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## Supervising VOD Services in AGCOM



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# Few words about AGCOM

- Established by Law 249/97 as an independent and convergent regulator. Main areas of activity:
  - Audiovisual sector
  - Electronic communications sector
  - Press
  - Postal services (Decree no. 201/2011)
- Forward-looking approach, which allowed AGCOM to regulate efficiently the first waves of convergence (bundles, DVB-H)

# Blurring the boundaries (content side)

- The penetration of social networks and applications is determining an **explosion of production & consumption of online video content.**
- Two traditional barriers have decreased:
  - **Lower costs** of production and distribution
  - **Accessibility** of AV content to consumers from multiple sources (video sharing, web application and video streaming sites)
- Most of this content is user generated (UGC)



# Challenges for regulators (content side)

- **User generated content (UGC)** does not fall under the scope of the AVMS Directive. An AVMS should:
  - Fall under the editorial responsibility of a media service provider;
  - Require an economic activity;
  - Be a “TV-like” service (opening sequence, professional quality, use of a logo, end credits...).

What if editorial responsibility (organizing content) and economic activity (selecting ads) are dealt with by 2 subjects (YouTube)? In Italy it must be the same subject

- **Newspapers websites**, delivering AV content:
  - Criterion of principal purpose, difficult to implement
- AV content delivered in **closed areas** (hotels, train stations)
  - Criterion of general public, difficult to implement

# Possible regulatory solutions (content side)

- An harmonized approach to regulation is needed.
- Platforms such as EPRA are crucial for the discussion, exchange of information and consolidation of common position.
- This is a task that NRAs should be able to handle autonomously.

# Blurring the boundaries (device side)



*“Broadcasting is only one of the Apps that the modern TV sets incorporate”*

Rupert Murdoch



# Challenges for regulators (device side)

Linear (broadcasting) and non-linear audiovisual media services and other (UGC, OTT, Internet) content can be made available over the same platform and device.

- **Asymmetric regulation:** uneven playing field among operators doing similar (or the same) activity:
  - Channels on terrestrial or sat frequencies, cable and even Internet, if it is Tv-like, are subject to regulation. Also the VOD is regulated (two tier principle), but.....
  - .... New Media of the connected environment (OTT, Connected TV, Apps) are less subject to regulations and often come from outside EU
- **Protection of users:** Users cannot distinguish the different regulatory environments and levels of protection
  - (protection of minors, minimum content standards, restrictions on advertising, accessibility services to help those with disabilities)



# Possible regulatory solutions (device side)

- Ensuring clear **source identification** (e.g. through “title bar”/labelling on windows)?
- Adopting **software engines** (e.g. Shazam) to monitor new media services online;
- Fostering **cooperation** between broadcasters and CE manufacturers, Apps providers and other stakeholders at national, regional and worldwide level
- Adopting **co-regulation** tools, involving all stakeholders:
  - No connected TV manufacturers, OTT or UGC websites have shown any availability in cooperating with AGCOM and opening a debate about regulation of their services.
  - Panasonic: ok regulation, but technologically neutral and extended to all devices which allow the usage of Apps

# AGCOM regulatory activities (I)

- The transposition of the AVMSD is thorough (latest small change in July 2012 on protection of minors)
- AGCOM adopted 2 regulations in 2010 designing the authorization procedures with regards to:
  - Audiovisual media services **on other means of communication** (Web radio/TV, IPTV, catch-up TV etc.): Decision 606/10/CONS. Operators must file a request to AGCOM, which will answer within 30 days. Fee: 500 euro for TV channels, 250 for radio channels.
  - Audiovisual media services **On demand** (VOD): Decision 607/10/CONS. The operator must file a general authorization (SCIA) to AGCOM and may start its activities immediately. Fee: 500€

# AGCOM regulatory activities (II)

- **Threshold:** authorization not needed if in the previous year the operator gathered revenues from advertising, teleshopping, sponsorships and pay-tv below €100.000

The **goal** of this exemption is to limit the scope of the regulation only to big companies and leave small online companies free of duties.

# AGCOM regulatory activities (III)

- **Minimal info requested** for the notification. Forms are available online:
  - Name, address, phone, mail of the subject;
  - Yearly revenues (for the threshold)
  - Date of planned start of activities
  - Basic info on the network and service providers (with indication of pay/free tv)
- NO specific **monitoring procedures** on online media services. This will be revised with the harmonization of authorization regulations
- Detailed set of **FAQ** published in 2010 on <http://www.agcom.it/Default.aspx?message=contenuto&DCId=481>

# AGCOM regulatory activities (IV)

- **Sanctions:**
  - AGCOM can only levy sanctions that are introduced by primary law;
  - the law provides only for financial penalties in case any operator breaches its provisions
  - if the operators fail to notify the start of their activities, AGCOM may order them to notify. Only in case the operator fails to comply with the order AGCOM may issue a financial penalty from 10.000 to 250.000 euro (as set by the Law)
  - No penalties on VOD were issue last year.

# Focus on VOD

- **European works:** possible options for the operators:
  - 20% of their annual available hours from 2015 (until then the percentage is 5%)
  - 5% of their annual revenues from VOD services invested in EU works from 2015 (until then 2%)
  - Few operators have reported their options...
- **Monitoring system:**
  - IES plus random check on the data received by the operators;
  - the company to which the monitoring service is outsourced will have to monitor the activity of 2 operators randomly chosen every year.
    - VOD content is monitored mainly on the basis of complaints, but ad-hoc checks are possible
- 4 VOD notified so far, out of the 146 available according to MAVISE. Further investigation is planned, but the reason could be the threshold of 100.000 euro of revenues

# Conclusions

Many efforts have been made to provide a clear and transparent regulatory framework for audiovisual media services on demand and on «other means of communications». A guidance tool has been provided with detailed FAQ

But there is still a lot to do to:

- improve the monitoring activities, in particular for online content
- re-affirm the principle of technological neutrality and
- review the authorization systems and the threshold of 100.000 euro.



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Thank you,

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