



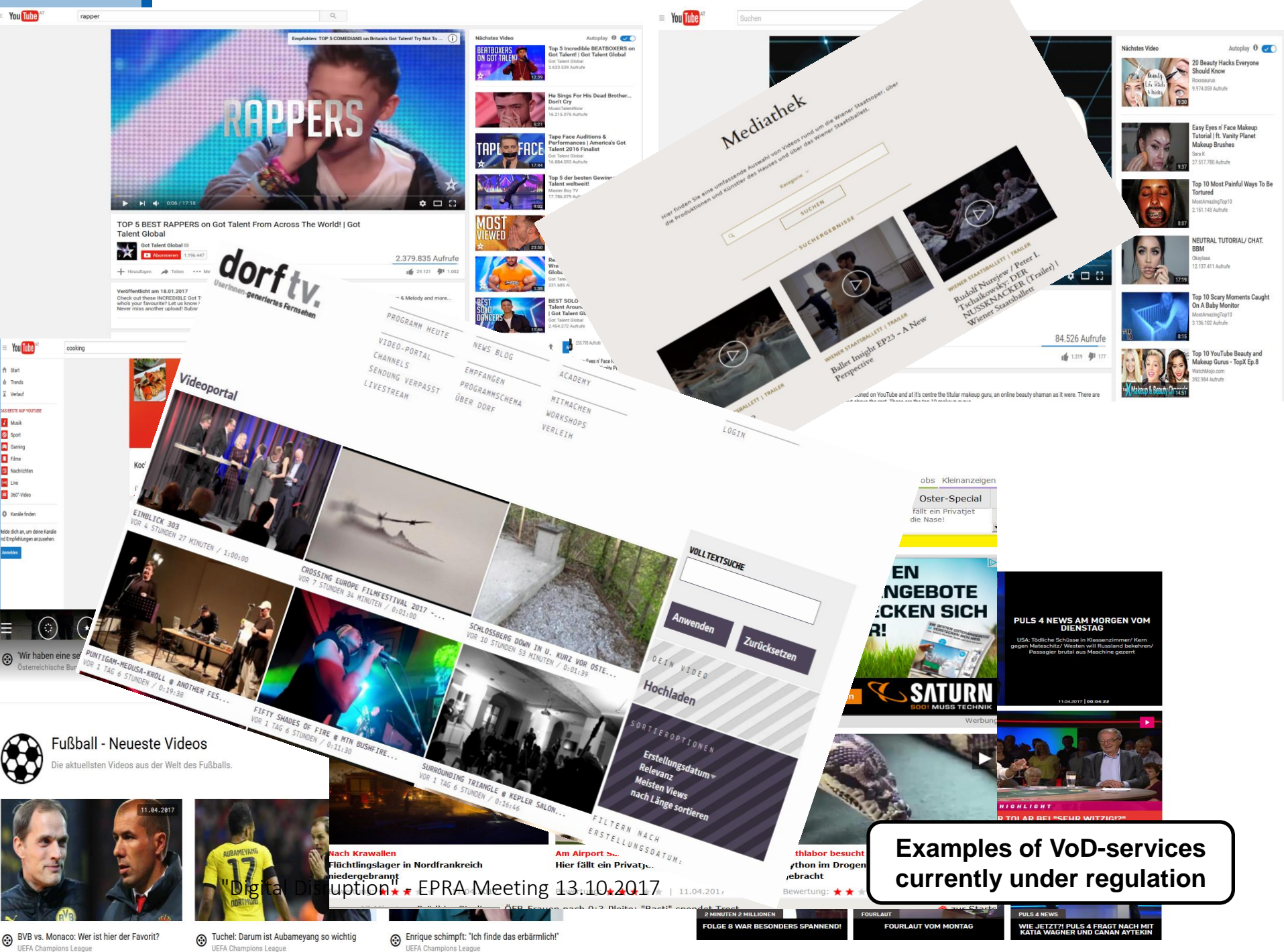
# Digital Disruption and regulatory challenges

Susanne Lackner, Vice-Chairperson, Austrian Communications Authority



## Digital disruption leads to „digital explosion“ of the traditional regulators' tasks

- Although the review of the (former) TVWF Directive legislator aimed at keeping pace with technological developments in 2007, it remains unclear whether **the practical impact of this regulation and the enforcement of regulation** has sufficiently been taken into consideration
- Given the current discussion on the revision of the AVMS Directive, the problem described as per above would rather get worse. Even if in this case „the tail wags the dog“, the legislator should endeavour to make a proper impact assessment re the challenges for NRAs when it comes to regulate re VoDs, user-generated content, VSPs and – in general terms – Social Media with regard to the currently planned changes in the D
- Traditional regulatory performance including administrative procedures with NRAs disposing of limited staff will not be able to manage these challenges, alternative ways of law enforcement need to be found



Examples of VoD-services currently under regulation



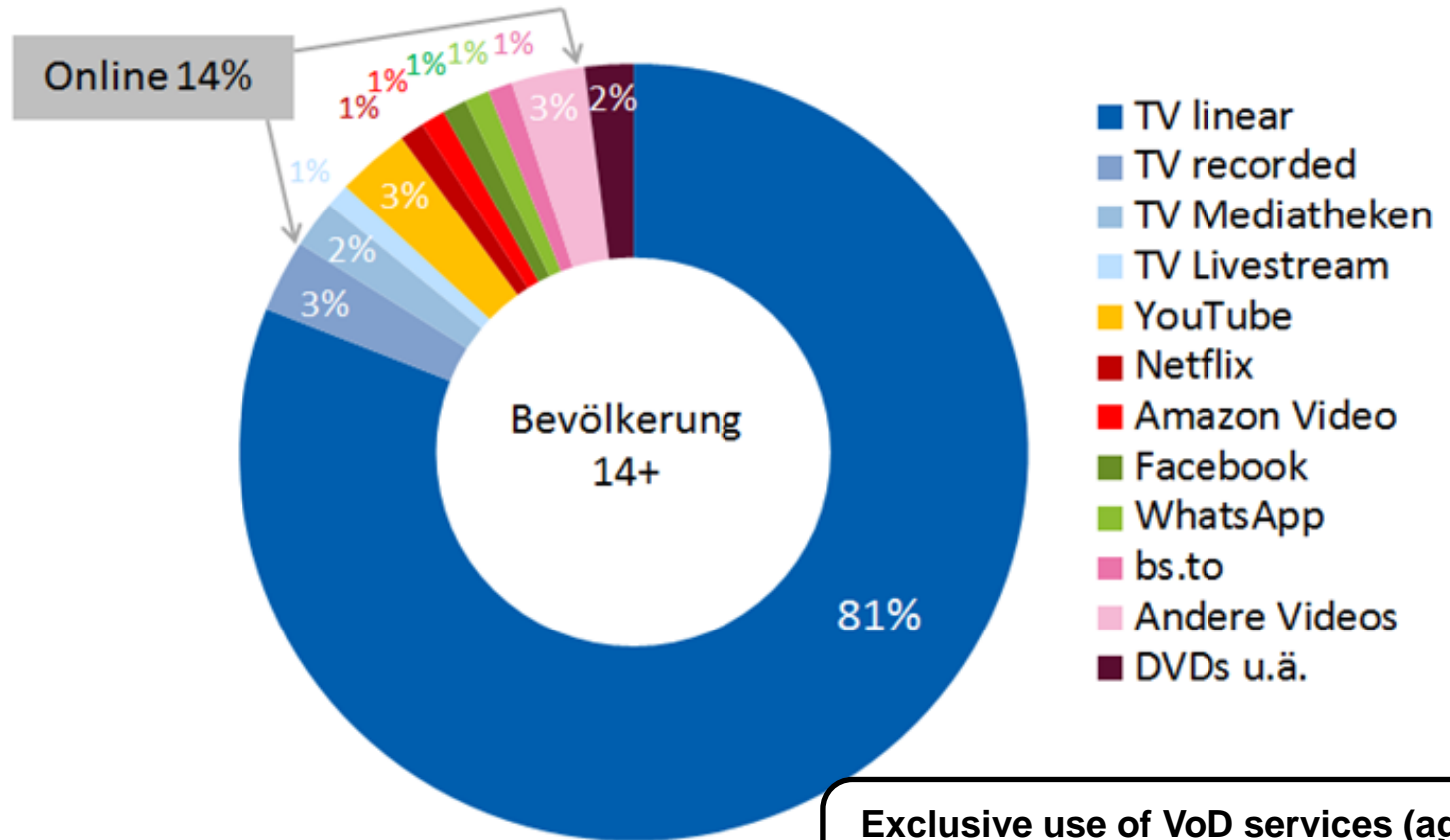
# Regulatory practice re AVMS VoD-offers by KommAustria since 2010

- Austrian legislation provides for a notification (and an update) obligation re VoD services: this makes sense, as it leads to legal certainty for providers whether or not they have to comply with legal obligations enshrined in the AVMS-D (question of all questions: is the service „television-like?). As the draft Directive provides for a „listing obligation“ for AVMS-services in general, Austria would not require a new system in this regard
- In 2010, a first attempt to enforce aforementioned provisions was performed: we contacted „traditional“ stakeholders in relation to which VoD activities could be expected
- Most of them notified their services, in the other cases KommAustria performed administrative and penal procedures to enforce the law
- Between 2010 and 2016 , **app. 180** services had been registered (this figure will increase dramatically):
  - TV Catch-up services (including cable operators): app. 130
  - VoD-services of the written press: 31 (one procedure led to the ECJ-case „New Media Online“)
  - Entertainment services 24
  - YouTube services: 30

# Age Group 14+

## Nutzung von Bewegtbildangeboten

Ø täglicher Marktanteil, Personen ab 14 Jahren

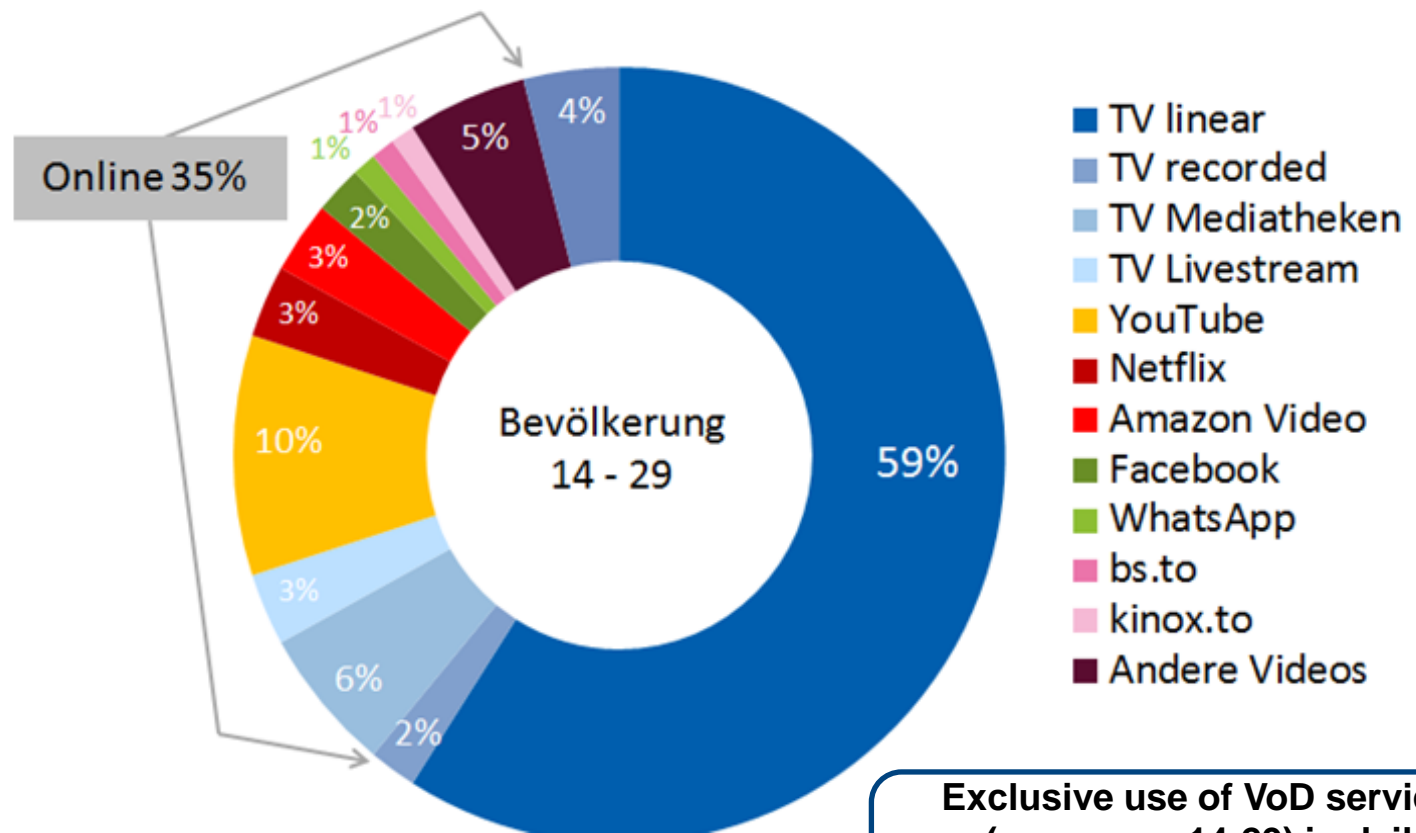


**Exclusive use of VoD services (age group 14+) in daily audiovisual consumption: 18%**

# Age Group 14 - 29

## Nutzung von Bewegtbildangeboten

Ø täglicher Marktanteil, Personen 14-29 Jahre



**Exclusive use of VoD services  
(age group 14-29) in daily  
audiovisual consumption: 41%**



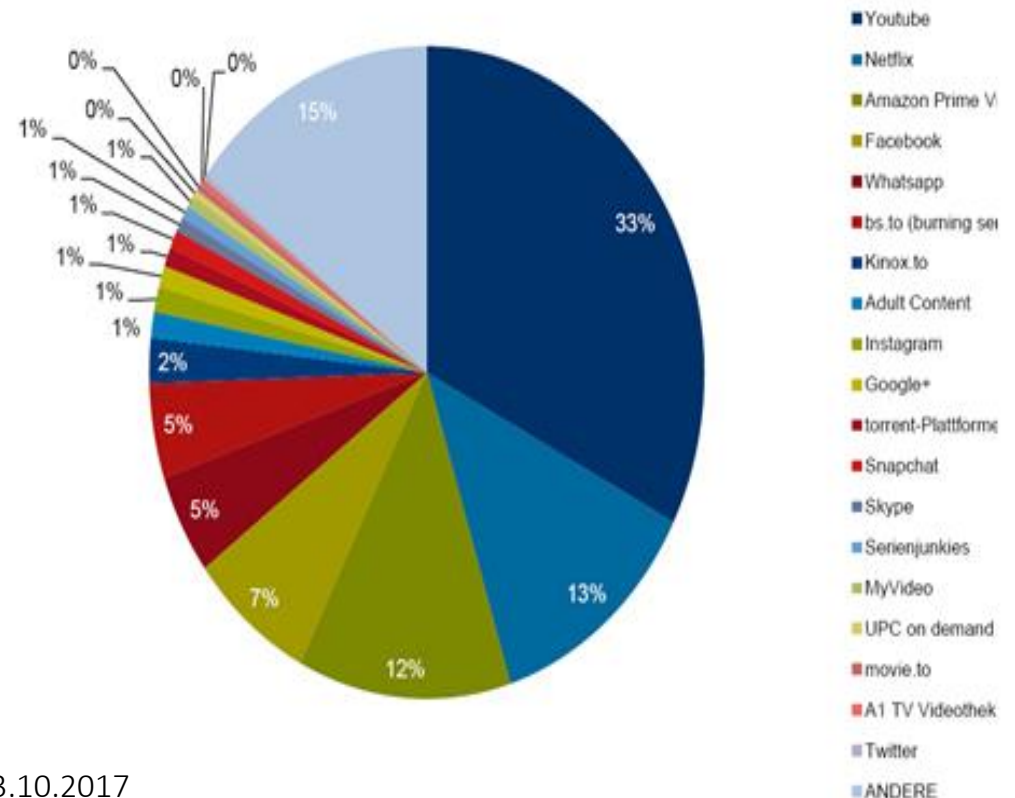
## YouTube consumption compared to other VSP platforms

### Bewegtbildnutzung auf Videoplattformen

Videonutzung gestern gesamt 14+, in Minuten & %

Plattform	Minuten	Prozent
Youtube	28.573	33%
Netflix	11.002	13%
Amazon Prime Video	10.878	12%
Facebook	6.356	7%
Whatsapp	4.367	5%
bs.to (burning series)	4.133	5%
Kinox.to	1.959	2%
Adult Content	1.128	1%
Instagram	1.096	1%
Google+	928	1%
torrent-Plattformen	833	1%
Snapchat	792	1%
Skype	609	1%
Serienjunkies	567	1%
MyVideo	505	1%
UPC on demand	339	0%
movie.to	302	0%
A1 TV Videothek	292	0%
Twitter	250	0%
ANDERE	12.787	15%
<b>Summe</b>	<b>87.697</b>	<b>100%</b>

Video-Nutzung Gesamt: 87.697 Minuten





## Some relevant trends changes since 2007/2010

- The concept of the 2007 Directive re VoD-services was graduated regulation, justified by being of pull nature , on the other hand not having the mass media impact of linear services. This has changed since dramatically: e.g. PewDiePie with 53 Mio followers. So if there has been justification for regulation before, it has become well-founded even more
- „Traditional“ stakeholders extended their presence on (various/all) Social Networks, including Facebook, right owners sell their content directly to VSPs
- Consumption habits changed: concerning the daily use of audiovisual content, app 40% (age group 14-29), exclusively consume Social Media

**With a view to the proposed changes to the AVMS-D, in this light, the digital disruption might lead to a „digital explosion“ for NRAs**



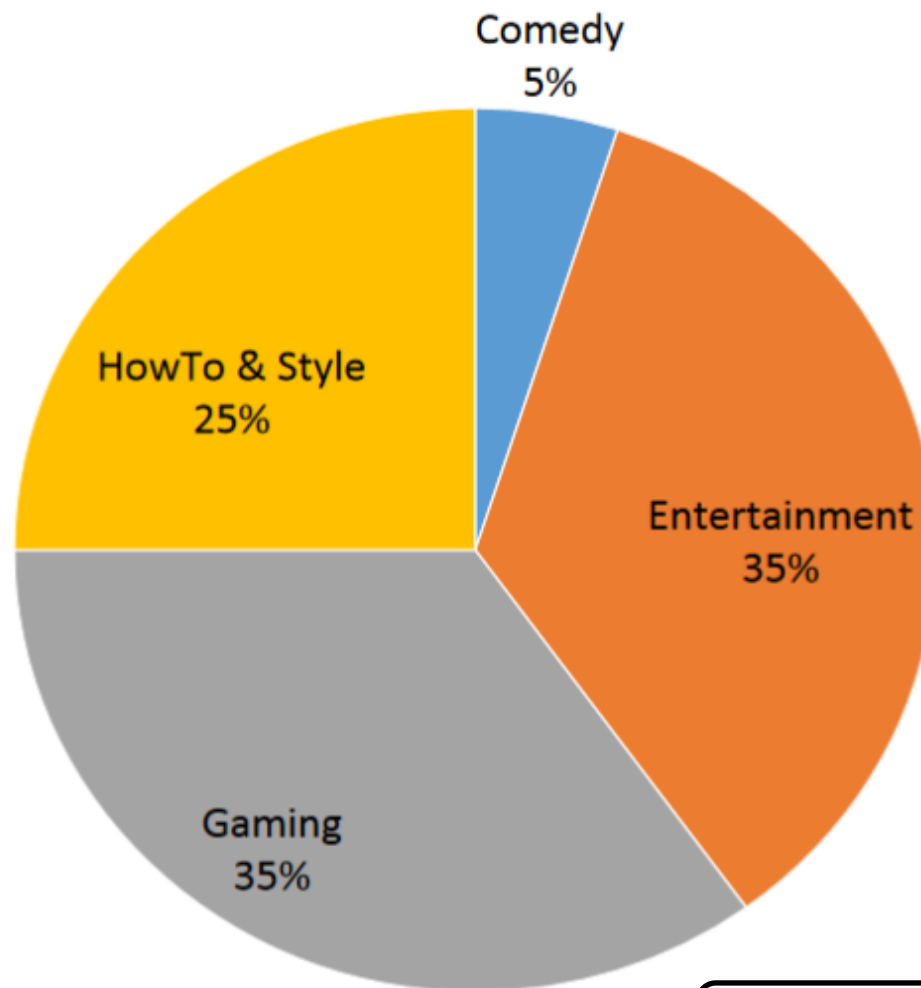


# KommAustria's alternative/complementary strategy to traditional regulative procedures

- Trying to get an overview of market changes: commissioning of a study providing empirical data (sample: 100 most successful YTs)
- Reaching out to the „new“ stakeholders on the basis of alternative, non-bureaucratic strategies:
  - Information events by the NRA & visiting YT-meetings
  - Dedicated websites, use of social media, on the basis of non-bureaucratic language, simple registration procedures
  - Transparent description of criteria in view of qualification as AVMS VoD service
  - Comprehensive FAQs for stakeholders, guidance by NRA staff
  - Cooperation with MCN and Google re reference to statutory obligations in contracts
  - Currently assessment of most important services (YT) in terms of views and subscriptions (app. 500) including legal evaluation whether AVMS service
  - Next step: electronic information of providers concerned re registration and yearly update obligation
  - Ultimate step in case of non-compliance: „traditional“ administrative (and penal) procedures



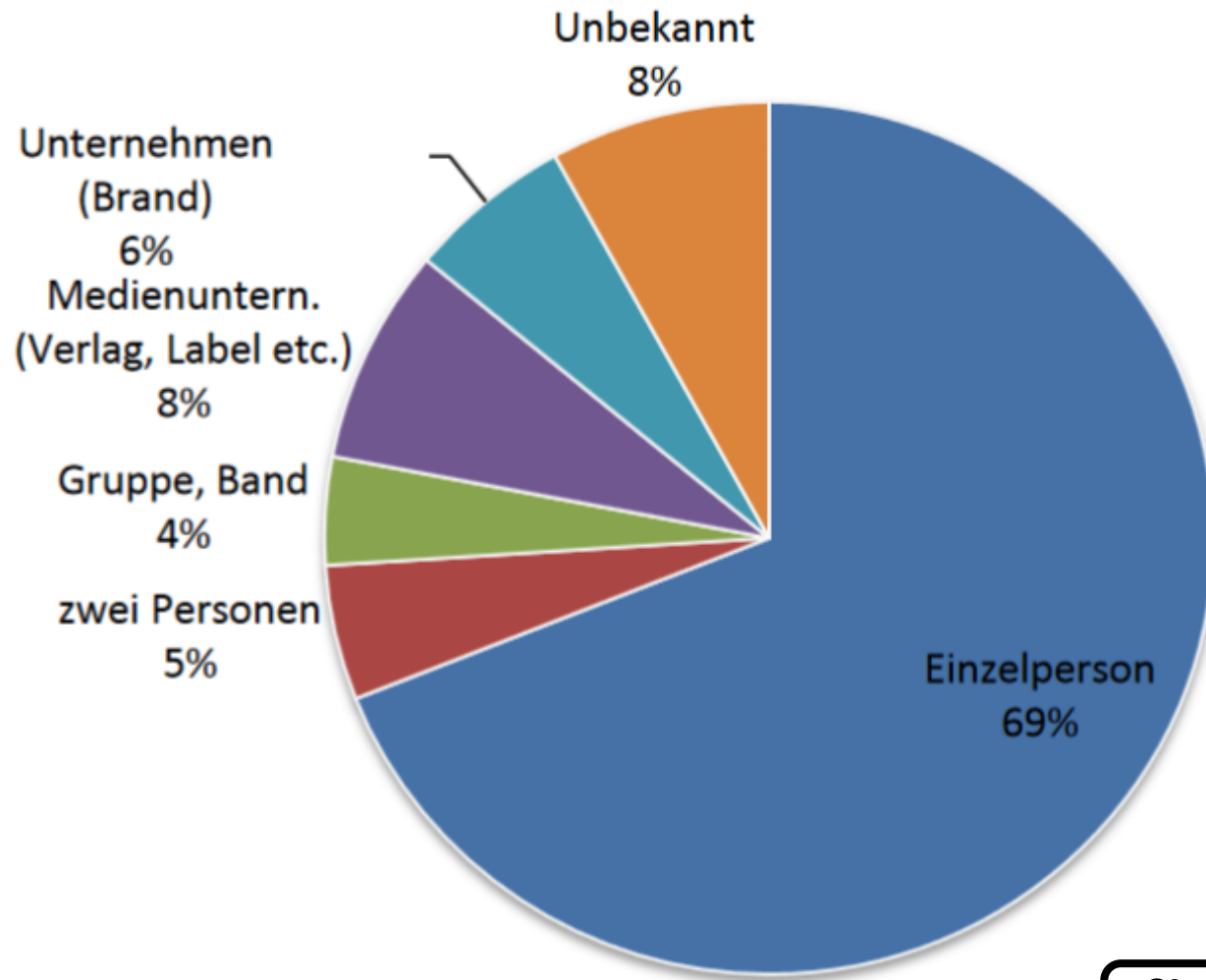
# Kategorien



**Categories of Content in study  
sample (100 offers)**



# Betreiber des Channels



**Channel operators  
(sample: 100)**



# Summary

## regulation must be adapted to the new environment

- Regulatory goals must be explained in substance (media pluralism, protection of minors, requirement of independence of the media, use of separation between content and advertising, etc..)
- Awareness of NRAs of the loss of importance and credibility of traditional stakeholders and their content (specifically news)
- Main suggestions for law-makers:
  - Implementation of the principle of „Better (and simpler) regulation“ (AVMS, E-Commerce, other applicable laws, self-regulation by Social Media
  - Clarity of definitions for providers AND NRAs (user-generated content, Social Media (platforms), etc....