY DON'T, THEY FULFILL THE CRITERION OF « GENERAL PUBLIC » BUT NOT THE CRITERION OF « ECONOMIC SERVICE »).**

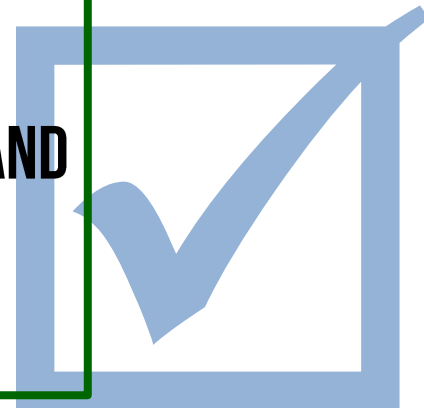
5. PROGRAMMES

- a set of moving images with or without sound or a set of sound (AVMS also cover radio services in our legislation) constituting an individual item within a schedule or a catalogue established by a provider
- a form and content **comparable** to traditional broadcasting

LARGE INTERPRETATION:

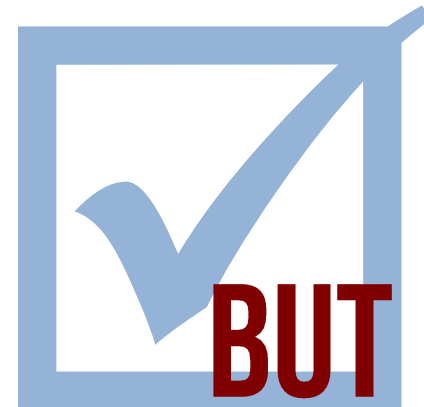
ONLY CONTENTS THAT ARE NOT CONCEIVED TO ADDRESS THE GENERAL PUBLIC SHOULD BE EXCLUDED

(EX.: VIDEOS SHOOTED IN A STRICTLY PRIVATE CONTEXT AND SUPPOSED TO ADDRESS ONLY A FAMILY, A CORPORATION, ETC.)



6. ELECTRONIC COMMUNICATIONS NETWORKS

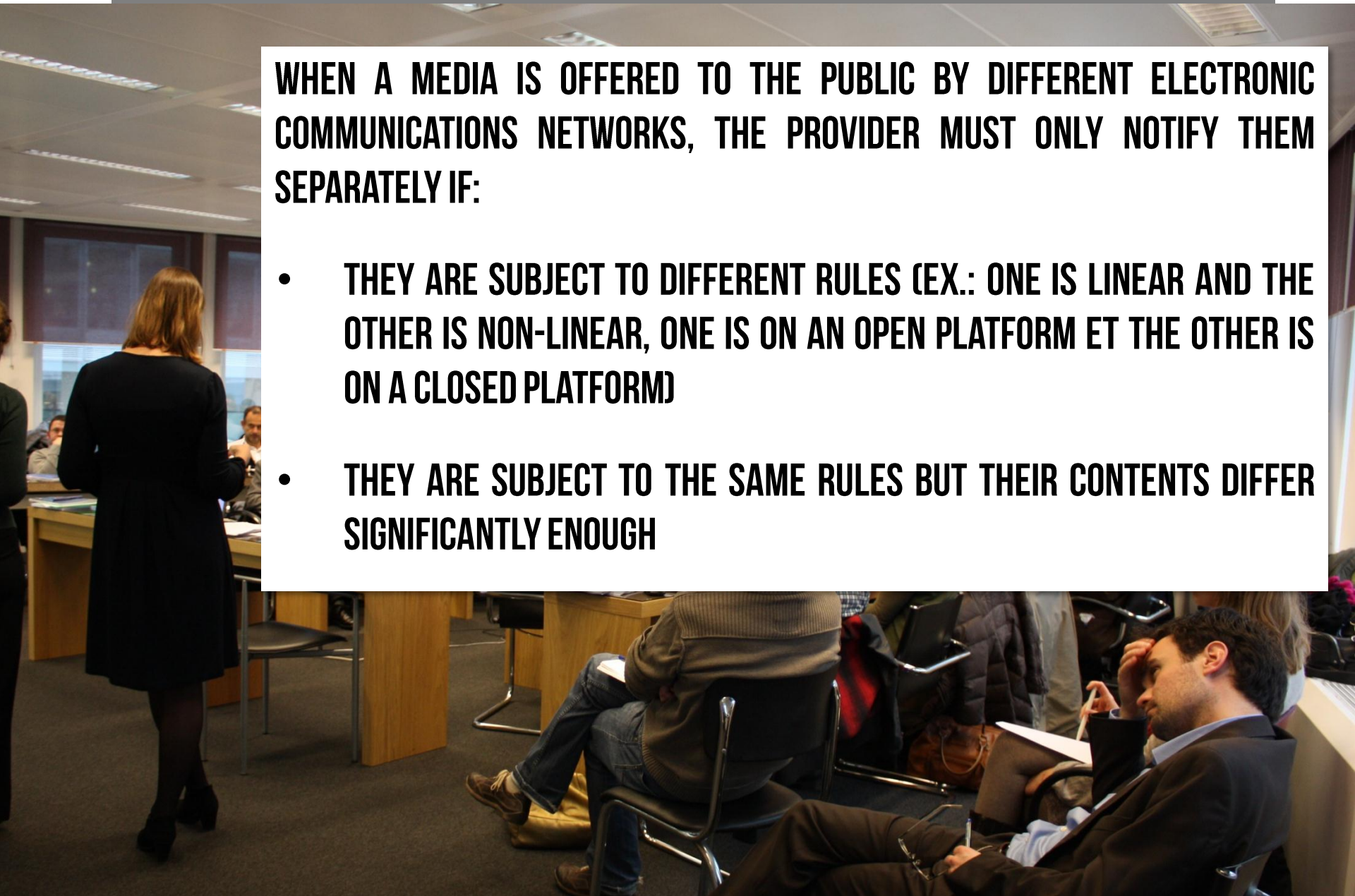
- Concerns: cable, hertzian broadcasting, satellite, Internet, mobile networks
- Does not concern: cinema, DVD rental



DEBATE ON MUTLIPLATFORM SERVICES

WHEN A MEDIA IS OFFERED TO THE PUBLIC BY DIFFERENT ELECTRONIC COMMUNICATIONS NETWORKS, THE PROVIDER MUST ONLY NOTIFY THEM SEPARATELY IF:

- **THEY ARE SUBJECT TO DIFFERENT RULES (EX.: ONE IS LINEAR AND THE OTHER IS NON-LINEAR, ONE IS ON AN OPEN PLATFORM ET THE OTHER IS ON A CLOSED PLATFORM)**
- **THEY ARE SUBJECT TO THE SAME RULES BUT THEIR CONTENTS DIFFER SIGNIFICANTLY ENOUGH**



7. AIM TO INFORM, ENTERTAIN, EDUCATE OR TO ENSURE COMMERCIAL COMMUNICATION

So large it doesn't seem to exclude anything.



**INTUITIVE
REASONABLE
PRAGMATIC**



THE FUTURE OF NEW MEDIA REGULATION

BENEFITS OF REGULATION

PURPOSE OF REGULATION

A NEW REGULATORY DYNAMIC ?

gulation, auto-régulation
et co-régulation :
et application au marché
de médias audiovisuels

GENERALLY APPLICABLE REGULATION

- Identification
- Protection of minors
- Advertising rules

LINEAR SERVICES

- Specific rules on protection of minors
- Ad time limits
- Quotas

NON-LINEAR SERVICES

- Access of minors
- Promotion of European works

CLOSED PLATFORM

- Independance from politics
- Journalistic ethics

OPEN PLATFORM

CLOSED PLATFORM

- Independance from politics
- Journalistic ethics

OPEN PLATFORM

