

NPO REPLY TO THE EUROPEAN COMMISSION GREEN PAPER
“PREPARING FOR A FULLY CONVERGED AUDIOVISUAL WORLD: GROWTH, CREATION AND VALUES”

1. INTRODUCTION

NPO welcomes the European Commission’s invitation to respond to a number of questions in its Green paper¹. We are pleased to have the opportunity to contribute to the discussion by submitting our responses, in particular to those questions that directly affect Public Service Media (PSM) in the Netherlands. In our answers we will highlight a number of issues which, in our opinion, are not yet sufficiently elaborated in the Green Paper, but which are already emerging as limitations to consumer choice and obstacles to a level playing field for providers of audiovisual services in the Dutch market. They are also potential threats to PSM’s universal availability and its findability. If these are hampered, this will also hamper the PSM’s ability to perform their democratic, social and cultural functions, as stipulated in the protocol to the Treaty of Amsterdam.

As a member of the EBU (European Broadcasting Union), NPO endorses the analysis and recommendations made by the EBU in its response to the Green Paper. The Dutch market, however, has a number of specific characteristics, mainly due to its fast-paced digitalisation, that merit special attention. It is a competitive market with many private broadcasters and providers of (online) audiovisual services, including large global players. It ranks top on the list of countries with high broadband penetration and is therefore a test market for many new audiovisual services. There is competition between distribution networks, but the market tends to ownership concentration by the two or three largest providers of (digital) broadcast and broadband networks, which offer radio and TV packages, often as part of triple or quadruple play offers. The increased control that connected TV and other converged devices ideally offer to consumers could be restricted by market developments such as concentration, lack of transparency, difficulties in accessibility and findability of PSM content, lack of standardisation and consumer lock-in issues. Some of the potential threats to PSM’s universal availability and findability are already emerging in the Dutch market.

These considerations have led us to emphasize a number of issues that are important to ensure the accessibility and findability of PSM in a converging world and to create and maintain a level playing field and optimal choice for consumers.

In the Netherlands traditional and new media companies, national and international, compete for audiences, programmes, programme rights and talents. This market has grown substantially in the past 15 years, due to – amongst other factors – a high level of broadband and digital television penetration. Of 7.5 million Dutch households 83 per cent receives digital television², 94 per cent is connected to the Internet³ and the majority has a connection to broadband Internet. Mid 2012, 63 per cent of DSL- and cable subscribers had access to an advertised speed of 10 Mbps or higher and 27 per cent of subscribers to an advertised speed of even 30 Mbps or higher.⁴

¹ “Connected TV and Convergence. Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values” (COM(2013) 231 final).

² OPTA (2013). *Telecommonitor eerste kwartaal 2013*. Consulted at: <https://www.acm.nl/nl/publicaties/publicatie/11670/Telecommonitor-eerste-kwartaal-2013-Breedbandabonnementen-steeds-sneller/>

³ Commissariaat voor de Media (2013). *Mediamonitor, analyse en verdieping over audiovisuele media in het digitale tijdperk*. Hilversum: Commissariaat voor de Media, februari 2013. Consulted at: <http://www.mediamonitor.nl/dsresource?objectid=13914&type=org>

⁴ OPTA, *Jaarverslag 2012* (annual report). <http://optajaarverslag2012.acm.nl/download/OPTA%20Jaarverslag%202012.pdf>

Mobile devices are also prevalent; 40 per cent of the Dutch population of 13 years and older owns a smart phone, 44 per cent a tablet (iPad, tablet computer) and 68 per cent a laptop or netbook⁵. A more recent report indicates that the percentage of smartphone users is already 60 per cent of all mobile phone users⁶. When connected to Wifi or combined with a mobile Internet subscription, all these mobile devices can be used to access audiovisual services.

Increasingly households have connected TVs, mainly through subscriptions to cable and IPTV operators who offer Internet connected settopboxes. Some households have connected their TV set to an Internet connected computer, game console, Google or Apple TV. In 2012 11.4% of Dutch households could access the Internet on their TV set (SKO, 2012).

This high level of 'connectedness' has enabled the development of new audiovisual services of traditional broadcasters, but also of new media and Internet companies. Cable, IPTV, and fibre TV distributors offer a total of 347 channels to Dutch households.⁷

Dutch PSM company NPO operates 3 main general interest TV channels and 8 thematic TV channels, which are part of network operators' digital basic or premium packages. Dutch commercial broadcasters offer 8 general interest TV channels, radio channels and dozens of targeted or thematic TV channels to Dutch audiences. Most PSM programmes are made available in on-demand and catch-up services. They are increasingly enriched with interactive options and additional content, enabling the audience to fully enjoy the benefits of converged TV. In this way the Dutch PSM contribute substantially, as it has always done, to innovation and to the availability of new audiovisual services for a diverse audience, in line with their public service remit to contribute to innovation in media.

Unlike most new, international players on the market, PSM and national commercial broadcasters invest substantially in original, national content. The Dutch PSM have a particular prominent position in this respect, spending approximately 84 per cent of TV broadcast time on original national content (in 2012, 00.00-24.00 h.). Of the total broadcast time only 12 per cent is spent on non-national European content and merely 4 per cent on non-European content, mainly from the US (in 2012, 00.00-24.00 h.). Although some of the new players, like Netflix and Google, also invest in national content, their investments in national content are marginal compared to those of European broadcasters and in particular to European PSM.

After a period of sustained growth and experimentation, the Dutch audiovisual media market is currently facing stagnation. This is due to the economic crisis and the (partly) corresponding decline in advertising revenues, but also to severe budget cuts for the Dutch PSM. The net TV advertising revenues have declined between 2011 and 2012 with 5.4 per cent to 962 million⁸. Dutch PSM are confronted with structural budget cuts of a total of 300 million Euros in the period of 2013 to 2017, about a third of their yearly budget. These developments are likely to cause a decline in commissions for independent TV producers and other related industries. The resulting stagnation will also affect the further development of the converged broadband/ TV market and investments in new audiovisual services.

The entrance of new and global market players has increased competition for content, content rights and talents. At the same time many of the new players as well as network distributors and device manufacturers now have a stake in the packaging and distribution of content. Offering premium content has become an important means to attract consumers and through them

⁵ Stichting Kijkonderzoek (2012). *SKO TV in Nederland 2012. Ontwikkelingen in TV bezit en TV gebruik*. SKO: Amstelveen, 01-01-2013. Consulted at: www.kijkonderzoek.nl

⁶ According to the 'Dutch Smartphone User 2012-Q4' report 61% of Dutch mobile phone users has a smartphone: <http://www.telecompaper.com/pressrelease/android-dominant-in-dutch-market--925969>

⁷ Commissariaat voor de Media (2013), *ibid*

⁸ SPOT (2013). *TV Jaarrapport 2012*. Amstelveen: SPOT. Consulted at: http://spot.nl/docs/default-source/jaarrapporten/spot-tv-jaarrapportage2012_binnenwerk_licht.pdf?sfvrsn=2

advertisers. Network and platform operators and device manufacturers are likely to give their own or liaised content services privileged positions on their platforms, opening screens, search engines or navigation tools. PSM content will then become more difficult to find and harder to distinguish. These developments threaten to undermine the availability of PSM content. PSM's remit is to inform, educate and entertain, independently of commercial and political interest. It should offer a platform for democratic debate, reflect cultural diversity and contribute to social cohesion. In order to be able to fulfil these roles, it should have a broad reach and broadcast a comprehensive programme offer, including premium content. Some of the current developments threaten the accessibility and findability of PSM content and thereby its ability to perform these roles for society. Regulation might be required to safeguard PSMs function.

These considerations shape the perspective from which NPO looks at the questions listed in the Green Paper.

2. GROWTH AND INNOVATION

2.1. Market considerations

Question 1 - What are the factors that enable US companies to establish a successful presence in the fragmented EU market despite language and cultural barriers, while many EU companies struggle? What are the factors hindering EU companies?

NPO expects that over time the convergence of broadcast and broadband and the rise of connected TVs will continue, and will lead to fundamental changes in the value network. We expect that large international players – mainly from the US - can exploit the advantages of economies of scale to an even larger extent than before. A large home market, the prevalence of the English language, and a less complex system of rights clearance contribute at least as much, if not more, to the success of US media companies in the converged and online media domain than they already did in the audiovisual broadcast market. In this context easy and universal access for citizens to Dutch and European content remains of utmost importance.

The EU can substantially contribute to ensure that a level playing field is (re)established.

Question 2 - What are the factors affecting the availability of premium content? Are there currently practices relating to premium content at wholesale level which affect market access and sustainable business operations? If so, what is the impact on consumers? Is there a need for regulatory intervention beyond the application of existing competition rules?

Technological and market developments are causing fundamental changes in the value network and in the market for premium content. Firstly, more (international, mostly from outside the European market) players have entered the market, which causes an increase in competition for premium content like (the rights for) sports-, film and popular TV series. The largest growth is visible in on-demand and pay TV services. This might, in the long run, threaten the availability of premium content for a general audience.

A recent example in the Netherlands of how competition affects PSM's position is Fox's acquisition of the Dutch Premier League football rights (*Eredivisie*) and the pay channel *Premier League Live*. Until 2014 the Dutch PSM has the right to broadcast the Premier League matches' extracts, but from then on Fox also owns the rights to extracts.

This means that one broadcaster owns the (exclusive) rights to both live events as well as to the extracts. While the listed events article in the AVMS Directive ensures that events of major importance to society will be broadcast on an open TV channel, a broadcaster who owns both the rights to the live events and the extracts could strategically program the extracts, in a way

that maximizes the audience for its pay channels. In this way it could become more difficult for consumers to have access to these events than when a free-to-air broadcaster owns the right to show the extracts. Article 14 of the AVMS would then fail to achieve its underlying goals. This is a potential threat that the European Commission should have an eye for when monitoring the implementation of the AVMS Directive.

Secondly, positions in the value network are changing, with more players moving upwards the value chain and an increased competition for viewers' eyeballs. Network distributors increasingly become content providers or close deals with pay TV operators. UPC for instance offers a range of channels from the company that also owns UPC (Liberty Global). Both main cable companies (UPC, Ziggo) offer HBO's pay TV services, which provide access to a range of popular and high quality TV drama, mainly from the US. In addition to increased competition for premium content, the involvement of network providers in content also introduces the risk that they privilege their own or liaised channels and services above those of other audiovisual service providers. For instance in assigning network capacity, promotional activities and navigation options (see question 3).

Thirdly, the presence of US media conglomerates, in combination with the windowing strategies of the large TV and film producers, make it more difficult for European or smaller media companies to sustain viable (OTT) audiovisual services. Windowing strategies enable large TV and film producers to maximize their revenues by reaping the benefits of first releases in cinema theatres or on pay TV channels, followed by DVD and paid on-demand services. Free-to-air channels are more likely to end up as the last window.

Increased competition is likely to drive up the prices for premium content, which can then only be recuperated by pay TV operators charging the consumer substantial amounts of money or by large commercial broadcasters able to attract sufficient advertising revenues. Premium content risks to end up in the hands of a few large media conglomerates. Because PSM will then have more difficulties in acquiring the rights for (first releases of) this content and/or the rights to include popular series in their on-demand offer, the attractiveness of their overall offer might diminish.

When free-to-air broadcasters in general and PSM in particular can no longer afford to pay for premium content, this threatens to undermine PSM's task to contribute to social cohesion and shared experiences by offering a broad programme portfolio that invites a wide audience to watch its channels and use its on-demand services.

Offering wide access to premium content remains important for PSM. They can only continue to foster social cohesion and offer a platform for democratic debate in a meaningful way when they reach a large part of the population. And only then can PSM fulfil the democratic, social and cultural needs of the societies they serve.

- *Therefore, it is of utmost importance that Member States (continue to) support a strong PSM. In order to guarantee that PSM can produce and commission high quality content for all people, both a general audience as well as targeted at particular niche and under-served audiences, it needs to be sufficiently funded.*

In addition, the AVMS Directive aims to ensure that major events remain publicly accessible. For this purpose article 14 of the AVMS Directive stipulates that Member States are entitled to compile a list of events that they consider to be of major importance to society. In the context of the developments sketched in the previous paragraphs, there might be reason to extend the list. NPO therefore advocates that:

- *In order to determine what is needed to guarantee universal and free access to coverage of events of major importance to society, national and European legislators should consider the*

composition of the list of events and any extension of this list in the light of the above market developments.

Question 3 - Are there obstacles which require regulatory action on access to platforms?

NPO recognizes the Green Paper's observation that digital intermediaries and gatekeepers are of increasing importance in providing access to content and guiding consumers to content. This development will be a major challenge to the position of European audiovisual service providers in general and PSM in particular. It requires the attention and close monitoring of the (national) regulators and in addition probably the European Commission. Additional regulation might be required to ensure a level playing field.

Network providers are such gatekeepers, but also programme packagers, online content aggregators, social media platforms and device manufacturers. They increasingly influence how consumers have access to, find and consume content. Network providers affect the access, visibility and findability of (PSM) programmes and channels, by determining the position of channels and programmes on opening screens and EPGs, navigation and search options and by the placement of programmes in on-demand services.

The fact that in the Netherlands all major distribution networks are owned by vertically integrated companies that increasingly combine network ownership with content packaging and with providing content services is in our opinion not conducive for an open and transparent market and a level playing field. This development is aggravated by increased market concentration, especially in the distribution market.

The Telecom Directive regulates access to networks. Member States may impose reasonable must-carry obligations and several Member States have included those in their Media and/or Telecom laws. Must-carry rules usually apply to the PSM's main channels. In the Netherlands a government proposal was recently accepted by Parliament that changes the current legal obligation to carry a minimum number of channels, including must-carry channels (Media law, article 6.13) in such a way that the obligation no longer rests on the network provider, but on all TV packagers above a certain threshold of subscribers. In this way all TV packagers, regardless of whether they are also the owners of the network, and regardless of the kind of distribution network (cable, satellite, IPTV, digital terrestrial) are subject to this regulation.

The proposal requires TV packagers to carry a minimum of 30 channels, amongst which the PSM must-carry channels. This regulation ensures consumer's access to a diverse TV offer in the basic packages of network operators. However, it does not ensure consumers' access to PSM's thematic channels or demand services, as these are not part of the must-carry obligations. It also does not address the findability of programmes on network and platform providers.

A related issue is the way in which network owners or packagers deal with accessory facilities and with recommendations, or other overlays offered to viewers while watching programmes. Accessory facilities are for instance subtitling, spoken subtitling, HbbTV and RDS signals. Regarding the distribution of accessory facilities and the integrity of the signal, an amendment was submitted to parliament on the Dutch government's proposal to change network providers' legal minimum carriage obligations. The amendment stipulates that the government can make a ministerial regulation on the transmission of accessory facilities that are distributed with the TV signal, in case negotiations between stakeholders fail to lead to an agreement. The amendment seeks to ensure that programme channels will be distributed entirely and unchanged, including any accessory facilities and that the TV signal should not be blocked, changed or replaced⁹. From

⁹ Amendement bij de Wijziging van de Mediawet 2008 in verband met de verspreiding van televisie- en radio programmakanalen door middel van omroepnetwerken en omroepzenders en de vaststelling van de minimale omvang van het standaardpakket televisie- en radioprogrammakanalen. Tweede Kamer, Vergaderjaar 2012-2013, 33 426 nr. 38.

a PSM perspective this should also imply that TV packagers are not allowed to insert unsolicited recommendations in broadcasters' signals, unless explicitly requested by viewers.

Another regulatory shortcoming is that the above measures only apply to network providers, and not (yet) to other intermediaries, such as TV and other device manufacturers or audiovisual service providers. In our view there should be legal guarantees that all these intermediaries distribute our programmes entirely and unchanged.

The amendment provides a regulatory backstop in case the market does not sufficiently guarantee consumers' access to a diverse media offer.

Therefore:

- *NPO advocates the support of European regulators of this kind of regulation, necessary to guarantee unchanged transmission of the broadcast signal, including accessory facilities, and preventing unsolicited overlays.*
- *NPO proposes additional legal measures to ensure that TV packagers or other audiovisual service providers are not allowed to insert unsolicited recommendations in broadcasters' signals, unless explicitly requested by viewers.*
- *NPO proposes an extension of the legal measures concerning the entire and unchanged transmission of its programme channels to all intermediaries, including device manufacturers and service providers on digital platforms.*
- *Article 3 of the Universal Service Directive should be widened to allow Member States to include the transmission of non-linear audiovisual media services on managed networks.*

Consumers increasingly use broadband Internet to access audiovisual services and they benefit from a growing availability of online audiovisual services. Following consumers' changing media behaviour the Dutch PSM's programmes are increasingly available online. NPO offers live online streams of all its main TV and radio channels, including its thematic TV channels. NPO also offers on demand and catch-up services, on its website as well as in a stand-alone app that users can download on their mobile devices. Broadband Internet distribution of audiovisual services requires substantial network capacity, especially when many people simultaneously access the same service.

When network operators own content or liaise with content owners, this introduces the risk of preferential treatment in the allocation of network capacity. To prevent this kind of preferential treatment the Dutch parliament accepted a law on network neutrality that obliges network providers to be transparent in how they deal with Internet traffic. In addition it obliges them to deal with all Internet traffic in an equal way and prohibits them to block and throttle Internet traffic.

However, the current legal measures focus on the public Internet (unmanaged lane or best effort Internet). They do not address how network providers distribute network capacity over the managed and unmanaged lane. When faced with legal restrictions on the public, unmanaged Internet lane, network providers might seek to increase revenues from the managed lane by assigning more capacity to the latter. The open Internet then risks becoming a dirt road compared to the managed lane highway. This is more likely to occur when network providers have an interest in content provision, and therefore an interest in differential treatment of content providers.

Therefore NPO recommends that:

- *Net neutrality regulation, similar to the Dutch regulation, is included in the Telecom Directive.*

- *EU and regulatory authorities should closely monitor developments in the distribution of network capacity, including the managed lane as well as the unmanaged lane (i.e. the open Internet), while taking into account the importance of a level playing field in the market for audiovisual services as well as the importance of wide and easy access to audiovisual services from a cultural and public interest perspective.*

Findability/prominence

PSM services should not only be easily and widely accessible, but also easy to be found.

Gatekeepers can affect the findability by the placement of PSM services on opening screens, EPG's and portals. Are PSM services for instance available from the opening screen of connected TV's and in the EPGs of network providers or can they only be found on underlying screens?

How and under which brand are PSM audiovisual services offered to consumers in on-demand and catch-up services? Can PSM have their own on-demand / catch-up service with their own logo on the EPGs of network providers, or are PSM programmes part of the network providers' on demand service? The latter makes the original sender less recognizable and more difficult to find.

Another example of how network providers affect the findability of programmes is by their search options and how they presents the results. Does a viewer searching for 'sports' by typing that keyword in the search option, only find thematic sports channels or also individual sports programmes that are broadcast on (PSM's) general interest channels? Current market developments might threaten the findability of PSM content.

NPO therefore endorses the EBU's viewpoint that:

- *An appropriate prominence approach should be a key component of any policy framework relating to the access to platforms.*

Findability of broadcasters' programmes and other content is not only an issue that broadcasters face with regard to distribution network providers. The search and recommendation algorithms of search engines, audiovisual content aggregators and social media platforms also affect the findability of our content. Especially young people intensively use social media platforms like Facebook and YouTube. They exchange recommendations and clips of TV programmes with friends and use the platforms as a starting point for their audiovisual media consumption. These platforms thus increasingly function as a gateway to broadcasters' content.

When PSM offer their content on third party platforms they should be able to control how their programmes are found and in what context they appear. Currently users can search for PSM content on third parties' platforms by using adequate key words. However, the platform owner mostly controls subsequent recommendations. Viewers, who follow these recommendations, will then leave the original PSM context. These kinds of practices could undermine PSM's position as the curators of reliable and trusted content. Regarding national and EU content providers governments could impose due prominence rules for PSM content on third party platforms, but it difficult to impose such regulations on non-EU companies.

A potential alternative strategy to ensure that PSM as NPO can better control their content and the context in which it is consumed, might be to develop their own distribution platforms, for instance in the form of a PSM EPG, media player or portal. NPO might also consider collaborating with other European PSM and/or national FTA commercial broadcasters in order to offer consumers access to a diverse offer of local content in a trusted context. This might be an important way of ensuring the integrity, recognition and findability of local and PSM content, vis-à-vis being subject to the context offered by the platforms of large international media conglomerates. These forms of collaboration are currently experimented with, for instance by the Flemish VRT and VTM in their Stieve project and by public and commercial UK broadcasters in the Radioplayer.

Another consideration for broadcasters to build their own players, portals or EPGs is that this offers them access to user data, which are of increasing importance for offering users a personalized and targeted media delivery. Access to user data will be a determining asset in the evolving media ecosystem. PSM will need access to these data in order to have the option to better target recommendations and programme overlays, of course with due respect to laws on privacy and data protection.

To ensure a level playing field, it should be possible for PSM and national commercial broadcasters to cooperate on a national level. This will help to sustain good accessibility and findability of European and national content. Cooperation on a European level with other PSM or on a national level with national commercial broadcasters might also be the only way in which PSM can afford to build these platforms

- *European Competition Authorities should take these considerations into account when they are judging competition and state aid issues.*

2.2. Financing models

Question 4 - Do the current AVMSD requirements provide the best way to promote the creation, distribution, availability and market appeal of European works?

Question 5 - How will convergence and changing consumer behaviour influence the current system of content financing? How are different actors in the new value chain contributing to financing?

The availability of high quality content that expresses and shapes the culturally diverse identities of European Member States remains an important goal of the AVMS Directive. This becomes all the more important in a fast changing and globalizing world. Whereas, in a converged media domain, international providers of audiovisual media services can more easily reach consumers worldwide, consumers keep showing a strong appreciation of national and local content. It provides them with a sense of belonging and helps them make sense of the world around them, from familiar, local or national reference points.

PSM have always been committed to investing in the production of original national content. They remain one of the main, long-term providers of original, national content and supporters of the European production industry and creative sector. Acknowledging this appeal has led some US and international companies that have recently entered European markets to invest in European, national content. The US OTT video provider Netflix for instance co-financed the Norwegian-American series Lilyhammer in 2012. YouTube (owned by Google) invested one hundred million dollar in content in 2011¹⁰, of which it bought – amongst others - the cricket broadcast rights. It has a talent programme that supports artists with training and promotion activities. In the Dutch market YouTube live streamed the Dutch music festival Lowlands. However these investments remain small compared to those made by PSM and they are often one-off projects. Global media companies are more likely to select types of content that they can also exploit worldwide (like Netflix' investment in the popular series House of Cards) than in more specific local content. Moreover there is no guarantee that the content they have invested in will remain accessible for all.

Unlike PSM, who have a legal obligation for universal reach, private companies can also decide to make the content available behind a pay wall, if this enables them to earn larger revenues.

¹⁰ 10 april 2012. <http://www.emerce.nl/nieuws/meerderheid-preroll-ads-youtube-skippen>

PSM remain the only ones that guarantee sustainable and high quality content to remain accessible for all. Strong PSM with sustainable funding are therefore the most important measures governments can take to ensure the creation, distribution, availability and market appeal of European works. Because PSM invest substantially in European content, they should also be able to reap the benefits of these investments by being able to show the content on all relevant platforms, including their on-demand services. In the current situation content producers often keep these rights in order to exploit the content on other platforms themselves.

Therefore:

- *NPO supports the continuation of the AVMS requirements concerning the creation and distribution of European works.*
- *The European Commission should stimulate that PSM are enabled to retain the rights to distribute the content on relevant platforms, including their on-demand services, when they have paid for the production of the content.*
- *In order to keep fulfilling its role of supporting national and non-national European works PSM need a strong and stable financial basis.*

2.3. Interoperability of connected TV

Question 6 - Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market?

In a real converged media domain, offering optimum choice, users should be able to determine which device they want to use to access broadcast and other audiovisual services. This freedom of consumer choice can only be realized when network providers enable connections to any kind of STB or TV, by using open and interoperable standards. Currently consumers need a different device (TV or STB) to connect to each of the different distribution networks. Even within the same platform, they often can't use the same device, due to different systems used by the network providers. There are TV sets on the market that theoretically can be connected to any digital distribution network, but certification procedures of network providers often limit their use. Network providers often require users to rent a dedicated, proprietary STB or buy a certificated TV set.

The only way in which fragmentation can be prevented and interoperability guaranteed is by using open standards.

- *The EU and governments should promote and facilitate the development of open standards.*

2.4. Infrastructure and spectrum

Question 7 - How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations?

PSM should be universally accessible. All viewers and listeners should be able to receive basic PSM services without any costs, apart from the costs for the device and antenna needed to receive the signal (i.e. free at the point of use). In theory all distribution networks (terrestrial,

satellite, cable, fixed and mobile broadband) could realize this. However, for remote and rural areas fixed cable and broadband networks are less suitable (economically) than satellite and terrestrial distribution and possibly wireless broadband. Moreover, apart from the public part of the terrestrial frequencies used by PSM, all other distribution networks are exploited by commercial companies that control how and under which conditions users can access audio-visual services and they require consumers to pay for subscriptions. PSM should not depend on gatekeepers' commercial business models. Everyone should be able to receive PSM signals non-selectively and unrestricted.

In addition to being available on FTA platforms, PSM have to be available on all platforms used by their audiences. Users increasingly access audio-visual services through a variety of distribution networks and on a variety of platforms, depending on location, device, availability, and costs. The necessity to be available on all distribution platforms requires additional investments. It also paves the way for (new, sometimes global) gatekeepers to settle between PSM and their audiences.

Linear TV viewing is still the dominant mode of TV viewing, but – stimulated by the growing use of mobile devices, viewers increasingly use non-linear audio-visual services or a combination of linear and non-linear services.

Because (wired and wireless) broadband Internet connections are offered on the basis of 'best effort service', the quality of the signal cannot be guaranteed. Especially in case of large numbers of simultaneous viewers this can lead to a degraded signal. It is more efficient to use broadcast delivery networks such as terrestrial, satellite and cable (DVB-C) to reach large audiences.

- *DVB-T spectrum needs to be maintained as currently the only distribution network through which PSM can be delivered efficiently and FTA.*
- *The EU should ensure that the right conditions are in place for the implementation of broadcast techniques in the development of wireless broadband.*
- *Delivery platform gatekeeper's commercial models should not prevent PSM services to be available on those platforms.*

Question 8 - What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?

In our view, the allocation of frequency should primarily be based on the physical characteristic of a spectrum, not (only) on the economics surrounding it. For instance applications that operate in line-of-site conditions (ground-to-air communications) should not be allocated spectrum in the UHF band just because it is more economical.

At the allocation of spectrum the administration should be imposing minimal spectral efficiency criteria to promote the usage of the most efficient technologies and encourage operators to upgrade their networks, for instance, 2G networks could be upgraded to 3G or 4G networks in the same spectrum.

For PSM as well as other critical public service operations (i.e. PPDR) spectrum should be allocated on a priority basis. For instance: mobile broadband combines the potential of universal reach with the development of new innovative broadcasting techniques. Part of the spectrum for mobile broadband should therefore be kept out of commercial business models and incentives of mobile operators and be allocated directly to PSM. Separating it from

commercial performance pressure will help make the development of mobile broadband a faster, easier and feasible one, while ensuring PSMs aspirations for universal reach.

PSM are depending on the Program-Making- Special-Events- (PMSE) and Electronic News Gathering/Outdoor Broadcasting applications (ENG/OB). Therefore it is imperative that PMSE and ENG/OB have guaranteed access to spectrum. Since the usage of these applications is temporary by nature permanent allocation is inefficient. Licenced Shared Access (LSA) is an appropriate mechanism to allocate spectrum to these applications. Currently LSA is based on an incumbent party having the license and priority rights to spectrum that others can use on a LSA basis. LSA should be used as a license mechanism in its own right.

- *The EU should ensure that spectrum should be allocated primarily based on its physical/propagation characteristics.*
- *The EU should ensure that LSA be used as a sharing mechanism in its own right.*

Question 9 - What specific research needs with regard to spectrum have to be addressed to facilitate such development?

One technology for both broadcast and mobile telecommunication/broadband wireless access would be the most efficient use of spectrum. Therefore NPO suggests research in the convergence of technologies, e.g. the convergence of DVB-T(2) and 4G/LTE or its successor. DVB-T(2)s high tower, high power infrastructure has proven its success in the distribution of linear audio-visual content. 4G/LTE low tower, low power technology (and adaptive modulation) is very efficient in the delivery of non-linear and personalized content to both stationary and mobile connected devices. NPO believes the convergence of these two technologies creates a new technology with the best of both worlds, linear and non-linear. The results of this research should be the basis for the application of 5G.

- *The EU should ensure promote research to the convergence of DVB-T(2) and 4G/LTE.*

3. VALUES

3.1. Regulatory framework

Question 10 - Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?

Question 11 - Is there a need to adapt the definition of AVMS providers and/or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?

The differences in regulation between linear and non-linear audiovisual services in the current AVMS Directive have been motivated by the lesser impact non-linear audiovisual services would have on users and the greater level of user control over non-linear content. This difference is increasingly questioned because users nowadays have a greater level of control over linear services than before, enabled by modern TV equipment (including tablets and smart phones) that allow users to skip advertising, pause and resume linear programmes. At the same time users do not always have the presumed full control over the consumption of non-linear services;

online videos often have commercial overlays or are preceded by commercials (pre-rolls) that can't be skipped. In this respect the differences between linear and non-linear audiovisual services are blurring. In addition, the same content is often offered both in a linear and non-linear way, in order to enable viewers to watch programmes at a time of their own choice. Linear and non-linear services are also increasingly available through the same devices and on the same screens. This makes the distinction in regulation between linear and non-linear less obvious.

However, in terms of the amount of viewing time, linear viewing is still dominant. In the Netherlands 94 per cent of the total viewing time is linear, and only 6 per cent non-linear (for 6+ viewers) (SKO/KLO). Linear, live TV is also often watched in a family or household setting together with others, which makes it less likely that people use all the tools that enable individual control of linear programmes.

From a market perspective the changes in available technologies and services and the changes in media use raise the question to what extent linear and non-linear audiovisual service providers compete with each other with similar content for the same viewers and to what extent differences in regulation distort this competition.

A similar question can be raised with regard to the differential treatment between providers located in EU Member States and those from outside the EU that are not subject to EU regulation.

NPO is not directly affected by the differential treatment of linear and non-linear services, because it already adopts the same high standards for both its linear and non-linear services, and these are already higher than stipulated in the AVMS Directive. However, there might still be reason for concern, because in the long run, unequal treatment of linear and non-linear audiovisual media services providers and of EU and non-EU based providers, could undermine the public service goals of the AVMS Directive. It could leave consumers less protected and contribute to a strengthening of large, international media conglomerates that will dominate EU markets, with detrimental consequences for EU broadcasters, including PSM (see answers to question 1, 2 and 3).

- *Depending on actual future developments in markets and media behaviour, the different regulatory regimes for linear and non-linear services might have to be reconsidered, in such a way that regulation continues to address the areas of concern, regardless of whether they are consumed in a linear or non-linear way.*

It is clear that the increasing presence of global players that offer audiovisual media services on European markets might undermine the effectiveness of European regulations and of realizing the goals of the AVMS regulation, such as to foster a European audiovisual market, privacy, consumer protection and protection of minors. This is the case as long as those players are not subject to European regulation.

Again, ensuring strong PSM might be one of the few ways in which the future availability upholding the AVMS Directives' underlying public service goals can be achieved. PSM can also help to maintain high quality standards in the market for audiovisual media services.

- *The most viable approach to ensure an offer that lives up to the standards as expressed in the European Audiovisual Media Services Directive is to stimulate a strong European audiovisual market, including strong PSM companies. Sufficient and stable financing of PSM are part of this, as already mentioned in the response to question 5.*

3.2. Media freedom and pluralism

Question 15 - Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to public intervention at EU level?

Search engines, content aggregators, social media and other digital intermediaries increasingly influence the way in which people consume (audiovisual) media in general and news in particular. They offer tools to personalize content according to people's preferences and they offer users recommendations for content that they might be interested in, based on user and usage profiles. Many people value personalisation options, guidance and recommendations that alert them to new and wider selections of content. However, there are also reasons for concern. The ranking, the way in which search results are presented, and the way in which recommendations are offered, might be guided by commercial rather than public service interests and this is not always transparent. Paying sources often get more prominent places in search results or on opening screens, without being transparent for users what has determined this ranking. If these mechanisms are applied, there is a risk that PSM content will have less chance of being ranked in top search results or recommendations.

Consumers and providers should be protected against these forms of unrequested filtering and recommendations. It should be transparent for users if and when filtering and recommendations are based on a self-defined user or usage profile or whether they are also influenced by commercial considerations. There should be a clear distinction in search and filtering results between commercial and non-commercial content. Third party overlays or recommendations should only be allowed after explicit user consent.

Question 16 - What should be the scope of existing regulation on access (art. 6 Access Directive) and universal service (art. 31 Universal Service Directive) in view of increasing convergence of linear and non-linear services on common platforms? In a convergent broadcast/broadband environment, are there specific needs to ensure the accessibility and the convenience to find and enjoy 'general interest content'?

The consumption of linear and non-linear content is increasingly interwoven and users should have easy access to non-linear content. Consumers should be able to access broadcasters' non-linear offers on a platform and device of their choice (TV, pc/laptop, tablet, mobile), including accessory facilities, such as the HbbTV signal. If necessary to achieve this, it should be possible to apply the obligations for conditional access services, as laid down in article 6 of the Access Directive, to non-linear audiovisual services. When these services are directly related to must-carry channels, it should be possible to include these in the must-carry obligations for network providers.

- *Regarding access regulation, there should be no distinction between linear and non-linear services of general interest. It should be possible to place non-linear services under the existing access (art. 6 Access Directive) and must-carry regulations (art. 31 USD).*

The same applies to the findability of services of general interest. They should be available and easy to find on any platform. Regarding Smart TV for instance, it should be possible to place general interest content on the opening screen. In case the service provider cannot ensure this, users should be able to implement this themselves and intermediaries should not be able to prevent this (see also answer to question 3).

- *Depending on market developments, Member States should be able to impose appropriate prominence regulation on digital gatekeepers.*

3.4. Protection of minors

Question 20 - Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?

NPO endorses the goals of the current AVMS regulation regarding the protection of minors.

Children and young people are avid users of online content and they should be able to do this safely. Currently non-linear, online services do not need to uphold the same level of protection as linear services. A potential expansion of current AVMS regulation to the non-linear and online domain should be carefully considered and balanced against the importance of a free and open Internet, the freedom of information and expression of opinion.

Online, children can easily access content from providers in other EU Member States or from non-EU countries that are currently not subject to EU regulation at all, and who might apply different standards on what content is suitable and appropriate for minors.

In our opinion parents and educators have an important role to play. They can be supported by effective and adequate self-regulatory tools such as the Dutch labelling system (www.Kijkwijzer.nl, NICAM) that indicates potentially harmful content (containing violent or sexual explicit material) and provides age indications. The availability of child-locks and filtering software for online content can help parents to prevent their children from being confronted unexpectedly with content for which they are too young.

Good examples also help. PSM offer a range of high quality and appealing programmes for children that are trusted and safe. NPO applies the same high editorial standards for its broadcast and online content. Because of our role in setting standards in the market, our content should be visible, findable and widely available on all relevant distribution platforms. This enables parents and educators to show their children good and safe examples as alternatives to less suitable content elsewhere.

- *The European Commission should promote self-regulatory tools such as those offered by the NICAM Kijkwijzer amongst Member States.*

3.5. Accessibility for persons with disabilities

Question 26 - Do you think that additional standardisation efforts are needed in this field?

NPO puts substantial efforts in making its programmes accessible for persons with disabilities. NPO is legally obliged to subtitle PSM programmes

The costs connected to subtitling can be very high. Broadcasters should be able to make a cost-benefit analysis preceding the decision to subtitle programmes for very small audiences, such as for instance their thematic channels.

NPO participates in the EBU access services group that stimulates and supports development, knowledge exchange and collaboration in the field of access services such as subtitling, signed programmes, audio description and audio subtitling.

The current regulation (article 7, AVMS Directive), which tells governments to encourage media companies under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disabilities, is sufficient to ensure a good level of accessibility on a national level for persons with disabilities.

- *No extra regulatory measures are required.*

Question 27 - What incentives could be offered to encourage investment in innovative services for people with disabilities?

Developments in the field of speech recognition, automatic speech-to-text and text-to-speech translations can contribute immensely to the development of tools that enable the deaf, hearing impaired, blind and visually impaired to benefit from the broadcasters' content.

- *European research programmes could contribute to research in this field. European ICT innovation subsidies could encourage investment in innovative services in this field.*

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**NPO (Netherlands Public Broadcasting)
P.O. Box 26444
NL - 1202 JJ HILVERSUM
Tel: (+31-35) 67 72148
(Transparency Register identification nr: 870503037-12)**