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"Study on the application of measures concerning the promotion of the distribution and production of European works in audiovisual media services (i.e. including television programmes and non-linear services)"

Final Study Report

28th May 2009



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1. Executive Summary / Résumé / Zusammenfassung

1.1. English

Introduction

- On 11 December 2007, the European Parliament and Council adopted Directive 2007/65/EC amending the "Television Without Frontiers Directive" (TVWF) and renaming it into the "Audiovisual Media Services Directive" (AVMS). The new Directive must be implemented by the Member States by 19 December 2009.
- The new Directive did not make any amendments to Articles 4 and 5 of TVWF. Articles 4 and 5 place requirements on Member States to ensure that broadcasters under their jurisdiction devote a majority of transmission time to European works and at least 10% of transmission time (or programme budget) to European independent productions.
- The new Directive includes non-linear audiovisual media services within the scope of the Directive. Its Article 3i places requirements on Member States to ensure that non-linear service providers under their jurisdiction promote the production of and access to European works.
- In order to provide the European Commission with the elements required to continue monitoring and evaluating Articles 4 and 5, and to commence monitoring Article 3i, the Commission requested this independent study to be carried out, covering the situation as regards promotion of European works on linear and non-linear services at the end of 2007.
- This study builds on the previous study on Articles 4 and 5 from 2005, completed by Attentional Limited (then known as David Graham and Associates), Oliver & Ohlbaum, Carat Expert and Arena Audiovisual.
- Core objectives of the study are:
 - Description and analysis of the implementing measures taken by Member States pursuant to Articles 3i, 4 and 5 of the Directive as of the end of 2007.
 - Description and analysis of the production industry and market for audiovisual works.
 - Independent evaluation of the application of Articles 4 and 5 to specific linear broadcast channels.
 - Review of non-linear audiovisual media services in Europe in 2007.

- Recommendations for operational procedures and performance indicators for monitoring the application of Article 3i to non-linear services.

The Final Study Report

- The Final Study Report contains work from all Parts of the study, covering all the study objectives.
- In November 2008 a workshop was held in Brussels where the Draft Final Report was presented to key stakeholders. Comments received at, and subsequent to, the workshop have been carefully considered in the preparation of the Final Study Report.

Modes of Implementation

- **AIM:** To identify and analyse national legal measures implementing Articles 4 and 5 of the Directive, and stricter requirements placed on broadcasters, as well as already existing national legal measures regarding on-demand services adopted pursuant to Article 3i, or which may have a similar effect.
- **METHODOLOGY:** Questionnaires to national regulatory authorities, supplemented by telephone interviews to resolve unclear responses.
- **SOME DIFFERENCES BETWEEN NATIONAL TRANSPOSITIONS OF ARTICLES 4 AND 5:** A few Member States have adopted a definition of 'total qualifying hours' that is more restrictive than the Directive. Some Member States have incorporated the Directive's qualifying term 'where practicable', or other specific measures allowing lower proportions of European works and independent productions to be achieved in certain exceptional situations.
- **DEFINITIONS OF 'INDEPENDENT PRODUCER' VARY GREATLY BETWEEN MEMBER STATES:** Most, but not all, Member States have defined the term in their legislation. These definitions consist of a combination of different elements, mostly based on the factors suggested by the Directive (ownership of production company, amount of programmes supplied to the same broadcaster, ownership of secondary rights), but some also contain other elements that concern the actual ability of the producer to conduct their business autonomously from a broadcaster. The thresholds set for each element also very significantly between Member States.
- **TARGET FOR INDEPENDENT PRODUCTIONS IS USUALLY BASED ON TRANSMISSION TIME:** Only a few examples were found where a specific proportion of programming budget must always be assigned to independent productions. France and Italy go further in their approach, since they require broadcasters to reserve a certain percentage of their entire annual turnover (which will always be higher than the programming budget).
- **DIFFERENT APPROACHES FOR MONITORING AND SANCTIONING ADHERENCE TO ARTICLES 4 AND 5:** Most Member States simply require broadcasters to submit statements of the achieved proportions of European works and independent

productions, but some Member State authorities do take additional steps to verify the submitted data or carry out independent monitoring of broadcasts. Some Member States have not established any sanctions for failure to achieve the required proportions, but authorities in most Member States have a range of sanctions at their disposal. Typically, sanctions may be warnings and fines, but in some Member States, it is possible to shorten or revoke broadcasting licences in the most serious cases.

- **MOST MEMBER STATES APPLY SOME MEASURES STRICTER THAN ARTICLES 4 AND 5:** Some Member States apply higher percentage requirements for European works or independent productions than those contained in the Directive (on some or all broadcasters). Almost all Member States place some form of additional content requirements on broadcasters to reflect linguistic or cultural specificities in a Member State. Several Member States require that a certain proportion of broadcasting time shall be allocated to programmes originally produced in a national language.
- **PRIOR TO THE ADOPTION OF THE NEW ARTICLE 3i, VERY FEW MEMBER STATES HAD NATIONAL RULES WITH SIMILAR EFFECTS:** The French Community of Belgium have adopted a "technology neutral" approach without any distinction between distribution platforms, and this was interpreted to mean that non-linear television services were subject to the same obligations as other television broadcasting services, including the obligations on European works and independent productions. France had placed a tax on Video-on-Demand (VOD) service providers, in order to secure a financial contribution to film production.
- **IMPLEMENTATION OF ARTICLE 3i WILL MOSTLY TAKE PLACE IN 2009:** The deadline for implementation is 19 December 2009. From our interviews with national regulatory bodies we discovered only a few Member States expected national implementation to be completed in 2008, with the majority of those interviewed expecting this to take place in 2009.

The European Supply Chain and Audiovisual Content Creation

- **AIM:** To provide an analysis and description of the current market structure and revenue of the EU audiovisual (linear and non-linear) sector.
- **METHODOLOGY:** Combined a wide array of macro and micro data in order to create as accurate a picture as possible of the whole sector and its three main component parts – content creation, channel management and TV delivery.
- **MARKET STRUCTURE AND THE SUPPLY CHAIN IS BECOMING INCREASINGLY COMPLEX:** New distribution channels such as on-demand services, new funding models for content creation and increased levels of fragmentation in the traditional broadcasting market, have all altered the overall structure of the market.
- **CONSUMER PAYMENTS HAVE DRIVEN GROWTH IN THE MARKET:** Total TV industry revenue of €78.1 billion in 2006, of which licence fees accounted for 23%, advertising and associated

sponsorship for 36% and consumer payments to pay TV, cable relay and VoD services for 34%. The main source of growth in the E17 countries is in consumer payments, which have grown 10.1% year-on-year since 2002.

- **MARKET STRUCTURE AND REVENUE DRIVERS VARY SIGNIFICANTLY BY MEMBER STATE:** Contribution of advertising, public finance and subscription payments varies significantly by Member State.
- **MARKET FOR CHANNELS HAS THREE DISTINCT TYPES:** Free TV channels (available to all, both publicly and commercially funded), basic tier pay-TV channels (available to subscribers as part of a pay-TV subscription), and premium pay-TV channels (requiring an additional subscription fee).
- **FREE TV REMAINS THE MOST POPULAR BUSINESS MODEL:** Despite significant migration to pay-TV services, pay-TV homes still represent less than a third of all European TV homes. There has been a significant fall in the number of analogue homes as households move to DTT platforms. By the end of 2007, free DTT reached over 28 million homes.
- **ON-DEMAND REPRESENTS A SMALL PROPORTION OF THE OVERALL INDUSTRY:** The number of on-demand services available by market varies considerably (between 2 and 32). We estimate that in 2006 on-demand services generated approximately €400m of revenue in the E30, representing just 0.5% of TV industry revenues.
- **THERE ARE THREE BASIC PROGRAMMING CHOICES FOR CHANNELS:** Where to source programming (commissions vs. acquisitions vs. repeats); what genre to broadcast (drama, news, comedy, factual, stock vs. flow¹); and what sub-genre to broadcast (e.g. a drama-soap-opera versus a one-off film).
- **EUROPEAN CONTENT CREATION SECTOR VALUED AT €18.3BN:** Of this, €16.5 billion came from commissions by network channels and €1.8 billion from commissions by smaller channels. Of this €18.3 billion, about €2.6 billion was spending on national and local news and sports coverage (spending on sports rights is excluded). Of the remaining €15.7 billion, an estimated 43% (€6.8bn) was spent on commissions from external producers and around 57% was invested in in-house production².
- **NETWORK CHANNELS³ ACCOUNT FOR THE MAJORITY OF ALL NEW COMMISSIONING:** Main network channels account for about 57% of gross industry revenue but over 90% of spend on all new commissions.

¹ A stock programme has repeat value and can be shown again at a later date, while flow programmes have little or no further value after the first showing (narrative repeats excluded). Examples of flow programming include news, sport, games, and some entertainment programming.

² External production includes broadcaster affiliates such as UFA and Studio Hamburg in Germany, and Fremantle across RTL's group of channels.

³ For this analysis, 'network channels' were defined as any channel with an average share of over 5% of its domestic audience.

- **INDEPENDENT PRODUCTION COMPANY PROFITABILITY IS CYCLICAL:** Margins are heavily influenced by successful commissioned programmes that in the long term (depending on terms of trade), can generate significant ancillary and overseas revenue for the producer. By contrast, a failed commission will adversely impact profit margins.
- **CONSIDERABLE VERTICAL INTEGRATION ALONG THE VALUE CHAIN:** Our analysis suggests that 57% of non-news programming is made by in-house departments within broadcasters. Similarly, a very high proportion of premium pay-TV channels are owned by pay-TV platform owners.
- **ACQUISITIONS FROM USA REMAIN POPULAR:** Almost all European broadcasters acquire popular US programming (both TV series and Hollywood movies). Recently there has been an increase in the number of imports from Asian nations, especially Japan and South Korea.

EU-Wide Analysis of Linear Data

- **AIM:** Produce a consistent measure of Articles 4 and 5 across Member States, and apply this to a sample of broadcast (linear) channels in Europe.
- **METHODOLOGY:** A sample of 54 channels operating in 11 Member States was selected, designed to represent the diversity of the EU30 in terms of market size, geography and recency of EU membership, while also favouring the larger Member States in order to cover the largest possible share of the EU in terms of population and economic scale. Channels were selected to represent the diversity of European broadcasters in terms of audience size, ownership and revenue model, while also favouring leading channels in order to cover the largest possible share of European TV viewing⁴. Channels were monitored during two non-consecutive weeks of 2007, one in March, one in November.

A single approach has been used to codify all the programmes broadcast during this period and allow comparisons between channels across Member States in terms of the proportion of qualifying, European, non-domestic European, independent and recent independent works, including in peak-time. Data have been compared to past findings when available, and to national declarations when available.

⁴ The 11 Member States and 54 channels that form the sample are: Belgium (Flemish and French Communities: VRT, VTM, La Une, RTL-TVI), Estonia (ETV, Kanal2, TV3), France (France2, France3, TF1, M6, Canal+, Direct8), Germany (ARD1, ZDF, RTL, Sat.1, Pro7, Vox), Ireland (RTE1, RTE2, TV3), Italy (Rai1, Rai2, Canal5, Italia1, La7, Fox Life), Poland (TVP1, TVP2, TVN, Polsat, TV4, Canal+), Romania (TVR1, Pro TV, Prima TV, Antena1), Spain (TVE1, La2, Antena3, TeleCinco, Cuatro, La Sexta), Sweden (SVT1, Kanal5, TV3, TV4) and the United Kingdom (BBC1, BBC2, ITV1, Channel4, Five, Sky One).

For the first time, indicators have been produced and analysed not only as a proportion of transmission hours, but also as a proportion of viewer hours.

- **QUALIFYING WORKS:** Across our sample, qualifying programmes (to which Articles 4 and 5 apply) make up 68.3% of the total transmission hours and 65% of the total viewer hours on all channels studied in 2007.
- **EUROPEAN WORKS:** Across our sample, European works made up 62.4% of the total qualifying transmission hours in 2007. Most European broadcasters among those analysed met the 50% requirement of Article 4. European works also make up an average of 74% of the total viewer hours across all studied channels in 2007. The figures are even higher when looking at peak-time only. Channels with the highest proportions of European works are the leading, publicly funded⁵ channels from Southern, old and large European Member States.
- **INDEPENDENT WORKS:** Independent European works make up 31% of the total qualifying transmission hours in 2007, compared to 33.4% of total qualifying viewer hours. Proportions are higher in peak-time. Pay-TV typically shows significantly fewer independent productions than free-to-air channels. More independent productions can be found on private channels from Northern, old and large Member States. When we look specifically at the peak-time situation we see leading, private channels from small and old Member States offering significantly more independent productions.
- **RECENT WORKS:** Across our sample, recent independent European works make up an average of 84.4% of the total independent European hours in 2007, compared to 91.7% of total independent viewer hours.
- **BROADCASTERS INDIVIDUAL SITUATIONS:** Individual channels depend heavily on their local market environment and cultural dynamics. A complete analysis of each Member State is provided in this report.

Views from the Industry: Broadcasters and Producers

- **AIM:** To further our understanding, based on views from stakeholders, of the implications of Articles 4 and 5.
- **METHODOLOGY:** We issued tailored questionnaires to over 230 key stakeholders⁶ in the European audiovisual industry and received 71 responses representing 24 Member States.

⁵ ‘Publicly-funded’ includes mixed funded broadcasters, where some funding is public.

⁶ Stakeholders included broadcasters (publicly – including mixed funded broadcasters - and commercially funded), independent producers, trade bodies, regulators and pure VoD players (Pure VoD player: a provider of a VoD service not linked to a service run by traditional linear broadcasters offering catch-up (and sometimes broadcaster-specific library content), generally operated by cable companies, telecommunications companies, film industries or independent internet players).

- **AMOUNT OF COMMISSIONING IS RELATED TO BROADCASTER'S REVENUE STRUCTURE:** Commercial broadcasters tend to allocate a relatively higher proportion of their programme budget (51%) to acquired programmes, and a significantly lower proportion (18%) to in-house production. Contrastingly, publicly funded broadcasters tend to invest heavily in in-house production (58%) and spend less on acquisitions (16%).
- **MAJORITY OF FORMAT COMMISSIONING IS BY COMMERCIAL BROADCASTERS:** An average of 10% of commercial broadcasters' total programming budget is invested in commissioning formatted programming.⁷ For the publicly funded broadcasters, the level of investment on formats was typically between 0% and 3%.
- **THERE HAS BEEN A SHIFT TOWARDS MORE EXTERNAL COMMISSIONING:** Over 70% of respondents (both commercial and publicly funded) stated that the proportion of external commissioning had increased over the last five years
- **COMMISSIONING DECISIONS VARY BY GENRE:** The vast majority of news programming is produced in-house, while cinema film and documentaries tend to be produced externally. Fiction, entertainment and factual magazine programming have a more balanced mix in terms of sourcing, with 20% to 50% produced in-house and 40% to 70% produced independently.
- **ACQUISITIONS GENERALLY CHEAPER THAN COMMISSIONS:** Across all genres, except sport and fiction, over 65% of broadcasters stated that acquired programming cost over 80% less than commissioned programming.
- **US PRODUCED ACQUISITIONS REMAIN POPULAR:** Just over half of the broadcaster's acquisitions were sourced from the US and just under 25% from content owners in another European country. All broadcasters stated feature films and fiction from outside Europe (mainly from the US) were attractive and tended to be very successful in primetime schedules.
- **PRIMARY BROADCASTER IS STILL THE MAIN SOURCE OF PROGRAMME FUNDING:** Across all genres, over 85% of funding comes from the primary broadcaster, with between 1% and 7% from a secondary broadcaster or a co-producer⁸.
- **OVER THREE QUARTERS OF RESPONDENTS ARE INVOLVED IN CO-PRODUCTIONS – MAJORITY ARE DOMESTIC OR INTRA EUROPE:** Approximately 86% of broadcasters and 75% of independent producers co-produce programmes. Both producers and broadcasters identified domestic co-productions and co-productions with other European producers as the most commonplace.

⁷ A format is defined as any programme locally adapted for broadcast in at least one other market than the market of origin and for which a licensing fee is payable, e.g. *Who Wants to Be a Millionaire*, *Betty la Fea*.

⁸ The primary broadcaster is the main commissioner of the programme and will typically retain the first showing domestic rights, while the secondary broadcaster or co-producer may finance some of the production in order to retain other domestic and international rights.

- **BROADCASTERS EXPECT TO RETAIN THE MAJORITY OF DOMESTIC RIGHTS:** All broadcasters stated that they expect first (and repeat) showing domestic terrestrial and new media rights (including on-demand rights) when commissioning programmes externally, while around 81% stated that they expect repeat showings in the domestic secondary market and domestic ancillary rights.
- **FICTION AND FEATURE FILMS IDENTIFIED AS SUCCESSFUL EUROPEAN EXPORTS AND IMPORTS:** Fiction and feature films were assessed by broadcasters as being the most successful in the international market, while news and factual magazines were seen as inherently local and therefore unlikely to sell well abroad. Sport, documentaries, fiction and feature films were all rated highly as potential European imports, while news and factual magazines were given low ratings. Only entertainment and factual entertainment/reality formats were rated above 50% as potentially exportable.

View from the Industry: On-demand Services

- **AIM:** Explore the views of key stakeholders on the programming strategies and offerings of on-demand services, as well as their views on content strategies and regulatory issues.
- **METHODOLOGY:** Questionnaires were designed to collect quantitative and qualitative data from 50 non-linear (on-demand) services (35 broadcasters and 15 pure VoD players). In addition, 29 non-linear services were analysed independently in order to investigate the concept of "prominence".
- **MAJORITY OF RESPONDENT ON-DEMAND SERVICES OFFERED VIA INTERNET OR IPTV:** Almost all respondents, both broadcasters and pure VoD players, have content available via on-demand services distributed via the internet or IPTV. While broadcasters also use mobile (40%) and cable (32%), pure VoD players rely primarily on cable (25%) as their secondary distribution technology.
- **GENRE OFFERING VARIES BETWEEN BROADCASTERS AND PURE VOD PLAYERS:** Broadcasters generally offer a balanced mix of live, archive and, more recently, catch-up material on their VoD services, with a balanced mix of genres. Pure VoD players show a clear preference for archive material, with a focus on cinema, TV fiction and documentaries.
- **IN GENERAL, EUROPEAN CONTENT IS KEY COMPONENT OF ON-DEMAND CATALOGUES:** Among those interviewed for this survey, only 17% of pure VoD players and 12% of broadcasters said that their catalogues consisted of less than 25% European titles. Broadcasters typically have 100% European content, as they generally replicate their linear schedules in their on-demand services, minus the titles for which they do not own the on-demand rights. By contrast, 33% of pure VoD players said their catalogues comprise between 25% and 75% of European titles.

- **PURE VOD PLAYERS DO NOT SPEND MONEY ON COMMISSIONS:** Our respondent pure VoD players allocated 100% of their programme budget to acquisitions, with non-European imports representing almost half of the total. By contrast, on-demand services operated by broadcasters say they spend around 75% of their on-demand budgets on national commissions, although this figure is a proportion of a very limited budget.
- **MAJORITY OF BROADCASTERS' NON-LINEAR SERVICES ARE FREE-TO-USE FOR THE CONSUMER:** Of the respondent broadcasters, 41% use advertising to fund all or part of their on-demand service. Public subsidy is used as the sole revenue stream by 23% of the broadcasters who responded. Conversely, the majority of the revenue of pure VoD players who took part in our survey comes only from direct payments from consumers either as subscription fees or as pay-per-view.
- **EUROPEAN PROGRAMMING CONSIDERED IMPORTANT BY PROVIDERS:** The majority of on-demand services surveyed, whether broadcaster-run or pure VoD players, think that European programming is all-in-all a very good option for their services. There are however some caveats: European programmes are seen as expensive, no easier to acquire than non-European content, and not necessarily the best way to attract European consumers.
- **PROMINENCE:** Prominence is a key concept in addressing how European works are being promoted by on-demand services. Prominence may be analysed in two dimensions: **active prominence** (does the service offer the possibility of searching titles by origin of production and does it provide information on the origin of production together with the description of the titles?); and **passive prominence** (what is the proportion of European works among the titles that are pushed to the consumers when they access the service via its homepage and browse its main sections?) As far as active prominence is concerned, our analysis shows that on-demand services rarely enable consumers to select titles by origin of production (nor by language). However, half the services from our sample indicate the country of origin in the description of the titles. When considering the origin of the titles that appeared "by default" on the screen (passive prominence), the proportion of titles of European origin that were 'pushed' by the 29 on-demand services from our sample was 54%, on average. There were, however, large differences between services.

Monitoring Methods for Article 3i

- **AIM:** To identify and evaluate possible performance indicators and operational procedures for monitoring Article 3i.
- **METHODOLOGY:** Various procedures and indicators were researched and discussed. Questions designed to collect stakeholder views on the appropriateness of procedures and indicators, as well as to collect actual data based on all proposed indicators, were included in the survey of stakeholders.

- **SELF-DECLARATIONS APPROPRIATE OPERATIONAL PROCEDURE FOR NON-LINEAR:** At this time, self-declarations are the most appropriate operational procedure within which to collect data on the application of Article 3i. It proved possible to acquire data through self-declarations via the survey. We believe that the amount of data received will improve once requested via legislation.
- **INDEPENDENT EVALUATION OF NON-LINEAR SERVICES NOT APPROPRIATE AT THIS TIME:** Data equivalent to the robust Television Audience Measurement (TAM) data available for the independent evaluation of linear services is not currently available for non-linear services. Alternatives to TAM data, such as using 'web-harvesting' software to copy information from on-demand catalogues into databases, or having consultants do this manually, are inappropriate, for legal reasons in the first case, and time and cost considerations in the second case. However, we do not preclude the development of an agreed technology for harvesting appropriate data in future, once the legal concerns have been successfully addressed.
- **CATALOGUE LEVEL INDICATORS MOST APPROPRIATE:** All types of respondents ranked the proportion of catalogue titles as the most appropriate indicator (with the exception of producers, who favoured financial and consumption indicators). It provides a clear indication of the proportion of European content available on a non-linear service. Proportion of catalogue hours was also considered to be a good indicator by most respondents, addressing the concern that catalogues could be filled with short-form content to meet a title-level indicator alone. Applying these indicators to specific services, we found that the majority of services had over 80% European titles and hours, with many having 100%. Pure VoD players typically had a smaller proportion of European titles on their services than broadcaster-run services. Broadcaster-run services are often replicating their linear offering through their non-linear service, minus the programming that they do not own the on-demand rights for (typically non-European content). This is not the case for pure VoD players, offering a possible reason for the higher proportion of EU content on broadcaster-run services than services from pure VoD players.
- **FINANCIAL CONTRIBUTION REQUIRES A CAREFUL APPROACH:** This indicator split opinion, with producers favouring it and broadcasters and pure VoD players strongly opposing it. Such data is considered highly confidential, and as the figures being discussed at this time are relatively small, such data may tell us little at this time. However, data on financial contribution is explicitly mentioned as an option in the Directive, so we suggest a simple indicator at this time: Member State authorities could ask providers to supply an amount spent on content in a year, and a figure for the approximate proportion spent on European works.
- **CONSUMPTION DATA NOT APPROPRIATE AT THIS TIME:** With the exception of producers, consumption data was an unpopular indicator with respondents, largely because it is highly commercially sensitive, and is not requested of linear providers. Lack of a

comparable data source to TAM data, as is available for linear services, means that robust consumption data for independent verification or monitoring are currently very difficult to acquire. TAM-style data sources for non-linear may become available in future, when they may be used as an indicator.

- **'PROMINENCE' IS AN OPEN TERM WITH MANY POSSIBLE INDICATORS, AND SHOULD NOT BE APPLIED TOO STRICTLY AT THIS TIME:** A wide variety of indicators, such as the ability to search by country-of-origin through to proportions of pages dedicated to European content, are possible 'prominence' indicators. There was a concern, from the survey and at the workshop, that being overly prescriptive could potentially limit the creative development of non-linear services. Comments at the workshop made clear that this subject would require further discussion within the Member States. At this time, we therefore propose relatively broad guidelines.

General Conclusions

- Transposition of Articles 4 and 5 varies from Member State to Member State by the strictness of the application of the legislation, and the number of additional requirements.
- The transposition of Articles 4 and 5 has remained largely similar in Member States covered in the 2005 Study.
- On-demand services and increased fragmentation are making the €78.1bn television industry in Europe more complex. But on-demand remains a relatively small component of this revenue, at €400m.
- For linear services, free TV remains the most popular business model. For broadcaster-run non-linear services this trend is continuing, with most offering some or all of their content for free. However, non-linear services not attached to broadcasters strongly favour business models based on consumer payments.
- Although there is some variation in the amount spent on acquisitions and commissions for linear broadcasters, the picture for their non-linear services is more consistent, with 75% of the budget for broadcaster-run non-linear services being spent on commissions. Broadcasters typically require the on-demand rights for commissioned content, but gaining new media rights for acquisitions is more difficult. The picture is different for pure VoD players though, who rely substantially on acquisitions.
- Broadcaster-run non-linear services typically have near or exactly 100% European content in their catalogues, whereas pure VoD players have a much greater reliance on non-European content. This is largely because of pure VoD player's greater reliance on acquisitions to populate their services.
- In our analysis of linear services, we found that the majority of channels surveyed met the requirements of Articles 4 and 5. Across our sample, 62.4% of qualifying transmission hours were

European content and 31% were independent European works, of which 84.4% were less than five years old.

- In applying viewing figures as an indicator for the first time in this study, we found that proportions for viewer hours are consistently higher than the proportions for transmission hours for European content (62.4% of qualifying transmission hours are European across our entire sample, compared with 74% of viewer hours; 31% of qualifying transmission hours are European independent productions, compared with 33.4% of viewer hours). This indicates that European and independently produced content are popular with audiences in the Member States surveyed.
- We found that with a December 2009 deadline for implementation of the new Directive and a non-linear industry still at a nascent stage, few Member States have implemented Article 3i or defined measures to this effect, and much discussion on the application of Article 3i is still to take place during 2009. The workshop indicated that further discussions within Member States and with stakeholders are required.
- At this time, we believe that self-declarations are the most suitable operational procedure for acquiring data to monitor adherence to Article 3i. Independent evaluation will require data similar to that available for linear services (Television Audience Measurement data), which is not currently available for non-linear services. However calls were made at the workshop for the development of these services, and for assistance here by the Commission and by Member States, for example towards the development of industry standards for data to help service providers report to Member State authorities, using key performance indicators.
- At this time we believe the performance indicators that will provide the most robust data on European content on non-linear services are: proportion of catalogue titles that are European, proportion of catalogue hours that are European, proportion of the total amount spent on content devoted to European works.
- Consumption data is not appropriate at this time, largely because of its confidential nature and the lack of a robust independent data source. However, if a robust data source (similar to that currently available for linear services) for consumption data is successfully developed in the future, then consumption data for non-linear services should be strongly considered as an indicator.
- 'Prominence' has been found to be the most contentious performance indicator we looked at, and was widely discussed at the workshop. The term is loosely defined, meaning that multiple interpretations are possible, and there are concerns from stakeholders that strict rules here could limit creative freedom for new services. We believe that prominence indicators require more discussion within Member States.

1.2. Français

Introduction

- Le 11 décembre 2007, le Parlement européen et le Conseil européen ont adopté la Directive 2007/65/CE modifiant la directive sur la «Télévision sans frontières» (TVSF) pour l'intituler la directive «Services de médias audiovisuels» (SMA). La nouvelle Directive doit être mise en œuvre par les États membres avant le 19 décembre 2009.
- La nouvelle directive ne modifie pas les Articles 4 et 5 de la directive TVSF. Les Articles 4 et 5 établissent des exigences vis-à-vis des États membres visant à garantir que les diffuseurs sous leur compétence consacrent une majorité du temps de transmission à des œuvres européennes et au moins 10 % du temps de transmission (ou budget des programmes) à des productions européennes indépendantes.
- Le domaine d'application de la nouvelle directive s'étend aux services médias audiovisuels non linéaires. Son Article 3i établit des exigences vis-à-vis des États membres visant à garantir que les prestataires de services non linéaires sous leur compétence promeuvent la production et l'accès à des œuvres européennes.
- Afin de fournir à la Commission européenne les éléments nécessaires pour procéder au contrôle et à l'évaluation du respect des Articles 4 et 5 et de commencer à contrôler le respect de l'Article 3i, la Commission a demandé la réalisation de cette étude indépendante, traitant de la situation de la promotion des œuvres européennes sur les services linéaires et non linéaires à la fin de l'année 2007.
- Cette étude se base sur l'étude précédente effectuée sur les Articles 4 et 5 de 2005, réalisée par Attentional Limited (connu alors sous le nom de David Graham and Associates), Oliver&Ohlbaum, Carat Expert et Arena Audiovisual.
- Les objectifs principaux de l'enquête sont les suivants :
 - Description et analyse des mesures de mise en œuvre prises par les États membres conformément aux Articles 3i, 4 et 5 de la Directive à la fin de l'année 2007.
 - Description et analyse de l'industrie de la production et du marché des œuvres audiovisuelles.
 - Évaluation indépendante de l'application des Articles 4 et 5 sur les chaînes de diffusion linéaires spécifiques.
 - Examen des services médias audiovisuels non linéaires en Europe en 2007.
 - Recommandations concernant les procédures opérationnelles et indicateurs de performance en vue du contrôle de l'application de l'Article 3i par les services non linéaires.

Rapport définitif de l'étude

- Le Rapport définitif de l'étude contient des travaux émanant de toutes les parties et couvrant tous les objectifs de l'étude.
- Au mois de novembre 2008, un atelier s'est tenu à Bruxelles au cours duquel un Projet de rapport définitif a été présenté aux parties prenantes. Les commentaires émis pendant et après l'atelier ont été passés en revue avec attention dans la préparation du Rapport définitif de l'étude.

Modes de mise en œuvre

- **OBJECTIF :** Identifier et analyser les mesures législatives nationales de mise en œuvre des Articles 4 et 5 de la Directive et les exigences plus strictes imposées aux diffuseurs ainsi que les mesures législatives nationales existantes concernant les services à la demande adoptées en vertu de l'Article 3i, ou susceptibles d'avoir un effet similaire.
- **MÉTHODOLOGIE :** Questionnaires à l'attention des autorités nationales de régulation, entretiens par téléphone pour résoudre les réponses peu claires.
- **DIFFÉRENCES ENTRE LES TRANSPOSITIONS NATIONALES DES ARTICLES 4 ET 5 :** Quelques États membres ont adopté une définition de «l'assiette des heures totales prises en compte» plus restrictive que la directive. Certains États membres ont intégré le terme de la Directive «dans la mesure du possible» ou autres mesures autorisant des proportions inférieures d'œuvres européennes et de productions indépendantes à réaliser dans certaines situations exceptionnelles.
- **LES DEFINITIONS DE « PRODUCTEUR INDEPENDANT » VARIENT LARGEMENT ENTRE LES ETATS MEMBRES :** La plupart des États membres ont défini le terme dans leur législation. Ces définitions sont constituées d'association de différents éléments, reposant principalement sur les facteurs suggérés par la directive (propriété de la société de production, volume de programmes fournis au même diffuseur, propriété des droits secondaires) mais certaines contiennent également d'autres éléments qui concernent la capacité réelle du producteur à procéder à ses activités sans être lié à un diffuseur. Les seuils fixés pour chaque élément varient également de façon significative entre les États membres.
- **LA PROMOTION DES PRODUCTIONS INDEPENDANTES REPOSE GENERALEMENT SUR LE TEMPS DE TRANSMISSION :** On trouve seulement quelques exemples dans lesquels une proportion spécifique de budgets de programmation doit toujours être affectée à des productions indépendantes. La France et l'Italie vont plus loin dans leur approche puisqu'ils exigent des diffuseurs de réservier un certain pourcentage de leur chiffre d'affaires annuel (qui sera toujours supérieur au budget de programmation).
- **DIFFERENTES APPROCHES DE CONTROLE ET DE SANCTION VIS-À-VIS DU RESPECT DES ARTICLES 4 ET 5 :** La plupart des États membres exigent simplement des diffuseurs de déclarer les

proportions d'œuvres européennes réalisées et productions indépendantes, mais certains États membres vont plus loin en vérifiant les données présentées et en procédant à des contrôles indépendants des diffusions. Certains États membres n'ont pas établi de sanctions concernant les manquements aux proportions requises, mais les autorités de la plupart des États membres disposent d'une série de sanctions. Les sanctions sont le plus souvent des avertissements et des amendes mais, dans certains États membres, il est possible d'écourter ou de révoquer les licences de diffusion dans les cas les plus graves.

- **LA PLUPART DES ETATS MEMBRES APPLIQUENT DES MESURES PLUS STRICTES QUE LES ARTICLES 4 ET 5 :** Certains États membres exigent des pourcentages d'œuvres européennes ou productions indépendantes supérieurs à ceux figurant dans la directive (à certains ou à tous les diffuseurs). La plupart des États membres imposent des exigences aux diffuseurs relatives à certaines formes de contenus additionnels afin de refléter les spécificités linguistiques ou culturelles d'un État membre. Plusieurs États membres exigent qu'une certaine proportion de temps de diffusion soit attribuée à des programmes produits à l'origine dans la langue du pays.
- **AVANT L'ADOPTION DU NOUVEL ARTICLE 3i, TRES PEU D'ETATS MEMBRES DISPOSAIENT DE REGLES NATIONALES AYANT DES EFFETS SIMILAIRES :** La communauté française de Belgique a adopté une approche de « neutralité technologique » sans distinction entre les plateformes de distribution et ceci a été interprété dans le sens où les services non linéaires de télévision étaient soumis à des obligations similaires à celles des autres services de télévision notamment les obligations concernant les œuvres européennes et productions indépendantes. La France a imposé une taxe sur les prestataires de services de la Vidéo à la demande (VOD) afin de percevoir une contribution financière pour la production de films.
- **LA MISE EN ŒUVRE DE L'ARTICLE 3i AURA PRINCIPALEMENT LIEU EN 2009 :** Le délai de mise en œuvre est le 19 décembre 2009. A partir des entretiens menés avec des organismes nationaux de régulation, nous avons remarqué que seuls quelques États membres estimaient pouvoir achever la mise en œuvre en 2008, la majorité des États interrogés prévoyant une mise en œuvre pour 2009.

La chaîne de valeur européenne et la création de contenu audiovisuel

- **OBJECTIF :** Fournir une analyse et une description de la structure actuelle du marché et des revenus du secteur de l'audiovisuel de l'UE (linéaire et non linéaire).
- **MÉTHODOLOGIE :** Associer une large gamme de données macro et micro afin de créer une image aussi précise que possible de l'intégralité du secteur et de ses trois composantes principales - la

création de contenu, la gestion des chaînes et la fourniture de programmes TV.

- **LA STRUCTURE DU MARCHE ET LA CHAÎNE DE VALEUR DEVIENNENT DE PLUS EN PLUS COMPLEXES** : Les nouveaux canaux de distribution tels que les services à la demande, les nouveaux modèles de financement de création de contenu et l'augmentation des niveaux de fragmentation du marché classique de la diffusion ont modifié la structure générale du marché.
- **LES PAIEMENTS DES CONSOMMATEURS ONT GENERE UNE CROISSANCE DU MARCHE** : Les revenus totaux de l'industrie télévisuelle de 78,1 milliards d'euros en 2006, dont des redevances de licence de 23%, publicité et parrainage associé 36% et les paiements des consommateurs pour régler la TV, le relais câblé et les services VOD de 34%. La source principale de croissance dans les pays E17 réside dans les paiements des consommateurs, qui ont augmenté de 10,1 % d'une année sur l'autre depuis 2002.
- **LA STRUCTURE DU MARCHE ET LES MOTEURS DE REVENUS VARIENT LARGEMENT SELON LES ETATS MEMBRES** : La contribution de la publicité, du financement public et des paiements des abonnements varient largement en fonction des États membres.
- **LE MARCHE DES CHAÎNES SE COMPOSE DE TROIS TYPES DISTINCTS** : Les chaînes de TV gratuites (accessibles à tous, financées par les pouvoirs publics et la publicité), les chaînes de TV payantes de base (accessibles aux abonnés dans le cadre d'un abonnement TV payant) et les chaînes de TV payantes premium (nécessitant un abonnement supplémentaire).
- **LA TV GRATUITE RESTE LE MODELE ECONOMIQUE LE PLUS POPULAIRE** : Malgré une migration significative vers des services de TV payante, les foyers équipés de TV payante représentent moins d'un tiers de tous les foyers équipés de TV de l'Union européenne. On a constaté une chute significative du nombre de foyers équipés d'analogique alors que les foyers migrent vers les plateformes TNT. A la fin de l'année 2007, la TNT gratuite a atteint plus de 28 millions de foyers.
- **LA TV A LA DEMANDE REPRESENTE UNE FAIBLE PROPORTION DE L'INDUSTRIE GENERALE** : Le nombre de services à la demande proposés sur le marché varie largement (de 2 à 32). Nous estimons qu'en 2006, les services à la demande ont généré environ 400 millions € de revenus dans les pays E30, représentant seulement 0,5 % des revenus de l'industrie télévisuelle.
- **ON RECENSE TROIS QUESTIONNEMENTS CONCERNANT LA PROGRAMMATION POUR LES CHAÎNES** : Où trouver les programmes (commissions / acquisitions / rediffusions); quel genre programmer (films dramatiques, informations, comédies, factuel, stock/ débit⁹); et quel genre subsidiaire programmer (p.e. série dramatique /film à un épisode).

⁹ Un programme stock a une valeur de rediffusion et peut être regardé à nouveau ultérieurement, alors que les programmes de débit ont peu de valeur ultérieure après le premier visionnage (hormis les rediffusions narratives). Les

- **LE SECTEUR DE LA CRÉATION DE CONTENU EUROPÉEN EST EVALUÉ A 18,3 MILLIARDS € :** Sur ces derniers, 16,5 milliards € proviennent des commissions des chaînes réseau et 1,8 milliard € des commissions des chaînes de moindre envergure. Sur ces 18,3 milliards €, environ 2,6 milliards € ont été dépensés pour les informations nationales et locales et la couverture sportive (les dépenses pour les droits sportifs sont exclus). Sur les 15,7 milliards € restants, environ 43 % (6,8 milliards €) ont été dépensé pour des commandes émanant de producteurs extérieurs et environ 57 % a été investi dans la production en interne¹⁰.
- **LES "NETWORK CHANNELS"¹¹ REPRÉSENTENT LA MAJORITÉ DES NOUVELLES COMMANDES :** Les chaînes principales de réseau participent à hauteur d'environ 57% du revenu brut de l'industrie mais représentent plus de 90 % des dépenses sur toutes les nouvelles commandes.
- **LA RENTABILITE DES SOCIETES INDEPENDANTES DE PRODUCTION EST CYCLIQUE :** Les marges sont largement influencées par les programmes commandés et qui rencontrent le succès qui, à long terme (en fonction des conditions du marché) peuvent générer des revenus accessoires et internationaux significatifs pour le producteur. Au contraire, une commande qui n'a pas eu le succès escompté va avoir une incidence négative sur les marges de bénéfices.
- **INTÉGRATION VERTICALE CONSIDÉRABLE LE LONG DE LA CHAÎNE DE VALEUR :** Notre analyse souligne que 57% des programmations autres que les informations sont réalisées par les services internes des diffuseurs. De façon similaire, une très large proportion de TV payantes premium sont détenues par des propriétaires de plateformes de TV payantes.
- **LES ACQUISITIONS AUX ETATS-UNIS RESTENT POPULAIRES:** La plupart des diffuseurs européens achètent des programmes populaires aux États-Unis (séries TV et films hollywoodiens). Récemment, on a constaté une augmentation du nombre d'importations depuis l'Asie, en particulier le Japon et la Corée du Sud.

Analyse des données linéaires à l'échelle européenne

- **OBJECTIF :** Produire une mesure cohérente des Articles 4 et 5 chez les États membres et l'appliquer à un échantillon de chaînes (linéaires) de diffusion en Europe.
- **MÉTHODOLOGIE :** Un échantillon de 54 chaînes opérant dans 11 États membres a été sélectionné, conçu pour représenter la diversité de l'UE 30 en termes de taille de marché, géographie et

programmes de débit comprennent les informations, le sport, les jeux et certains programmes de divertissement.

¹⁰ La production extérieure comprend les filiales des diffuseurs tels que UFA et Studio Hambourg en Allemagne et Freemantle sur le groupe de chaînes de RTL.

¹¹ Pour cette analyse les « chaînes de réseau » sont définies comme toute chaîne ayant une part moyenne de plus de 5% l'audience nationale.

date d'entrée dans l'UE ; tout en favorisant les États membres les plus grands afin de couvrir la part la plus large possible de l'UE en termes de population et d'échelle économique. Les chaînes ont été sélectionnées afin de représenter la diversité des diffuseurs européens en termes de taille d'audience, propriété et modèle de revenus, tout en favorisant les chaînes leader pour couvrir la part la plus importante de l'audience européenne¹². Les chaînes ont été contrôlées au cours de deux semaines non consécutives de 2007, une en mars et une en novembre.

Une approche unique a été utilisée pour codifier toutes les diffusions de programmes au cours de cette période et permettre des comparaisons entre les chaînes au sein des États Membres en termes de proportions d'œuvres européennes, européennes non domestiques, indépendantes et indépendantes récentes, cela pendant les heures de plus grande audience. Les données ont été comparées aux résultats précédents et aux déclarations nationales lorsque ceux-ci étaient disponibles.

Pour la première fois, des indicateurs ont été produits et analysés non seulement en fonction de la proportion des heures de transmission, mais également en fonction de la proportion d'heures téléspectateur.

- **L'ASSIETTE DES HEURES PRISES EN COMPTE :** Dans notre échantillon, les programmes auxquels s'appliquent les Articles 4 et 5 constituent 68,3 % des heures totales de transmission et 65% des heures totales d'heures téléspectateur sur toutes les chaînes étudiées en 2007.
- **ŒUVRES EUROPÉENNES :** Dans notre échantillon, les œuvres européennes constituaient 62,4 % du total des heures de transmission prises en compte en 2007. La plupart des diffuseurs européens parmi ceux analysés ont respecté 50% des exigences de l'Article 4. Les œuvres européennes ont également constitué une moyenne de 74% des heures totales téléspectateur sur toutes les chaînes étudiées en 2007. Ces chiffres sont plus importants si l'on ne tient compte que des heures de forte audience. Les chaînes ayant les proportions les plus importantes d'œuvres européennes sont les chaînes leaders dotées de financement public¹³ des anciens et importants États membres européens du sud.
- **ŒUVRES INDEPENDANTES :** Les œuvres européennes indépendantes constituent 31% des heures de transmission prises

¹² Les 11 États membres et 54 chaînes constituant l'échantillon sont les suivants : Belgique (Communautés flamande et française : VRT, VTM, La Une, RTL-TVI), Estonie (ETV, Kanal2, TV3), France (France2, France3, TF1, M6, Canal+, Direct8), Allemagne (ARD1, ZDF, RTL, Sat.1, Pro7, Vox), Irlande (RTE1, RTE2, TV3), Italie (Rai1, Rai2, Canal5, Italia1, La7, Fox Life), Pologne (TVP1, TVP2, TVN, Polsat, TV4, Canal+), Roumanie (TVR1, Pro TV, Prima TV, Antena1), Espagne (TVE1, La2, Antena3, TeleCinco, Cuatro, La Sexta), Suède (SVT1, Kanal5, TV3, TV4) et le Royaume-Uni (BBC1, BBC2, ITV1, Channel4, Five, Sky One).

¹³ « dotés de financement public » comprend les diffuseurs à financement mixte chez lesquels une partie du financement est public.

en compte en 2007, par rapport à 33,4 % d'heures totales téléspectateur prises en compte. Les proportions sont plus importantes au cours des heures à forte audience. Les chaînes payantes diffusent beaucoup moins de productions indépendantes que les chaînes gratuites. Davantage de productions indépendantes sont diffusées sur les chaînes privées des anciens et importants États membres du nord. Si nous regardons plus spécifiquement les situations aux heures de plus grande audience, nous voyons que les chaînes privées leader des petits et anciens États membres proposent beaucoup plus de productions indépendantes.

- **ŒUVRES RECENTES :** Dans notre échantillon, les œuvres européennes indépendantes récentes constituent une moyenne de 84,4 % des heures totales indépendantes européennes en 2007, par rapport à 91% des heures totales téléspectateur indépendantes.
- **SITUATIONS INDIVIDUELLES DES DIFFUSEURS :** Les chaînes indépendantes dépendent fortement de leur environnement local de marché et de la dynamique culturelle. Une analyse complète de chaque État membre est fournie dans ce rapport.

Points de vue de l'Industrie : Diffuseurs et producteurs

- **OBJECTIF :** Améliorer notre compréhension des implications des Articles 4 et 5 sur la base des points de vue des parties prenantes.
- **MÉTHODOLOGIE :** Nous avons publié des questionnaires sur mesure à destination de plus de 230 parties prenantes clés¹⁴ de l'industrie audiovisuelle européenne et reçu 71 réponses représentant 24 États membres.
- **LE VOLUME DE COMMANDE EST LIE À LA STRUCTURE DES REVENUS DU DIFFUSEUR :** Les diffuseurs commerciaux ont tendance à affecter une part relativement plus importante de leur budget de programmes (51%) aux programmes acquis, et une proportion largement inférieure (18%) à la production interne. Au contraire, les diffuseurs dotés de financement public ont tendance à procéder à des investissements lourds dans des productions en interne (58%) et dépenser moins pour les acquisitions (16%).
- **LA MAJORITE DES COMMANDES DE FORMATS EST EFFECTUEE PAR LES DIFFUSEURS COMMERCIAUX :** Une moyenne de 10% du budget total de programmation des diffuseurs commerciaux est investie dans la programmation de commandes de formats.¹⁵ Pour

¹⁴ Les parties prenantes comprennent des diffuseurs (à financement public et diffuseurs à financement mixte), producteurs indépendants, organismes de commerce, organismes de réglementation et fournisseurs de contenus exclusivement VoD (Un prestataire de service VoD non lié à un service exécuté par un diffuseur linéaire classique proposant un rattrapage (et parfois un contenu de bibliothèque spécifique au diffuseur), généralement exploité par des sociétés du câble, sociétés de télécommunication, industries du film ou acteurs Internet indépendants).

¹⁵ Un format signifie tout programme adapté localement et diffusé dans au moins un autre marché que le marché d'origine et assorti de frais de licence, par exemple *Qui veut gagner des millions*, *Ugly betty*.

les diffuseurs publics, le niveau d'investissement sur les formats est généralement de 0 à 3 %.

- **ON A CONSTATE UNE AUGMENTATION DES COMMANDES EXTERIEURES :** Plus de 70% des contributeurs (tant commerciaux que financés par les pouvoirs publics) ont indiqué que la proportion des commandes extérieures avait augmenté au cours des cinq dernières années.
- **LES DECISIONS DE COMMANDE VARIENT EN FONCTION DU GENRE :** La grande majorité des programmes d'information est produite en interne alors que les films de cinéma et les documentaires sont plutôt produits en externe. Les fictions, les divertissements et les magazines de société sont plus mélangés en termes d'approvisionnement avec 20 à 50 % produits en interne et 40 à 70% produits de façon indépendante.
- **LES ACQUISITIONS SONT GENERALEMENT MOINS CHERES QUE LES COMMANDES :** Dans tous les genres, sauf pour le sport et la fiction, plus de 65% des diffuseurs indiquent que les programmes acquis coûtent 80% moins cher que les programmes commandés.
- **LES ACQUISITIONS PRODUITES AUX ÉTATS-UNIS RESTENT POPULAIRES :** Plus de la moitié des acquisitions des diffuseurs ont été achetées aux États-Unis et moins de 25% auprès de propriétaires de contenus d'autres pays européens. Tous les diffuseurs ont indiqué que les films de long métrage et les fictions produits hors d'Europe (principalement aux Etats-Unis) sont attractifs et ont tendance à connaître du succès en programmation de début de soirée.
- **LE PREMIER DIFFUSEUR EST TOUJOURS LA SOURCE PRINCIPALE DE FINANCEMENT DES PROGRAMMES :** Parmi tous les genres, plus de 85% des financements proviennent du premier diffuseur avec entre 1% et 7% provenant d'un diffuseur secondaire ou un coproducteur¹⁶.
- **PLUS DE TROIS QUART DES PARTIES INTERROGÉES PARTICIPENT A DES COPRODUCTIONS – LA MAJORITÉ SONT DOMESTIQUES OU INTRAEUROPEENS :** Environ 86 % des diffuseurs et 75% des producteurs indépendants coproduisent des programmes. Les producteurs et les diffuseurs ont identifié les coproductions domestiques et les coproductions avec d'autres producteurs européens comme étant le cas le plus général.
- **LES DIFFUSEURS COMPTENT CONSERVER LA MAJORITÉ DES DROITS DOMESTIQUES :** Tous les diffuseurs ont indiqué s'attendre à disposer d'abord des droits de diffusion terrestres domestiques et des nouveaux médias (dont les droits des programmes à la demande) lorsqu'ils commandent des programmes en externe, alors que 81 % environ ont indiqué s'attendre à disposer des rediffusions sur le marché domestique secondaire et des droits domestiques accessoires.

¹⁶ Le diffuseur principal est le commanditaire principal du programme et va généralement conserver les premiers droits de diffusion nationale, alors que le diffuseur secondaire ou coproducteur peut financer une partie de la production pour conserver d'autres droits domestiques ou internationaux.

- **LA FICTION ET LES FILMS SONT IDENTIFIES COMME DES IMPORTATIONS ET DES EXPORTATIONS REUSSIES POUR L'EUROPE :** Les films de fiction et les long métrages ont été évalués par les diffuseurs comme étant les plus prospères sur le marché international, alors que les informations et les magazines de société ont été considérés comme locaux principalement et, par conséquent, peu à même de bien se vendre à l'étranger. Les documentaires sportifs, les fictions et les longs métrages ont été bien identifiés comme des possibles importations européennes, alors que les informations et les magazines de société ont obtenus des notes basses. Seuls les formats de divertissement et dits factuels ou de réalité ont reçu des notes supérieures à 50% comme étant potentiellement exportables.

Points de vue de l'Industrie : Services à la demande

- **OBJECTIF :** Étudier les points de vue des parties prenantes clés sur les stratégies de programmation et les propositions de services à la demande, et leur point de vue sur les stratégies de contenu et les questions réglementaires.
- **METHODOLOGIE :** Les questionnaires ont été conçus pour recueillir des données quantitatives et qualitatives émanant de 50 services non linéaires (à la demande) (35 diffuseurs et 15 fournisseurs de contenus exclusivement en VoD). En outre, 29 services non linéaires ont été analysés de façon indépendante afin d'analyser le concept de « proéminence ».
- **LA MAJORITE DES REPONDANTS DES SERVICES A LA DEMANDE SONT PROPOSES PAR INTERNET OU IPTV :** La plupart des parties interrogées, diffuseurs et fournisseurs de contenus exclusivement en VoD disposent de contenus disponibles sur des services à la demande diffusés sur l'Internet ou IPTV. Les diffuseurs utilisent également les dispositifs mobiles (40%) et câblés (32%), les fournisseurs de contenus exclusivement en VoD se reposent principalement sur le câble (25%) en tant que technologie secondaire de distribution.
- **LES OFFRES DE GENRE VARIENT ENTRE LES DIFFUSEURS ET LES FOURNISSEURS DE CONTENUS EXCLUSIVEMENT EN VoD :** Les diffuseurs proposent généralement un mélange de diffusion en direct, archives et plus récemment de programmes de ratrappage sur leurs services VoD, avec un mélange de genres équilibré. Les fournisseurs de contenus exclusivement en VoD préfèrent clairement les matériels d'archive, avec une préférence pour le cinéma, les fictions TV et les documentaires.
- **EN GENERAL LE CONTENU EUROPEEN EST LA COMPOSANTE CLÉ DES CATALOGUE A LA DEMANDE :** Parmi les personnes interrogées pour cette étude, seules 17% des fournisseurs de contenus exclusivement en VoD et 12% des diffuseurs ont déclaré que leurs catalogues étaient constitués de moins de 25% de titres européens. Les diffuseurs, disposent généralement de 100 % de contenu européen, puisqu'ils duplient généralement leur

programmation linéaire dans leurs services à la demande, moins les titres pour lesquels ils ne disposent pas de droits à la demande. Au contraire, 33% des fournisseurs de contenus exclusivement en VoD indiquent que leurs catalogues comprennent entre 25 et 75 % de titres européens.

- **LES FOURNISSEURS PROPOSANT DES CONTENUS EXCLUSIVEMENT EN VoD NE DEPENSENT PAS D'ARGENT DANS DES COMMANDES :** Les parties interrogées, fournisseurs de contenus exclusivement en VoD, ont affecté 100% de leur budget de programme aux acquisitions, dont les importations non européennes représentent presque la moitié du total. Au contraire, les services à la demande opérés par les diffuseurs indiquent dépenser environ 75% de leurs budgets à la demande pour des commandes nationales, bien que ce chiffre représente une proportion très limitée du budget.
- **LA MAJORITE DES SERVICES NON LINEAIRES DES DIFFUSEURS SONT GRATUITS POUR LE CONSOMMATEUR :** Sur les diffuseurs répondants, 41% utilisent des publicités pour financer tout ou partie de leur service à la demande. Les subventions publiques sont utilisées comme un flux de revenu unique par 23% des diffuseurs répondants. Au contraire, la majorité des revenus des fournisseurs de contenus exclusivement en VoD qui ont participé à notre enquête provient uniquement des paiements directs émanant des consommateurs soit sous forme d'abonnement, soit de paiement à la carte.
- **LA PROGRAMMATION EUROPEENNE EST CONSIDEREE COMME IMPORTANTE PAR LES FOURNISSEURS :** La majorité des services à la demande interrogés, exécutés par des diffuseurs ou des fournisseurs de contenus exclusivement en VoD, estime que la programmation européenne est, l'un dans l'autre, une bonne option pour leurs services. On constate tout de même quelques oppositions : les programmes européens sont considérés comme onéreux, pas plus facile à acquérir que les contenus non européens et pas nécessairement comme la meilleure façon d'attirer les consommateurs européens.
- **PROEMINENCE :** La proéminence est un concept clé pour comprendre comment les œuvres européennes sont promues par les services à la demande.
La proéminence peut être analysée dans deux dimensions : **Proéminence active** (Le service offre-t-il la possibilité de rechercher des titres par origine de production et fournit-il des informations sur l'origine de la production avec la description des titres ?), et la **proéminence passive** (quelle est la proportion d'œuvres européennes parmi les titres proposés aux consommateurs lorsqu'ils accèdent à leur page d'accueil et naviguent dans les sections principales ?)
S'agissant de la proéminence active, notre analyse indique que les services à la demande permettent rarement aux consommateurs de sélectionner des titres par origine de production (ni par langue). Toutefois, la moitié des services de notre échantillon indiquent le pays d'origine dans la description des titres.

Lorsque l'on considère l'origine des titres figurant « par défaut » sur l'écran (proéminence passive), la proportion des titres d'origine européenne qui ont été « mis en avant » par les 29 services à la demande de notre échantillon est de 54 % en moyenne. On constate toutefois, de grandes différences entre les services.

Méthodes de contrôle de l'Article 3i

- **OBJECTIF :** Identifier et évaluer les indicateurs de performance et procédures opérationnelles possibles pour le contrôle de l'Article 3i.
- **MÉTHODOLOGIE :** Diverses procédures et indicateurs ont été recherchés et discutés. Les questions conçues pour recueillir les points de vue des parties prenantes sur le caractère approprié des procédures et indicateurs et pour recueillir les données réelles sur la base de tous les indicateurs proposés ont été incluses dans l'enquête auprès des parties prenantes.
- **L'AUTO-DECLARATION, UNE PROCEDURE OPERATIONNELLE APPROPRIEE POUR LES SERVICES NON LINEAIRES :** Pour le moment, les auto-déclarations sont la procédure opérationnelle la plus appropriée pour recueillir des données sur l'application de l'Article 3i. Il a été prouvé par l'enquête qu'il est possible d'acquérir des données via les auto-déclarations. Nous estimons que le volume de données reçues s'améliorera une fois la mise en œuvre requise par la législation.
- **LES EVALUATIONS INDEPENDANTES DES SERVICES NON LINEAIRES NE SONT ACTUELLEMENT PAS APPROPRIEES :** Des données équivalentes aux données de la Mesure de l'audience télévisuelle (TAM) disponibles pour l'évaluation indépendante des services linéaires, ne sont actuellement pas disponibles pour les services non linéaires. Des alternatives aux données TAM, telle que l'utilisation d'un logiciel « web-harvesting » pour copier des informations sur les catalogues à la demande sur des bases de données, ou disposer de consultants qui réalisent ceci manuellement, ne sont pas appropriées, pour des raisons, dans le premier cas, juridiques et des considérations de temps et d'argent dans le second cas. Toutefois, le développement d'une technologie agréée de collecte appropriée des données à l'avenir n'est pas impossible, une fois les questions juridiques convenablement réglées.
- **LES INDICATEURS DE NIVEAU DU CATALOGUE LES PLUS APPROPRIES :** Tous les types d'acteurs interrogés ont identifié la proportion de titres du catalogue comme l'indicateur le plus approprié (à l'exception des producteurs, qui ont favorisé les indicateurs financiers et de consommation). Elle fournit une indication claire sur la proportion du contenu européen disponible sur les services non linéaires. La proportion des heures de catalogue a également été considérée comme un bon indicateur par la plupart des contributeurs, car ceci répond à la préoccupation selon laquelle les catalogues peuvent être remplis par des contenus courts pour respecter le seul indicateur de niveau de titre. En appliquant ces indicateurs à des services spécifiques, nous avons

décelé que la majorité des services disposaient de 80 % de titres et horaires européens, nombre d'entre eux disposant de 100%. Les fournisseurs de contenus exclusivement en VoD disposent généralement d'une proportion de titres européens proposés par leurs services inférieure à celle des services proposés par les diffuseurs. L'offre proposée par les diffuseurs correspond souvent à l'offre linéaire via leur service non linéaire, moins la programmation pour laquelle ils ne disposent pas de droits à la demande (généralement des contenus non européens). Ceci ne concerne pas les fournisseurs de contenus exclusivement en VoD, offrant une explication possible à la proportion plus élevée des contenus européens sur les services des diffuseurs que sur les services proposés par les fournisseurs de contenus exclusivement en VoD.

- **LA CONTRIBUTION FINANCIERE NECESSITE UNE APPROCHE PRUDENTE :** Cet indicateur divise l'opinion, les producteurs la favorisant et les diffuseurs et fournisseurs de contenus exclusivement en VoD s'y opposant fortement. De telles données sont considérées comme hautement confidentielles et, puisque les chiffres en cours de discussion sont relativement peu nombreux, de telles données nous en disent peu pour le moment. Toutefois, puisque les données sur la participation financière sont explicitement mentionnées comme une option dans la Directive, nous suggérons donc un simple indicateur pour le moment. Ainsi, les autorités des pays membres pourraient demander aux fournisseurs de fournir le montant dépensé sur les contenus une fois par an, et un chiffre correspondant à la proportion dépensée pour les œuvres européennes.
- **LES DONNEES DE CONSOMMATION NE SONT PAS APPROPRIEES POUR LE MOMENT :** A l'exception des producteurs, les données de consommation ont été un indicateur peu populaire parmi les parties interrogées, principalement parce qu'il est très sensible au niveau commercial et n'est pas demandé aux prestataires linéaires. Un manque de sources de données comparables aux données TAM, comme il en existe pour les services linéaires, signifie que des données de consommation solides de vérification ou de contrôle indépendant sont actuellement très difficiles à obtenir. Les sources de données de type TAM pour les non linéaires seront disponibles à l'avenir, elles pourront alors servir d'indicateur.
- **LA « PROEMINENCE » EST UN TERME OUVERT, AVEC DE NOMBREUX INDICATEURS POSSIBLES ET NE DOIT PAS ETRE APPLIQUE DE FACON TROP STRICTE POUR LE MOMENT :** De nombreux indicateurs, tels que la capacité de rechercher par le pays d'origine à travers la proportion de pages consacrées aux contenus européens, sont des indicateurs possibles de « proéminence ». Une inquiétude émane de l'enquête et de l'atelier et indique qu'une position trop normative pourrait potentiellement limiter le développement créatif de services non linéaires. Les commentaires émis lors de l'atelier ont clairement indiqué que ce sujet nécessitait des discussions complémentaires au sein des États membres. Pour le moment, nous proposons par conséquent des lignes directrices relativement larges.

Conclusions générales

- La transposition des Articles 4 et 5 varient d'un État membre à l'autre, s'agissant du niveau d'exigence dans l'application de la législation et du nombre de contraintes additionnelles.
- La transposition des Articles 4 et 5 est restée largement similaire dans les États membres examinés dans l'étude menée en 2005.
- Les services à la demande et l'augmentation de la fragmentation font de l'industrie de la télévision, d'une valeur de 78,1 milliards d'euros, une industrie plus complexe en Europe. Mais les contenus à la demande restent un composant relativement faible de ce revenu, à hauteur de 400 millions €.
- Pour les services linéaires, la TV gratuite reste le modèle économique le plus populaire. Pour les services non linéaires fournis par les diffuseurs, cette tendance est constante, la plupart proposent une partie ou l'intégralité de leur contenu gratuitement. Toutefois, les services non linéaires non rattachés à des diffuseurs favorisent largement les modèles économiques reposant sur les paiements des consommateurs.
- Bien que l'on constate des variations des montants dépensés pour les acquisitions et les commandes des diffuseurs linéaires, leurs services non linéaires sont plus cohérents avec 75 % du budget des services non linéaires proposés par les diffuseurs dépensés en commandes. Les diffuseurs ont généralement besoin des droits à la demande des contenus commandés, mais l'obtention de nouveaux droits pour les acquisitions est plus difficile. La situation est différente pour les fournisseurs de contenus exclusivement en VoD qui s'appuient largement sur les acquisitions.
- Les services non linéaires proposés par les diffuseurs disposent généralement de 100% de contenu européen ou presque dans leurs catalogues, alors que les fournisseurs de contenus exclusivement en VoD s'appuient beaucoup plus sur les contenus non européens. Ceci s'explique par le fait que les fournisseurs de contenus exclusivement en VoD s'appuient plutôt sur les acquisitions pour leur offre de services.
- Il ressort de notre analyse des services linéaires que la majorité des chaînes étudiées sont conformes aux exigences des Articles 4 et 5. Dans notre échantillon, 62,4 % des heures de transmission prises en compte étaient constituées de contenu européen et 31% étaient des œuvres européennes indépendantes, dont 84,4% dataient de moins de cinq ans.
- En appliquant des chiffres d'audience comme un indicateur pour la première fois dans cette étude, nous avons trouvé que les proportions des heures téléspectateur sont de façon constante plus importantes que les proportions des heures de transmission des contenus européens (62,4% des heures de transmission prises en compte sont européennes dans l'intégralité de notre échantillon, par rapport à 74% des heures téléspectateur ; 31 % des heures de

transmission prises en compte sont des productions indépendantes européennes, par rapport à 33,4 % des heures téléspectateur). Ceci indique que les contenus européens et les contenus produits de façon indépendante sont populaires auprès des publics des États membres analysés.

- Nous avons décelé qu'avec la date limite de mise en œuvre de la nouvelle directive en décembre 2009 et une industrie non linéaire se trouvant encore à un stade précoce, peu d'États membres ont mis en œuvre l'Article 3i ou défini des mesures à cet égard. De nombreuses discussions sur l'application de l'Article 3i doivent encore être menées au cours de l'année 2009. L'atelier a permis de constater que des discussions supplémentaires au sein des États membres avec les parties prenantes sont nécessaires.
- Pour le moment, nous estimons que la procédure d'auto-déclaration est la procédure opérationnelle la plus appropriée pour recueillir des données permettant de contrôler l'application de l'Article 3i. Une évaluation indépendante nécessitera la production de données similaires à la Mesure de l'audience télévisuelle (TAM), qui ne sont actuellement pas disponibles pour les services non linéaires. Toutefois, lors de l'atelier, certains ont appelé au développement de ces services et ont demandé une assistance de la Commission et des États membres, par exemple, en vue du développement de normes de l'industrie pour des données visant à aider les prestataires de service à fournir des rapports aux autorités des États membres, au moyen d'indicateurs de performance clé.
- Pour le moment, nous estimons que les indicateurs de performance qui vont fournir les données les plus solides sur les contenus européens sur les services non linéaires sont les suivants : proportion des titres européens du catalogue, proportion horaire des contenus européens dans le catalogue, proportion du montant total dépensé pour le contenu consacré aux œuvres européennes.
- Les données relatives à la consommation ne sont pas appropriées pour le moment, largement à cause de leur nature confidentielle et le manque de sources solides indépendantes. Toutefois, si une source de données robustes (similaires à celle actuellement proposée pour les services linéaires) concernant les données de consommation est développée avec succès à l'avenir, les données de consommation pour les services non linéaires devraient être fortement considérées comme un indicateur pertinent.
- « La proéminence » a été considérée comme l'indicateur le plus controversé que nous avons examiné et a été largement abordée lors de l'atelier. Le terme est mal défini, ce que signifie que de multiples interprétations sont possibles et les parties prenantes sont préoccupées par la possible limitation de la liberté créative des nouveaux services par des règles strictes. Nous estimons que les indicateurs de proéminence nécessitent une discussion plus approfondie au sein des États membres.

1.3. Deutsch

Einleitung

- Am 11. Dezember 2007 haben das Europaparlament und der Rat die Richtlinie 2007/65/EC angenommen, dabei wurde die "Fernseh-Richtlinie" in die "Richtlinie über audiovisuellen Mediendienste" (TVWF-Richtlinie) umbenannt. Die neue Richtlinie muss von den Mitgliedstaaten bis 19. Dezember 2009 umgesetzt werden.
- In der neuen Richtlinie gibt es keine Änderungen bei Artikel 4 und 5 der TVWF-Richtlinie. In Artikel 4 und 5 wird von den Mitgliedstaaten die Gewähr gefordert, dass Rundfunksender unter ihrer Rechtshoheit die Mehrheit ihrer Sendezeit europäischen Produktionen widmen, und mindestens 10% der Sendezeit (oder des Programmbudgets) auf unabhängige europäische Produktionen aufwenden.
- Die neue Richtlinie gilt auch für nicht-lineare audiovisuelle Medien. Artikel 3i fordert von Mitgliedstaaten die Gewähr, dass nichtlineare Serviceanbieter unter ihrer Rechtshoheit die Produktion von und den Zugang zu europäischen Werken fördern.
- Um zu gewährleisten, dass der Europäischen Kommission die zur Überwachung und Auswertung von Artikel 4 und 5 erforderlichen Mittel zur Verfügung stehen und um mit der Kontrolle bezüglich Artikel 3i zu beginnen, hat die Kommission diese unabhängige Studie in Auftrag gegeben. Darin wird der Stand der Dinge bezüglich der Förderung Europäischer Produktionen von linearen und nicht-linearen Diensten Ende 2007 untersucht.
- Diese Studie baut auf der vorhergehenden Studie zu Artikel 4 und 5 von 2005 auf, die von den Firmen Attentional Limited (vormals David Graham and Associates), Oliver & Ohlbaum, Carat Expert und Arena Audiovisual durchgeführt wurde.
- Die Hauptzielsetzungen der Studie sind:
 - Beschreibung und Analyse der von den Mitgliedstaaten getroffenen Maßnahmen zur Umsetzung von Artikel 3i, 4 und 5 der Richtlinie am Ende des Jahres 2007.
 - Beschreibung und Analyse der Produktionsindustrie und des Marktes für audiovisuelle Werke.
 - Unabhängige Bewertung der Anwendung von Artikel 4 und 5 auf spezifische lineare Rundfunkkanäle.
 - Überblick über die nicht-linearen audiovisuellen Mediendienste in Europa in 2007.
 - Empfehlungen für Verfahrensweisen und Leistungsindikatoren zur Überwachung der Anwendung von Artikel 3i auf nicht-lineare Dienste.

Abschlussbericht der Studie

- Der Abschlussbericht enthält Ergebnisse aus allen Teilen der Studie und deckt alle Zielsetzungen der Studie ab.
- Im November 2008 wurde in Brüssel ein Workshop abgehalten, bei dem der Entwurf des Abschlussberichts den wichtigsten

Interessenvertretern vorgelegt wurde. Kommentare, die während des und nach dem Workshop abgegeben wurden, wurden bei der Erstellung des Abschlussberichts der Studie genau berücksichtigt.

Arten der Umsetzung

- **ZIELSETZUNG:** Bestimmung und Analyse nationaler gesetzlicher Maßnahmen zur Umsetzung von Artikel 4 und 5 der Richtlinie und strengerer Anforderungen an Rundfunksender sowie bestehender nationaler gesetzlicher Maßnahmen bezüglich nicht-linearer Dienste, die gemäß Artikel 3i eingeführt wurden oder Maßnahmen, die eine ähnliche Wirkung haben könnten.
- **METHODIK:** Fragebögen an nationale Aufsichtsbehörden, ergänzt durch telefonische Interviews zur Abklärung unklarer Antworten.
- **UNTERSCHIEDE ZWISCHEN NATIONALEN UMSETZUNGEN VON ARTIKEL 4 UND 5:** Einige Mitgliedstaaten haben eine Definition von 'anrechnungsfähigen Gesamtstunden' übernommen, die einschränkender ist, als es die Richtlinie vorschreibt. Andere Mitgliedstaaten haben den qualifizierenden Begriff "soweit durchführbar" oder andere Ausnahmeregelungen gemäß den Bestimmungen in die Richtlinien mit aufgenommen, nach denen in bestimmten Ausnahmefällen niedrigere Anteile von europäischen Werken und unabhängigen Produktionen zulässig sind.
- **DEFINITIONEN VON 'UNABHÄNGIGER PRODUZENT' SIND IN DEN EINZELNEN MITGLIEDSTAATEN SEHR UNTERSCHIEDLICH:** Die meisten, aber nicht alle Mitgliedstaaten, definieren diesen Begriff in ihrer Gesetzgebung. Die Definitionen bestehen aus einer Kombination verschiedener Merkmale. Diese basieren meist auf in der Richtlinie enthaltenen Faktoren (Besitzverhältnis der Produktionsfirma, Anzahl der an einen Sender gelieferten Programme, Besitzverhältnisse von Zweitverwertungsrechten), enthalten aber auch andere Elemente, die die Fähigkeit der Produzenten, ihr Geschäft unabhängig von Rundfunksendern abzuwickeln, betreffen. Auch die festgelegten Grenzwerte für die einzelnen Elemente sind in den einzelnen Mitgliedstaaten sehr unterschiedlich.
- **DIE VORGABE FÜR UNABHÄNGIGE PRODUKTIONEN BEZIEHT SICH ÜBLICHERWEISE AUF DIE SENDEZEIT:** Es wurden nur wenige Beispiele gefunden, bei denen ein bestimmter Anteil der Haushaltsmittel stets unabhängigen Produktionen zugewiesen werden muss. Frankreich und Italien gehen in ihrem Ansatz noch weiter, da sie ihre Rundfunksender verpflichten, einen bestimmten Prozentsatz ihres gesamten Jahresumsatzes (der immer höher ist als die Haushaltsmittel) unabhängigen Produktionen zuzuweisen.
- **VERSCHIEDENE ANSÄTZE FÜR DIE ÜBERWACHUNG UND SANKTIONIERUNG DER EINHALTUNG VON ARTIKEL 4 UND 5:** Die meisten Mitgliedstaaten verlangen von Rundfunksendern nur eine Selbstauskunft zu den erzielten Anteilen europäischer Werke und unabhängiger Produktionen. Einige Mitgliedstaaten ergreifen aber zusätzliche Maßnahmen zur Überprüfung der eingereichten Daten oder führen unabhängige Kontrollen von Sendungen durch.

Manche Mitgliedstaaten haben noch keine Sanktionen festgelegt, wenn die erforderlichen Anteile nicht erzielt wurden, doch in den meisten Mitgliedstaaten stehen den Behörden eine Reihe von Sanktionen zur Verfügung. Die Sanktionen bestehen meist aus Warnungen und Geldstrafen, doch in einigen Mitgliedstaaten ist es in den schwerwiegendsten Fällen auch möglich, Sendelizenzen zu verkürzen oder zu widerrufen.

- **DIE MEISTEN MITGLIEDSTAATEN WENDEN EINIGE MASSNAHMEN AN, DIE STRENGER SIND ALS ARTIKEL 4 UND 5:** In einigen Mitgliedstaaten gelten bei den Prozentsätzen für europäische Werke oder unabhängige Produktionen höhere Anforderungen als in der Richtlinie (für einige oder alle Rundfunksender). In fast allen Mitgliedstaaten gibt es zusätzliche Anforderungen für Rundfunksender in Bezug auf den Inhalt, die die sprachlichen oder kulturellen Ausprägungen in einem Mitgliedstaat widerspiegeln. In mehreren Mitgliedstaaten muss ein bestimmter Anteil der Sendezeit Sendungen zugeteilt werden, die ursprünglich in einer Landessprache produziert wurden.
- **VOR DER ANNAHME DES NEUEN ARTIKELS 3i GAB ES NUR IN SEHR WENIGEN MITGLIEDSTAATEN NATIONALE VORSCHRIFTEN MIT ÄHNLICHEN AUSWIRKUNGEN:** Die Französische Gemeinschaft Belgiens hat einen "technologienutralen" Ansatz ohne Unterscheidung zwischen Distributionsplattformen übernommen und dieser wurde so ausgelegt, dass nicht-lineare Fernsehdienste denselben Verpflichtungen unterliegen wie andere Fernsehsender, einschließlich der Verpflichtung zu europäischen Werken und unabhängigen Produktionen. In Frankreich mussten Anbieter von Abrufdiensten (Video-on-Demand - VoD) eine Steuer entrichten, um einen finanziellen Beitrag zur Filmproduktion zu leisten.
- **DIE UMSETZUNG VON ARTIKEL 3i WIRD VOR ALLEM IN 2009 STATTFINDEN:** Die Frist für die Umsetzung ist der 19. Dezember 2009. Bei unseren Interviews mit nationalen Genehmigungsbehörden haben wir festgestellt, dass nur einige Mitgliedstaaten erwarteten, dass die nationale Umsetzung in 2008 abgeschlossen sein werde, während die Mehrheit davon ausging, dass dies in 2009 stattfinden werde.

Die europäische Lieferkette und die Herstellung von audiovisuellen Inhalten

- **ZIELSETZUNG:** Bereitstellung einer Analyse und Beschreibung der derzeitigen Marktstruktur und der Einnahmen des audiovisuellen Sektors (linear und nicht-linear) in der EU.
- **METHODIK:** Eine Vielzahl von Makro- und Mikrodaten wurde kombiniert, um eine möglichst genaues Bild des gesamten Sektors und seiner drei Hauptbestandteile – Herstellung von Inhalten, Sendermanagement und Programmausstrahlung – zu erstellen.
- **DIE MARKTSTRUKTUR UND DIE LIEFERKETTE WERDEN IMMER KOMPLEXER:** Neue Absatzkanäle wie etwa Abrufdienste, neue Finanzierungsmodelle für die Herstellung von Inhalten und eine zunehmende Fragmentierung des traditionellen Rundfunkmarktes haben die Gesamtstruktur des Marktes geändert.
- **ZAHLUNGEN DURCH VERBRAUCHER HABEN DAS WACHSTUM IM MARKT VORANGETRIEBEN:** Die Gesamteinnahmen der Fernsehindustrie lagen 2006 bei 78,1 Mrd. €, davon entfielen 23% auf Fernsehgebühren, 36% auf Werbung und Sponsoring und 34% auf Zahlungen von Verbrauchern für Pay-TV, Kabel und VoD-Dienste. Den größten Anteil des Wachstums in den E17 Ländern machen die Zahlungen von Verbrauchern aus, bei denen seit 2002 jedes Jahr ein Zuwachs von 10,1% verzeichnet werden konnte.
- **GROSSE UNTERSCHIEDE IN DEN EINZELNEN MITGLIEDSTAATEN IN BEZUG AUF MARKTSTRUKTUR UND EINFLUSSFAKTOREN FÜR DIE EINNAHMEN:** Die Beiträge durch Werbung, die öffentliche Hand und Abonnementzahlungen sind in den einzelnen Mitgliedstaaten sehr unterschiedlich.
- **MARKT FÜR FERNSEHSENDER UMFASST DREI SEHR UNTERSCHIEDLICHE TYPEN:** Kostenlose Fernsehsender (zugänglich für alle, Finanzierung öffentlich-rechtlich und durch Werbeeinnahmen), Pay-TV-Sender (für Abonnenten im Rahmen ihres Pay-TV Abonnements) und Premium Pay-TV Sender (mit zusätzlicher Abonnementsgebühr).
- **KOSTENLOSES FERNSEHEN BLEIBT DAS BELIEBTSTE GESCHÄFTSMODELL:** Trotz erheblicher Migration zu Pay-TV machen Haushalte mit Pay-TV immer noch weniger als ein Drittel der europäischen Fernsehhaushalte aus. Die Anzahl der analogen Haushalte ging wesentlich zurück, da immer mehr Haushalte auf DVB-T-Plattformen (Digitalfernsehen) wechseln. Bis Ende 2007 wurden kostenloses DVB-T von über 28 Millionen Haushalten empfangen.
- **ABRUDDIENSTE MACHEN NUR EINEN KLEINEN ANTEIL DER GESAMTEN BRANCHE AUS:** Die Anzahl der im Markt erhältlichen Abrudienste schwankt stark (zwischen 2 und 32). Nach unserer Schätzung wurden in 2006 in den E30 mit Abrudiensten Einnahmen von ca. 400 Mio. € erzielt, das macht nur 0,5% der Einnahmen der TV-Branche aus.
- **FÜR DIE SENDER STEHEN DREI VERSCHIEDENE ARTEN DER PROGRAMMGESTALTUNG ZUR WAHL:** Ursprung der Sendungen (Auftragsproduktionen, Zukäufe oder Wiederholungen); Auswahl

des Genres (Film, Nachrichten, Komödie, Factual Entertainment, Stock- oder Flow-Programme¹⁷) und des Untergenres (z.B. Drama- Seifenoper oder ein Einzelfilm).

- **DER EUROPÄISCHE SEKTOR DER HERSTELLUNG VON INHALTEN WURDE AUF 18,3 MRD. € BEZIFFERT:** Davon entfielen 16,5 Milliarden € auf Auftragsproduktionen durch größere Rundfunksender und 1,8 Milliarden € auf Auftragsproduktionen durch kleinere Sender. Von den 18,3 Milliarden € entfielen etwa 2,6 Milliarden € auf nationale und regionale Nachrichten und Sportsendungen (Übertragungsrechte für Sportveranstaltungen ausgenommen). Von den übrigen 15,7 Milliarden € wurden nach Schätzungen 43% (6,8 Mrd. €) auf Auftragsproduktionen von externen Produzenten aufgewendet und etwa 57% in Eigenproduktionen investiert¹⁸.
- **GRÖSSERE RUNDFUNKSENDER¹⁹ MACHEN DIE MEHRZAHL ALLER NEUEN AUFTRAGSPRODUKTIONEN AUS:** Die größeren Rundfunksender verzeichnen etwa 57% der Bruttoeinnahmen der Branche, machen aber über 90% der Ausgaben für alle neuen Auftragsproduktionen aus.
- **DIE RENTABILITÄT VON UNABHÄNGIGEN PRODUKTIONSFIRMEN IST ZYKLISCH:** Die Margen hängen stark vom Erfolg der Auftragsproduktionen ab, die langfristig (abhängig von Handelsbedingungen) erhebliche zusätzliche Einnahmen und Einnahmen aus dem Ausland für den Produzenten bringen können. Erfolglose Auftragsproduktionen wirken sich dagegen negativ auf die Margen aus.
- **ERHEBLICHE VERTIKALE INTEGRATION ENTLANG DER WERTSCHÖPFUNGSKETTE:** Unsere Analyse deutet darauf hin, dass 57% aller Sendungen (Nachrichten ausgenommen) von den Rundfunksendern im eigenen Haus erstellt werden. Ein sehr hoher Anteil von Premium Pay-TV Sendern gehört den Eigentümern von Pay-TV-Plattformen.
- **ZUKÄUFE AUS DEN USA IMMER NOCH WEIT VERBREITET:** Fast alle europäischen Rundfunksender kaufen beliebte US-Sendungen zu (sowohl Fernsehserien als auch Hollywood-Filme). In letzter Zeit ist auch ein Anstieg bei der Anzahl der Importe aus asiatischen Ländern festzustellen, vor allem aus Japan und aus Südkorea.

¹⁷ Ein Stock-Programm hat einen Wiederholungswert und kann zu einem späteren Zeitpunkt erneut ausgestrahlt werden, während Flow-Programme nach der ersten Ausstrahlung nur einen geringen oder gar keinen Wert mehr haben (narrative Wiederholungen ausgenommen). Beispiele für Flow-Programme sind Nachrichten, Sportsendungen, Spielsendungen und bestimmte Unterhaltungssendungen.

¹⁸ Zu den externen Produktionen gehören an Rundfunksender angeschlossene Unternehmen wie etwa UFA und Studio Hamburg in Deutschland und Fremantle und die RTL-Gruppe von Rundfunksendern.

¹⁹ Für die Zwecke dieser Analyse wurden alle Fernsehsender mit einem durchschnittlichen Anteil von über 5% des Inlandpublikums als 'größerer Rundfunksender' definiert.

EU-weite Analyse von linearen Daten

- **ZIELSETZUNG:** Erstellen eines einheitlichen Maßstabs für Artikel 4 und 5 in allen Mitgliedstaaten und Anwendung auf eine Stichprobe von (linearen) Rundfunksendern in Europa.
- **METHODIK:** Es wurde eine Stichprobe von 54 Sendern, die in 11 Mitgliedstaaten tätig sind, ausgewählt. Damit sollte die Vielfalt der EU30 in Bezug auf die Größe des Marktes, geographische Aspekte und die Dauer der EU-Mitgliedschaft berücksichtigt und die größeren Mitgliedstaaten begünstigt werden, um den größtmöglichen Anteil der EU in Bezug auf Einwohnerzahl und wirtschaftliche Größenordnung abzudecken. Die Sender wurden so ausgewählt, dass die Vielfalt der europäischen Rundfunksender im Hinblick auf Zuschauerzahlen, Eigentümer und Einnahmenmodell repräsentiert wird, gleichzeitig wurden führende Sender bevorzugt mit aufgenommen, um den größtmöglichen Anteil des europäischen Fernsehkonsums abzudecken²⁰. Die Sender wurden für zwei nicht aufeinanderfolgende Wochen im Jahr 2007 überwacht, eine Woche im März und eine Woche im November.

Ein einheitlicher Ansatz wurde zur Einordnung aller während dieses Zeitraums gesendeten Programme in Kodes verwendet und um Vergleiche zwischen den Sendern in den Mitgliedstaaten im Hinblick auf den Anteil von anrechnungsfähigen, europäischen Werken, Werken aus dem europäischen Ausland, unabhängigen und neuen unabhängigen Werken, einschließlich der Hauptsendezeit zu ermöglichen. Die Daten wurden mit früheren Erkenntnissen und nationalen Angaben verglichen, sofern verfügbar.

Zum ersten Mal wurden damit Indikatoren erstellt und analysiert, nicht nur im Verhältnis zu den Sendestunden, sondern auch im Verhältnis zu den Zuschauerstunden.

- **ANRECHNUNGSFÄHIGE WERKE:** Bei unserer Stichprobe machen qualifizierende Sendungen (für die Artikel 4 und 5 gelten) bei allen Sendern, die in 2007 untersucht wurden, 68,3% der gesamten Sendezeit und 65% der Zuschauerstunden aus.
- **EUROPÄISCHE WERKE:** Bei unserer Stichprobe entfielen in 2007 62,4% der gesamten anrechnungsfähigen Sendestunden auf europäische Werke. Die meisten der analysierten europäischen Rundfunksender erfüllten die Vorgabe von 50% in Artikel 4. Europäische Werke machen in 2007 im Durchschnitt auch 74% der gesamten Zuschauerstunden bei allen analysierten Sendern aus.

²⁰ Die Stichprobe setzt sich aus dem folgenden 11 Mitgliedstaaten und 54 Sendern zusammen: Belgien (Flämische und Französische Gemeinschaft: VRT, VTM, La Une, RTL-TVI), Estland (ETV, Kanal2, TV3), Frankreich (France2, France3, TF1, M6, Canal+, Direct8), Deutschland (ARD1, ZDF, RTL, Sat.1, Pro7, Vox), Irland (RTE1, RTE2, TV3), Italien (Rai1, Rai2, Canal5, Italia1, La7, Fox Life), Polen (TVP1, TVP2, TVN, Polsat, TV4, Canal+), Rumänien (TVR1, Pro TV, Prima TV, Antena1), Spanien (TVE1, La2, Antena3, TeleCinco, Cuatro, La Sexta), Schweden (SVT1, Kanal5, TV3, TV4) und Großbritannien (BBC1, BBC2, ITV1, Channel4, Five, Sky One).

Wenn man nur die Hauptsendezeit betrachtet, liegen die Zahlen sogar noch höher. Die Sender mit den höchsten Anteilen an europäischen Werken sind öffentlich-rechtliche²¹ Sender in südlichen, älteren und größeren europäischen Mitgliedstaaten.

- **UNABHÄNGIGE WERKE:** Unabhängige europäische Werke machen 31% der gesamten qualifizierenden Sendestunden in 2007 aus im Vergleich zu 33,4% der gesamten anrechnungsfähigen Sendestunden. In der Hauptsendezeit liegen die Anteile höher. Bei Pay-TV werden normalerweise wesentlich weniger unabhängige Produktionen gezeigt als bei Sendern mit freiem Empfang. Mehr unabhängige Produktionen werden auf den Privatsendern in nördlichen, älteren und größeren Mitgliedstaaten gezeigt. Bei genauerer Betrachtung der Situation zur Hauptsendezeit wird ersichtlich, dass führende Privatsender aus kleinen und älteren Mitgliedstaaten wesentlich mehr unabhängige Produktionen bieten.
- **NEUE WERKE:** Bei unserer Stichprobe machten in 2007 unabhängige europäische Werke durchschnittlich 84,4% der gesamten Sendezeit von unabhängigen europäischen Werken aus im Vergleich zu 91,7% der gesamten Zuschauerstunden bei den Zuschauerstunden für völlig unabhängige Werke.
- **SITUATION EINZELNER RUNDFUNKSENDER:** Die einzelnen Sender hängen stark von den Marktbedingungen und der kulturellen Dynamik vor Ort ab. Eine vollständige Analyse der einzelnen Mitgliedstaaten ist in diesem Bericht enthalten.

Ansichten aus der Branche: Rundfunksender und Produzenten

- **ZIELSETZUNG:** Unser Verständnis der Auswirkungen von Artikel 4 und 5 auf der Basis der Meinungen von Interessenvertretern zu erweitern.
- **METHODIK:** Wir haben maßgeschneiderte Fragebögen an über 230 der wichtigsten Interessenvertreter²² in der europäischen Branche der audiovisuellen Medien versandt und über 71 Antworten aus 24 Mitgliedstaaten erhalten.
- **UMFANG VON AUFTRAGSPRODUKTIONEN IST VON DER EINNAHMENSTRUKTUR DES RUNDFUNKSENDERS ABHÄNGIG:** Kommerzielle Rundfunksender neigen dazu, einen etwas höheren Anteil ihres Programmbudgets (51%) auf zugekauft Sendungen aufzuwenden und einen wesentlich niedrigeren Anteil (18%) auf Eigenproduktionen. Im Gegensatz dazu neigen öffentlich-rechtliche

²¹ 'Öffentlich-rechtlich' schließt Rundfunksender mit Mischfinanzierung ein.

²² Zu den Interessenvertretern gehören Rundfunksender (öffentlicht-rechtlich – einschließlich Rundfunksender mit Mischfinanzierung – und privat finanziert), unabhängige Produzenten, Handelsgremien, Aufsichtsbehörden und reine VoD-Anbieter (Reiner VoD-Anbieter: Anbieter eines VoD-Dienstes (Abrufdienstes) ohne Anbindung an traditionelle lineare Rundfunksender, die Catch-up-Dienste anbieten (und in manchen Fällen Archivinhalte nur für diesen Rundfunksender anbieten), wird im allgemeinen von Kabelunternehmen, Telekommunikationsfirmen, der Filmindustrie oder unabhängigen Internetanbietern angeboten).

Rundfunksender zu starken Investitionen in Eigenproduktionen (58%) und geben weniger (16%) für den Zukauf von Produktionen aus.

- **MEHRZAHL DER AUFTRAGSPRODUKTIONEN FÜR PROGRAMMFORMATE ERFOLGT DURCH KOMMERZIELLE RUNDFUNKSENDER:** Im Durchschnitt wird 10% des gesamten Programmbudgets von kommerziellen Rundfunksendern in Auftragsproduktionen in Programmformate investiert.²³ Bei öffentlich-rechtlichen Rundfunksendern liegt die Investitionsquote meist zwischen 0% und 3%.
- **DER TREND GEHT ZU MEHR EXTERNEN AUFTRAGSPRODUKTIONEN:** Über 70% der Befragten (sowohl private als auch öffentlich-rechtliche Sender) gaben an, dass der Anteil der externen Auftragsproduktionen in den letzten fünf Jahren zugenommen habe.
- **WAHL VON AUFTRAGSPRODUKTIONEN HÄNGT VOM GENRE AB:** Nachrichten sind großteils Eigenproduktionen, während Kino- und Dokumentarfilme meist extern produziert werden. Bei Fernsehfilmen und Unterhaltungs- und Magazinsendungen ist der Ursprung etwas ausgeglichener, zwischen 20% und 50% sind Eigenproduktionen und zwischen 40% und 70% sind unabhängige Produktionen.
- **ZUKÄUFE SIND IM ALLGEMEINEN BILLIGER ALS AUFTRAGSPRODUKTIONEN:** Über alle Genres gesehen, mit Ausnahme von Sport und Fernsehspielen, gaben über 65% der Rundfunksender an, dass die Kosten für zugekauft Sendungen über 80% geringer seien als für Auftragsproduktionen.
- **IN DEN USA PRODUZIERTE ZUKÄUFE WEITERHIN BELIEBT:** Etwas über die Hälfte der Zukäufe von Rundfunksendern kamen aus den USA und etwas unter 25% aus anderen europäischen Ländern. Alle Rundfunksender gaben an, dass Spielfilme und Fernsehfilme von außerhalb Europas (hauptsächlich aus den USA) attraktiv und zur Hauptsendezeit sehr erfolgreich seien.
- **ERSTAUSSTRAHLER IMMER NOCH DIE HAUPTQUELLE BEI DER FINANZIERUNG VON SENDUNGEN:** Bei allen Genres stammt die Finanzierung zu über 85% vom Erstausstrahler und zwischen 1% und 7% von einem Zweitausstrahler oder einem Koproduzenten²⁴.
- **ÜBER DREI VIERTEL DER BEFRAGTEN WIRKEN BEI KOPRODUKTIONEN MIT - MEIST IM INLAND ODER INNERHALB EUROPAS:** Etwa 86% der Rundfunksender und 75% der unabhängigen Produzenten wirken an Koproduktionen mit. Sowohl Produzenten als auch Rundfunksender nannten

²³ Format wird definiert als eine Sendung, die zur regionalen Ausstrahlung in mindestens einem anderen Markt als dem ursprünglichen Markt vor Ort überarbeitet wird, wobei eine Lizenzgebühr zu entrichten ist, z.B. *Wer wird Millionär, Alles Betty*.

²⁴ Der Erstausstrahler ist der Hauptauftraggeber und behält meist die Erstausstrahlungsrechte bei, während der Zweitausstrahler oder Koproduzent einen Teil der Produktion mitfinanziert, um sich andere Ausstrahlungsrechte für das In- und Ausland zu sichern.

einheimische Koproduktionen und Koproduktionen mit anderen europäischen Produzenten als die gängigste Variante.

- **RUNDFUNKSENDER ERWARTEN, DASS SIE DIE MEISTEN IHRER RECHTE IM EINHEIMISCHEN MARKT BEIBEHALTEN:** Alle Rundfunksender gaben an, dass sie bei externen Auftragsproduktionen die Rechte für die Erstausstrahlung (und Wiederholungen) für terrestrische Ausstrahlung und für neue Medien (einschließlich der Abrufrechte) erwarten, während etwa 81% angaben, dass sie Zweitausstrahlungen im einheimischen Markt und sonstige Rechte im einheimischen Markt erwarten.
- **FIKTION UND SPIELFILME WURDEN ALS ERFOLGREICHE EUROPÄISCHE EXPORTE UND IMPORTE ERMITTELT:** Fiktion und Spielfilme wurden von den Rundfunksendern als am erfolgreichsten im internationalen Markt eingestuft, während Nachrichten und Magazinsendungen als regional betrachtet wurden, deren Verkauf ins Ausland unwahrscheinlich sei. Sport, Dokumentarfilme, Fiktion und Spielfilme wurden alle als mögliche europäische Importe eingestuft, während Nachrichten und Magazinsendungen niedrig bewertet wurden. Nur das Unterhaltungsformat und das Format Factual Entertainment/Reality-TV wurden zu über 50% als exportierbar eingestuft.

Ansichten aus der Branche: Abrufdienste

- **ZIELSETZUNG:** Untersuchung der Ansichten der Haupt-Interessenvertreter zu den Programmstrategien und zum Angebot von Abrufdiensten sowie ihrer Ansichten zu Inhaltsstrategien und regulatorischen Fragen.
- **METHODIK:** Es wurden Fragebögen zum Sammeln von quantitativen und qualitativen Daten von 50 nicht-linearen (Abruf) Diensten (35 Rundfunksender und 15 reine VoD-Anbieter) erstellt. Zusätzlich wurden zur Untersuchung des Konzepts "Herausstellung" unabhängig davon 29 nicht-lineare Dienste analysiert.
- **DIE MEHRZAHL DER ABRUDIENSTE DER BEFRAGTEN WURDE ÜBER DAS INTERNET ODER ÜBER IPTV ANGEBOTEN:** Fast alle Befragten, sowohl Rundfunksender als auch reine VoD-Anbieter bieten Inhalt über Abrufdienste an, die über das Internet oder über IPTV vertrieben werden. Während Rundfunksender auch Mobilfunk (40%) und Kabel (32%) nutzen, verwenden reine VoD-Anbieter hauptsächlich Kabel (25%) als ihre sekundäre Distributionstechnologie.
- **DIE ANGEBOTENEN GENRES UNTERScheiden SICH BEI RUNDFUNKSENDERN UND REINEN VOD-ANBIETERN:** Rundfunksender bieten im Allgemeinen eine ausgeglichene Mischung von Live-, Archiv- und seit neuestem auch Catch-up-Material im Rahmen ihrer VoD-Dienste an, mit einer ausgeglichenen Mischung von Genres. Reine VoD-Anbieter zeigen eine deutliche Vorliebe für Archivmaterial mit Schwerpunkt auf Kino, Fernsehspiele und Dokumentarfilme.

- **IM ALLGEMEINEN IST DER EUROPÄISCHE INHALT DER WICHTIGSTE BESTANDTEIL DER KATALOGE VON ABRUDIENSTEN:** Bei dieser Umfrage gaben von den Befragten nur 17% der reinen VoD-Anbieter und 12% der Rundfunksender an, dass ihre Kataloge weniger als 25% europäischen Titel enthielten. Rundfunksender haben normalerweise 100% europäische Inhalte, da sie im Allgemeinen ihre linearen Programme in ihren Abrudiensten wiederholen außer den Titeln, für die sie nicht über die Abrufrechte verfügen. Im Gegensatz dazu gaben 33% der reinen VoD-Anbieter an, dass ihre Kataloge zwischen 25% und 75% europäische Titel enthalten.
- **REINE VOD-ANBIETER GEBEN KEIN GELD FÜR AUFTRAGSPRODUKTIONEN AUS:** Die reinen VoD-Anbieter unter den Befragten teilten 100% ihres Programmbudgets für Zukäufe zu, davon entfielen mindestens die Hälfte auf außereuropäische Importe. Im Gegensatz dazu gaben die Abrudienste der Rundfunksender an, dass sie etwa 75% ihrer Abrubudgets auf nationale Auftragsproduktionen verwenden, obwohl diese Zahl einen Anteil eines sehr begrenzten Budgets darstellt.
- **DIE MEISTEN NICHT-LINEAREN DIENSTE SIND FÜR DEN VERBRAUCHER KOSTENLOS:** Von den Rundfunksendern, die an der Umfrage teilnahmen, benutzen 41% Werbung zur Finanzierung ihres gesamten oder eines Teils ihres Abrudienstes. Öffentliche Subventionen sind für 23% der Rundfunksender, die an der Umfrage teilnahmen, die einzige Einnahmequelle. Im Gegensatz dazu stammt der Großteil der Einnahmen von reinen VoD-Anbietern, die an unserer Umfrage teilnahmen, nur aus direkten Zahlungen von Verbrauchern, entweder als Abonnement oder als Pay-per-View.
- **ANBIETER ERACHTEN EUROPÄISCHE PROGRAMME ALS WICHTIG:** Die meisten der Abrudienste, die an der Umfrage teilnahmen, unabhängig davon, ob es sich bei diesen um Rundfunksender oder reine VoD-Anbieter handelte, sind der Ansicht, dass europäische Programme insgesamt eine sehr gute Wahl für ihre Dienste darstellen. Es gibt dazu jedoch einige Vorbehalte: Europäische Programme werden als teuer betrachtet, die nicht einfacher zu erwerben sind als außereuropäische Inhalte und werden nicht unbedingt als der beste Weg zur Werbung europäischer Verbraucher betrachtet.
- **HERAUSSTELLUNG:** Herausstellung ist ein wesentliches Konzept, wenn man sich damit befasst, wie europäische Werke von Abrudiensten gefördert werden.
Herausstellung kann in zwei Dimensionen analysiert werden: **aktive Herausstellung** (bietet der Dienst die Möglichkeit, Titel nach dem Ursprungsland der Produktion zu durchsuchen und werden die Informationen zum Ursprung der Produktion zusammen mit der Beschreibung der Titel angeboten?) und **passive Herausstellung** (wie hoch ist der Anteil der europäischen Werke unter den Titeln, die dem Verbraucher beim Zugriff auf den Dienst über dessen Homepage und beim Blättern durch die verschiedenen Abschnitte gezeigt werden?)

In Bezug auf die aktive Herausstellung zeigt unsere Analyse auf, dass Abrufdienste es Verbrauchern nur selten ermöglichen, Titel nach dem Ursprungsland der Produktion (oder nach Sprache) auszuwählen. Bei der Hälfte der Dienste in unserer Stichprobe wird das Ursprungsland in der Beschreibung der Titel angegeben.

Bei der Berücksichtigung des Ursprungs der Titel, die "automatisch" auf dem Bildschirm erscheinen (passive Herausstellung), lag der Anteil der Titel europäischen Ursprungs, die von den 29 Abrufdiensten in unserer Stichprobe 'angepriesen' wurden, im Durchschnitt bei 54%. Es gab jedoch große Unterschiede zwischen den Diensten.

Überwachungsmethoden für Artikel 3i

- **ZIELSETZUNG:** Bestimmung und Beurteilung möglicher Leistungsindikatoren und Verfahrensweisen für die Überwachung gemäß Artikel 3i.
- **METHODIK:** Es wurden verschiedene Verfahren und Indikatoren untersucht und besprochen. Fragen, die zur Erfassung der Ansichten von Interessenvertretern zur Angemessenheit von Verfahrensweisen und Indikatoren ausgelegt waren sowie die Erfassung von tatsächlichen Daten, die auf allen vorgeschlagenen Indikatoren basieren, wurden in die Umfrage unter den Interessenvertretern mit aufgenommen.
- **IST SELBSTAUSKUNFT ANGEMESSENE VERFAHRENSWEISE FÜR NICHT-LINEAR:** Derzeit sind Selbstauskünfte die geeignetste Verfahrensweise zur Erfassung von Daten zur Anwendung von Artikel 3i. Die Umfrage hat gezeigt, dass die Erfassung von Daten durch Selbstauskunft möglich ist. Wir sind der Ansicht, dass sich die Anzahl der empfangenen Daten verbessern wird, wenn es gesetzlich vorgeschrieben ist.
- **UNABHÄNGIGE BEURTEILUNG VON NICHT-LINEAREN DIENSTEN DERZEIT NICHT ANGEMESSEN:** Daten, wie sie bei der bewährten Fernsehzuschauerforschung (Television Audience Measurement - TAM) für die unabhängige Beurteilung von linearen Diensten zur Verfügung stehen, gibt es für nicht-lineare Dienste derzeit noch nicht. Alternativen zu TAM-Daten wie etwa 'Web-Harvesting' Software zum Kopieren von Informationen von Abrukatalogen in Datenbanken oder Berater, die diese Aufgabe manuell durchführen, sind im ersten Fall aus rechtlichen Gründen und im zweiten Fall aus zeitlichen und finanziellen Erwägungen nicht angemessen. Wir wollen jedoch die Entwicklung einer vereinbarten Technologie zum Sammeln entsprechender Daten in der Zukunft nicht ausschließen, wenn die rechtlichen Einwände ganz ausgeräumt sind.
- **INDIKATOREN AUF KATALOGEBENE AM BESTEN GEEIGNET:** Von allen Befragten wurde der Anteil an den Katalogtiteln als der beste Indikator bezeichnet (mit Ausnahme der Produzenten, die finanzielle Aspekte und Nutzung als die wichtigsten Indikatoren erachteten). Daraus ist der Anteil der europäischen Inhalte, die als nichtlineare Dienste erhältlich sind, klar erkennbar. Der Anteil der

Katalogstunden wurde von den meisten Befragten ebenfalls als ein guter Indikator betrachtet, damit wurden Bedenken ausgeräumt, dass Kataloge mit Inhalten in Kurzform gefüllt werden, nur um den Indikator auf Titelebene zu erfüllen. Als diese Indikatoren auf einzelne Dienste angewendet wurden, stellten wir fest, dass die meisten Dienste über 80% europäische Titel und Stunden aufweisen und viele sogar 100%. Reine VoD-Anbieter führten meist einen kleineren Anteil von europäischen Titeln in ihrem Angebot als die von Rundfunksendern angebotenen Dienste. Die von Rundfunksendern angebotenen Dienste wiederholten oft ihr lineares Angebot über ihren nicht-linearen Dienst außer den Sendungen, bei denen sie nicht über die Abrufrechte verfügen (meist außereuropäischer Inhalt). Das ist bei reinen VoD-Anbietern nicht der Fall und möglicherweise der Grund dafür, dass der Anteil von EU-Inhalten bei den Diensten der Rundfunksender höher liegt als bei den Diensten von reinen VoD-Anbietern.

- **BEIM FINANZIELLEM BEITRAG MUSS VORSICHTIG VORGEGANGEN WERDEN:** Bei diesem Indikator waren die Meinungen geteilt, von den Produzenten wurde er befürwortet, bei den Rundfunksendern und reinen VoD-Anbietern traf er dagegen auf starke Ablehnung. Diese Daten werden als streng vertraulich betrachtet und da die Zahlen, die derzeit im Gespräch sind, relativ niedrig sind, können die Daten zu diesem Zeitpunkt wenig aussagen. Da Daten zu finanziellen Beiträgen jedoch in der Richtlinie ausdrücklich als eine Möglichkeit genannt werden, schlagen wir zu diesem Zeitpunkt einen einfachen Indikator vor: Die zuständigen Behörden in den Mitgliedstaaten könnten von den Anbietern verlangen, dass sie einen Betrag für die jährlichen Aufwendungen für den Inhalt angeben und einen Betrag für den ungefähren Anteil, der auf europäische Werke aufgewendet wurde.
- **NUTZUNGSDATEN ZU DIESEM ZEITPUNKT NOCH NICHT ANGEMESSEN:** Mit Ausnahme der Produzenten wurden Nutzungsdaten als Indikator von den Befragten nicht befürwortet, vor allem deshalb, weil es sich dabei um vertrauliche Daten handelt und sie von linearen Anbietern nicht verlangt werden. Da es keine Datenquelle gibt, die mit den TAM-Daten für lineare Dienste vergleichbar ist, sind zuverlässige Nutzungsdaten zur unabhängigen Überprüfung oder Kontrolle derzeit nur sehr schwer erhältlich. Datenquellen für nicht-lineare Dienste, die denen nach TAM ähnlich sind, können in Zukunft zur Verfügung stehen und dann als ein Indikator verwendet werden.
- **'HERAUSSTELLUNG' IST EIN OFFENER BEGRIFF MIT VIELEN MÖGLICHEN INDIKATOREN UND SOLLTE ZU DIESEM ZEITPUNKT NOCH NICHT ZU STRENG ANGEWENDET WERDEN:** Viele verschiedene Indikatoren wie etwa die Möglichkeit, nach Ursprungsland zu suchen bis hin zum Anteil der Seiten nur mit europäischen Inhalten sind mögliche Indikatoren zur 'Herausstellung'. Es gab Bedenken bei der Umfrage und im Workshop, dass zu viele Verordnungen die kreative Entwicklung von nicht-linearen Diensten beschränken könnten. Aus den Kommentaren beim Workshop wurde deutlich, dass dieses Thema von den Mitgliedstaaten noch genauer erörtert werden muss. Zu

diesem Zeitpunkt schlagen wir daher vor, die Richtlinien relativ weit zu fassen.

Allgemeine Schlussfolgerungen

- Die Umsetzung von Artikel 4 und 5 ist in den einzelnen Mitgliedstaaten in Bezug auf die Anwendung der gesetzlichen Bestimmungen und die Anzahl der zusätzlichen Anforderungen unterschiedlich.
- Die Umsetzung von Artikel 4 und 5 ist in den Mitgliedstaaten, die an der Studie in 2005 beteiligt waren, zum großen Teil gleich geblieben.
- Durch die Abrufdienste und die zunehmende Fragmentierung wird die 78,1 Mrd. € Fernsehindustrie in Europa komplexer. Abrufdienste machen mit 400 Mio. € jedoch nur einen geringen Teil dieser Einnahmen aus.
- Bei linearen Diensten bleibt Fernsehen mit freiem Empfang das beliebteste Geschäftsmodell. Bei den von Rundfunksendern angebotenen nicht-linearen Diensten setzt sich dieser Trend fort, die meisten bieten einen Teil des Inhalts oder den gesamten Inhalt kostenfrei an. Nicht-lineare Dienste, die nicht an Rundfunksender angebunden sind, bevorzugen jedoch Geschäftsmodelle, bei denen Verbraucher für ihre Dienste bezahlen.
- Obwohl es bei den Beträgen, die lineare Rundfunksender auf Zukäufe und Auftragsproduktionen aufwenden, Unterschiede gibt, zeigt sich bei ihren nicht-linearen Diensten ein einheitlicheres Bild, d.h., 75% des Budgets für nicht-lineare Dienste von Rundfunksendern entfallen auf Auftragsproduktionen. Rundfunksender benötigen normalerweise die Rechte für Abrufdienste bei Auftragsproduktionen, aber der Erwerb von neuen Medienrechten für Zukäufe ist schwieriger. Bei reinen VoD-Anbietern, die sich stark auf Zukäufe verlassen, sieht es wieder anders aus.
- Nicht-lineare Dienste haben meist nahezu oder genau 100% europäische Inhalte in ihren Katalogen, während sich reine VoD-Anbieter wesentlich mehr auf nicht-europäische Inhalte verlassen. Das ist vor allem darauf zurückzuführen, dass reine VoD-Anbieter mehr Zukäufe für ihre Dienste verwenden.
- Bei unserer Analyse von linearen Diensten haben wir festgestellt, dass die meisten der befragten Sender die Anforderungen von Artikel 4 und 5 erfüllt haben. In unserer Stichprobe wiesen 62,4% der anrechnungsfähigen Sendestunden einen europäischen Inhalt auf und bei 31% handelte es sich um unabhängige europäische Werke, von denen 84,4% weniger als fünf Jahre alt waren.
- Durch die erstmalige Aufnahme von Zuschauerzahlen als ein Indikator in dieser Studie stellten wir fest, dass die Anzahl der Zuschauerstunden durchgehend höher liegt als der Anteil für die Sendezeit mit europäischen Inhalten (62,4% der anrechnungsfähigen Sendestunden sind in unserer gesamten

Stichprobe europäisch, im Vergleich zu 74% der Zuschauerstunden; 31% der qualifizierenden Sendestunden entfallen auf europäische unabhängige Produktionen im Vergleich zu 33,4% der Zuschauerstunden). Damit wird angezeigt, dass europäische Inhalte und unabhängige Produktionen bei Zuschauern in den an der Umfrage beteiligten Mitgliedstaaten beliebt sind.

- Wir haben festgestellt, dass trotz der Frist für die Umsetzung der neuen Richtlinie im Dezember 2009 und einer nicht-linearen Branche, die noch im Entstehen begriffen ist, nur wenige Mitgliedstaaten Artikel 3i umgesetzt oder entsprechende Maßnahmen festgelegt haben und im Lauf von 2009 noch viele Gespräche zur Anwendung von Artikel 3i stattfinden müssen. Aus dem Workshop hat sich ergeben, dass weitere Gespräche in den Mitgliedstaaten und mit den Interessenvertretern notwendig sind.
- Zu diesem Zeitpunkt sind wir der Ansicht, dass Selbstauskünfte die geeignete Verfahrensweise zur Erfassung von Daten zur Kontrolle der Einhaltung von Artikel 3i darstellen. Für unabhängige Beurteilungen sind ähnliche Daten erforderlich wie sie für lineare Dienste erhältlich sind (Fernsehzuschauerforschung - Television Audience Measurement), für nicht-lineare Dienste stehen sie derzeit noch nicht zur Verfügung. Beim Workshop wurden die Erarbeitung dieser Dienste und die Unterstützung durch die Kommission und Mitgliedstaaten gefordert, zum Beispiel bei der Erarbeitung von Industriestandards für Daten, die den Anbietern bei der Berichterstattung an die zuständigen Behörden in den Mitgliedstaaten mit Leistungsindikatoren behilflich sind.
- Zu diesem Zeitpunkt sind wir der Ansicht, dass die folgenden Leistungsindikatoren die zuverlässigsten Daten zu europäischen Inhalten auf nicht-linearen Diensten liefern: Anteil der Katalogtitel europäischen Ursprungs, Anteil der Katalogstunden europäischen Ursprungs, Anteil der Gesamtaufwendungen für Inhalte für europäische Werke.
- Nutzungsdaten sind zu diesem Zeitpunkt noch nicht geeignet, vor allem weil sie vertraulich sind und keine zuverlässige, unabhängige Datenquelle vorliegt. Wenn in Zukunft jedoch eine zuverlässige Datenquelle für Nutzungsdaten vorliegt (wie sie für lineare Dienste bereits zur Verfügung steht), sollten Nutzungsdaten für nicht-lineare Dienste auf jeden Fall als ein Indikator in Betracht gezogen werden.
- 'Herausstellung' war der umstrittenste Leistungsindikator, der von uns beurteilt wurde und wurde beim Workshop ausführlich besprochen. Der Begriff ist nicht eindeutig definiert, d.h., dass mehrere Interpretationen möglich sind und es bestehen Bedenken bei den Interessenvertretern, dass strenge Vorschriften die kreative Freiheit für neue Dienst einschränken könnten. Wir sind der Ansicht, dass zu den Indikatoren zu 'Herausstellung' weitere Gespräche unter den Mitgliedstaaten erforderlich sind.

2. Project Overview

The following pages summarise the key sections of the study in detail. The numbers in brackets refer to the appropriate section of the main report.

2.1. Introduction

Article 25(a) of the Television Without Frontiers Directive ('TVWF') included a provision for "an independent study on the impact of measures concerning the promotion of distribution and production of television programmes at Community and national levels". The measures at Community level to promote programme making and programme distribution are contained within Articles 4 and 5 of the TVWF. Articles 4 and 5 place requirements on Member States to ensure that broadcasters under their jurisdiction devote a majority of transmission time to European works and at least 10% of transmission time (or programme budget) to European independent productions. The independent study was completed in 2005 by a consortium led by Attentional Limited (then known as David Graham & Associates), which included Oliver & Ohlbaum, Carat Expert and Arena Audiovisual.

On 11 December 2007, the European Parliament and Council adopted Directive 2007/65, amending the TVWF Directive. Further to Directive 2007/65, the name of the amended TVWF was changed to the "Audiovisual Media Services Directive". Directive 2007/65 must be implemented by the Member States by 19 December 2009. It may be noted that Directive 2007/65 did not make any amendments to Articles 4 and 5 of TVWF.

A notable aim of the amendments contained in Directive 2007/65 was to include non-linear audiovisual media services within the scope of the Directive. One of the new provisions introduced in this regard is Article 3i, which places requirements on Member States to ensure that non-linear service providers under their jurisdiction promote the production of and access to European works.

In order to provide the European Commission with the elements required to continue monitoring and evaluating Articles 4 and 5, and to commence monitoring Article 3i, the Commission requested this independent study to be carried out, covering the situation as regards promotion of European works on linear and non-linear services at the end of 2007.

This study builds on the previous study on Articles 4 and 5 from 2005. The 2005 study covered 17 countries; these countries are referred to as

"the E17".²⁵ The remit of the present study covers the 27 Member States of the European Union as of 2007 and the 3 Member States of the European Free Trade Association who participate in the European Economic Area. Collectively, these 30 countries are referred to as "the E30".²⁶ These 30 Member States were investigated for the legal and economic overview components of the study. For the specific analysis of the promotion of European and Independent European works on linear services, and the promotion of European works on non-linear services, a representative sample of 11 Member States was selected after careful discussions between the consortium and the Commission's steering group.²⁷

2.2. Modes of Implementation: Legal Report

Description and analysis of the implementing measures taken by the EU and EEA Member States pursuant to Articles 4 and 5, and any measure currently adopted pursuant to Article 3i

The report identifies how the 30 Member States covered in the legal analysis have implemented Articles 4 and 5 in national legislation as of 1 January 2008 and describes the additional content requirements that some Member States place on broadcasters. [4]

The report also identifies any national provisions regarding on-demand audiovisual services which were in effect as of 1 January 2008, and have the effect of promoting European Works within non-linear services, in line with Article 3i of the Directive.

Key findings

How Articles 4 and 5 are implemented

Articles 4 and 5 of the Directive exist to create minimum standards for the national measures on linear services. Member States have transposed Articles 4 and 5 into national law using a combination of primary legislation and secondary legislation. [5.1]

²⁵ E17 countries include: UK, Germany, France, Italy, Spain, Portugal, Denmark, Finland, Norway, Iceland, Ireland, The Netherlands, Belgium, Luxembourg, Austria, Greece and Sweden.

²⁶ E30 countries include: E17 + Latvia, Lithuania, Liechtenstein, Bulgaria, Poland, Slovenia, Slovakia, Czech Republic, Malta, Cyprus, Estonia, Romania and Hungary.

²⁷ The sample Member States are Belgium, Estonia, France, Germany, Ireland, Italy, Poland, Romania, Spain, Sweden and the United Kingdom.

The Directive defines total qualifying hours as a channel's transmission time "excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping". The majority of the E30 have transcribed the definition directly into national legislation. Only France, Germany, Italy and the UK have adopted approaches significantly different to the Directive, with the major differences found in France and Germany. France distinguishes between audiovisual works and cinematographic works and applies different requirements to each of these two groups. Germany defines what is included as qualifying hours: feature films, television movies, series, documentaries and comparable productions. [5.1.1]

Articles 4 and 5 of The Directive contain the qualifying term 'where practicable'. Certain Member States – for example Austria, Belgium (Flemish Community), Czech Republic, Denmark, Greece, Iceland, Luxembourg, Spain and Sweden – have incorporated the wording 'where practicable' into national legislation, which we consider to be a more flexible approach than when this phrase is absent. [5.1.3]

The Directive does not contain a definition of 'independent producer', but states that the definition applied by Member States should take account of criteria "such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights".²⁸ Some Member States do not define the term 'independent producer' in their legislation.²⁹ The remaining Member States utilise a combination of elements when creating their national definitions of 'independent producer'. Requirements on ownership are applied by a clear majority of these Member States. For example, in France, in order for a production company to qualify as independent, a broadcaster may hold no more than 15% of the share capital in the company, and the company may hold no more than 15% of the share capital of a broadcaster. Programme supply requirements are found in about half of the Member States, and a comparable number of Member States have adopted other elements that concern the actual ability of the producer to conduct his business unhindered by intervention from a broadcaster (e.g. capacity to exercise actual control over the production, or the producer not being an employee, board member, etc. of the broadcaster). Criteria based on secondary rights are only applied by Norway, Latvia and France. [5.1.4]

Article 5 of the Directive establishes that Member States may choose whether broadcasters must reserve either at least 10% of their transmission time or at least 10% of their programming budget for independent productions. Nearly all Member States have chosen to apply a transmission time requirement, or to let the broadcasters choose between adherence to a percentage of programming budgets or a percentage of transmission time. However, Hungary requires broadcasters to reserve *both* 10% of transmission time and 12% of programming budget, and Portugal requires the public service channel RTP 2 to reserve at least 10% of its programming budget. France and Italy have a very

²⁸ Directive 2007/65, Recital 49

²⁹ Austria, Belgium (Flemish Community), Cyprus, Denmark, Germany, Malta and Sweden.

different approach, since they require broadcasters to reserve a certain percentage of their entire *annual turnover* (a figure which will always be higher than the broadcasters' programming budget); Italy requires broadcasters to reserve 10% of their turnover for independent productions, while France generally requires broadcasters to reserve 10.66% of turnover for audiovisual independent productions and 2.4% of turnover for cinematographic independent productions. **[5.1.5]**

The standard methodology employed by Member States to monitor adherence to Articles 4 and 5 is to require broadcasters to submit transmission returns, giving the volume of European works and independent productions they broadcast. Some Member States take additional steps to verify the accuracy of the data provided by broadcasters, either by verifying the returns received from broadcasters or by direct monitoring of broadcasts: this includes Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Ireland, Italy, Netherlands, Spain, Poland and Portugal. For example, in France, the Conseil Supérieur de l'Audiovisuel (CSA) categorises every programme broadcast on public service TV to check the broadcasters' statements, and collects samples of contracts between broadcasters and producers. In Italy, the regulator (AGCOM) has commissioned a service provider to monitor all terrestrial analogue channels and a smaller sample of satellite and DTT channels, and this data is then compared with the transmission returns from the broadcasters. **[5.2.1]**

In certain Member States – Austria, Cyprus, Iceland, Ireland and Sweden – the regulator has no legal powers to apply sanctions. In Austria, the regulator may fine a broadcaster who fails to submit returns, but cannot apply sanctions on a failure to meet the requirements of Articles 4 and 5. In the remaining Member States, regulatory authorities have a range of powers at their disposal to encourage adherence to the Directive, from warnings to the imposition of fines and – in some Member States, and for the most serious cases – regulatory authorities can shorten or revoke a broadcaster's licence. **[5.2.2]**

Article 3 of The Directive states that "Member States shall remain free to require television broadcasters under their jurisdiction to comply with more detailed or stricter rules in the areas covered by this Directive." **[5.3.1]**

Seven Member States – Finland, France, Hungary, Italy, The Netherlands, Spain and the United Kingdom – apply higher percentage requirements for European works or independent productions than those contained in the Directive on some, or all, of their broadcasters. For example, France requires broadcasters to reserve at least 60% of transmission to European works. The United Kingdom has also set higher requirements on European works in some channel licences. Finland applies a 15% independent productions requirement on all broadcasters, while the UK, Slovakia and the Netherlands apply higher proportions on public service broadcasters. **[5.3.2]**

Almost all Member States place additional content requirements on broadcasters to reflect linguistic or cultural specificities in a Member State. Several Member States require that a certain proportion of broadcasting

time shall be programmes originally produced in the national language (or one of the national languages); examples include the Netherlands, Portugal, Latvia, France, Hungary, Poland and Greece. In addition, France requires terrestrial analogue channels to invest at least 16% of their turnover into such productions. [5.3.3]

The application of Articles 4 and 5 (whether the measures are applied flexibly or prescriptively), and the additional requirements placed on broadcasters in national legislation (low or high additional requirements), define four 'implementation modes.' [5.4]

Each Member State's implementation mode is given below:

		Application of Directive	
		Flexible	Prescriptive
Additional Requirements	High	Spain Sweden	Bulgaria Finland France Italy Netherlands Poland Portugal Romania United Kingdom
	Low	Austria Cyprus Czech Republic Denmark Germany Iceland Ireland Lithuania Luxembourg Malta	Belgium Estonia Greece Hungary Latvia Norway Slovakia Slovenia

Only 3 Member States that were covered in the 2005 Study – Belgium, the Netherlands and Norway - have been assigned a different implementation mode from that which they had previously. The Netherlands and Norway have switched from "Flexible" to "Prescriptive", while Belgium and Norway have been moved from "High" to "Low". These alterations are due to a combination of changes in the legislation and an adjustment in the classification methodology since the 2005 Study.

On-demand audiovisual media services and European works

The report identifies any national provisions regarding on-demand audiovisual services which were in effect as of 1 January 2008 and have the effect of promoting European works within non-linear services, in line with Article 3i of the Directive (introduced by Directive 2007/65 of 19 December 2007, which must be implemented by the Member States by 19 December 2009). [6.1]

As of 1 January 2008, none of the Member States have implemented Article 3i, although Italy has adopted a provision that authorises the regulator AGCOM to carry out the implementation through the subsequent issuing of secondary legislation (such secondary legislation was, however, not issued in the first half of 2008). [6.2]

However, a few Member States (the French Community of Belgium and France) have adopted legislation that, although not adopted with the intention of implementing Article 3i, nevertheless in some way could have a similar objective and effect to Article 3i.

The 2003 legislation of the French Community of Belgium is based on a principle of technological neutrality, without any distinction between distribution platforms. This has led the regulator to consider non-linear television services as being subject to the same obligations as other television broadcasting services, including the obligations on European works, independent productions, French language programming and spending on audiovisual production. The regulator has actively applied these obligations to the first non-linear audiovisual service within its jurisdiction. [6.2.1]

France collects a 2% tax from Video-on-Demand service providers, calculated on the fees paid by consumers (exclusive of VAT). A voluntary inter-professional agreement of 20 December 2005 had also placed investment quotas for EU and French-originated cinematographic works on cinema-on-demand providers (between 3% and 10% of revenue, depending on the turnover of each provider), but this agreement expired on 20 December 2006 without being renewed. [6.2.2]

2.3. The European Supply Chain and Audiovisual Content Creation

This section of the report provides an analysis and description of the current market structure and revenue of the EU audiovisual (linear and non-linear) sector – encompassing both broadcasting and production - and the flow of funds through the European TV supply chain. [7]

The section updates a similar study completed for the European Commission in 2005 ("the 2005 study")³⁰ and regularly makes reference to the countries included in that previous study as E17³¹ in order to show comparable growth rates and highlight any changes in market structure.

³⁰ Study on the impact of measures concerning the promotion of the distribution and production of television programs provided for under Art 25 (a) of the Directive on Television without Frontiers, 24 May 2005.

³¹ E17 countries include: UK, Germany, France, Italy, Spain, Portugal, Denmark, Finland, Norway, Iceland, Ireland, The Netherlands, Belgium, Luxembourg, Austria, Greece and Sweden.

The study also makes reference to the E30, which includes the 13 countries that were not included in the 2005 study³². [7]

Key findings

Market structure and the supply chain framework

The supply of TV services to viewers is made up of three broad and interrelated functions: the creation of new content; the management of individual TV broadcast channels; and the distribution of a channel, or group of channels, to viewing households by either terrestrial, satellite, cable or internet delivery systems. Sources of value added along this supply chain vary considerably. Original content can range from continuous studio-based programming with a handful of contributors to full action dramas shot in multiple locations with a large cast and crew. Distribution may simply be a technical transmission service (UHF/VHF terrestrial) while pay TV distribution can involve the packaging, retailing and marketing of a group of channels in encrypted form and entails subscriber management and billing services. Equally channel management varies at the level of value added: from large-scale commissioning of new programming and acquisitions from a number of sources, to the use of a limited number of already available programme libraries. The management of on-demand services varies yet further, from aggregating the on-demand services (particularly "catch-up") offered by broadcasters, to negotiating separate rights deals with movie studios, content producers and rights holders, and packaging them into a service for users. [7.1]

Current market structure and flow of funds along the supply chain

Analysing each of the E30's individual market structure and flow of funds in detail, we calculated total TV industry revenue of €78.1 billion in 2006, 93% (€72.8 billion) of which came from three main sources: licence fees (€17.8 billion – 23%); advertising and associated sponsorship (€28.3 billion – 36%); and consumer payments to pay TV, cable relay and VoD services (€26.2 billion – 34%). The main source of growth in the E17 countries is in consumer payments, which have grown 10.1% year-on-year since 2002. Both advertising and licence fees grew at just over 3% year-on-year, slightly above inflation. [7.2.1]

Considering each of the individual states in more detail, we identified significant variations in market structure and the drivers of revenue. The UK and Germany are by far the two largest TV markets in Europe; France and Italy – which have similar sized economies to that of the UK – are somewhat smaller. The UK and Italy have the most developed advertising markets among the larger nations, while France and the UK have the

³² E30 countries include: E17 + Latvia, Lithuania, Liechtenstein, Bulgaria, Poland, Slovenia, Slovakia, Czech Republic, Malta, Cyprus, Estonia, Romania and Hungary.

largest proportionate pay-TV markets. Public funding through licence fees is highest in Germany and the UK. TV revenue per household is highest in Norway and the UK due to their highly developed cable and satellite pay-TV markets. Among the next nine largest markets, pay TV is most developed in Ireland, Portugal and Romania, all of which enjoy pay TV penetration rates of over 50%. It is in these smaller markets that VoD revenues are proportionately highest, due to their developed pay-TV sectors. In the 10 smallest markets there are significant variations in market structure: the licence fee in Bulgaria, Slovenia and Iceland contributes over 25% to the overall TV market; in Slovakia, Lithuania and Latvia, pay and network advertising accounts for over 50% of the total market; and in Cyprus and Estonia, the pay TV market accounts for over 50% of total TV revenue. [7.2.1]

We also looked at how television services were distributed and delivered in each of the member states and found a complex combination of different systems. Each system in turn varies in the degree to which it provides free delivery or extracts a monthly charge. The four main delivery systems are UHF/VHF terrestrial frequencies, direct-to-home satellite, cable, and IPTV services using telecom networks. Analogue terrestrial still remains the most common form of distribution with 21% of homes receiving television signals through an analogue aerial receiver, however all Member States now have firm plans to move to digital terrestrial television (DTT), with switchover dates ranging from December 2008 (Germany) to December 2014 (Poland). The key trend emerging from our analysis of pay TV was a drive to digitise cable networks in Germany, Benelux and Scandinavia, which currently can only carry 20 to 40 analogue channels. Post digitisation these networks should be able to carry 100+ channels. Complementing this drive to digital has been the emergence of a new broadcast delivery platform over DSL broadband services, known as IPTV, which has already proved popular in France, Sweden and Norway. Direct-to-home satellite's transfer to digital has been rapid and has increased the number of channels to well over 600 channels for the main national markets. [7.2.2]

The technical mix of distribution systems across Europe is, however, perhaps less important than the business models adopted across and within different TV systems. Free TV, where the signal is available to the consumer for no extra monthly charge once they have bought the necessary reception equipment, is available via satellite and terrestrial TV systems throughout Europe. Cable relay services are not quite free, as a small monthly charge is made – often through the local utility or housing association bill but – as they are charging just for technical delivery, rather than the TV channel or channels – it could be regarded as nearer free TV than pay TV. Subscription pay TV is available through all types of delivery system – cable, satellite, terrestrial and DSL – throughout Europe, and mainly in digital forms. Generally, pay TV consists of a basic package of news, children's, lifestyle, factual and specialist entertainment channels – anywhere from 30 to 400 – which cost between €15 and €25 a month, and a series of premium sports and movie channels that can be purchased on an à la carte basis – albeit with discounts for a larger

number of channels. Across the E30, average pay-TV penetration³³ is approximately 31% and varies widely across markets. [7.2.2]

We also considered the influence of on-demand services on the overall structure of the TV market. We found that a substantial part of current on-demand offerings in the larger European markets are “catch-up” services from the main broadcasters (such as VRT’s Net Gemist service in Belgium and RTV’s internet service in Slovenia). In 2006, services had only been established in a small number of developed markets and even by the end of 2007 were generating almost no revenue – while it is feasible to insert advertising into these services, many are provided by the public broadcaster (and are thus advertising-free) and commercial services have only limited ability to measure audiences (and hence monetise them with advertisers). The number of services available varies considerably by market. France, the Netherlands and Germany have 32, 30 and 26 services available respectively, while some of the smaller nations, such as Estonia, Iceland and Slovenia, have only 2 or 3 services. We estimate that in 2006 on-demand services generated approximately €400m of revenue in the E30, representing just 0.5% of the TV industry. Within the report we profile four individual on-demand services. [7.2.3]

Considering channel management in more detail, we found that the market can be broken down into three main types – free TV channels (available to all the audience), basic tier pay-TV channels (which are available to subscribers as part of a pay-TV subscription), and premium pay-TV channels (for which an additional subscription fee is paid). Free TV channels can be divided into publicly funded channels and commercial, or advertiser funded channels³⁴. Pay-TV channels also take advertising, but have an element of subscription fees – paid to them by the platform operators - in their revenue mix. Premium pay-TV channels often only take a very limited amount of advertising – their main selling point is to offer uninterrupted access to sport or movies – and subscription fees form the overwhelming majority of their revenue mix. [7.2.4]

We identified three basic programme scheduling choices for TV channels: from where to source programming (commissions vs. acquisitions vs. repeats); what genre to broadcast (drama, news, comedy, factual, stock vs. flow³⁵); and sub-genre choices (e.g. a drama soap opera versus a one-off film). [7.2.5]

³³ Pay-TV penetration in France and The Netherlands is skewed slightly due to very low subscription costs for households to access IPTV and digital cable services in these markets. In the Netherlands, low cost digital cable packages were promoted to encourage households to move from analogue cable during the digital switchover, while in France, fierce competition between broadband providers resulted in a number of free IPTV services being made available on the market.

³⁴ Some, for example France Television and ARD/ZDF, take a mixture of public funding and advertising revenue.

³⁵ A stock programme has repeat value and can be shown again at a later date, while flow programmes have little or no further value after the first showing (narrative repeats excluded). Examples of flow programming include news, sport, games, and some entertainment programming.

The European TV content creation sector was worth approximately €18.3 billion in 2006. Of this, €16.5 billion came from commissions by network channels and €1.8 billion from commissions by smaller channels³⁶. Of this €18.3 billion, about €2.6 billion was spending on national and local news and sports coverage (spending on sports rights is excluded). Of the remaining €15.7 billion, an estimated 43% (€6.8bn) was spent on commissions from external producers and around 57% was invested in in-house production³⁷. **[7.2.6]**

Main network channels account for about 57% of gross industry revenue but over 90% of all new commission spending. Secondary channels tend to be carried within pay-TV packages, where a large proportion of revenues either go to the platform providers or is spent on premium acquisitions, such as top feature films or sport. **[7.2.6]**

Within the content creation section we also considered the profitability of production. The profitability of an individual production company tends to follow a cyclical trend in terms of profit margin. Margins are disproportionately impacted by hit commissions that in the long term (depending on terms of trade) generate significant ancillary and overseas revenue for the producer. Contrastingly, a 'flop' commission will adversely impact profit margins. Over the last few years, independent producers have become increasingly reliant on secondary and ancillary revenues to drive profits, with commission spending by broadcasters generally only covering the production cost for the producer. The position of the production company when it comes to retaining a financial interest in the content varies significantly by Member State. Many states do not have explicit terms of trade – all exploitation rights pass to the commissioning broadcaster. However, a small number of states (typically those with the most developed independent production sectors) allow the producer to retain some rights and for those rights to revert to the producer after a certain period of time. The UK and France are the markets where producers have most rights retention. Other markets are known to be studying the relative success of the production sector in these two markets with a view to potential changes to their own position on rights. **[7.2.6]**

There is considerable vertical integration along the TV value chain. Our analysis suggests that 57% of non-news programming is made by in-house departments within broadcasters, with the remaining 43% split between independent producers and some third-party producers owned by broadcasters³⁸. Similarly, a very high proportion of premium pay-TV channels are owned by pay-TV platform owners, while both main network channel broadcasters and pay-TV platform owners are the main owners of smaller basic tier and free-to-air channels across Europe. **[7.2.9]**

³⁶ Revenue from direct subsidies (of approximately €0.3m), and direct income to producers from the exploitation of ancillary rights such as international programme sales, DVDs, licensing and merchandising (approx €0.8m) has been accounted for in the content creation figure detailed in the main text.

³⁷ External production includes broadcaster affiliates such as UFA and Studio Hamburg in Germany and Fremantle across RTL's group of channels.

³⁸ Sources: OBS, TVI, PWC, Kagan, National Regulators, company reports, screen digest, O&O Models, O&O Analysis, Broker Reports, Press, Interviews.

Finally we considered trade issues. Traditionally there has been significant deficit in the balance of trade for programming between Europe and the rest of the world. Almost all European broadcasters acquire popular US programming (both TV series and Hollywood movies) and more recently there has been an increase in the number of imports from Asian nations, especially Japan and South Korea. **[7.2.10]**

2.4. Linear data analysis

A sample of 54 channels operating in 11 Member States has been designed to conduct an analysis of linear services along the lines of that conducted in the 2005 Study. Member States have been selected to represent the diversity of EU30 in terms of market size, geography and recency of EU membership while also favouring the larger Member States in order to cover the largest possible share of EU in terms of population and economics. Channels have been selected to represent the diversity of European broadcasters in terms of audience size, ownership and revenue model while also favouring leading channels in order to cover the largest possible share of European TV viewing³⁹. Channels have been monitored during two non-consecutive weeks of 2007, one in March, one in November. **[8.1]**

The methodology used to analyse the programming of these channels in the 2005 Study was adapted to the 2007 situation and could in fact be applied to 2007 data almost identically, enabling comparisons over time for the 36 channels which were part of the sample of the 2005 Study **[8.1.3]**. In essence, a single approach has been used to codify all the programmes broadcast during this period and allow comparisons between channels across Member States in terms of their proportion of qualifying, European, non-domestic European, independent and recent independent works, including in peak-time. Data have been compared to past findings when available, and to national declarations when available **[8.2]**. For the first time, indicators have been produced and analysed not only as a proportion of transmission hours, but also as a proportion of viewer hours **[8.2.8]**.

Key findings

Across our sample, qualifying programmes make up 68.3% of the total transmission hours and 65% of the total viewer hours on all channels studied in 2007. These proportions are very similar across channel and country types, so we can say with confidence that, as a general rule, the

³⁹ The 11 Member States and 54 channels part of the sample are: Belgium (Flemish and French Communities: VRT, VTM, La Une, RTL-TVI), Estonia (ETV, Kanal2, TV3), France (France2, France3, TF1, M6, Canal+, Direct8), Germany (ARD1, ZDF, RTL, Sat.1, Pro7, Vox), Ireland (RTE1, RTE2, TV3), Italy (Rai1, Rai2, Canal5, Italia1, La7, Fox Life), Poland (TVP1, TVP2, TVN, Polsat, TV4, Canal+), Romania (TVR1, Pro TV, Prima TV, Antena1), Spain (TVE1, La2, Antena3, TeleCinco, Cuatro, La Sexta), Sweden (SVT1, Kanal5, TV3, TV4) and the United Kingdom (BBC1, BBC2, ITV1, Channel4, Five, Sky One).

requirements of Articles 4 and 5 of the Directive cover approximately two thirds of all hours either transmitted over television channels or watched by television viewers. [8.3.3]

As a general rule, European broadcasters are significantly above the 50% requirement for European works and the 10% requirement for independent works. Also, a vast majority of independent works are less than 5 years old. Considering that the channels of our sample are mostly aiming for mass television audiences, they tend to favour fresh programming to attract viewers.

Across our sample, European works made up 62.4% of the total qualifying transmission hours in 2007. Most European broadcasters met the 50% requirement of Article 4. European works also make up an average of 74% of the total viewer hours across all studied channels in 2007, indicating the strong appeal of European works to European audiences, and the broadcasters' reliance on European content to build their ratings. The figures are even higher when looking at peak-time only: 62.8% of the total qualifying transmission hours and 75.5% of the total viewer hours. Channels with the highest proportions of European works are leading, public channels from Southern, old and large European countries. Among the 9 channels falling below the 50% requirement, according to both our methodology and national declarations, we found all types of channels (private and public) in all types of country type (large or small, old or new, North or South), with a bias towards pay-TV channels and free-to-air channels broadcasting from a Member State other than that of reception.

[8.3.4]

Across our sample, independent European works make up 31% of the total qualifying transmission hours in 2007, compared to 33.4% of total qualifying viewer hours. Proportions are higher when looking specifically at peak-time: 34.6% of the total qualifying transmission hours and 36.9% of the total viewer hours. Pay-TV shows significantly fewer independent productions than free-to-air channels. Apart from that, differences between channel types are rather small across all-day, although more independent productions can be found on private channels from Northern, old and large Member States. But there are important differences when we look specifically at the peak-time situation with leading, public channels from Southern, small and old Member States offering significantly more independent productions. [8.3.6]

Larger markets like France, Germany, Spain and the UK, rank higher in terms of European and independent works, than for example Ireland, Estonia, Romania or Sweden. Countries with large populations typically benefit from relatively more revenue to finance local production, as they have more viewers, which can explain why these large markets have relatively large proportions of European and independent production. Although being large markets, Poland and Italy rank relatively low, which we explain by the fact that Poland is a relatively poorer market and Italy is a relatively less competitive market. Although being small markets, the Flemish Community of Belgium ranks high on both criteria, which we explain by the fact that this market is very dynamic economically and culturally, with independent producers developing many formats which then travel internationally.

The situations of individual channels depend heavily on their market environment and cultural dynamics. A complete analysis of each Member State, covering all criteria and including an analysis of the channels' programming policies on the level of their requirement, is provided in section [8.4] of this report.

2.5. Views from Inside the Audiovisual Industry : Qualitative Research on Linear and Non-Linear Services

As part of our overall study, we issued tailored questionnaires to over 230 key stakeholders⁴⁰ in the European audiovisual industry. Through the 71 responses we received we were able to further our understanding of the implications of Articles 4 and 5 (the key focus of the 2005 study) and consider in more detail Article 3i and its implications for the stakeholder's on-demand activities. [9.1]

Key findings

Determinants of programme spending decisions

This section of the report focuses on three important decisions made by broadcasters: the balance between commissioned and acquired programming; from whom broadcasters commission new programmes; and the source of acquired programmes (particularly the balance between European-made programmes and programmes from the US).⁴¹

Overall programming spend and the balance between commissions and acquisitions

We found that fiction, entertainment and news programming account for almost two thirds of total programming spend. In addition, these genres were identified by the majority of broadcasters (over 60%) as cheaper to produce in-house⁴². We also established that broadcasters invest the majority (61%) of their programme budget on commissioned programmes (external commissions, 32% and in-house, 29%), with the remainder (39%) spent on the acquisition of ready-made programmes. Commercial broadcasters tend to allocate a higher proportion of their programme budget (51%) to acquired programmes, and a significantly lower proportion (18%) to in-house production. Contrastingly, publicly funded

⁴⁰ Stakeholders included broadcasters (publicly and commercially funded), independent producers, trade bodies, regulators and pure VoD players

⁴¹ All figures pertain to 2007

⁴² The only genre all respondents felt is cheaper to produce externally was cinema film.

broadcasters tend to invest heavily in in-house production (58%) and far less on acquisitions (16%). [9.4]

In order to assess how the development of formatted programming has impacted the programme portfolio, we asked broadcasters specifically what proportion of their programming budget was spent on commissioning formats.⁴³ We found the majority of format commissioning is by commercial broadcasters, with an average of 10% of their total programming budget invested in commissioning formatted programming. For the publicly funded broadcasters, only 6%⁴⁴ of their programming budget was spent on commissioning formats. [9.4]

This part of the questionnaire also identified that there has been a general shift across both publicly and commercially funded broadcasters towards external commissioning, with over 70% of respondents stating that the proportion of external commissioning had increased over the last five years. [9.4]

Commissioning new programmes

Broadcasters have three basic sources of new programmes: internal in-house production; commissioning programmes from the in-house production unit of another broadcaster; or commissioning a producer independent of the broadcasters. [9.4.2]

The vast majority of news programming is produced in-house, while cinema film and documentaries tend to be produced externally. Fiction, entertainment and factual magazine programming have a more balanced mix in terms of sourcing, with 20% to 50% produced in-house and 40% to 70% produced by independent producers. Documentaries are rarely produced in-house and cinema film is always sourced from the external market (typically Hollywood studios or local/domestic independent producers). In news, games and sport over 15% of programming is made by other broadcasters e.g. Five in the UK sourcing their news programming from Sky. 82% of broadcasters reported that external spend has grown, and 38% reported that in-house spend has fallen in the past five years [9.4.2]

We also found that over 64% of format commissioning was invested in entertainment and games formats such as *Pop Idol* or *Deal Or No Deal*, while over a third of broadcasters stated they had spent less on format commissioning over the last few years, both in-house and externally. [9.4.2]

⁴³ A format is defined as any programme locally adapted for broadcast in at least one other market than the market of origin and for which a licensing fee is payable, e.g. *Who Wants to Be a Millionaire*, *Betty la Fea*.

⁴⁴ This figure was skewed slightly by two publicly funded broadcasters who both reported high levels of investment in formatted programming. Generally, the level of investment sits between 0% and 3%.

Decisions about programme acquisitions

Across all genres, except sport and fiction, over 65% of broadcasters stated that acquired programming cost over 80% less than commissioned programming. Within this group, 75% of respondents felt that acquiring factual magazine and entertainment programming cost less than 20% of the investment required to commission a similar program. The response for fiction was more mixed, with over 23% of respondents stating that acquired fiction programmes can cost over 50% of the cost of commissioning. With the exception of fiction and cinema film, over 95% of acquisition spend was on programming produced in the last five years.

[9.4.3]

Just over half of the broadcaster's acquisitions were from the US and just under 25% from content owners in another European country. Only 19% of acquired programming was from the broadcasters' respective domestic market and just over 3% of acquired programming was from content owners outside Europe and the US (mostly from Asia). **[9.4.3]**

Financing of New Programmes

Across all genres, over 85% of funding comes from the primary broadcaster, with between 1% and 7% from a secondary broadcaster or a co-producer⁴⁵. Only in sport does funding flow from merchandising advances. All genres benefit from limited public funding, although the large majority of this comes from licence fees rather than direct public funding. **[9.5]**

Co-production between Member States and intra-community trade in European works

Approximately 86% of broadcasters and 75% of independent producers co-produce programmes. Entertainment is the most commonly co-produced genre, shortly followed by fiction and cinema film. Factual magazine programming and games are rarely co-produced, while news and sport are never produced in partnership with a third party.

Both producers and broadcasters identified domestic co-productions and co-productions with other European producers as the most commonplace. For broadcasters this was closely followed by multi-country European co-productions, with broadcasters in the larger Member States often producing programming with each other and neighbouring countries. **[9.6]**

⁴⁵ The primary broadcaster is the main commissioner of the programme and will typically retain the first showing domestic rights, while the secondary broadcaster or co-producer may finance some of the production in order to retain international rights.

Terms of Trade

All broadcasters stated that they expect first (and repeat) showing domestic terrestrial and new media rights (including on-demand rights) when commissioning programmes externally, while around 81% stated that they expect repeat showings in the domestic secondary market and domestic ancillary rights.

The majority of broadcasters felt that the terms of agreements negotiated with independent producers were about as favourable to both parties as agreements for other programmes commissioned externally. In asking producers about similar rights issues, we found that around a third of respondents felt that the payment they receive for rights is less than the value they could create from them over a given period. **[9.7]**

The balance of trade in programming

Fiction and feature films were assessed by broadcasters as being the most successful in the international market, while news and factual magazines were seen as inherently local and therefore unlikely to sell well abroad. Sport, documentaries, fiction and feature films were all rated highly as potential European imports, while news and factual magazines were given low ratings, with under 25% of broadcasters viewing the genres as potential imports. All broadcasters stated feature films and fiction from outside Europe (mainly from the US) were attractive and tended to be very successful in primetime schedules, driving audiences and consequently advertising revenue. Again, news and factual magazines were not seen as particularly appealing imports due to their focus on local issues.

Only entertainment and factual entertainment/reality formats were rated above 50% as potentially exportable formats. The exporting of formats is a fairly recent development in television markets and there is only a small number of countries that have successfully managed to exploit formats on a global scale (UK with *Dancing With The Stars*, The Netherlands with *Big Brother* and Sweden with *Survivor*). **[9.8]**

The development of on-demand services

In order to collect the data necessary to understand the programming strategies and offerings of on-demand services, as well as their views on content and the related regulatory issues, we issued tailored questionnaires to over 70 key stakeholders from the broadcasting and pure VoD sectors. Twenty-eight stakeholders took part in our survey **[9.2]**. Also, we conducted an independent analysis of 29 on-demand services, some linked to broadcast groups, some not. This material was collected from non-linear players in the same sample of 11 Member States as for linear services.

It is important to note that whereas linear data analysis in this study is based on independent monitoring, this is not currently possible for non-linear services. For the analysis of non-linear services the consultants

have relied on data acquired through self-declarations from on-demand service providers. The majority of data was collected through a survey of on-demand service providers. The consultant's evaluation of prominence of European content on non-linear services required an additional desk research project, where the consultants looked at the services themselves to evaluate various prominence indicators.

Key findings

Almost all respondents, both broadcasters and pure VoD players, have content available via on-demand services distributed via the internet or IPTV. While broadcasters also use mobile (40%) and cable (32%), pure VoD players rely primarily on cable (25%) as their secondary distribution technology. While broadcasters generally offer a balanced mix of live, archive and, more recently, catch-up material on their VoD services, and a balanced mix of genres, reflecting the fact that a large part of their catalogue is derived from their generalist television schedules, pure VoD players show a clear preference for archive material, with a focus on cinema, TV fiction and documentaries. Entertainment is by far the most popular genre on broadcasters' on-demand services (39.5%), followed by news (18.7%). For pure VoD players, cinema alone takes 62% of all viewing time spent, followed by entertainment (22.3%). **[9.9.1]**

European titles are, in general, a key component of on-demand catalogues for both broadcasters and pure VoD players: among those interviewed for this survey, only 17% of pure VoD players and 12% of broadcasters said that their catalogues consisted of less than 25% European titles. The actual proportion for broadcasters is often 100%, as they generally replicate their linear schedules in their on-demand services, minus the titles for which they do not own the on-demand rights (and which are generally not European). By contrast, 33% of pure VoD players said their catalogues comprise between 25% and 75% of European titles. Also, pure players allocate 100% of their programme budget to acquisitions, with non-European imports representing almost half of the total, meaning that the pure VoD players in this survey have spent no money at all on commissioning new programmes. By contrast, on-demand services operated by broadcasters say they spend around 75% of their on-demand budgets on national commissions, although this figure is a proportion of an extremely limited budget. **[9.9.2]**

Of the respondent broadcasters, 41% use advertising to fund all or part of their on-demand service (both pre/post roll and adverts midway through a programme, although the latter was less commonly used than pre/post roll advertising). Of all these respondents, 18% funded their service only via advertising; 14% also had content available via subscription or pay-per-view along with content supported by advertising; and 9% were funded in part by advertising revenue and in part by public subsidy. Public subsidy was the sole revenue stream for 23% of the broadcasters who responded. 36% of the broadcaster owned on-demand services were funded solely via subscription and pay-per-view charges. Therefore 64% of broadcaster owned services are essentially free-to-use for the viewer to some extent. The vast majority of the revenue of pure VoD players who

took part in our survey came only from direct payments from consumers either as subscription fees (92% of pure VoD players who responded) or as pay-per-view. The remaining 8% were in part supported via subscription and pay-per-view fees, but also received some public subsidy. [9.9.3]

The majority of on-demand services surveyed, whether broadcasters or pure VoD players, think that European programming is all-in-all a very good option for their services. There are however some caveats here: European programmes are seen as expensive, no easier to acquire although services are themselves European, and not particularly the best way to attract European consumers. A large portion of on-demand services do not see a clear link between European programmes and regulatory obligations, reflecting the fact that the debate over that part of the AVMS Directive has in most cases not started yet at the national level. [9.9.7]

2.6. Monitoring of Article 3i

As part of the current study, the consortium evaluated possible performance indicators and operational procedures for monitoring Article 3i of the AVMS Directive. Conclusions on this followed extensive research via questionnaires, interviews desk research and internal discussions within the consortium and with the Commission's steering group. [10.1.1]

Operational Procedures

We have identified two distinct legal scenarios within which operational procedures can exist: firstly, self-declaration by service providers, and, secondly, independent evaluation. [10.2]

For linear services, both types of operational procedure are applied. Broadcasters provide self-declarations to Member State authorities, detailing how they have met the requirements of Articles 4 and 5. Independent evaluations of linear broadcast channels are also completed to verify the data supplied via the self-declarations, both at the Member-State level and EU-wide in the context of independent studies. Such an EU-wide independent monitoring has been completed for a sample of linear services in this study, as seen in Chapter 8. For linear services, this sort of independent monitoring is possible largely because robust Television Audience Measurement (TAM) data is available to the consultants. [10.2]

For non-linear services, however, independent monitoring similar to that completed for linear services, is not possible at this time. In order to complete an independent evaluation, consultants require robust data on all the programming available on each service. There is currently no equivalent to TAM data for the non-linear services, meaning that data on programming (including titles, durations, and consumption data) is not available to independent consultants as it is for linear programming.

However, we do believe that the development of industry standards for data on non-linear services such as this should be supported at the Member State and European level. [10.2]

We have identified two possible ways in which catalogue data (that is, lists of all the titles available on an on-demand service) could be obtained. However, neither option is appropriate to use at this time. [10.2]

The first involves a process known as 'web-scraping' or 'web-harvesting', which involves developing software that goes into an on-demand service, and copies information that is required from the website, such as titles, and posts it to another source, such as a database. However, such a methodology raises some legal questions: permission would have to be obtained from the service provider before such software could be legally utilised. We believe that in order to secure this level of permission, legislation at the Member State level will be required. [10.2]

The second approach involves going directly to the services and looking for information on titles and durations of content. But this approach has two main problems. Firstly, there is a possibility that some content in the catalogue will be missed, as there are no set schedules for non-linear services, as there are for linear services. Content has to be searched for, meaning that some programmes could be overlooked during the review. Secondly, this process will be extremely time consuming and expensive. This has put this process beyond the scope of this study. [10.2]

Self-declarations are possible at this time, as has been proven by the responses we have received from providers to our survey. Self-declarations do have their drawbacks: they are unverified data, and data may be collated differently by different providers, making comparisons between data more difficult. However, self-declarations are currently completed by linear service providers for Articles 4 and 5. Also, provided that self-declarations are enforced through Member State legislation, then data can be acquired from all non-linear services. [10.2]

The above has shown that at this time independent evaluation of non-linear services is not a viable operational procedure for the monitoring of Article 3i. Instead, for this study, we have utilised self-declaration, which we believe is the only appropriate and affordable procedure currently available. [10.2]

Performance Indicators for Article 3i

After careful review of Article 3i, six possible performance indicators for monitoring Article 3i were proposed to broadcasters, producers, pure VoD players and regulators. These were: 'Title-level data', 'Hour-level data', 'Consumption-level data', reviewing 'Prominence' of European content, and 'Financial Contribution' data. Respondents were asked to rank these six indicators in terms of preference. [10.3.1]

To begin with, all respondents were asked whether they were familiar with Article 3i. All regulators were aware of the article, with 80% of broadcasters and 70% of pure VoD players knowing of its existence prior

to this study. Producers were more split, with 50% of those returning questionnaires not being aware of Article 3i. **[10.3.3]**

Title-level data, which for this study reflected a situation whereby all titles in a catalogue would be coded for country of origin, was the most popular indicator from our respondents. All types of respondents ranked it the best indicator for monitoring Article 3i, with the exception of producers, who ranked it third behind financial and consumption data. There are some possible negative implications related to this indicator. Firstly, it does not capture actual consumption of European content on non-linear services. Secondly, on its own, it does not distinguish between various durations of content. However, we expect internal datasets will have information on duration, which could easily be included in any title-based analysis. However, title-level data does give a strong and clear indicator of the proportion of European content in the catalogue of a non-linear service. **[10.4.1]**

Hour-level data is a development of title-level data, adding durations for the titles in the entire on-demand catalogue. This was the second-most popular indicator for all respondents, except for producers, who ranked it slightly lower, mainly because of their higher favour for consumption and financial data. We expect that for the majority of services, duration data will already be integrated in internal data systems. Therefore, once data has been coded for country of origin, any extra administrative burdens should be minimal. Hour-level data would successfully combat the concern that title-level data alone would allow providers to meet Article 3i by filling their catalogue with cheaper, short-form European content. However, it is important to note that, at this stage, it is unclear how relevant duration will be for programming on non-linear services, as content such as that on *YouTube* and *DailyMotion*, have shown the popularity of short-form programming on demand. **[10.4.2]**

'Prominence' is a particularly open term that could lead to a wide-variety of indicators and procedures. It was also an indicator that prompted a lot of discussion at the workshop, indicating that further discussion at the Member State and European level is required here before implementation of Article 3i in late 2009. This said, it is important to acknowledge it as the one indicator that requires providers to directly address the issue of how European content is promoted to consumers, and we have researched and evaluated a variety of possible prominence measures. Some prominence measures, such as 'click-throughs' from homepages, and relevant search keywords, should be straightforward to apply. However, there is a danger in being overly prescriptive. First of all, monitoring of prominence on a qualitative basis would be relatively subjective. Also, establishing firm fixed prominence indicators (for example, stipulating that a certain proportion of a home page must be dedicated to European content) could potentially limit the creative development of non-linear services. Thus we would suggest that relatively broad rules are set. We would also suggest that the best way forward regarding prominence, at this current stage, is to suggest, in accordance with Article 3(7) and Recital 36 of the AVMS Directive, that it is co- or self-regulated. Thus providers would agree to a set of guidelines, committing them to

enhancing the prominence of European content on their services. [10.4.3]

Data on the financial contribution of on-demand services to the production of European content was the indicator that split opinion most significantly. Producers strongly approved of it (in particular as it will help them understand where money is being spent), regulators varied between strong support and light opposition, whereas the providers themselves, both broadcasters and pure VoD players, strongly opposed it as an indicator. The main negative connotations of the indicator are that the data is considered highly confidential, and also as non-linear services are still at a nascent stage, and thus very little is spent on new content, the figures may tell us very little. Also, financial data on spend on European programming may in fact be difficult to extract from company accounts: for example content from many different territories may be acquired together within a 'package' of content for a single cost. However, financial data is important as it is central to the legislation. Therefore at this stage the most appropriate procedure will be to have providers inform regulators of the annual amount spent on programming, and where possible indicate the proportion that is spent on European works.

[10.4.4]

Consumption data was, on the whole, an unpopular indicator, being given a low ranking by all respondents, with the exception of producers. Consumption data would, however, have the important benefit of being able to provide an indicator that shows how much European content is actually being viewed on non-linear services. However, there are some major arguments against using consumption data at this time. Firstly, consumption data is more commercially sensitive than catalogue data. Also, there is currently no public source of on-demand audience data, comparable to the TAM data available for linear broadcasting. However, Recital 48 of the Directive asks that Member State reports on non-linear services should take consumption data into account. Therefore, we suggest that although consumption data should not be a performance indicator at this stage, it should be included in Member State reports where possible, to give an indication of the on-demand environment. However, we do believe that once industry-standard robust viewing data for non-linear services becomes available, then consumption data should be considered as a potential indicator for monitoring Article 3i. Support for the development of such industry standard data at the Member State and European level is important here. [10.4.5]

Thus, at this time, we suggest that title-level and hour-level data should provide the key quantitative indicators for monitoring Article 3i, with prominence ensured via co- and self-regulation and financial contribution data acquired at a base-level (i.e. requesting data on spend on new programming) where possible. We do not suggest using consumption data as a performance indicator at this time (although where possible it could be included in Member State reports, as an important indicator of change in the non-linear environment), nor strict prominence measures.

[11.6]

Application of performance indicators

The consultants have also provided, where possible, practical applications of key performance indicators for Article 3i to specific services. This is again based on data acquired through self-declarations. **[10.5.3]**

The main quantitative indicators that have been applied are proportion of titles in a catalogue that are European and proportion of hours of content in a catalogue that are European. This has shown that the vast majority of services who supplied data for our study had over 80% European titles in their catalogue (with many having 100%). However, pure VoD players typically had a smaller proportion of European titles than that available on the non-linear services owned by broadcasters. On-demand services provided by private broadcasters have a slightly lower proportion of European titles, when compared with non-linear services provided by public broadcasters. **[10.5.3]**

One financial indicator was applied to specific services, asking for the proportion of the total budget for the non-linear service to be split by source of programming, but data was not forthcoming from service providers. Based on a very limited response, it appears that non-linear services run by broadcasters typically had high proportions of national content, whereas pure VoD players independent from broadcasters relied more on non-European content. **[10.5.3]**

The consultants also applied three prominence indicators to specific services. This was based on additional desk research completed by the consultants. The three indicators were addressed the these questions: 1) Can content be searched for by country of origin?; 2) Is country of origin of an item of content indicated anywhere on the service?; 3) What is the estimated proportion of the homepage dedicated to European works? **[10.5.3]**

We compared the findings on these indicators with the results from the quantitative survey of on-demand services. Based on this initial prominence analysis, for on-demand services owned by private broadcasters, the prominence of European content does not necessarily match the proportion of European content that is actually available. On average, prominence scores are lower than the results from the quantitative indicators, showing that although many European works can be offered on a service, the service may nevertheless promote non-European works (for example US programming) more prominently than European works. This supports the relevance of prominence measures as part of the monitoring of Article 3i. **[10.5.3]**

3. Introduction

3.1. The Remit

Article 25(a) of the Television Without Frontiers Directive ('TVWF') included a provision for "an independent study on the impact of measures concerning the promotion of distribution and production of television programmes at Community and national levels".

The measures at Community level to promote programme making and programme distribution are contained within Articles 4 and 5 of the TVWF. Articles 4 and 5 place requirements on Member States to ensure that broadcasters under their jurisdiction devote a majority of transmission time to European works and at least 10% of transmission time (or programme budget) to European independent productions.

Article 4(1) states:

"Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping. This proportion, having regard to broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria."

Article 5 states:

"Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, or alternatively, at the discretion of the Member State, at least 10% of their programme budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to broadcasters' informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production."

The European Commission conducted a selection process by competitive tender and appointed David Graham and Associates Limited (DGA) to carry out such a study as required by Article 25(a) in November 2003. DGA led a consortium of companies to conduct the project: Oliver & Ohlbaum Associates Limited (O&O), Arena Audiovisual and Carat Expert.

The final study report was issued on 24 May 2005 under the title "*Impact Study of Measures (Community and National) Concerning the Promotion of Distribution and Production of TV Programmes Provided for Under Article 25(a) of the TV Without Frontiers Directive*" (referred to throughout this report as "The 2005 Study").

On 11 December 2007, the European Parliament and Council adopted Directive 2007/65, amending the TVWF Directive. Further to Directive 2007/65, the name of the amended TVWF was changed to the "Audiovisual Media Services Directive". Directive 2007/65 must be implemented by the Member States by 19 December 2009. It may be noted that Directive 2007/65 did not make any amendments to Articles 4 and 5 of TVWF.

Throughout this report, the Audiovisual Media Services Directive is referred to as 'AVMS'.

A notable aim of the amendments contained in Directive 2007/65 was to include non-linear audiovisual media services within the scope of the Directive. One of the new provisions introduced in this regard is Article 3i, which places requirements on Member States to ensure that non-linear service providers under their jurisdiction promote the production of and access to European works.

Article 3i states:

"Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, *inter alia*, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service."

According to Article 26 of the AVMS Directive, the European Commission shall submit a report on the application of the Directive every three years, starting in 2011. Further to this, it is the intention of the Commission to evaluate periodically the impact on the audiovisual sector of the national legislations implementing Articles 3i, including national legislations prior to the adoption of the Directive, which purport a similar objective as Article 3i, as it has been until now the case with Articles 4 and 5 under the TVWF Directive.

In order to provide the European Commission with the elements required for this monitoring and evaluation, the Commission requested an independent study to be carried out, covering the situation as regards promotion of European works at the end of 2007. Through a competitive tender, in December 2007 the Commission appointed Attentional Limited ("Attentional"; formerly known as David Graham and Associates Limited) to carry out this study. Attentional leads a consortium of companies to conduct the project: Oliver & Ohlbaum Associates Limited (O&O), Headway International and Rambøll Management.

The 2005 study covered 17 countries; these countries are referred to as "the E17".⁴⁶ The remit of the present study covers the 27 Member States of the European Union as of 2007 and the 3 Member States of the European Free Trade Association who participate in the European Economic Area. Collectively, these 30 countries are referred to as "the E30".⁴⁷ References in this report to "Member State(s)" include both EU and EEA countries.⁴⁸

3.2. Sections of this Report

This Final Study Report contains the following sections. An executive summary and project overview above have already presented the key research, with the detail to follow in the rest of the report.

'Methods of Implementation' presents the legal research originally completed and accepted in the First Interim Report, now amended following further research on the situation in France.

Following this, the economic overview of the television and non-linear marketplace, originally completed and accepted in the Second Interim Report, has been replicated for the Final Study Report.

The third section of this report covers the extensive analysis of linear services, in particular the review of the extent to which Articles 4 and 5 are being implemented. This significantly develops the work on linear services originally seen in the Second Interim Report, where the methodology was detailed and accepted, and applied to three of the eleven Member States that constitute our sample for this study. The Final Study Report contains both a pan-European analysis and individual profiles for each sample Member State.

The section entitled 'Views from the Audiovisual Industry', originally seen in the Second Interim Report, has also been extensively revised. Although the chapters within the section that deal mainly with linear programming have remained very similar to the Second Interim Report, the chapters dealing with non-linear services have been developed, bringing together all the research on non-linear services completed during this study.

⁴⁶ E17 countries include: UK, Germany, France, Italy, Spain, Portugal, Denmark, Finland, Norway, Iceland, Ireland, The Netherlands, Belgium, Luxembourg, Austria, Greece and Sweden.

⁴⁷ E30 countries include: E17 + Latvia, Lithuania, Liechtenstein, Bulgaria, Poland, Slovenia, Slovakia, Czech Republic, Malta, Cyprus, Estonia, Romania and Hungary.

⁴⁸ As noted in section 4.1.1, Liechtenstein is not discussed in section 5 of this report, since there no television channels broadcasting subject to Liechtenstein jurisdiction. For practical purposes, references to E17 and E30 should therefore be understood to exclude Liechtenstein.

Regarding on-demand services, a section has been included in the Final Study Report that details our view on the appropriate operational procedures and performance indicators for monitoring the application of Article 3i to non-linear services, as the AVMS Directive is implemented into Member States' legislation. This section also included some practical applications of performance indicators to specific non-linear services.

Finally, we present a section detailing the key findings from each of the above sections, and a chapter covering the overall conclusions of the study.

In November 2008 a workshop was held in Brussels where the Draft Final Report was presented to key stakeholders. Comments received at, and subsequent to, the workshop have been carefully considered in the preparation of the Final Study Report. Written comments following the workshop have, where possible, been included in an appendix to this report.

4. Modes of Implementation

This section report covers the legal analysis prepared by Rambøll Management and covers a description and analysis of the implementing measures taken by the E30 pursuant to Articles 4 and 5 of the Directive as of the end of 2007, as well as any measures related to promotion of European works already adopted by the E30 in respect of on-demand services.

This legal report addresses two themes:

Theme one: How Articles 4 and 5 are implemented

The report identifies how the E30 have implemented Articles 4 and 5 in national legislation and describes the additional content requirements that some Member States place on broadcasters. In order to assist comparison with the 2005 Study, this section of the report follows a similar structure to that of the legal analysis in Chapter 6 of The 2005 Study.

Theme two: On-demand audiovisual media services and European works

The report identifies any existing national provisions with the effect of promoting European Works within non-linear services.

4.1. Approach and Methodology

4.1.1. How Articles 4 and 5 are implemented

As with all EU Directives, the provisions of the TVWF Directive have been implemented through different national legislation in each Member State. Differences in the way in which national legislation is framed and the way in which key terms are defined in national legislation can make adherence to Articles 4 and 5 more or less difficult for broadcasters. Also, Article 3(1) of The Directive expressly provides that Member States remain free to apply more detailed or stricter rules in the areas covered by The Directive. Consequently, Articles 4 and 5 constitute the minimum standards that Member States and third parties directly affected (e.g. broadcasters) have to comply with.

We looked at how the TVWF Directive was transposed into national legislation in each Member State to determine whether it was prescriptive or flexible. We looked in particular at the way in which key terms (such as 'independent producer'⁴⁹) are defined, and the use of 'non slip-back clauses'⁵⁰ to prevent broadcasters reducing the proportion of European and independent productions in their schedule. We also looked at whether or not national legislation contains the 'where practicable' clause in framing the requirements of Articles 4 and 5. The use of this phrase, which is contained in the TVWF Directive, allows the Member States to apply the minimum proportions in a flexible way because it gives the Member States a possibility to exempt – on a case-by-case basis - some broadcasters that are unable to meet the requirements of Articles 4 and 5 from the obligation, if substantiated.

We also reviewed the measures in place in each Member State to monitor adherence by broadcasters to the requirements of Articles 4 and 5, and the sanctions (warnings or fines, for example) applied by national authorities when these requirements are not met.

Having reviewed the implementation of the TVWF Directive – the way in which Articles 4 and 5 are transposed into national legislation and monitored – we then looked at any additional requirements placed on broadcasters by national legislation to increase the quantity, or enhance the quality, of European and independent production. Examples of additional requirements include, *inter alia*, the language and cultural requirements applied to broadcasters in many Member States, and the support for EU and domestic film production that public service broadcasters in several Member States are required to provide.

⁴⁹ This term is not explicitly defined in the Directive, although recital 49 offers some guidance to the Member Stages. For further details, please refer to section 5.1.4.

⁵⁰ Clauses requiring broadcasters not to show a lower proportion of European works than shown in the previous year.

Taken together, the transposition of Articles 4 and 5 (whether the measures are transposed into national legislation flexibly or prescriptively), their application and the additional requirements placed on broadcasters in national legislation (low or high additional requirements), define four 'implementation modes' that are used in this phase of the study.

The data for the review of national legislation has been collected from national authorities using Part I of the questionnaire, which is included in Appendix II (Chapter 14 of this study). Most of the replies have been received in February and March 2008. When the validity of the new data has appeared uncertain (e.g. because it appeared inconsistent with data from the 2005 Study), the issues have been resolved using a combination of telephone interviews and e-mail correspondence.

Similarly to the 2005 Study, Liechtenstein is not discussed in the following report, since there are still no television channels broadcasting subject to Liechtenstein jurisdiction.

4.1.2. On-demand audiovisual services and European Works

The data for the on-demand part of the legal study has been collected from national authorities through section II of the questionnaire attached as Appendix II. Most of the replies have been received in February and March 2008.

The study "*The Development of Video on Demand in Europe*", published by the NPA Conseil in 2006,⁵¹ has also been consulted.

⁵¹ <http://www.npaconseil.com/data/ENG060619final.pdf>

5. How Articles 4 and 5 are Implemented

5.1. Transposition of Articles 4 and 5

Member States have transposed Articles 4 and 5 into national law using a combination of primary legislation and secondary regulation.⁵² The degree to which Member States are flexible or prescriptive in transposing The Directive can be determined with reference to certain key terms and phrases.

5.1.1. Total qualifying hours

The TVWF Directive defines total qualifying hours as a broadcaster's transmission time "excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping".⁵³ The majority of the E30 have transcribed the definition directly into national legislation; however, France, Germany, Italy and the UK have adopted approaches significantly different to the TVWF Directive.

France and Germany define what is included in qualifying transmission time.

France distinguishes between audiovisual works and cinematographic works (of long duration, i.e. at least 60 minutes),⁵⁴ and applies different requirements to each of these two groups. According to the latest statement by the regulator (CSA),⁵⁵ only the following types of programmes are recognised as audiovisual works: fiction programmes, animation programmes, documentaries, magazine and entertainment programmes produced mainly outside the studio, music videos, cinematographic works shorter than 60 minutes, concerts and retransmissions of theatrical, lyrical or choreographic performances.

Germany defines what is included as qualifying hours: feature films, television movies, series, documentaries and comparable productions.⁵⁶

⁵² Primary legislation refers to Acts issued by the legislative body (parliament) of the relevant Member State. Secondary legislation refers to executive orders, regulations etc, issued by an administrative body in the Member State pursuant to authorization in the relevant primary legislation.

⁵³ See Article 4(1) and Article 5 of the Directive.

⁵⁴ Decree no. 90-66 of 17 January 1990, Article 4.

⁵⁵ "Programmes recognized as audiovisual works for January to September 2007",

http://www.csa.fr/actualite/dossiers/dossiers_detail.php?id=19783&chap=2536

⁵⁶ Interstate Treaty on Broadcasting of 31 August 1991 (as amended), Article 6(2).

Italy excludes talk shows,⁵⁷ making the achievement of a majority proportion of European works more difficult, because it excludes programming that is likely to be made domestically and that would otherwise count as a European work.

The UK applies different calculations for European works and independent productions. While the proportion of European works is calculated as stated in the Directive, a separate definition of “qualifying programmes” is applied to independent productions; this definition excludes acquisitions and repeats.⁵⁸

By defining what is included in the qualifying hours, France and Germany apply a stricter definition of audiovisual works than The Directive because they exclude programming – particularly current affairs programmes and talk shows – that tends to be produced domestically. The measures contained in Article 4 applying to European production must therefore be achieved in the categories of programmes included in the definition, without the benefit of a high proportion of European qualifying programming in other excluded programme genres.

We can see, therefore, that France and Germany apply a stricter definition than that of Article 4, and require all broadcasters to show more original European works than The Directive (a path followed by the majority of the E30).

The following table provides an overview of the definition of Total Qualifying Hours in the national legislation of the Member States:

Table 1: Definition of Total Qualifying hours

Identical or equivalent with the Directive	Slightly more restrictive	Significantly more restrictive
Austria	Lithuania	
Belgium	Luxembourg	
Bulgaria	Malta	
Cyprus	Netherlands	
Czech Republic	Norway	
Denmark	Poland	
Estonia	Portugal	
Finland	Romania	
Greece	Slovakia	
Hungary	Slovenia	
Iceland	Spain	
Ireland	Sweden	
Latvia		

Source: Member State regulatory authorities

⁵⁷ Broadcasting Code (legislative decree no. 177 of 31 July 2005, as amended), Article 6.

⁵⁸ The Broadcasting (Independent Productions) Order 1991, Section 2.

⁵⁹ Independent productions only.

5.1.2. Qualifying European hours (definition of European works)

Article 6 of Directive 89/552 as amended by Directive 97/36 provides a detailed definition of 'European works' as

- (a) productions originating in Member States,
- (b) in countries that are signatories to the European Convention on Transfrontier Television or have concluded a bilateral trade agreement with the EU; or
- (c) originating from other European third countries, when the works have been made⁶⁰ by producers established in European third countries with which the EU has concluded agreements relating to the audiovisual sector, and the works have been made mainly with authors and workers residing in one or more European States.

(b) and (c) are conditional on works originating from Member States not being the subject of discriminatory measures in the third countries concerned.

Works not included in the above definition shall also be deemed to be European works, if they are produced within the framework of bilateral co-production treaties concluded between Member States and third countries, the participating EU co-producers supply a majority share of the total cost of the production, and the production is not controlled by one or more producers established outside the territory of the Member States.

The definition of European works is changed slightly by Directive 2007/65. In particular, co-productions with third countries will in the future be considered European works when they are co-produced within the framework of agreements related to the audiovisual sector concluded between the EU and third countries and fulfilling the conditions defined in each of these agreements.⁶¹

5.1.3. The 'where practicable' clause

Articles 4 and 5 of The Directive contain the qualifying term 'where practicable'. Certain Member States – for example Austria, Belgium (Flemish Community), Czech Republic, Denmark, Greece, Iceland, Luxembourg, Spain and Sweden – have incorporated the wording 'where practicable' - or expressions to a similar effect - into national legislation, which we consider to be a more flexible implementation of The Directive than when such a phrase is absent.

⁶⁰ Either exclusively by these producers, or in co-production with producers established in one or more Member States

⁶¹ Article 1(n)(i), third indent of Directive 2007/65, replacing the previous Art. 6(1)(c), 6(3) and 6(5).

In Austria, Luxembourg, Malta and Spain a ‘non-slip-back’ clause has been incorporated, meaning that broadcasters cannot show a lower proportion of European works than in the previous year (similar to the wording in the TVWF Directive that the proportion should be reached progressively). Other Member States have specifically defined to what extent a lower proportion will be accepted. Poland has set a lower proportion for the first transmission year of a new broadcaster, and lower thresholds for Pay-TV and thematic channels. In Slovakia, national legislation allows the regulator to set a lower proportion in licences for first-time licensees and for broadcasters of monothematic (special interest) programme services.⁶² In the Netherlands a broadcaster may apply for an exemption, which may be granted by the regulator, particularly to special interest channels and newly established channels. The exemptions can be granted for a maximum of three years, with a minimum percentage of 10%.⁶³ In Romania, broadcasters that have failed to meet the proportion have one year to do so.⁶⁴ Until 2007, Italy applied the term “where practicable” to both European works and independent productions, but as of 1 January 2008, this qualification has been abolished.⁶⁵ Some specific exemptions may be applied for, but the scope of the new exemptions regime will only be fully defined during 2008.⁶⁶

All these measures illustrate a more flexible application of the Directive than having no flexibility at all, but are less flexible than a general reference to ‘where practicable’, since these Member States will have defined in advance what proportion must be achieved.

The following table shows an overview of how “where practicable” clauses and similar measures have been implemented by the Member States:

Table 2: “Where practicable” and similar flexible measures

No flexibility	Semi-flexible	Fully flexible
Belgium (French)	Austria	Slovakia
Cyprus	Greece	Slovenia
Estonia	Hungary	Spain
Finland	Ireland	
France	Italy	
Germany	Luxembourg	
Latvia	Malta	
Norway	Netherlands	
Portugal	Poland	
United Kingdom	Romania	

⁶² Act No. 308 of 14 September 2000 Coll. On Broadcasting and Retransmission (as amended), Article 23(2).

⁶³ Regulation of the Commissariaat voor de Media of 18 December 2001 (“Policy Guidelines Programme Quota”).

⁶⁴ National Audiovisual Council Decision no. 187 of 3 April 2006, Article 95.

⁶⁵ The Broadcasting Code (Legislative decree no. 177 of 31 July 2005) Article 6, as amended by Law 244/2007.

⁶⁶ According to Law 244/2007, the scope of the new exemptions regime will be established by a regulation issued by the regulator AGCOM. This regulation has not been issued yet.

Source: Member State regulatory authorities

The column “fully flexible” contains the Member States which have a general reference to “where practicable” or similar terms in their legislation.

The column “semi-flexible” covers the Member States which offer some, but less flexibility, because their legislation includes a non-slip-back clause or other specific limitations on the extent to which lower proportions may be accepted.

The column “no flexibility” contains the Member States where the legislation contains no form of qualification or limitation to the established proportions. This means that in principle, the proportions must always be fulfilled. However, this does not mean that sanctions will be applied in all cases of failure to fulfil the proportions, as the initiation of a sanctioning procedure may be subject to the discretion of the regulatory authorities.

5.1.4. European works by independent producers

The Directive does not contain a definition of ‘independent producer’, but Recital 49 of Directive 2007/65⁶⁷ states that the definition should take account of criteria “such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights”.⁶⁸

No definition of ‘independent producer’ exists in national legislation in Austria,⁶⁹ Belgium (Flemish Community), Cyprus, Denmark, Germany, Malta and Sweden.

The remaining E30 countries utilise a combination of four main elements to define ‘independent producer’, as summarised in the following table:

⁶⁷ The identical wording could previously be found in Recital 31 of Directive 1997/36.

⁶⁸ It may be noted that during the preparation of Directive 2007/65, the European Parliament suggested that a definition should be inserted in the main body of the Directive, but eventually this proposal was not adopted.

⁶⁹ Austria has no definition of independent producer that applies to the national implementation of Article 5 of The Directive as such. However, Austria does have a definition of independent producer that applies to funding of television productions through ‘Television Fund Austria’. The definition is based on ownership: for the purposes of applying for a grant, a producer cannot be considered independent if a broadcaster involved in the financing of the project holds a majority share in the production company.

Table 3: Criteria for definition of independent producer

Member State	Criteria for definition of independent producer			
	Ownership	Programme supply	Secondary rights	Autonomy
Belgium (French)	✓	✓		
Bulgaria	✓	✓		
Czech Republic		✓		
Estonia		✓		
Finland	✓	✓		
France	✓	✓	✓	✓
Greece				✓
Hungary	✓			
Iceland	✓	✓		
Ireland	✓			✓
Italy	✓	✓		
Latvia	✓		✓	
Lithuania	✓			✓
Luxembourg	✓			
Netherlands	✓	✓		✓
Norway	✓	✓	✓	
Poland	✓			✓
Portugal	✓	✓	✓	✓
Romania	✓			✓
Slovakia	✓	✓		✓
Slovenia	✓			✓
Spain	✓			
United Kingdom	✓			✓

Source: Member State regulatory authorities

Ownership is the most commonly used criterion for defining whether or not a producer is independent. Independence is defined by placing a maximum holding by a broadcaster, or broadcasters, in a production company, or by a production company in a broadcaster, or both.

In the Netherlands, for example, a broadcaster must hold less than 25% of the share capital in an independent production company and a combination of broadcasters must hold less than 50% of the share

capital.⁷⁰ Norway applies the same limits – both to the broadcaster's holdings in the production company, and vice versa.⁷¹

In France the rules are more restrictive; a broadcaster may hold no more than 15% of the share capital of an independent producer and a production company that wishes to qualify as independent may hold no more than 15% of the share capital of a broadcaster.⁷²

The *programme supply* criterion captures the extent to which a producer's independence may be compromised if too great a proportion of his output is supplied to one broadcaster. In Estonia, for example, to qualify as independent, a production company cannot have produced more than 90% of its programmes for one broadcaster in the previous two years.⁷³ In Slovenia, no more than half of the annual production of an independent producer may be commissioned by a single broadcaster.⁷⁴

The *secondary rights* criterion relates to the extent to which an independent producer retains secondary rights when transferring rights to the broadcaster. In Norway⁷⁵ and Latvia,⁷⁶ in order to be considered an independent producer it is necessary that the producer holds secondary rights to his productions. In France, the broadcaster may only obtain exclusive rights to a limited number of different exhibition forms.⁷⁷ Additionally, an independent producer may not license rights to the first showing of an audiovisual work to a broadcaster for a period longer than eighteen months; the maximum duration that repeat rights may be

⁷⁰ Media Act of 21 April 1987 (as amended), Article 54(2)

⁷¹ Broadcasting Regulation 153 of 28 February 1997, Article 2-2

⁷² Decree no. 2001-609 of 9 July 2001 (as amended), Articles 6(II) and 11(II);

Decree no. 2001-1332 of 28 December 2001, Articles 6(II) and 11(II);

Decree no. 2001-1333 of 28 December 2001 (as amended), Articles 7(II) and 12(II); Decree no. 2002-140 of 4 February 2002 (as amended), Articles 7(II) and 12(II).

⁷³ Broadcasting Act of 19 May 1994 (as amended), Article 4³(3)

⁷⁴ Mass Media Act of 2001 (as amended), Article 73(1)

⁷⁵ Broadcasting Regulation 153 of 28 February 1997, Article 2-2

⁷⁶ The Radio and Television Law of 8 September 1995 (as amended), Article 2(4)

⁷⁷ For audiovisual works, the broadcaster can only acquire exclusive rights for one distribution platform: terrestrial analogue, digital terrestrial or cable/satellite (with some exceptions, e.g. for integrated and simultaneous transmission on cable/satellite). For cinematographic works, the broadcaster can only acquire rights to one of the following exhibition forms: theatrical exhibition in France, videogramme distribution in France, broadcasting on other French television services, exhibition via on-line services, or foreign exhibition (theatrical, videogramme and broadcasting). However, if 85% of the broadcaster's required contribution to cinematographic production is dedicated to independent productions (rather than the 75% which is the general requirement, as described in section 5.3.4), he may acquire rights to two of these exhibition forms.

Decree no. 2001-609 of 9 July 2001 (as amended), Articles 6(I)(2) and 11(I)(2);

Decree no. 2001-1332 of 28 December 2001, Articles 6(I)(2) and 11(I)(2);

Decree no. 2001-1333 of 28 December 2001 (as amended), Articles 7(I)(2) and 12(I)(2); Decree no. 2002-140 of 4 February 2002 (as amended), Articles 9(I)(2) and 14(I)(2).

licensed is 42 months and 3 broadcasts.⁷⁸ A cinematographic work can only be licensed exclusively for 2 broadcasts, with a maximum exclusivity period of 18 months for each broadcast.⁷⁹

The *autonomy* criterion is not used in the TVWF Directive. This criterion has been created to include other elements in the national definitions of independent producers, which are relevant to determining the extent to which an independent producer may in fact conduct his business unhindered by intervention by a broadcaster. In Ireland⁸⁰ and Slovakia⁸¹ an independent producer is defined by his capacity to exercise control over the actors, production staff, equipment and facilities used in the production. Similarly, in France the broadcaster cannot assume direct or indirect financial, technical or artistic initiative or responsibility for the production of an audiovisual work, or guarantee the outcome of the production.⁸² Some Member States require that the producer does not hold positions within the broadcaster (employee, board member, etc.). This requirement is found in Greece, Lithuania, Slovenia, the United Kingdom and Poland. In the Netherlands, a former employee of a public service broadcaster cannot be counted as an independent producer before two years have elapsed since the employment ended.⁸³ In Romania, the activity of a producer in creating certain audiovisual productions can only be financially supported to an amount smaller than 25% from the same sources as the program service (channel) within which his production is distributed, if the producer is to be considered independent towards this broadcaster.⁸⁴

We have allocated Member States to one of three categories of definition for 'independent producer'. The following table shows how the Member States have been distributed within these categories:

⁷⁸ Decree no. 2001-609 of 9 July 2001 (as amended), Article 11(I)(1);
Decree no. 2001-1332 of 28 December 2001, Article 11(I)(1);
Decree no. 2001-1333 of 28 December 2001 (as amended), Article 12(I)(1);
Decree no. 2002-140 of 4 February 2002 (as amended), Article 14(I)(1).

⁷⁹ Decree no. 2001-609 of 9 July 2001 (as amended), Article 6(I)(1);
Decree no. 2001-1332 of 28 December 2001, Article 6(I)(1);
Decree no. 2001-1333 of 28 December 2001 (as amended), Article 7(I)(1);
Decree no. 2002-140 of 4 February 2002 (as amended), Article 9(I)(1).

⁸⁰ Broadcasting Authority (Amendment) Act, 1993, Article 5
(amending Broadcasting Authority Act, 1960)

⁸¹ Act No. 308 of 14 September 2000 Coll. On Broadcasting and
Retransmission (as amended), Article 24

⁸² Decree no. 2001-609 of 9 July 2001 (as amended), Article 11(I)(4);
Decree no. 2001-1332 of 28 December 2001, Article 11(I)(4);
Decree no. 2001-1333 of 28 December 2001 (as amended), Article 12(I)(4);
Decree no. 2002-140 of 4 February 2002 (as amended), Article 14(I)(4).

⁸³ Covenant of 16 November 1999 between the Commissariaat voor de Media
and the National Broadcasting Foundation

⁸⁴ Audiovisual Law (Law no. 504 of 11 July 2002, as amended) Article 24(3)

Table 4: Member State approaches to defining independent producer

No definition	Flexible definition	Strict definition	
Austria	Czech Republic	Belgium (French)	Netherlands
Belgium (Flemish)	Estonia	Bulgaria	Norway
Cyprus	Greece	Finland	Poland
Denmark	Hungary	France	Portugal
Germany	Luxembourg	Iceland	Romania
Malta	Spain	Ireland	Slovakia
Sweden		Italy	Slovenia
		Latvia	United Kingdom
		Lithuania	

Source: Member State regulatory authorities

The Member States that have no legal definition of 'independent producer' are listed in the column "No definition". For these Member States, the decision as to whether a producer is independent or not rests on practice, and on the non-binding guidance of the Contact Committee established under the TVWF Directive (including the Suggested Guidelines drawn up in the framework of the Committee⁸⁵); here there is greatest flexibility in the definition of independent producer. The Member States that have a legal definition that employs only one of the four criteria indicated are listed in the column "flexible definition". Member States that apply a series of definitions related to ownership, programme supply, secondary rights and autonomy are listed in the column "strict definition".

5.1.5. Independent productions – a percentage of turnover or programme hours?

Article 5 of the TVWF Directive establishes two alternative requirements for independent productions. Broadcasters shall reserve at least 10% of either transmission time *or* programming budget for independent productions. The Member States can freely choose between these two alternatives.

The majority of the E30 have chosen to apply the 10% requirement for independent productions to transmission time.

A second group of Member States apply a flexible definition that enables broadcasters to choose between adherence to a percentage of programming budget, or a percentage of transmission time. This second group consists of Cyprus, Czech Republic, Denmark, Iceland, Ireland, Lithuania, Luxembourg, Malta and Sweden.

Very few countries apply the 10% requirement for independent productions to the programme budget of a broadcaster as opposed to transmission time.

⁸⁵

http://ec.europa.eu/avpolicy/docs/reg/tvwf/eu_works/controle45_en.pdf

Hungary is the only country to apply both criteria to all channels. Broadcasters are required to reserve both 10% of transmission time and 12% of programme budget to independent works.⁸⁶

Portugal generally applies the 10% requirement to programme hours.⁸⁷ However, the public service channel RTP 2 is required to reserve at least 10% of its programming budget for independent productions.⁸⁸

In France, all channels are required to reserve a part of their entire annual turnover to independent productions. The general requirement is to reserve 10.66% of turnover for audiovisual independent productions and 2.4% for cinematographic independent productions.⁸⁹

Italy applied a transmission time criterion until 2007.⁹⁰ However, as of 2008, this has been replaced by a requirement that broadcasters must use at least 10% of their entire annual turnover for European works by independent producers.⁹¹

⁸⁶ Act I of 1996, on Radio and Television Broadcasting (as amended), Article 7.

⁸⁷ Law no. 37 of 30 July 2007, Article 46.

⁸⁸ For the period 2008 to 2011, the obligation is stated in the Public Service concession, Article 10(10). This specifies the general obligation for RTP 2 to "include programmes of a strong cultural and educational component, enhancing (...) independent production of creative works (...)", which is established in Article 54(1) of Law no. 27 of 30 July 2007.

⁸⁹ Decree no. 2001-609 of 9 July 2001 (as amended), Articles 8 and 11; Decree no. 2001-1333 of 28 December 2001 (as amended), Articles 9 and 12; Decree no. 2002-140 of 4 February 2002 (as amended), Articles 9 and 14.

⁹⁰ The Broadcasting Code (Legislative decree no. 177 of 31 July 2005), Article 44.

⁹¹ The Broadcasting Code (Legislative decree no. 177 of 31 July 2005) Article 44, as amended by Law 244/2007.

5.2. Application of Articles 4 and 5

In section 5.1, above, we looked at substantive issues relating to how Articles 4 and 5 have been transposed into national law. Now we turn to procedural measures relating to how adherence to Articles 4 and 5 is monitored, and the sanctions that are applied when broadcasters do not meet the set requirements.

We explore two differences in the way Member States monitor the application of Articles 4 and 5: first, the methodology for independent evaluation of broadcaster outputs in each Member State and; second, the sanctions that may be applied for non-adherence.

5.2.1. Monitoring and verification of channel outputs

The standard methodology employed by Member States to monitor adherence to Articles 4 and 5 is to require broadcasters to submit transmission returns, giving data on the volume of European works and independent productions that they have broadcast.

Some Member States take additional steps to verify the accuracy of the data provided by broadcasters, either by verifying the returns received from broadcasters or by direct monitoring of broadcasts. Such measures may be carried out in-house or by using an independent research organisation. Member States that take these steps include Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Ireland, Italy, Netherlands, Spain, Poland and Portugal. Some examples of such additional steps are described in the following.

Cyprus relies exclusively on independent monitoring of channel broadcast schedules. In Italy, all broadcasters are required to submit transmission returns. The regulator (AGCOM) has commissioned a service provider to monitor all terrestrial analogue channels and a smaller sample of satellite and DTT channels, and the data from this monitoring is then compared with the transmission returns by the regulator.

In France, the Conseil Supérieur de l'Audiovisuel (CSA) categorises every programme broadcast on public service TV to check the broadcasters' own statements of performance against the measures. The CSA also collects samples of contracts between broadcasters and producers.

The following table summarises the Member State approaches to monitoring. "No verification" covers the countries which rely on the returns submitted by broadcasters. "Independent verification" covers the countries which carry out some level of independent verification of these returns, while "Independent monitoring" consists of the countries which (also) carry out some degree of independent monitoring of the actual broadcast schedules.

Table 5: Member State monitoring

No verification		Independent verification	Independent monitoring
Austria	Luxembourg	Belgium	Cyprus
Denmark	Malta	Bulgaria	Estonia
Finland	Norway	Czech Republic	France
Germany	Romania	Ireland	Italy
Greece	Slovakia	Netherlands	Portugal
Hungary	Slovenia	Poland	
Iceland	Sweden	Spain	
Latvia	United Kingdom		
Lithuania			

Source: Member State regulatory authorities

5.2.2. Sanctions

The sanctions contained in law that may be applied to broadcasters who fail to meet the requirements of Articles 4 and 5 vary between Member States. In five Member States – Austria,⁹² Cyprus, Iceland, Ireland and Sweden – the regulator has no legal powers to apply sanctions.

In the remaining Member States, regulatory authorities have a range of powers at their disposal to encourage adherence to the TVWF Directive, from warnings to the imposition of fines. In some Member States, and for the most serious cases, regulatory authorities can shorten or revoke a broadcaster's licence. These various sanctions are listed in Table 6.

In the questionnaires to the regulators we inquired about the number of broadcasters who failed to meet the requirements of Articles 4 and 5 of the TVWF Directive in 2007, and the number of sanctions applied to these broadcasters. Several regulators did not answer these questions, since data for 2007 was not yet available to them – a few of these provided figures from 2006. Of the 14 regulators who answered these questions in whole or in part for 2007, 9 regulators indicated that some channels had not met the requirements. Only 2 regulators indicated that any sanctions had been applied – and only in the form of warnings.⁹³

⁹² The regulator can issue a fine when a broadcaster fails to submit returns – but cannot apply sanctions on a failure to meet the requirements.

⁹³ 3 of the regulators had no authority to impose sanctions.

Table 6: Member State sanctions⁹⁴

Member State	Sanction		
	Warning	Fine	Licence
Austria	✗	✗	✗
Belgium ⁹⁵	✓	✓	✓
Bulgaria	✗	✓	✗
Cyprus	✗	✗	✗
Czech Rep.	✓	✓	✗
Denmark	✓	✗	✓
Estonia	✓	✓	✓
Finland	✓	✓	✓
France	✓	✓	✗
Germany	✓	✗	✗
Greece	✓	✓	✓
Hungary	✓	✓	✓
Iceland	✗	✗	✗
Ireland	✗	✗	✗
Italy	✗	✓	✗
Latvia	✓	✓	✓
Lithuania	✗	✓	✗
Luxembourg	✓	✗	✓
Malta	✓	✓	✓
Netherlands	✓	✓	✗
Norway	✓	✗	✓
Poland	✓	✓	✗
Portugal	✗	✓	✗
Romania	✓	✓	✓
Slovakia	✓	✓	✗
Slovenia	✓	✓	✓
Spain	✗	✓	✗
Sweden	✗	✗	✗
United Kingdom	✓	✓	✓

Source: Member State regulatory authorities

⁹⁴ In the table, '✗' means that the Member State does not have the sanction at their disposal and '✓' means that the Member State does have the sanction at their disposal.

⁹⁵ Both Flemish Community and French Community.

5.3. Stricter Measures Applied to Broadcasters

5.3.1. Introduction

Article 3 of the TVWF Directive states that "Member States shall remain free to require television broadcasters under their jurisdiction to comply with more detailed or stricter rules in the areas covered by this Directive."

Some Member States have applied Articles 4 and 5 of the TVWF Directive more strictly than required by the Directive, by setting the percentage requirements for European works and independent production higher than those required by The Directive. Higher requirements are generally applied only to public service broadcasters – in Italy, the Netherlands and the UK, for example. These interventions can be grouped under the general heading 'Measures to increase the Quantity of Production'.

Member States place other requirements (either legislative or administrative) on broadcasters that are not directly related to Articles 4 and 5 of The Directive, but which affect the output of broadcasters in their jurisdiction. These requirements take two forms:

- Member States impose additional requirements on the content of European and independent productions relating, for example, to the original language of productions, or the portrayal of national or regional cultures.⁹⁶ These interventions are often achieved through licence agreements or other administrative arrangements with broadcasters, and can be grouped under the general heading 'Measures to enhance the Quality of Productions'.
- Some Member States increase European or domestic production by requiring broadcasters (usually the public service broadcasters) to allocate a proportion of their income to, for instance, film production.⁹⁷ These interventions can be grouped under the general heading 'Additional funding to Promote European and Independent Production'.

5.3.2. Measures to increase the Quantity of Production

Seven Member States – Finland, France, Hungary, Italy, The Netherlands, Slovakia, and the United Kingdom – apply higher percentage requirements than those contained in The Directive on some or all of their broadcasters.

⁹⁶ Such measures are mentioned in Recital 44 of Directive 97/36.

⁹⁷ Such measures are mentioned in Recital 45 of Directive 97/36.

Proportion of European works

In France, legislation requires broadcasters to reserve at least 60% of transmissions to European audiovisual and cinematographic works. 60% of the transmission time dedicated to audiovisual works must be European works.⁹⁸ For cable, satellite and digital terrestrial channels, the individual licenses may allow the 60% requirement to be reached progressively, but the minimum proportion of European works must be at least 50% of qualifying hours.⁹⁹ 60% of the total number of broadcasts of cinematographic works of long duration must be European works.¹⁰⁰

In the United Kingdom, the proportion is set individually for each channel in the licence, which may establish higher requirements for individual channels. For example, high proportions of European works have been set for the BBC channels BBC3 (90%), BBC4 (around 70%), CBeebies (around 90%) and CBBC (around 75%).

Italy is applying the normal 50% proportion to the total (monthly) qualifying transmission time.¹⁰¹ However, the 50% proportion is also applied separately to qualifying transmission time during peak viewing hours.¹⁰²

Instead of using the term “majority proportion”, some of the remaining Member States have described the proportion as a percentage. These descriptions vary between ‘at least 50%’ (e.g. Bulgaria¹⁰³), ‘more than 50%’ (e.g. Poland¹⁰⁴) and ‘at least 51%’ (e.g. Spain¹⁰⁵). We understand these variations to be slightly differing interpretations of “majority proportion”, rather than intentionally stricter proportions, and therefore Member States with a required proportion of 51% have *not* been considered to employ a stricter requirement than the TVWF Directive.

Proportion of independent productions

Hungary requires all broadcasters to reserve 12% of the programme budget to independent works (as well as 10% of transmission time).¹⁰⁶

France generally requires broadcasters to reserve 10.66% of their turnover for audiovisual works which are independent productions.¹⁰⁷ The proportions to be reserved for audiovisual works are higher for the public

⁹⁸ Decree no. 90-66 of 17 January 1990 (as amended), Article 13.

⁹⁹ Decree no. 2001-1333 of 28 December 2001 (as amended), Article 15; Decree no. 2002-140 of 4 February 2002 (as amended), Article 18.

¹⁰⁰ Decree no. 90-66 of 17 January 1990 (as amended), Article 7.

¹⁰¹ The Broadcasting Code (Legislative decree no. 177 of 31 July 2005, as amended by Law 244/2007 and Law 31/2008), Articles 6 and 44.

¹⁰² Peak viewing hours are defined as 18:30-22:30, but will probably be adjusted during 2008 (likely to 19:30-23:30).

¹⁰³ Law for the Radio and the Television, SG. 138 of 24 November 1998 (as amended), Article 10(2).

¹⁰⁴ Broadcasting Act of 29 December 1992 (as amended), Article 15(3).

¹⁰⁵ Act 25/1994, 12th July (as amended), Article 5.

¹⁰⁶ Act I of 1996, on Radio and Television Broadcasting (as amended), Article 7.

¹⁰⁷ Decree no. 2001-609 of 9 July 2001 (as amended), Articles 8 and 11; Decree no. 2001-1333 of 28 December 2001 (as amended), Articles 9 and 12; Decree no. 2002-140 of 4 February 2002 (as amended), Articles 11 and 14.

broadcasters France 2 (12.66%), France 3 (12.33%) and M6 (12%).¹⁰⁸ Broadcasters must also invest a minimum of 3.2% of net turnover into French and European films,¹⁰⁹ with higher proportions for Canal+ (12%)¹¹⁰ and other film channels (21%, raised to 26% for first exhibition channels);¹¹¹ 75% of these proportions should be allocated to independent productions.¹¹²

The Italian public service broadcaster has been required to reserve at least 20% of qualifying hours for independent productions, and to allocate 15% of the turnover to European works, including independent productions. As of 1 January 2008, this will be replaced by a requirement to allocate 15% of the turnover to independent productions. Similarly, other channels will be required to allocate 10% of turnover.¹¹³

It should be added that a broadcaster's *turnover* will always be a higher amount than the broadcaster's *programming budget*. Therefore, calculating the allocation of funds for independent productions as a proportion of turnover is stricter than calculating the allocation as a proportion of the programming budget (as stated in Article 5 of the Directive).

In Slovakia, public service broadcasters are required to reserve at least 20% of qualifying hours for independent productions.¹¹⁴ In the Netherlands, each public service channel must reserve at least 17.5%, and the average proportion for all public service channels must be at least 25%.¹¹⁵ Additionally, re-runs may only be counted towards the measure when they are shown in peak-time, to prevent the measure being met by broadcasting re-runs in non-peak time.

All BBC and terrestrial analogue channels in the UK are required to reserve at least 25% of qualifying transmission time to independent productions.¹¹⁶

Finland applies a 15% independent works requirement on all broadcasters.¹¹⁷

The following table shows an overview of the Member States that have adopted requirements for higher proportions of European works and/or independent productions.

¹⁰⁸ Further to Decree no. 2001-609 of 9 July 2001 (as amended), Article 10

¹⁰⁹ Decree no. 2001-609 of 9 July 2001 (as amended), Article 3;

Decree no. 2002-140 of 4 February 2002 (as amended), Article 7.

¹¹⁰ Decree no. 2001-1332 of 28 December 2001, Article 5

¹¹¹ Decree no. 2001-1333 of 28 December 2001 (as amended), Article 20

¹¹² Decree no. 2001-609 of 9 July 2001 (as amended), Article 6;

Decree no. 2001-1332 of 28 December 2001, Article 6;

Decree no. 2001-1333 of 28 December 2001 (as amended), Article 7;

Decree no. 2002-140 of 4 February 2002 (as amended), Article 14.

¹¹³ The Broadcasting Code (Legislative decree no. 177 of 31 July 2005, as amended by Law 244/2007 and Law 31/2008), Articles 6 and 44

¹¹⁴ Act No. 308 of 14 September 2000 Coll. On Broadcasting and Retransmission (as amended), Article 25(1)

¹¹⁵ Media Act of 21 April 1987 (as amended), Article 54(2)

¹¹⁶ Communications Act 2003, section 277

¹¹⁷ Act 744/1998 on Television and Radio Operations (as amended), Article 17

Table 7: Higher requirements for European works and independent productions

Member State	European works	Independent productions
Finland		✓
France	✓	✓
Hungary		✓
Italy	✓	✓
Netherlands		✓
Slovakia		✓
United Kingdom	✓	✓

Source: Member State regulatory authorities

5.3.3. Measures to enhance the Quality of Productions

With the exception of Luxembourg, all of the E30 place additional requirements on broadcasters regarding the content of European and independent productions. These generally require broadcasters' programming to reflect linguistic or cultural specificities in a Member State.

For example, in the Netherlands, public service broadcasters must dedicate 50% of relevant transmission time to programmes originally produced in Dutch or Friesian,¹¹⁸ and for private channels the percentage is 40%.¹¹⁹ The language proportions are calculated independently from the required majority proportion of European works - European works originally produced in Dutch and Friesian will count towards achieving both proportions. In Portugal, national channels must broadcast programming originally produced in Portuguese for 50%¹²⁰ of transmission time (excluding time appointed to advertising, teleshopping and teletext¹²¹) and creative programmes originally produced in Portuguese for 20% of all transmission time – only 25% of these quotas can be fulfilled by programmes from other Portuguese-speaking countries.¹²² These proportions are calculated independently from the required majority proportion of European works - European works will only count towards the other quotas as well when the aforementioned origin requirement is fulfilled. In Latvia, 40% of the European works should be works originally produced in Latvian¹²³ – similar quotas apply for domestic language

¹¹⁸ Media Act of 21 April 1987 (as amended), Article 54a(1)

¹¹⁹ Media Act of 21 April 1987 (as amended), Article 71g

¹²⁰ Under the Public service concession for 2008 to 2011, the public service channel RTP 1 will be subject to a 60% requirement for programming in the Portuguese language (Article 9(8) of the concession agreement).

¹²¹ News, sports events and games are not excluded from this calculation (in contrast to the calculation of the proportion of European works),

¹²² Television Act (Law no. 27 of 30 July 2007), Article 44

¹²³ The Radio and Television Law of 8 September 1995 (as amended), Article 18(1)(2)

production in Hungary¹²⁴ and Poland (33% of qualifying transmission time in each country). In Greece, 25% of qualifying transmission time should be for works produced in Greek. Additionally, public service broadcaster ERT is required to broadcast programmes showing the correct use of the Greek language.¹²⁵

French legislation requires that at least 40% of broadcasters' audiovisual and cinematographic output is originally produced in French.¹²⁶ Additionally, all terrestrial analogue channels are required to invest at least 16% of turnover into original productions in the French language. Terrestrial channels, except France 5, are also required to provide 120 hours of European or French language works that have never previously been broadcast; these programmes must start between 8 and 9 p.m. and cannot account for more than 180 minutes per night.¹²⁷ Lower or more flexible requirements are set for France 2, France 3 and M6 in their licences.

In the United Kingdom, public service stations are subject to licence quotas for "original productions". Original productions are defined as "European programmes"¹²⁸ which have been commissioned by or for a UK public service channel with a view to their first showing on UK television on a public service channel. The original production quotas for each channel are between 53% (Five) and 90% (BBC News 24, BBC Parliament) in general, and between 42% (Five) and 90% (BBC 1) for peak-time.

Germany, the Netherlands, Spain and the UK also apply regional requirements on broadcasters, either through an extra layer of requirements for linguistic or cultural programming applied at a regional level (Germany¹²⁹ and Spain¹³⁰), or through a requirement on national broadcasters to reflect regional differences (The Netherlands¹³¹ and the UK¹³²). The UK also imposes specific regional production quotas on public service broadcasters.¹³³

¹²⁴ Act I of 1996, on Radio and Television Broadcasting (as amended), Article 7(1).

¹²⁵ Law 2328/1995, Article 3(18-19); Law 2644/1998, Article 10(3)

¹²⁶ Decree no. 90-66 of 17 January 1990, Article 7(I)

¹²⁷ Decree no. 2001-609 of 9 July 2001 (as amended), Article 8; Decree no. 2001-1333 of 28 December 2001 (as amended), Article 9.

¹²⁸ European programmes are European works, plus a proportion of "part-qualifying works": programmes which are not European works but nevertheless have been made with significant contributions from an EU producer (Broadcasting (Original Productions) Order 2004).

¹²⁹ The general competence in the area rests with the individual German States. The Interstate Treaty on Broadcasting of 31 August 1991 (as amended) provides a common regulatory framework, but the States may issue supplementary regulations (Article 1(2) of the treaty).

¹³⁰ The autonomous regions may adopt rules to promote audio-visual production in their regional languages, within the local television services under their jurisdiction. Act 25/1994, 12th July (as amended), Article 2(5)

¹³¹ Media Act of 21 April 1987 (as amended), Article 51e

¹³² BBC Charter and individual licences

¹³³ BBC Charter; individual licences, pursuant to Communications Act 2003, sections 286 through 288

The following table provides an overview of the distribution of Measures to enhance the Quality of Production in Member States.

Table 8: Measures to enhance the Quality of Production

Member State	Type of content	General Language	Original production language	Regional provisions
Austria	X	X	X	X
Belgium (Flemish)	X	X	✓	X
Belgium (French)	✓	X	✓	X
Bulgaria	✓	✓	X	X
Cyprus	✓	✓	X	X
Czech Republic	X	X	X	X
Denmark	X	✓	X	X
Estonia	✓	✓	X	X
Finland	✓	✓	X	X
France	✓	✓	✓	X
Germany	X	✓	X	✓
Greece	X	✓	✓	X
Hungary	X	X	✓	X
Iceland	X	X	✓	X
Ireland	X	✓	X	X
Italy	✓	X	X	X
Latvia	X	X	✓	X
Lithuania	✓	X	X	X
Luxembourg	X	X	X	X
Malta	X	✓	X	X
Netherlands	✓	X	✓	✓
Norway	X	✓	X	X
Poland	✓	✓	✓	X
Portugal	✓	X	✓	X
Romania	✓	✓	✓	X
Slovakia	X	✓	X	X
Slovenia	X	X	✓	X
Spain	X	X	✓	✓
Sweden	✓	✓	✓	X
United Kingdom	✓	✓	X	✓

Source: Member State regulatory authorities

The categories in the table cover the following types of requirements:

Type of content:

Requirements to broadcast a certain proportion of specific programme types, e.g. cultural or creative works.

General Language:

General requirements to reflect national (or minority) culture and language, correct use of the national language, etc.

Original production language:

Requirements that a certain percentage of broadcasts should be dedicated to works originally produced in a certain (national or minority) language. Dubbing and subtitling requirements are not included.

Regional provisions:

Regional requirements on broadcasters, as described above

5.3.4. Additional funding to Promote European and Independent Production

In this section we look at the requirements placed on broadcasters that relate primarily to the funding of indigenous film production, either directly or through a contribution to centrally administered film funds.

Examples where broadcasters are required to contribute directly to film production include France, where terrestrial free-to-air channels must invest a minimum of 3.2% of net turnover into French and European films;¹³⁴ higher proportions apply to Canal+ (12%)¹³⁵ and film channels and other film channels (21%, raised to 26% for first exhibition channels).¹³⁶ 75% of these proportions should be independently produced.¹³⁷ Broadcasters are also required to spend 16% of turnover - not programming budget - on audiovisual production.¹³⁸ Higher

¹³⁴ Decree no. 2001-609 of 9 July 2001 (as amended), Article 3;

Decree no. 2002-140 of 4 February 2002 (as amended), Article 7.

¹³⁵ Decree no. 2001-1332 of 28 December 2001, Article 5

¹³⁶ Decree no. 2001-1333 of 28 December 2001 (as amended), Article 20.

¹³⁷ Decree no. 2001-609 of 9 July 2001 (as amended), Article 6;

Decree no. 2001-1332 of 28 December 2001, Article 6;

Decree no. 2001-1333 of 28 December 2001 (as amended), Article 7;

Decree no. 2002-140 of 4 February 2002 (as amended), Article 14.

¹³⁸ Decree no. 2001-609 of 9 July 2001 (as amended), Article 8;

Decree no. 2001-1333 of 28 December 2001 (as amended), Article 9.

proportions apply to France 2 (19%), France 3 (18.5%) and M6 (18%),¹³⁹ while lower proportions (4.5%) apply to Canal+.¹⁴⁰ Two thirds of these proportions must be independently produced (equivalent to 10.66% for channels subject to the 16% requirement).¹⁴¹ The investment requirements do not apply to the cable, satellite and DTT broadcasters that spend less than 20% of the annual transmission time on audiovisual works.¹⁴²

Examples of Member States in which broadcasters contribute to a centrally administered film fund include Poland, where broadcasters must pay 1.5% of their income to the Polish Film Institute, and public service broadcasters must earmark at least 1.5% of their annual licence fees for film production purposes. If a broadcaster does not spend the full earmarked amount, the remainder shall be transferred to the Polish Film Institute.¹⁴³ France applies a 5.5% levy on the part of each broadcaster's annual revenues from advertising which exceed 11 million EUR, which is distributed to film production through a fund administered by the CNC.¹⁴⁴ Portugal places a 4% tax on the sale of television advertising that is directed towards film production.¹⁴⁵ In Sweden, the major broadcasting companies are also required to contribute to Swedish film production; SVT must contribute at least 34 million SEK (2006 figures) per year to the Swedish Film Institute, and guarantee to spend at least 36 million SEK per year on co-production, co-financing and purchasing rights for new Swedish feature films and short and documentary films.¹⁴⁶ Czech Republic (Czech Television)¹⁴⁷ and Norway (TV2)¹⁴⁸ also have requirements to contribute fixed amounts to film funds (12.5 million CZK¹⁴⁹ monthly and 25 million NOK annually,¹⁵⁰ respectively).

¹³⁹ Licence conditions, further to Decree no. 2001-609 of 9 July 2001 (as amended), Article 10

¹⁴⁰ Decree no. 2001-1332 of 28 December 2001, Article 9;

¹⁴¹ Decree no. 2001-609 of 9 July 2001 (as amended), Article 11;

Decree no. 2001-1332 of 28 December 2001, Article 11;

Decree no. 2001-1333 of 28 December 2001 (as amended), Article 12;

Decree no. 2002-140 of 4 February 2002 (as amended), Article 14.

¹⁴² Decree no. 2001-1333 of 28 December 2001 (as amended), Article 8;

Decree no. 2002-140 of 4 February 2002 (as amended), Article 11.

¹⁴³ Act on Cinematography of 30 June 2005, Article 19

¹⁴⁴ Code général des impôts (the general tax code), Article 302 bis KC

¹⁴⁵ Decree-Law no. 227 of 15 November 2006, Articles 50 to 58

¹⁴⁶ The obligations follow from The 2006 Film Agreement, an agreement between the Swedish State, several broadcasting companies and several associations (including the associations of Swedish film exhibitors, distributors and producers). The other broadcasting companies that are parties to the agreement have the following obligations:

TV 4: 8 million SEK contribution and 8 million SEK guaranteed spending

MTG: 4 million SEK contribution and 1 million SEK guaranteed spending

Kanal 5: 2 million SEK contribution and 0.5 million SEK guaranteed spending

C More Entertainment: 2 million SEK contribution and 0.5 million SEK guaranteed spending

¹⁴⁷ Article VI of Amendment 304/2007 to the Czech Television Act 483/1991

¹⁴⁸ TV 2 licence terms for 2003-2009, § 2-2

¹⁴⁹ Starting in 2008

¹⁵⁰ Figure for reference year 2003

The following table gives an overview of which Member States have film funding requirements.

Table 9: Requirements on broadcasters to fund film production

Film funding requirements	No film funding requirements	
Austria	Belgium (Flemish)	Ireland
Belgium (French)	Cyprus	Latvia
Bulgaria	Denmark	Lithuania
Czech Republic	Estonia	Luxembourg
France	Finland	Malta
Italy	Germany	Netherlands
Norway	Greece	Slovakia
Poland	Hungary	Slovenia
Portugal	Iceland	United Kingdom
Romania		
Spain		
Sweden		

Source: Member State regulatory authorities

5.4. Implementation Modes

Based on the preceding analysis, we can create indices to rank Member States according to: first, the strictness or flexibility with which they apply Articles 4 and 5 of the TVWF Directive; and second, whether or not they place additional requirements on national broadcasters to promote European and independent production. These indices are given for each Member State in the table below.

The scoring method has been inspired by the method applied in The 2005 Study. However, it has been decided to adjust the method in certain areas, to provide a regime that reflects updated opinions on the importance of individual items, and (particularly for "Additional requirements") is easier to apply consistently. For further details about the scoring method, please refer to Appendix VII and Appendix VIII.

The scoring has been carried out according to our current understanding of the rules of each Member State. Therefore, changes in scores for the Member States that were included in the 2005 Study are due to a combination of the following factors:

- Adjustment of scoring method
- Changes in the Member State regulatory regime
- Revised understanding of the Member State regulatory regime.

Table 10: Index of Implementation modes

Member State	Application of Articles 4 and 5		Additional Requirements	
	Index	Implementation Mode	Index	Implementation Mode
Austria	5	Flexible	1	Low
Belgium	14	Prescriptive	2	Low
Bulgaria	13	Prescriptive	3	High
Cyprus	7	Flexible	2	Low
Czech Republic	9	Flexible	1	Low
Denmark	7	Flexible	1	Low
Estonia	16	Prescriptive	2	Low
Finland	14	Prescriptive	3	High
France	17	Prescriptive	6	High
Germany	9	Flexible	2	Low
Greece	13	Prescriptive	2	Low
Hungary	14	Prescriptive	2	Low
Iceland	6	Flexible	1	Low
Ireland	8	Flexible	1	Low
Italy	15	Prescriptive	4	High
Latvia	15	Prescriptive	1	Low
Lithuania	8	Flexible	1	Low
Luxembourg	10	Flexible	0	Low
Malta	10	Flexible	1	Low
Netherlands	13	Prescriptive	4	High
Norway	13	Prescriptive	2	Low
Poland	13	Prescriptive	4	High
Portugal	14	Prescriptive	3	High
Romania	13	Prescriptive	4	High
Slovakia	12	Prescriptive	2	Low
Slovenia	14	Prescriptive	1	Low
Spain	10	Flexible	3	High
Sweden	3	Flexible	4	High
United Kingdom	15	Prescriptive	5	High

The second column of the table contains a score that reflects how flexible or prescriptive Member States are in their application of Articles 4 and 5. The score for each Member State has been constructed using the information summarised in sections 5.2 and 5.3 above. For further details about how the scores are reached, please refer to Appendix VII, where a detailed breakdown of the scores can also be found.

Scores in the index range from three points (Sweden) as the Member State that has implemented Articles 4 and 5 of The Directive with greatest flexibility for broadcasters; and 17 points (France) as the Member State with the strictest application of The Directive. The theoretical maximum score is 20.

For the E17 countries, the scores for application of Articles 4 and 5 have only changed moderately since The 2005 Study. The Member States with the highest change in the score are Belgium, Denmark, the Netherlands, Norway and Portugal, which have all changed their scores by 3 points. The Netherlands and Norway were listed as "Flexible" in The 2005 Study, since they received a score of 10. Now, their implementation mode is indicated as "Prescriptive".

The changes for Norway and Portugal are exclusively due to changes in the legislation. Both countries have introduced a strict definition of an independent producer. At the time of the 2005 Study, neither country had any definition of an independent producer in their legislation.

For Belgium, the change in score is due to a combination of changes in legislation and adjustment of scoring. The changes in legislation, which altogether add 2 points to the score, concern the French Community removing the "where practicable" qualification from their legislation, the Flemish Community no longer having a definition of 'independent producer' in their legislation, and both communities now reporting access to all the measured forms of sanctions. The adjusted scoring, which adds 1 point to the score, is due to adjusted methodology for scoring monitoring and verification.¹⁵¹

For the Netherlands, the change in score is due to adjustment of scoring for definition of independent producer,¹⁵² monitoring¹⁵³ and sanctions.¹⁵⁴

For Denmark, the change in score is due to adjustment of scoring for the definition of majority proportion of European works and applicable criteria for independent productions.

The third column categorises each Member State as either flexible or prescriptive in its application of Articles 4 and 5, based on whether it has a score of above or below ten.

Column 4 of the table summarises the additional requirements in each Member State, referred to in section 5.3 above, to increase the quantity and enhance the quality of European and independent production. Scores range from zero to six, with a theoretical maximum score of seven. For

¹⁵¹ See Appendix VII (Chapter 19)

¹⁵² No changes have occurred, but additional criteria established in the regulatory authority's policy guidelines have now been included in the scoring.

¹⁵³ Due to adjusted scoring method

¹⁵⁴ Availability of warnings has been reported

further details about how the scores are reached, please refer to Appendix VIII, where a detailed breakdown of the scores can also be found. Compared with the 2005 study, the scoring methodology has been changed for "Measures to enhance the Quality of Productions", so a direct comparison cannot be made.

Column 5 categorises Member States according to whether they place few or many additional requirements on broadcasters. A score of between zero and two is categorised as low, a score of three or more is categorised as high.

For the E17, the scores for each Member State have changed by no more than one point since The 2005 Study.

Belgium and Norway were both listed as "High" in The 2005 Study, since they received a score of 3. Now, their implementation mode is indicated as "Low". These changes are exclusively due to the changed methodology for scoring of "Measures to enhance the Quality of Productions".¹⁵⁵ For further details about the new methodology, please refer to Appendix VIII.

¹⁵⁵ The adjustment of the scoring methodology has meant that when a Member State requires a specific percentage of broadcasts to be dedicated to works originally produced in a certain (national or minority) language, this is scored exclusively as an "Original Production Language" requirement, and dubbing or subtitling requirements are not included in the scoring at all.

For Belgium, quotas on works originally produced in a national language was counted twice in the scoring for the 2005 Study (as both a "language" and "origin of production" requirement), and therefore the adjusted methodology has led to a reduction in score by one point.

For Norway, the requirement on TV2 to broadcast at least 50% of programmes in the Norwegian language can be fulfilled by dubbing, and therefore it has not been counted as an "Original Production Language" in the present study, resulting in the reduction in score by one point.

Using these dimensions enables us to locate each Member State within a matrix that describes four implementation modes:

Table 11: Implementation modes

		Application of Directive	
		Flexible	Prescriptive
Additional Requirements	High	Spain Sweden	Bulgaria Finland France Italy Netherlands Poland Portugal Romania United Kingdom
	Low	Austria Cyprus Czech Republic Denmark Germany Iceland Ireland Lithuania Luxembourg Malta	Belgium Estonia Greece Hungary Latvia Norway Slovakia Slovenia

Member States in the bottom left-hand corner of the matrix are characterised as having a flexible approach to implementing Articles 4 and 5 of The Directive, and they do not apply substantial additional requirements on broadcasters. For instance, Austria has implemented Articles 4 and 5 flexibly – the regulator has no power to sanction broadcasters – and the only additional requirement is a film funding requirement on the public service broadcaster.

In the bottom right-hand corner, there are Member States that apply the TVWF Directive strictly, but do not place significant additional content production requirements on broadcasters. Luxembourg, for example, has implemented Articles 4 and 5 of the TVWF Directive strictly – it has powers to revoke a channel's licence where a broadcaster fails to meet the provisions of these Articles – but it places no additional requirements on broadcasters as regards to the content of qualifying programming or film funding. In Greece, the wording of the Directive is closely followed in national legislation, but the only content-based requirement relates to the use of the Greek language.

In the top left-hand corner are Member States that have adopted a flexible approach to the implementation of The Directive, but do place significant additional requirements on broadcasters. For instance, Sweden has implemented Articles 4 and 5 very flexibly - and has in fact obtained the lowest possible score - but broadcasters are required to broadcast a significant portion of programmes in Swedish, programmes with Swedish artists, and works by Swedish authors (with additional cultural and language requirements on the Public Service Broadcaster), and to contribute to the funding of Swedish film production.

In the top right-hand corner of the matrix we identify Member States that have adopted a strict implementation of Articles 4 and 5 of the TVWF Directive, and that also place significant additional requirements on broadcasters. For instance, France and Italy have adopted a strict approach to Articles 4 and 5, which include strict monitoring of compliance. The European works requirements also apply separately to peak hours, the independent productions requirements are based on total turnover, and broadcasters are additionally subject to film funding requirements.

6. On-Demand Audiovisual Services and European Works

6.1. Introduction

This chapter reviews the existing national legislative measures that have already been adopted by some Member States in respect of on-demand services, and that are in line with Article 3i of the Audiovisual Media Services Directive. Data for this section were obtained through questionnaires sent to the regulatory bodies in each Member State.

Article 3i was introduced by Directive 2007/65. This Directive was adopted on 19 December 2007 and must only be implemented by 19 December 2009. Thus we are at a very early stage in the process of implementing Article 3i into national legislation.

None of the Member States have currently adopted any specific measures for the implementation of Directive 2007/65, including Article 3i. This chapter outlines the existing national legislative measures that, although not adopted with the intention of implementing Article 3i, nevertheless in some way have a similar effect to / purport a similar objective as Article 3i. As very few Member States have reported any such measures, the findings for the Member States that have such measures are presented as a separate summary for each relevant Member State.

This chapter also contains a brief description of any preliminary discussion on the implementation of on-demand measures in the Member States, as reported by the national authorities.

6.2. Pre-Existing National Legislation

As of 1 January 2008, the majority of Member States have not adopted any national legislative measures that have any effect similar to Article 3i of the Audiovisual Media Services Directive.¹⁵⁶

Only the following Member States have reported to us that they have any current national legislation with an effect somewhat similar to Article 3i:¹⁵⁷

¹⁵⁶ The same applied when data was collected from national regulatory authorities (mainly in February and March 2008).

¹⁵⁷ In previous work on the study we included reference to legislation from Poland here as well that, from a translation available from the Polish Film Institute at the time of writing, indicated that on-demand services may be subject to the same

- Belgium (French Community)
- France

It should also be noted that Italy has adopted a provision authorising the regulator to implement Article 3i by issuing secondary legislation. However, the on-demand services will only be subject to any obligations in this regard when the secondary legislation has been issued and entered into force. Since such secondary legislation has not yet been issued, it should not be viewed as pre-existing national legislation, but rather as a preliminary step towards national implementation of Article 3i. Therefore, the details on the relevant provision can be found in section 6.3.

In the following section, these measures are described separately for each relevant Member State.

6.2.1. Belgium (French Community)

The 2003 legislation of the French Community of Belgium¹⁵⁸ has been based on a principle of technological neutrality, without any distinction between distribution platforms. As stated in Article 2 of the Decree, it covers all broadcasting activities and all service providers under the jurisdiction of the French Community. Therefore, the regulator has considered non-linear television services subject to the same obligations as other television broadcasting services. By implication, the on-demand services must respect the same rules as television broadcasters regarding European works, independent productions, programmes in the French language and spending on audiovisual production.

In a 2007 ruling,¹⁵⁹ the regulator found that these obligations had not been fulfilled by the on-demand service *A la demande*, operated by Skynet iMotion Activitites (SiA), a company in the Belgacom group. This service was the only true non-linear service under the jurisdiction of the French Community,¹⁶⁰ and had originally been licensed according to the general rules for television broadcasting.

In respect to European works and independent productions, the regulator found that the operator had not fulfilled his obligation to transmit information

mandatory film fund contributions as other media services. However at the workshop and in subsequent discussion, the legal experts from the Office of the National Broadcasting Council has made clear to the consultants that they do not consider this legislation as applying to non-linear services, and have thus requested that the reference to Poland not be included in the Final Study Report.

¹⁵⁸ Broadcasting Decree of 27 February 2003 (as amended).

¹⁵⁹ www.csa.be/documents/show/689

¹⁶⁰ Two Near Video On Demand services were also in operation (one of them provided by SiA). In the context of the Directive, these are considered to be linear services (see Directive 2007/65, recital 20).

on the achieved proportions. The provider stated that it was not in possession of the information, but was examining the technical possibilities for being able to provide the information. According to the regulator, nothing new has happened in the case since the regulator made its ruling in 2007.

The ruling did not mention how the achieved proportions of European works and independent productions should be calculated in respect of an on-demand service (since the service provider had submitted no statistical information at all, it was not necessary to consider this specifically in the ruling). However, it is our understanding that according to the preliminary opinion of the regulator, the proportions should be calculated as the proportion of the total offering to the public (share of titles in the catalogue) in the sample weeks established by the regulator.

It should be noted that in 2007, a specific definition of non-linear services was inserted in the legislation (which is in line with the definition in Article 1(g) of Directive 2007/65).¹⁶¹ However, this has not been connected with any amendments of the obligations of television broadcasters.

6.2.2. France

France collects a 2% tax from Video-on-Demand service providers. The tax is calculated on the fees paid by consumers (exclusive of VAT).¹⁶²

The tax was the only measure effectively applied to on-demand services as of the end of 2007. However, two other issues deserve mention:

Under the French legislation, the regulatory authority CSA has been authorized to issue "catalogue quotas" that would apply to on-demand services,¹⁶³ but this authorisation has never been used by the CSA.

A voluntary inter-professional agreement on cinema-on-demand (offering of cinematographic works through on-demand audiovisual media services) was concluded on 20 December 2005 between the French government, movie industry operators and Internet access providers. This « Protocole d'accord interprofessionnel sur le cinéma à la demande » was mainly conceived as a means for promoting legal on-line circulation of creative works. Under the agreement, among other requirements, the signatories were required to uphold investment quotas for EU and French-originated cinematographic works. VOD operators with a turnover less than €1.5 million were required to invest 3% of revenue into European film, while operators with a turnover between €1.5 million and €3 million should invest 5% of revenue in European film, of which 3.5% should be allocated to French films. If a VOD operator

¹⁶¹ Broadcasting Decree of 27 February 2003 (as amended), Article 1(45).

¹⁶² Code General des Impôts (the general tax code), Article 302 bis KE.

¹⁶³ Law no. 96-299 of 10 April 1996, Article 5.

recorded revenues of more than €5 million, the proportion of revenue going to European and French films increased incrementally to a maximum of 10% and 7% respectively.

Since the above agreement was made for a period of one year and expired on 20 December 2006 without being renewed, the obligations mentioned above no longer apply. Eventually, the obligations will be replaced by the measures implementing Article 3i of the Directive (see also section 6.3).

6.3. Implementation of Directive 2007/65 and Pending National Legislation

This section describes the status of implementation of Directive 2007/65, at the time when replies were received from the national regulators.¹⁶⁴

None of the Member States have completed the implementation of Article 3i of the new AVMS Directive as of 1 January 2008.¹⁶⁵ However, Italy has adopted a provision that entered into force on 1 January 2008,¹⁶⁶ stating that:

“The electronic communications operators providing on-demand services will contribute, gradually and according to the conditions of the market, to the promotion and the funding of European works, dedicating to them a part of their income from audiovisual content offered to the public for a charge, regardless the means of transmission. The criteria and means of this contribution will be established by AGCOM within 6 months from the entry into force of this provision.”

In other words, the Italian regulator has been authorised to issue secondary legislation on the issue, setting requirements for on-demand providers' financial contributions to the promotion of European works (one of the possible means envisioned by Article 3i). As of the beginning of July 2008, secondary legislation had not yet been issued, and the on-demand services are therefore not yet subject to any obligations in this regard (see also section 6.2).

Most Member States have indicated in their reply to our questionnaire that implementation is expected to be carried out during 2009, or that the expected time of implementation is still unknown.

Otherwise, only Belgium (Flemish Community), Czech Republic, France and Latvia have indicated that implementation is likely to take place during 2008. Additionally, Cyprus and Hungary have indicated that digital platforms are not yet captured by the current legislation, but that the national legislation is under review and will be amended soon.

In the United Kingdom, one of the options being considered for the implementation is to apply a co-regulatory regime, i.e. self-regulation supported with a statutory back-stop (a legal means of State intervention if

¹⁶⁴ February to March 2008.

¹⁶⁵ The same applied when data was collected from national regulatory authorities (mainly in February and March 2008).

¹⁶⁶ Broadcasting Code (legislative decree no. 177 of 31 July 2005, as amended by Law 244/2007), Article 44.

the objectives of the regime are not met¹⁶⁷). A public consultation is likely to be launched mid-2008. At the moment, a similar approach is applied to the self-regulatory body "The Association for Television On-Demand" (ATVOD), which currently has 7 members. Membership is entirely voluntary, but in the absence of self-regulation, the Secretary of State would be authorised to issue centralised regulation. The current Code of Practice and Guidance Notes issued by ATVOD do not contain any measures that promote the production of and access to European works.

The national authorities have given references to a very limited amount of discussion relevant to the promotion of European works on on-demand services. From these, it appears that the discussions in the Member States so far have mainly been focused on providing input for the EU legislative process and assessing the likely impact of amending the TVWF Directive (before the final text of the AVMS Directive was known). For example, references were made to the replies made to the Commission-issued papers published prior to the Liverpool Conference of 2005.

Discussions on how to actually implement the AVMS Directive appear to be in the very early stages. Some Member States have established working groups to support the implementation process, but according to the national authorities, none of these working groups have yet held any discussions that are relevant to European works in the context of on-demand audiovisual services.

France and the Netherlands have carried out public consultations regarding the implementation of Directive 2007/65, and some other Member States expect to initiate public consultations in mid-2008.¹⁶⁸

France has so far carried out two public consultations. The first one was held from February to March 2008 pertaining to the implementation of Directive 2007/65 as such, including potential measures for the implementation of Article 3i. The second one was held from June to July 2008 pertaining to legal evolutions of audiovisual commercial communication issues. The subject matter of the second consultation was not directly relevant to Article 3i, but information of interest has been acquired from the first consultation.

In the first public consultation in France, several participants indicated that measures implementing Article 3i should be applied only to the parties with editorial responsibility for the on-demand services, and not to parties who just carry or sell access to these services. It appeared that the type of measure preferred by service providers and some professional associations would be a financial contribution, possibly financed by a relaxation of the restrictions on advertising breaks. Some proposed to combine this contribution with prominence requirements, and possibly even with catalogue quotas. Some participants advocated exclusively for prominence requirements. Other participants, particularly internet service providers,

¹⁶⁷ As envisioned by new Article 3(7) AVMS and Recital 36 of Directive 2007/65.

¹⁶⁸ This includes the United Kingdom and the French Community in Belgium.

argued against any form of regulation in the area. It was also mentioned that catch-up television needed to be dealt with specifically. Based on the results of these wide consultations, a draft bill is to be presented by the French government in October, submitted to Parliament by November, and adopted as law before the end of the year so as to enter into force in January 2009.

In the public consultation in the Netherlands, several parties indicated that they found it very difficult to understand the AVMS Directive's distinction between linear and non-linear services, particularly when the same provider offered both linear and non-linear services. Several providers of new services stated that they believed themselves to fall outside the Directive's definition of non-linear services.

In the French Community of Belgium, the results of a working group advising on the implementation of Directive 2007/65 were published on 17 June 2008.¹⁶⁹ The group suggested that a non-linear regime for European works and independent productions, similar to the linear regime, would be appropriate, provided that the higher degree of flexibility allowed by the AVMS Directive for non-linear services was reflected in the regime. For this purpose, the new regime could establish alternative targets for investment and prominence, leaving the choice between the targets to the individual service providers - assuming however that the established targets could be effectively monitored and assessed. It was suggested by the group that the existing additional French language requirements for linear services should also apply to non-linear services. The linear requirements for contribution to the production of audiovisual programming, which employ a progressive scale depending on the turnover of the broadcaster, could also be applied to non-linear services, and the definition of audiovisual productions to be supported through these contributions could be extended to include content exclusively for non-linear use, such as short programmes for mobile TV.

Catch-up TV services offer programmes that have already been distributed in linear services and were subject to the broadcasting legislation, including the requirements on European works. At the workshop in November 2008, it was emphasised that it was necessary to consider whether catch-up services should be regulated twice, i.e. whether they should always fulfill the European works requirements for non-linear services when the original broadcast was already subject to the European works requirements for linear services. Additionally, the working group paper mentioned that there would be a special need for defining the distribution of responsibilities in the cases where the non-linear service was offered by a party other than the related linear service.

Some national authorities indicated an assumption that on-demand service providers would not welcome additional requirements.

¹⁶⁹ http://www.csa.be/system/document/nom/826/CAV_20080617_decret_transposition_SMA.pdf

7. The European TV Supply Chain and Audiovisual Content Creation

This chapter provides an analysis and description of the current market structure and revenue of the EU Television sector – encompassing both broadcasting and production - and the flow of funds through the European TV supply chain. It looks at both traditional linear TV and the non-linear ("on-demand") services that are becoming widespread. It uses a combination of well-known industry sources, such as the *OBS*, *Screen Digest*, *Kagan*, the *EBU* and the *TVI Yearbook*; plus access to company accounts and investment bank reports; studies by key national regulators such as Ofcom and the CSA; and some of the bespoke channel survey and interview programme data covered in Chapter 9.¹⁷⁰ These are combined to create as accurate a picture as possible of the whole sector and its three main component parts – content creation, channel management and TV delivery. Where individual sources are used, these are detailed in the respective charts. The chapter updates a similar study completed for the EC in 2005 ("the 2005 study")¹⁷¹ and regularly makes reference to the countries included in that previous study as E17¹⁷² in order to show comparable growth rates and highlight any changes in market structure. The study also makes reference to the E30, which includes the 13 countries that were not included in the 2005 study¹⁷³. The majority of on-demand services reviewed were not available at the time of the 2005 study and hence comparisons are not meaningful. Wherever possible we have looked at the situation in 2007, however data needed to answer some questions is only currently available for 2006. In these cases we have used the most up-to-date data available and have clearly made reference that 2006 is being looked at.

¹⁷⁰ A bibliography can be found in Chapter 22.

¹⁷¹ Study on the impact of measures concerning the promotion of the distribution and production of television programs provided for under Art 25 (a) of the Directive on Television without Frontiers, 24 May 2005.

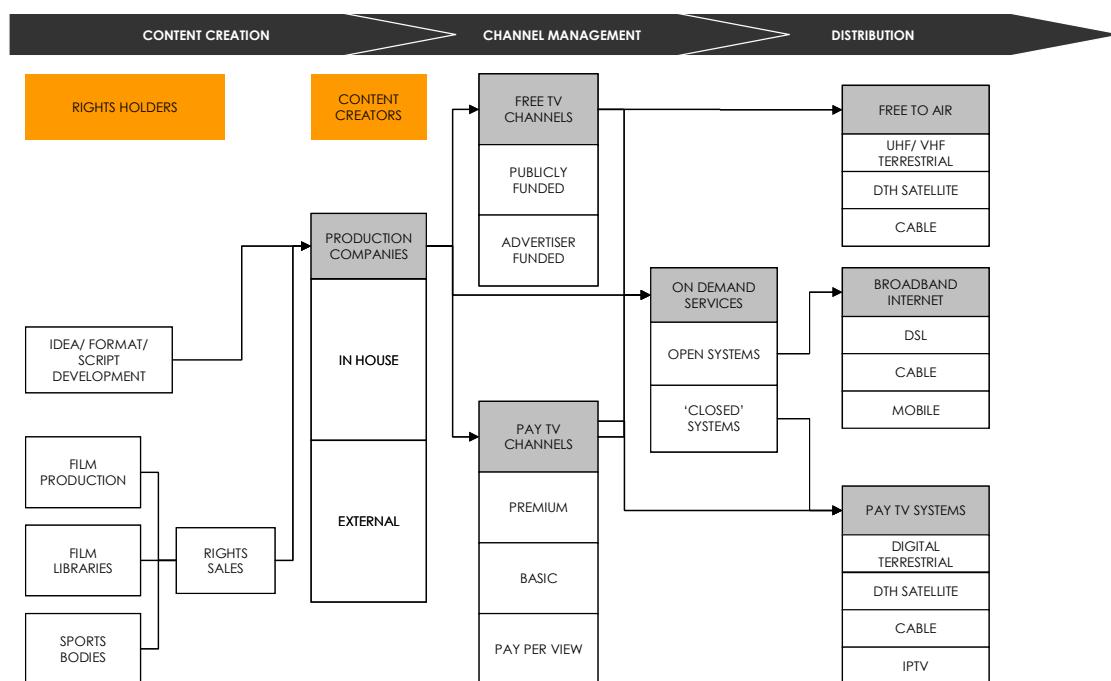
¹⁷² E17 countries include: UK, Germany, France, Italy, Spain, Portugal, Denmark, Finland, Norway, Iceland, Ireland, The Netherlands, Belgium, Luxembourg, Austria, Greece and Sweden.

¹⁷³ E30 countries include: E17 + Latvia, Lithuania, Liechtenstein, Bulgaria, Poland, Slovenia, Slovakia, Czech Republic, Malta, Cyprus, Estonia, Romania and Hungary.

7.1. Market Structure and the Supply Chain Framework

The supply of TV services to viewers is made up of three broad and interrelated functions (See Figure 1). Firstly, the creation of new content, such as news, documentaries, gameshows, dramas and entertainment programmes. Second is the management of individual TV broadcast channels (made up of a mixture of: commissions of new programmes; acquired rights to ready-made feature films or existing libraries of ready-made TV programmes; and various promotional and interstitial material, such as programme trails, station idents and advertising breaks), plus on-demand services, which package content for access at the consumer's convenience. Third is, the distribution of a channel, or group of channels, to viewing households by either terrestrial, satellite, cable or internet delivery systems.

Figure 1: European value chain by function¹⁷⁴



Sources of value added along the supply chain vary considerably. Distribution may be simply a technical transmission service, where the viewer receives TV

¹⁷⁴ 'Publicly funded' refers to broadcasters that receive government finance whether in the form of grants or a licence fee (although it is pertinent to note that the majority of these broadcasters supplement public funding with some level of advertising). Also, please note that in Figure 1, in the 'Distribution' column under 'Free-to-Air', 'UHF/VHF Terrestrial' covers both analogue and digital terrestrial, as both are distributed over ultra-high frequencies.

signals free of charge in unencrypted form, while pay-TV distribution can involve the packaging, retailing and marketing of a group of TV channels in encrypted form, where monthly charges are made for reception, with all the associated subscriber management and billing functions provided.

Similarly, channel management can involve the large scale commissioning of new programming and the acquisition of ready-made programming from a large number of sources, the heavy promotion and marketing of the channel to viewers, and significant investment in a station's brand image through TV and other media promotions. Alternatively, it can involve the use of a limited number of already available programme libraries or the commissioning of a single continuous studio-based programme strand.

The management of on-demand services varies yet further, from aggregating the on-demand services (particularly "catch-up") offered by broadcasters to negotiating separate rights deals with movie studios, content producers and rights holders and packaging them into a service for users.

Original content creation can range from a continuous studio-based programme with a handful of contributors, to a full action drama made on multiple locations, with a large cast and crew and significant investment in script development.

7.1.1. TV content creation and related rights trading

Creating new TV content usually involves a four-stage process. Firstly, the idea generation stage where the outline programme concept is developed; then initial planning and development (known as pre-production), the recording of the programmes (production), and lastly the editing of the material into its final form (post production).

Once made, an original commissioned programme can be shown a number of times on TV – through both the initial broadcaster (using both the first transmission and repeats), and other broadcasters purchasing rights for broadcast in later "windows." It can also be shown on various on-demand services; initially in broadcasters' own "catch-up" services and later as part of on-demand libraries. Lastly, it can be exploited on DVD/VHS. In general – although not always – those programmes with the most effort made in creation are the ones that can be exploited again and again on TV channels, on-demand services or video. Programmes with high initial production effort (or values) that can be reused are sometimes termed "stock" programmes – and are normally specifically commissioned and held for broadcast at a particular time in the schedule. Programmes that use less initial production effort and which are less repeatable are sometimes termed "flow" programmes – these programmes are made as part of long-running slots in the schedule. Drama, narrative comedy and well-researched and filmed documentaries are good examples of stock programmes, while game shows, chat shows and quizzes are good examples of flow programmes.

Some programme types or genres have elements of both stock and flow programmes. For instance, a reality show often has high production values

but limited repeat potential. However, the idea and structure of the programme can be exploited again – perhaps for a subsequent series or a new version in another country – although the programme itself has limited repeat value. This re-use of programme concepts, or formats, is now a significant part of the TV industry worldwide. Original commissions (new programming) and local programming – a programme that uses familiar faces, or cultural references - typically attract the largest audiences. However, commissioning new programming is high risk – only a small minority of shows go on to a second series. Using a format that has proven successful elsewhere, yet which can be made and adapted to suit local tastes, significantly reduces the risk associated with commissioning.

In general, typical stock programmes cost more to originate than flow programmes. New drama series and mini series, situation or sketch comedy shows and original documentaries (where a large amount of original material, rather than archive material is used) can cost between €50K and €2 million per hour (and occasionally well in excess of this). In contrast, typical flow programmes such as quiz shows, chat shows or even compilation factual programmes, cost less than €200K per hour even for flagship shows, and can cost as little as €1K to €10K an hour if produced in volume.

Added value in TV programme making comes from meeting the demands of the viewers and subscribers targeted by the channel owners. Programmes that appeal to more than one channel owner will strengthen the producer's negotiating position. Risks in programme making are high, with perhaps one in eight dramas or comedies becoming a long running success. In general, risks for stock programmes are higher than for flow programmes.

Risks are reduced for the producer when the commissioning channel pays a fixed fee that includes a profit margin, but in return takes the upside should the programme become a success. The channel enjoys unlimited rights to repeat the programme at low (or no) cost and the rights to sell the programme to other channels in the home market and internationally.

Rights trading is done either by a subsidiary of the commissioning broadcaster – if they retain the rights – or an independent rights distribution company (which may be linked to the independent producer), if the independent has chosen to own the rights but accept a smaller upfront fee from the broadcaster. Rights trading companies often have to pre-invest in a new programme in return for the rights. This helps compensate for the lower fees from commissioning broadcasters when they do not retain all rights.

A typical programme contains a large number of rights including, but not limited to:

- the rights to the first few transmissions;
- the rights to subsequent repeats on specific channels for a nominated period of time;
- the rights to sell on to other broadcasters in the same national market (often with a hold-back to allow the original broadcaster a unique period of use);

- the rights to use the programme on an on-demand service – potentially in a number of windows;
- the rights to sell the programme on video;
- the rights to sell the programme internationally;
- the rights to exploit the format of the programme (its basic structure and script) in the domestic market and overseas;
- the rights to exploit the programme brand and characters in merchandising and licensing deals;
- the rights to use the programme name and excerpts for internet and mobile clip services.

7.1.2. Channel management

Channel management involves the commissioning of new programming, either from external producers or in-house departments, the acquisition of ready-made TV programmes and feature films, the commissioning of station idents and promotions and, in the case of commercially funded channels, access to relevant advertising tapes. The channel is then run from a play-out centre that mixes together all the different forms of output – commissions, acquisitions, promotions and adverts – and then transmits a broadcast stream to the relevant delivery platform or platforms.

Added value is generated in channel management in three main ways: first, commissioning and acquiring the best mix of programmes for its target audience, and then scheduling these programmes optimally; second, creating a brand image for the channel, or selecting a specific niche audience that creates viewer loyalty to the channel over and above the appeal of the individual programmes; and third, gaining access to relevant distribution systems – especially unique or privileged access to distribution.

7.1.3. On-demand services

On-Demand services differ from normal linear TV broadcasts in that they are accessed by individual consumers at a time of their choosing, and on a programme-by-programme basis. They are thus described as “non-linear” (there is no broadcast schedule to follow). There are two main types of on-demand service: the “closed systems”, generally operated by cable and IPTV service providers, where an on-demand offering is an integral part of the consumer proposition – but is only available to that system’s subscribers; and “open systems”, generally operated by broadcasters, other rights holders and content aggregators, which are available over the internet and are thus available to anyone.

Currently there are very limited robust data available covering on-demand services due to the relative immaturity of the market. A number of the bigger service providers are still trialling services and debating the optimum business model to employ. Examples of business models include (although are not limited to): free services, typically catch-up services funded by public monies; pay-per-view (PPV) services whereby a viewer can pick from a selection of programming/movies from a library for a nominal fee (between €1 and €5); add-on subscription, where the user can add on access to a selection of on-demand programming (typically sport, music or movies) to their current pay package; integrated subscription on-demand, where the on-demand service is used to drive subscribers to a premium pay package, increase retention rates and reduce churn; and an ad-funded model, whereby pre-roll (or other types of sponsorship/advertising) are viewed by the user prior to consumption of the programming. A number of these models are discussed in more detail in the four case studies contained in section 7.2.3.

7.1.4. Distribution

There are two distinct value-added activities in distribution. The first is simply the successful delivery of TV signals to the viewer, of a sufficient quality and standard and with minimal interruption. In the case of pay TV this also includes the prevention of unauthorised reception, which requires an effective encryption and authorisation system.

On-demand services also require distribution and, in the case of “open” services, this is over the public internet and the user’s broadband connection. “Closed” services utilise the digital cable or IPTV networks owned by the service providers.

The second area of value-added only applies when a delivery system is also the retailer of a combination of channels or packages. Added value is being created by the mix of channels, the branding and image of the channel package, the pricing of the packages and customer support services such as billing and call centres. These services are often collectively referred to as aggregation.

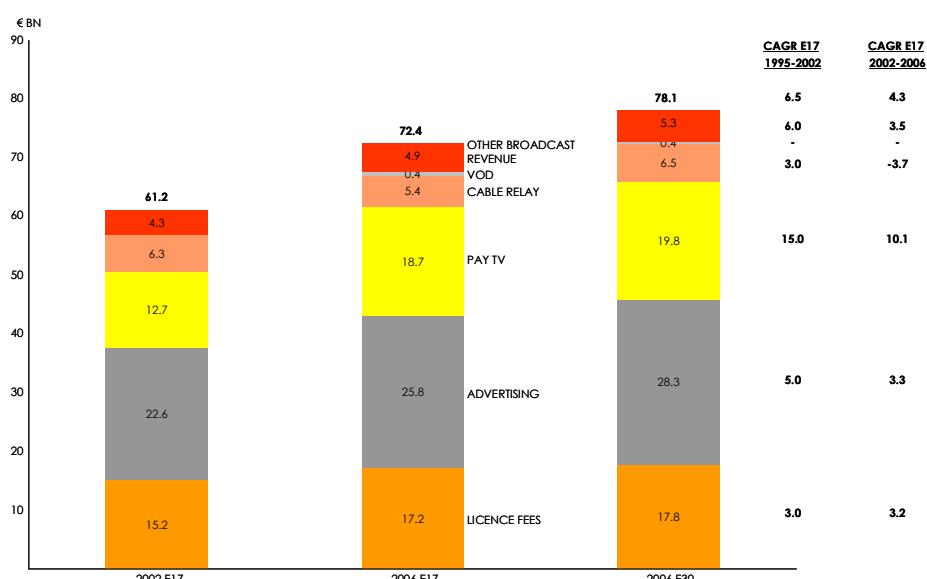
While free TV distribution usually only involves the first of these value added activities, pay TV often involves both, which makes it a larger and potentially riskier activity – especially where pay TV providers decide to discount the costs of the receiver box technology in order to drive take-up, hoping to recoup the losses from future subscriptions.

7.2. Current Market Structure and Flow of Funds Along the Supply Chain

7.2.1. Industry income

TV industry revenue in E30 totalled just over €78 billion in 2006 – equivalent to 0.66% of the States' combined GDP. Over 93% of this revenue – €72.8 billion – came from three main sources: licence fees, advertising, and consumer payments. The remaining €5.3 billion¹⁷⁵ revenue came from a mixture of ready-made programme sales by broadcasters, commercial exploitation such as merchandising and DVDs, interactive services and the hire of technical facilities to non-broadcast users (see Figure 2).

Figure 2: TV revenue by source in Europe (2002 & 2006)¹⁷⁶



SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, PWC, KAGAN, NATIONAL REGULATORS, COMPANY REPORTS, SCREEN DIGEST, O&O MODELS, O&O ANALYSIS, BROKER REPORTS, PRESS, INTERVIEWS

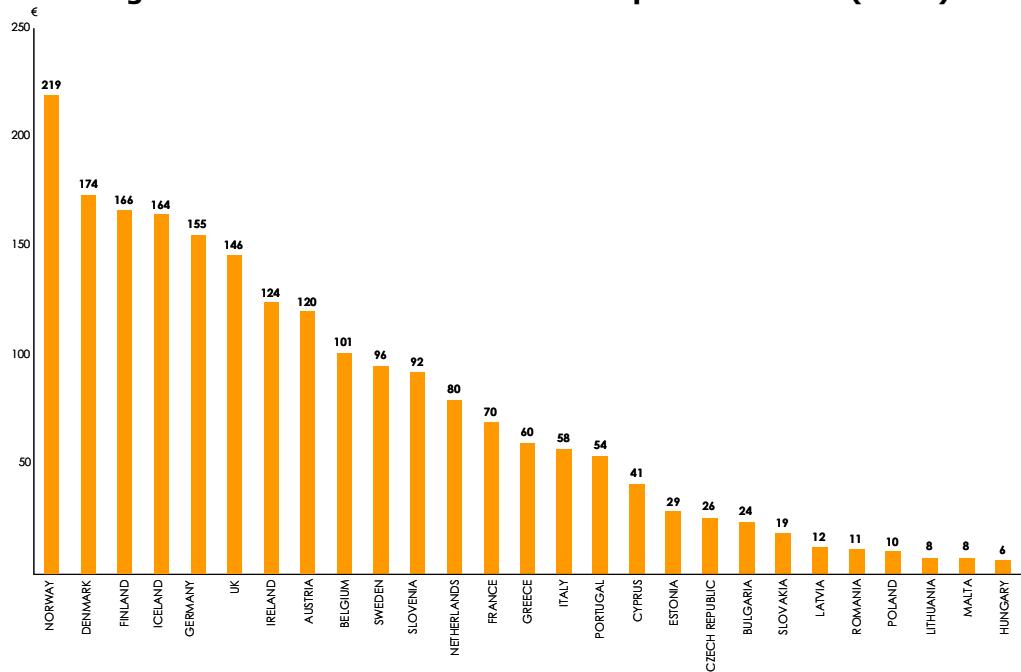
Licence fees/grants¹⁷⁷ in aid to channels were worth €17.8 billion in 2006 and saw above inflationary growth for the E17 Member States of over 3.0%, helped by general growth in the number of households (licence fees tend to be charged per household), and the occasional one-off rise mandated by governments. Generally, all this revenue – other than collection costs – goes direct to relevant broadcasters.

¹⁷⁵ Secondary revenues (revenues from sources other than licence fees/grants, advertising and subscription payments) in 2006 only include broadcasters' TV activities (i.e. excludes all revenue associated with publishing and non-TV related online activity).

¹⁷⁶ CAGR: Compound Annual Growth Rate.

¹⁷⁷ These have been adjusted to account for any radio activities of the public service broadcasters i.e. radio spend has been excluded.

Figure 3: Average amount of licence fee collected per household (2006)¹⁷⁸



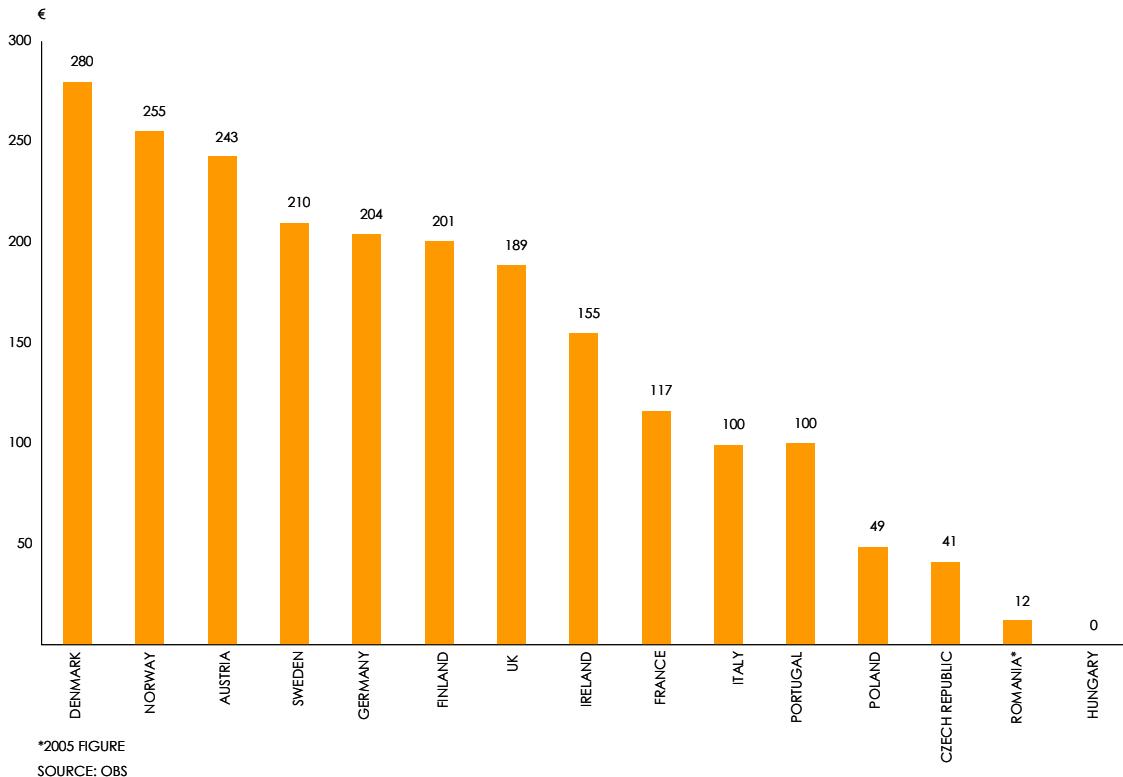
SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, PWC, KAGAN, NATIONAL REGULATORS, COMPANY REPORTS, SCREEN DIGEST, O&O MODELS, O&O ANALYSIS, BROKER REPORTS, PRESS, INTERVIEWS

The amount of TV licence fee collected in a country divided by the number of households (see Figure 3 above) was highest in Norway (€219) and Denmark (€174). As

Figure 4 illustrates, however, for a number of reasons the amount collected can deviate significantly from the actual amount each household is expected to pay. The fact that a number of households do not comply with their legal requirement to pay a national licence fee is among these reasons.

¹⁷⁸ This is calculated by dividing the total collected licence fee attributable to TV services in a particular Member State and dividing it by the number of TV households in that area.

Figure 4: Actual licence fee prices for selected states (2006)



Advertising and associated sponsorship revenues totalled €28.3 billion in 2006 (after advertising agency commission). Growth in the advertising market for the E17 Member States previously studied has fallen from 5% to 3% in the past four years, while growth in the majority of the new member states and EEA states has been rapid. Advertising and sponsorship revenue is sold directly by broadcasters.

Consumer payments totalled €26.2 billion in 2006 and fall into two very distinct categories. First, small monthly payments of €5 to €8 a month for access to low capacity cable relay services – usually 20 to 40 channels – that were built to supplement the terrestrial over-the-air distribution of the main channels in certain countries such as Germany and the Netherlands, and which have subsequently been used to deliver a small number of extra, more specialist channels. Total revenue from this source was €6.5 billion in 2006. All this revenue flows to the delivery system itself and is not shared with broadcasters¹⁷⁹. The second category features larger monthly payments for subscription pay-TV services – either packages of specialist channels or specific high-value premium sports and movie channels. Revenue from subscription pay-TV totalled €19.8 billion in 2006.

¹⁷⁹ In fact, in some limited instances, broadcasters pay cable relay systems for access.

The dynamics of growth in the pay-TV market have changed significantly in the last four years. This is largely due to three main changes in the pay-TV market: more competition between cable, satellite and telecom providers pushing down the price of pay-TV packages; a major shift towards digital television in all major western markets, with a number of subscribers moving from traditional cable relay to digital services via cable, satellite or DSL; traditional platform operators seeking new revenue streams through the development of bundling services (so called quadruple/triple-play packages).

Another shift in pay TV (and to some extent free TV) has been the proliferation of on-demand services across Europe, however, the majority of these are still in the development stage and generated revenues are very low. We estimate revenues from on-demand services in 2006 were €400m, under 0.5% of total TV revenue (see Figure 15).

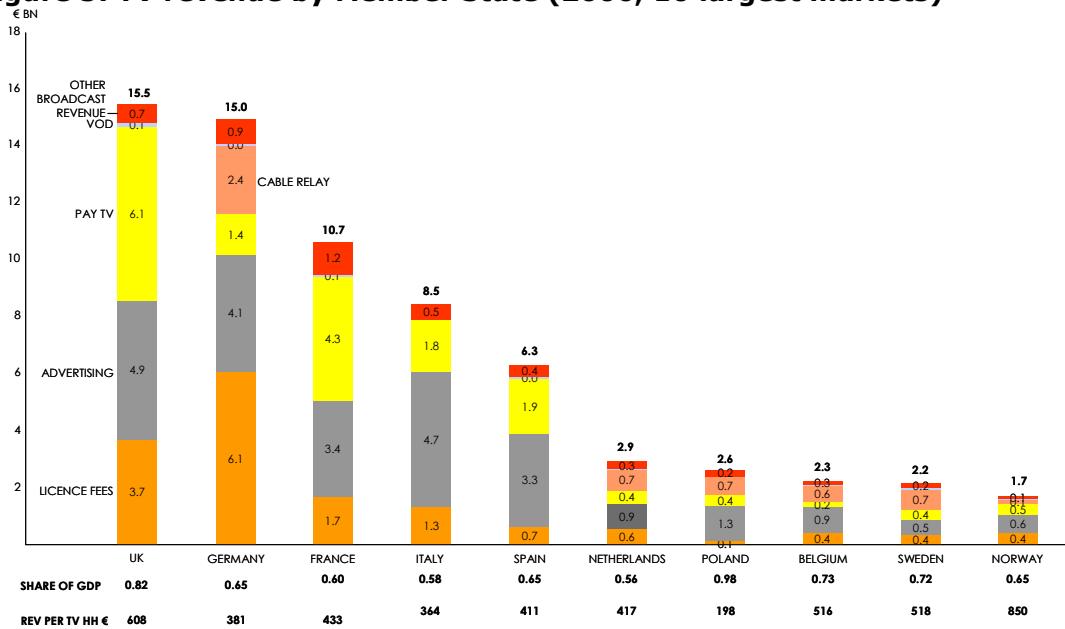
Taking into account growth in the E17 Member States only, highlights a decline in cable relay revenues as subscribers shift to digital cable pay services (often for very little extra cost¹⁸⁰). In the new Member States, these cable relay systems remain the principal distribution system, accounting for over €1.0bn (50%) of the pay TV market. Over the next few years, as these smaller markets digitise, we anticipate a similar trend, with subscribers shifting away from cable relay to low cost digital pay services. Annual growth for other pay-TV subscriptions in the E17 Member States has fallen by 30% (from the 15% growth seen between 1995 and 2002) to 10.2% a year. With lower growth in TV-related ARPUs (Average Revenue per User), platform operators have been forced to diversify into telecoms, broadband delivery and other services in order to reduce churn and generate higher returns per customer.

Generally, revenue from pay TV is shared between the delivery systems and the broadcast channels. The operators pay the channels they consider key to their service a monthly subscription fee per household; the value of this can range from 1-2c for minor channels to over €1 for a top-rank channel.

While all Member States generate some level of income from all three main sources of revenue, the mix of revenue streams and total amounts of revenue vary considerably – a pattern of variation that can only partially be explained by variations in GDP. (See Figure 5– Figure 7).

¹⁸⁰ In some cases (e.g. The Netherlands) the cost of digital cable was reduced below that of analogue cable relay in order to encourage users to transfer to the new digital platform.

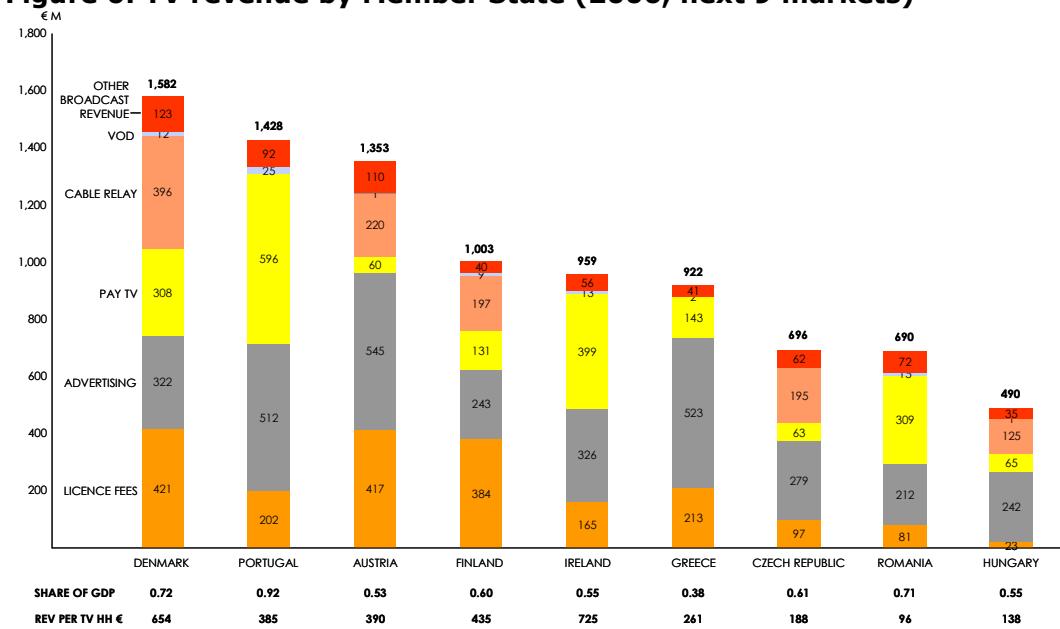
Figure 5: TV revenue by Member State (2006, 10 largest markets)



SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, PWC, KAGAN, NATIONAL REGULATORS, COMPANY REPORTS, SCREEN DIGEST, O&O MODELS, O&O ANALYSIS, BROKER REPORTS, PRESS, INTERVIEWS

The UK and Germany are by far the two largest TV markets in Europe; France and Italy – which have similar sized economies to that of the UK – are somewhat smaller. The UK and Italy have the most developed advertising markets among the larger nations, while France and the UK have the largest proportionate pay-TV markets. Public funding through licence fees is highest in Germany and the UK. TV revenue per household is highest in Norway and the UK due to their highly developed cable and satellite pay-TV markets.

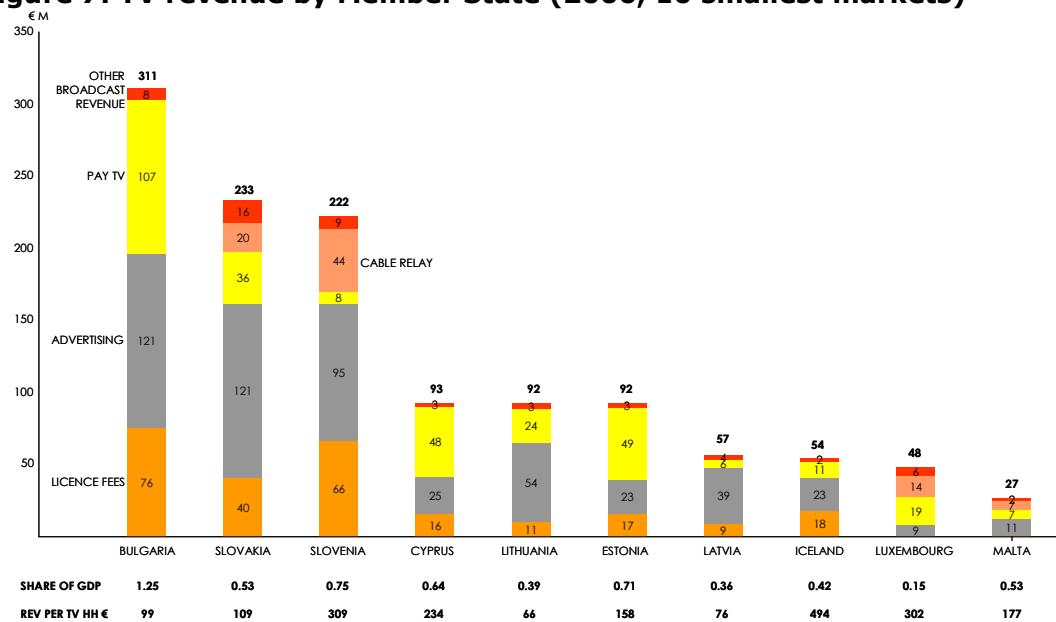
Figure 6: TV revenue by Member State (2006, next 9 markets)



SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, PWC, KAGAN, NATIONAL REGULATORS, COMPANY REPORTS, SCREEN DIGEST, O&O MODELS, O&O ANALYSIS, BROKER REPORTS, PRESS, INTERVIEWS

Among the next 9 largest markets (Figure 6), pay TV is most developed in Ireland, Portugal and Romania all of which enjoy pay TV penetration rates of over 50% (see Figure 10 and Figure 11). It is in these smaller markets that VoD revenues are proportionately highest, due to their developed pay-TV sectors. In Ireland there is already over 3% IPTV penetration and over 46% pay cable penetration, while in Romania over 50% of households have a pay cable TV service (see Figure 10 and Figure 12). Ireland also displays the highest revenue per TV household, at €725. In a number of the markets, cable relay revenues still contribute a significant amount to the overall TV market while advertising is most developed in Greece and Austria. Austria (along with Finland) also relies on high levels of public funding, with some of the highest licence fees in Europe (see Figure 3)

Figure 7: TV revenue by Member State (2006, 10 smallest markets)



SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, PWC, KAGAN, NATIONAL REGULATORS, COMPANY REPORTS, SCREEN DIGEST, O&O MODELS, O&O ANALYSIS, BROKER REPORTS, PRESS, INTERVIEWS

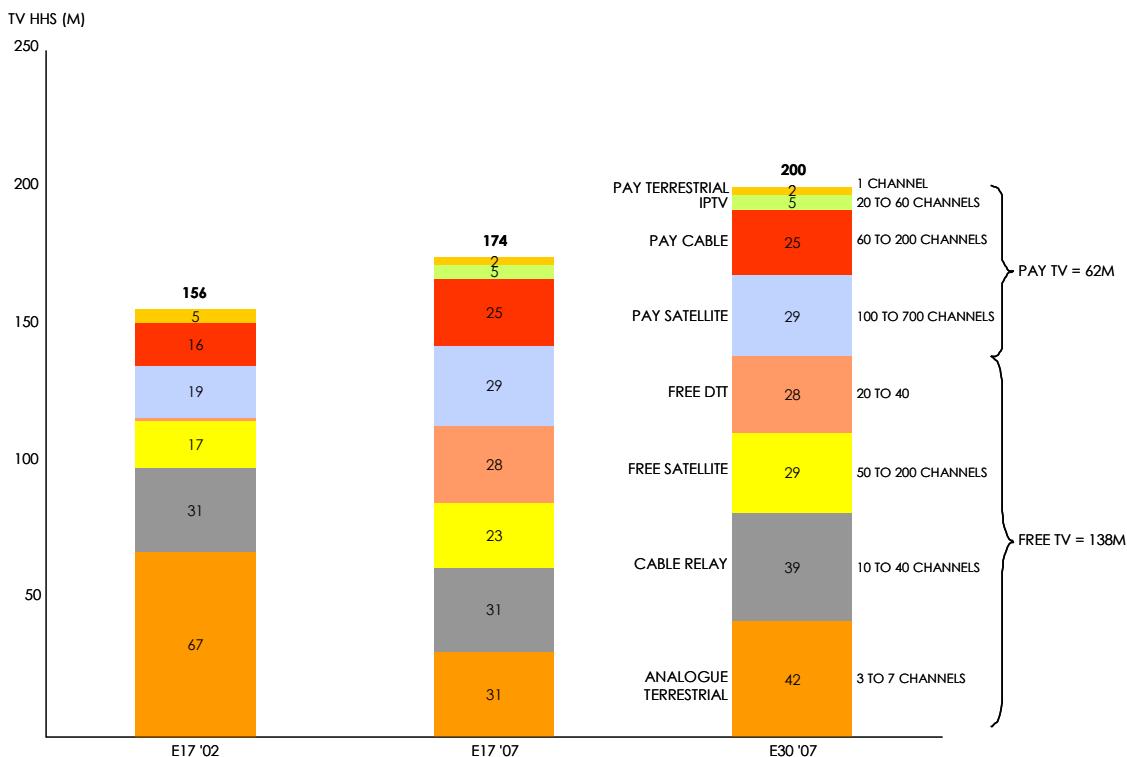
Figure 7 illustrates the 10 smallest markets in the study and illustrates significant variations in market structure: the licence fee in Bulgaria, Slovenia and Iceland contributes over 25% to the overall TV market; in Slovakia, Lithuania and Latvia, pay and network advertising accounts for over 50% of the total market; and in Cyprus and Estonia, the pay TV market accounts for over 50% of total TV revenue.

Overall, the TV sector in Bulgaria is the largest in proportion to GDP – at 1.25%, followed by Portugal, Poland and the UK. The lowest levels compared to GDP are to be found in Greece, Luxembourg and Lithuania. Among the largest nations, Italy has the smallest sized sector in proportion to GDP, at 0.58%.

7.2.2. TV distribution and delivery

TV across Europe is delivered to the home through a complex combination of different systems. Each system in turn varies in the degree to which it provides free delivery or extracts a monthly charge. Both these dimensions of delivery are dealt with in turn below (See Figure 8).

Figure 8: TV household by reception method in the European Union (2007)



SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, TBI, COMPANY REPORTS, SCREEN DIGEST, O&O ANALYSIS

The four main delivery systems are UHF/VHF terrestrial frequencies, direct-to-home satellite, cable, and IPTV services using telecom networks.

Cable systems in both France and the UK were built in the 1980s and 1990s, and tend to have capacity for several hundred digital channels simultaneously. Cable systems in Germany, Benelux, Scandinavia and in other Eastern markets were built earlier and often only have capacity to carry 20 to 40 analogue channels and a similar number of digital channels simultaneously. In many cases, regulation of these older cable relay systems severely restricts any reduction in the number of analogue services in order to introduce even a minimal number of new digital services. In the last few years there has been a drive to digitise these cable networks, with a number of operators offering viewers low cost digital TV packages in order to encourage switchover from traditional analogue cable relay to digital cable.

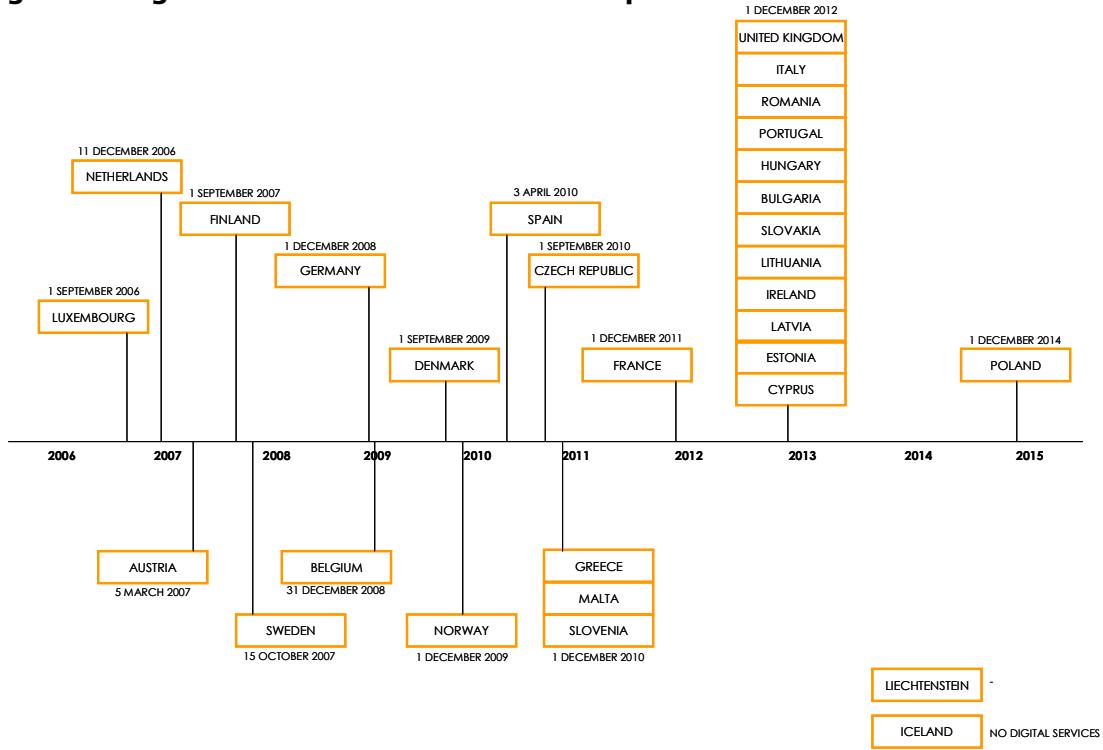
Complementing this drive to digital has been the emergence of a new broadcast delivery platform over DSL broadband services, known as IPTV. Due to the lack of cable infrastructure, IPTV was initially most popular in Italy, however, in the last few years a significant number of IPTV services have been launched across Europe and the platform now boasts over 5m households. In France particularly, approximately 2.5m households have embraced IPTV, drawn by the free set top boxes originally offered by broadband providers and the availability of new services such as PVR and

VoD. The widespread adoption of broadband services also allows open-system on demand services to reach consumers.

Direct-to-home satellite systems have existed in Europe since the late 1980s. Up to the late 1990s they were primarily analogue systems that, through a series of co-located satellites, could offer 50 to 80 channels targeted at individual national markets. The transfer to digital has increased this number to well over 600 channels for the main national markets. Although limited analogue satellite still remains in some markets (Germany and Austria), the switch to digital is rapid.

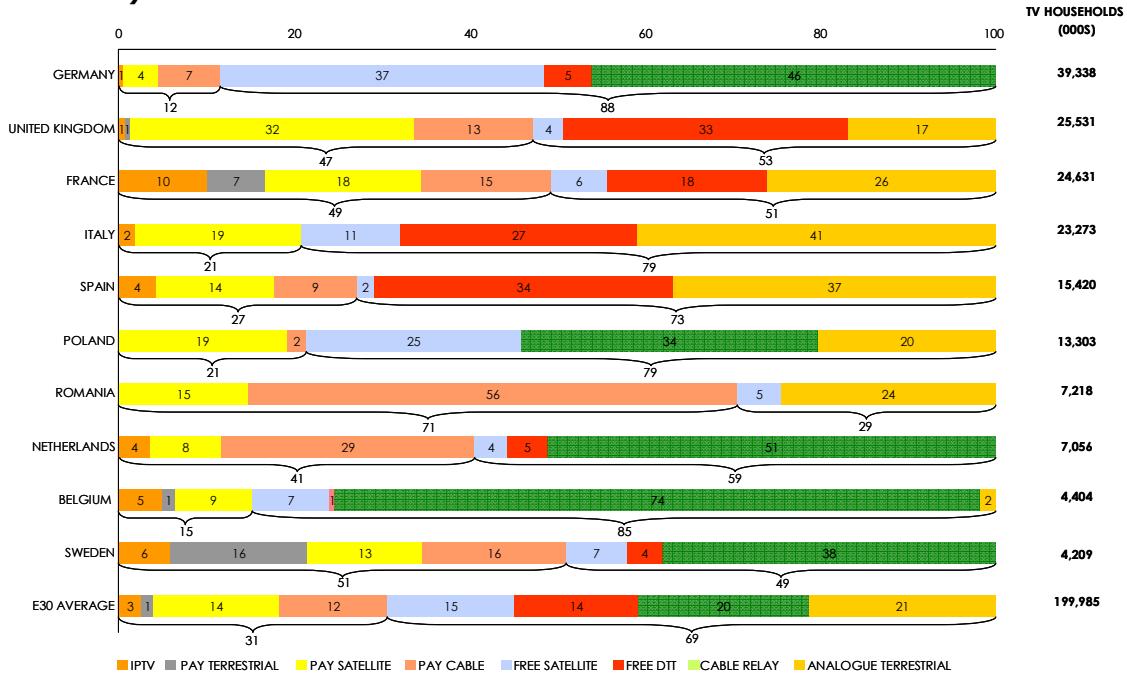
Analogue terrestrial transmission remains an important part of the broadcasting landscape across Europe, but all Member States now have firm plans to move to digital terrestrial television (DTT) transmission and to switch off the analogue signals by the target date of 2012 (see Figure 9). Many Member States are already a long way through this transition (see Figure 10– Figure 12).

Figure 9: Digital switchover timeline in Europe



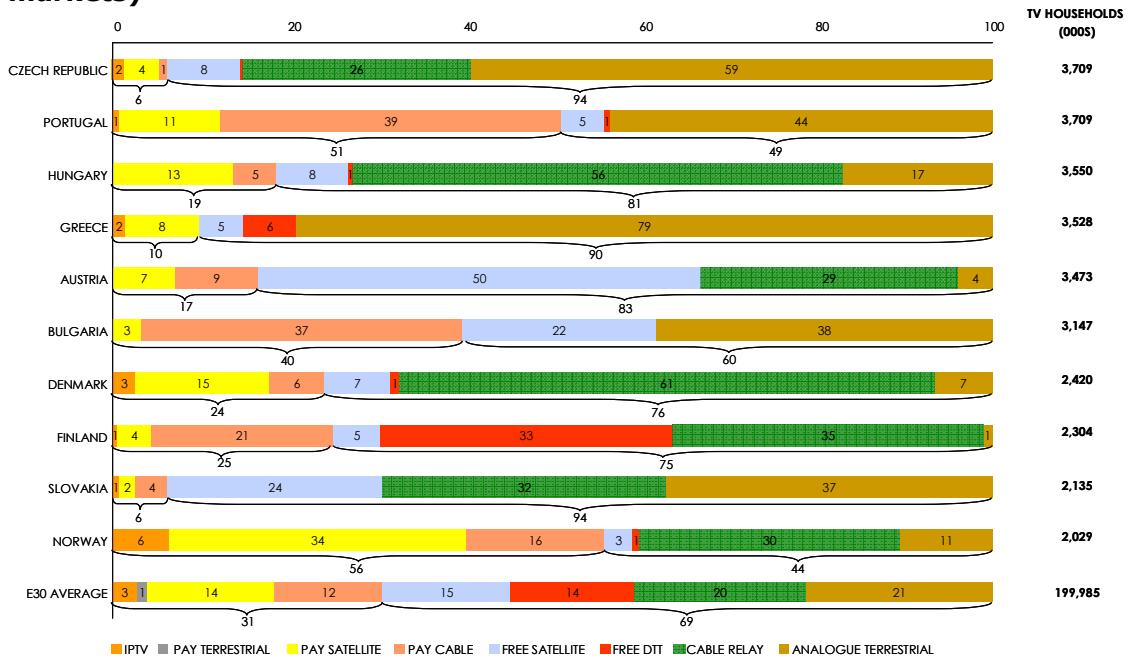
SOURCE: OBS, EBU, Local regulators, press releases

Figure 10: TV household by reception method by country (2007, 10 largest markets)



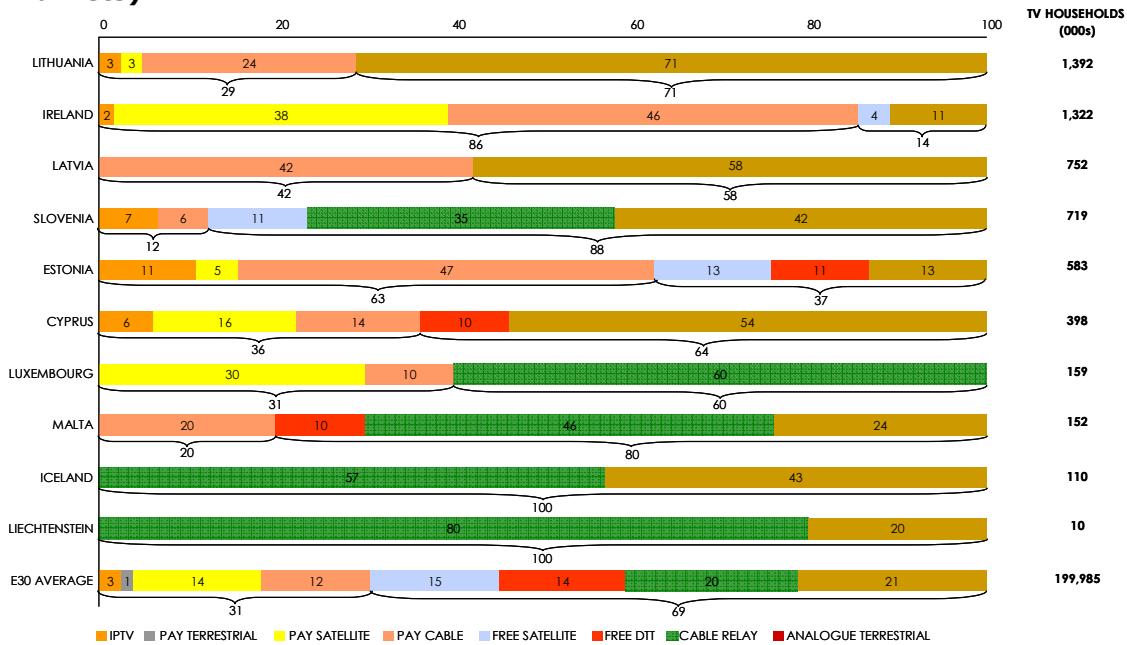
SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, TBI, COMPANY REPORTS, SCREEN DIGEST, O&O ANALYSIS

Figure 11: TV household by reception method by country (2007, next 10 markets)



SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, TBI, COMPANY REPORTS, SCREEN DIGEST, O&O ANALYSIS

Figure 12: TV household by reception method by country (2007, 10 smallest markets)



SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, TBI, COMPANY REPORTS, SCREEN DIGEST, O&O ANALYSIS

The technical mix of distribution systems across Europe is, however, perhaps less important than the business models adopted across and within different TV systems. Free TV, where the signal is available to the consumer for no extra monthly charge once they have bought the necessary reception equipment, is available via satellite and terrestrial TV systems throughout Europe. Free TV signals may still be encoded (or “encrypted”) to prevent reception outside the target national market or markets, which is often demanded by rights holders who have made different rights deals in different national markets.

Cable relay services are not quite free, as a small monthly charge is made – often through the local utility or housing association bill but – as they are charging just for technical delivery, rather than the TV channel or channels – it could be regarded as nearer free TV than pay TV.

The range of free TV (or near free TV) channels available varies considerably across Europe. Countries with high cable relay coverage, or high penetration of free-to-air satellite services, often provide well over 20 free TV channels to most of the population. Countries where analogue terrestrial TV is the only free TV outlet tend to offer just 4 to 7 free TV channels. In several countries with high penetration of 20 to 40 free TV channels, several of the free channels are overspill services from neighbouring countries. Cable relay systems in Belgium and the Netherlands tend to carry free UK, French and German channels; those in Ireland tend to carry free UK TV channels, and those in Austria, free German channels.

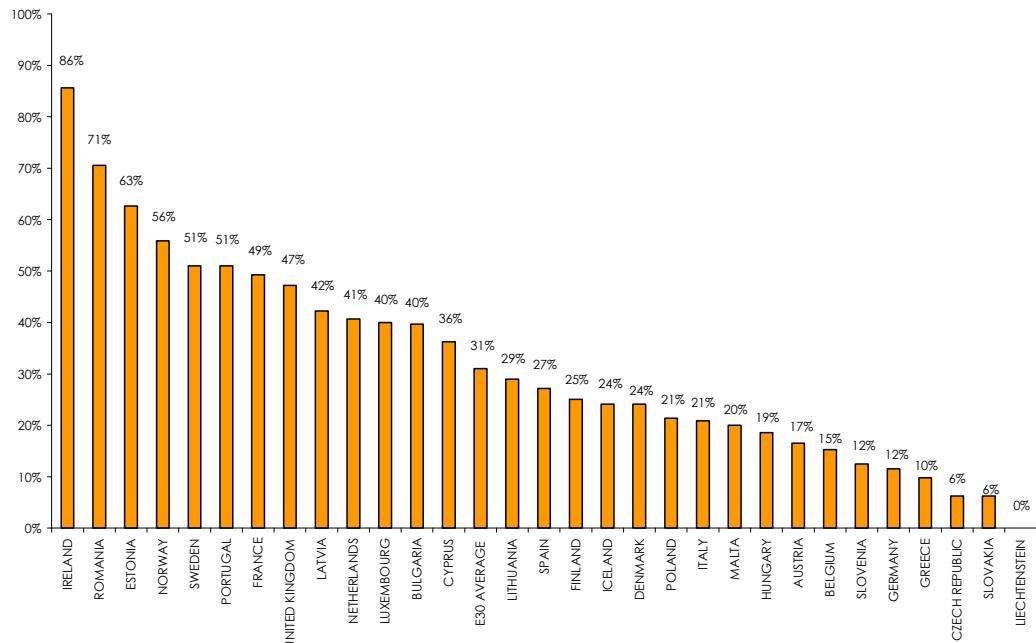
Subscription pay TV is, again, available through all types of delivery system – cable, satellite, terrestrial and DSL – throughout Europe, and mainly in digital forms. Generally, pay TV consists of a basic package of news, children's, lifestyle, factual and specialist entertainment channels – anywhere from 30 to 400 – which cost between €15 and €25 a month, and a series of premium sports and movie channels that can be purchased on an à la carte basis – albeit with discounts for a larger number of channels. Typically, each additional premium channel costs between €5 and €10 extra. Unusually in France, pay TV services are available from Canal+ over both analogue and digital terrestrial systems, while in the UK, DTT households have the option to upgrade to some premium channels through Top Up TV.

Free TV is available in some form or other to all the 200 million TV households in the E30. Subscription pay TV is taken by 62 million TV households – a penetration rate of 30 per cent (up from 25% for the E17 in 2002). Among the 139 million free-TV-only homes, around 42 million only have access to between 4 and 7 analogue terrestrial free TV services. It is pertinent to note here that, in the E17, the number of analogue terrestrial homes has more than halved (from 67 million to 31 million) with households moving to more affordable digital pay packages or DTT. Over 14% (28 million) of European households now access TV channels through a DTT set top box and, with digital switchover dates nearing, we anticipate the take-up of this platform to continue to grow rapidly to 2012. Of the remaining free TV households, around 28 million have access to 20 to 40 channels through cable relay and 29 million to 50 to 200 channels through free satellite services (most common in Poland, Austria and Germany). In line with digital switchover, analogue cable relay systems will be replaced by digital cable services in the forthcoming years.

Across the E30, average pay-TV penetration¹⁸¹ is approximately 31% and varies widely across markets. The UK, Romania and Portugal all have pay-TV penetration of over 40%, while in Hungary, Slovakia and Germany penetration is less than 20%, due to historically widespread cable relay. Among the 10 largest countries, Germany has the lowest pay-TV penetration at just 12% while amongst the smaller markets, Slovakia has one of the least developed markets with just 6% pay-TV penetration (see Figure 13).

¹⁸¹ Pay-TV penetration in France and The Netherlands is skewed slightly due to very low subscription costs for households to access IPTV and digital cable services in these markets. In the Netherlands, low cost digital cable packages were promoted to encourage households to move from analogue cable during the digital switchover, while in France, fierce competition between broadband providers resulted in a number of free IPTV services being made available on the market.

Figure 13: Pay-TV penetration across Europe (2007)



SOURCE: O&O TRENDS BASED ON: OBS, TVI, TBI, TV SPORTS MARKETS, COMPANY ACCOUNTS, SCREEN DIGEST, O&O ANALYSIS

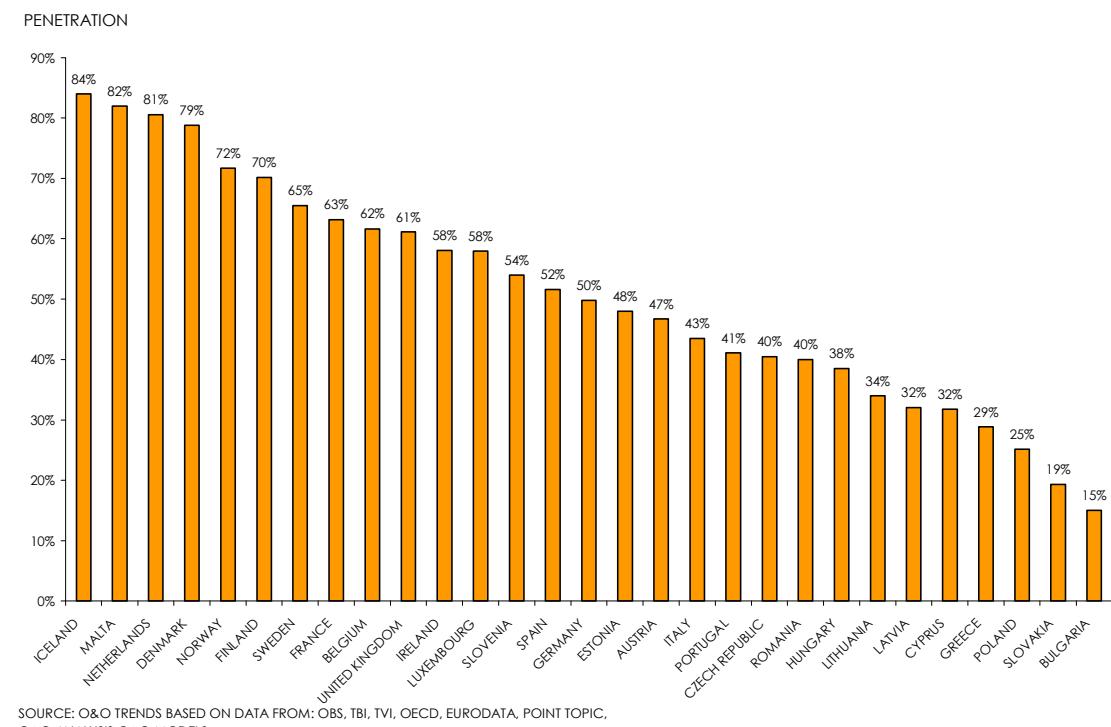
In many countries the pay-TV system operators are required to carry the main free-to-air channels and to make them available free of charge to their subscribing households – this is especially the case with digital pay-TV systems, where governments are keen to encourage conversion to digital. These “must carry” provisions are often accompanied by a requirement that free TV channels are positioned high up on any digital channel menu or electronic programme guide (EPG) offered to viewers.

In the pay-TV sector the delivery system owners tend to be the retailers of the pay-TV packages. In some cases, especially with satellite systems – they also own several channels themselves. However, several countries also have open access rules that are designed to allow pay-TV channels the right to retail themselves, while paying a regulated access fee to the delivery system operator. So in the UK, channels can sell themselves directly on the BSkyB satellite platform; and, in the Netherlands, channels or indeed satellite TV packagers and retailers, can gain access to the cable relay system. These open access rules do not, however, apply equally to all systems. In most cases the rules are applied to systems seen to have a dominant position in the pay-TV delivery market.

Many on-demand services (those using the “open” model) utilise broadband internet services as penetration across Europe continues to grow. At the end of 2006, over 72m households (~35%) had access to a broadband internet service (see Figure 14). Average speeds have also increased – making the

delivery of video services possible without the additional infrastructure that IPTV providers often require.

Figure 14: Broadband penetration across Europe, 2007¹⁸²



7.2.3. On-demand services

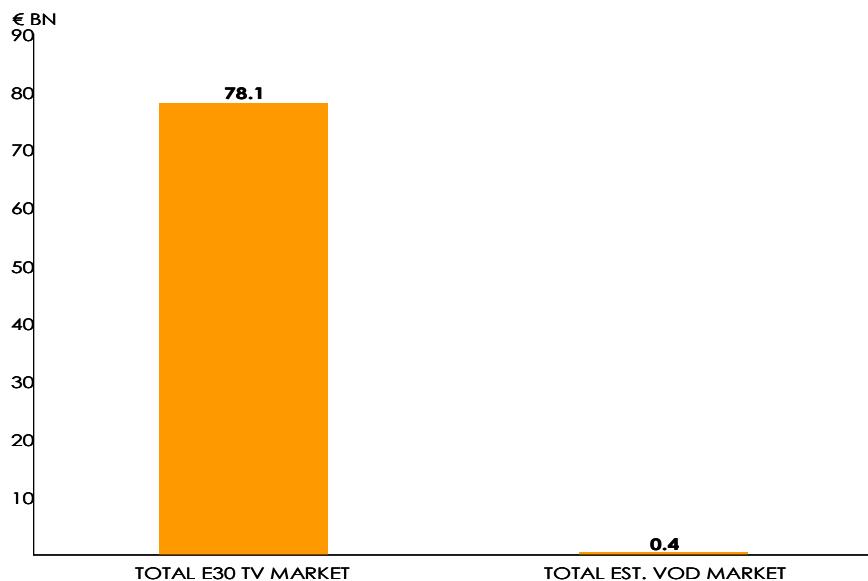
A substantial part of current on-demand offerings in the larger European markets are “catch-up” services from the main broadcasters (such as VRT’s Net Gemist service in Belgium and RTV’s internet service in Slovenia). With these services, the majority of a broadcaster’s schedule is made available to users for a limited period (typically seven days). There is usually no charge to access these services; they are offered to give audiences more chances to view content. In 2006, services had only been established in a small number of developed markets. Even by the end of 2007, they were generating almost no revenue – while it is feasible to insert advertising into these services, many are provided by the public broadcaster (and are thus advertising-free) and commercial services have only limited ability to measure audiences (and hence monetise them with advertisers). Below we review four individual on-demand case studies and consider in more detail the business models used and viewer uptake of each service.

¹⁸² No data for 2007 broadband penetration is yet available for all Member States, so we report on 2006 data to allow data to be compared for all markets. This data will be updated when 2007 figures become available.

The “closed” system operators generally do not charge separately for access to the on-demand service but rather offer it as part of a monthly package (often including TV, telephony and internet). Access to this basic service typically includes a catch-up TV service and an element of archive content. Value-added offerings include movies, adult, children’s and TV archive content. To access this, users typically pay - movies and adult content are generally offered on a pay-per-view basis, while children’s and library content typically form part of a subscription.

We estimate that in 2006 on-demand services generated approximately €400m of revenue in the E30, representing just 0.5% of the TV industry (see Figure 15 below).

Figure 15: The comparable size of the European video-on-demand market, 2006



SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, PWC, KAGAN, NATIONAL REGULATORS, COMPANY REPORTS, SCREEN DIGEST, O&O MODELS, O&O ANALYSIS, BROKER REPORTS, PRESS, INTERVIEWS

Of this revenue, very little flowed to content owners. The primary destination of any expenditure by service operators was movie studios to secure rights; most other content was still relatively new and thus the original broadcaster owned the rights. (Typical terms of trade are addressed later in this chapter.) A very small amount of library content was used, for which the rights had reverted to the original producer, but typical payments for this amounted to 1-2c per view.

Every Member State has a number of providers of on-demand services. A report recently published by the European Audiovisual Observatory (OBS)

identified 280 VoD services in the 24 countries included in the study¹⁸³. We estimate a further 20 services in the countries not included in the OBS study i.e. an E30 total of around 300 services. France, the Netherlands and Germany lead in terms of the number of VoD services available with 32, 30 and 26 respectively. Some of the smaller nations, such as Estonia, Iceland and Slovenia, have only 2 or 3 services.

In total, we believe that in 2007 there were approximately 110 closed system on-demand operators and 180 open services available in the E30 (see Table 12).

¹⁸³ European Audiovisual Observatory's survey did not include Latvia, Liechtenstein, Bulgaria, Romania, Malta, Lithuania and Greece, but included Switzerland and Turkey (excluded from this study).

Table 12: VoD services across the Member States¹⁸⁴

COUNTRY	TOTAL NUMBER OF SERVICES END 2007	CLOSED SYSTEMS	OPEN SERVICES	TOTAL DIGITAL CABLE AND IPTV HH END 2007 (000s)	BROADBAND HH END 2006 (000s)
FRANCE	40	14	26	6,140	10,918
NETHERLANDS	31	4	27	2,306	5,915
GERMANY	28	8	20	2,990	11,683
UNITED KINGDOM	21	10	11	3,628	11,664
SWEDEN	16	5	11	940	2,148
SPAIN	16	4	12	2,109	5,183
NORWAY	16	5	11	448	1,058
DENMARK	14	6	8	215	1,420
BELGIUM	14	11	3	610	1,944
ITALY	13	4	9	418	6,745
AUSTRIA	10	2	8	330	1,249
FINLAND	10	3	7	490	1,217
IRELAND	8	3	5	635	381
POLAND	8	6	2	344	2,533
HUNGARY	8	2	6	183	1,297
PORTUGAL	7	4	3	1,467	1,210
ICELAND	6	2	4	63	88
SLOVAKIA	5	1	4	94	132
ROMANIA	4	2	2	4,029	2,200
CZECH REPUBLIC	4	4	0	87	400
ESTONIA	4	2	2	338	165
SLOVENIA	4	2	2	90	330
BULGARIA	2	2	0	1,149	403
CYPRUS	2	2	0	81	62
LUXEMBOURG	2	2	0	16	54
LITHUANIA	1	1	0	369	107
LATVIA	1	1	0	316	137
MALTA	1	1	0	30	121
GREECE	1	1	0	53	760
TOTAL	297	114	183	29,966	71,521

SOURCE: OBS, SCREEN DIGEST, TVI, PWC, O&O ANALYSIS, KAGAN, COMPANY REPORTS, PRESS

¹⁸⁴ The number of video on demand services was calculated based on data from a report by the NPA Conseil and European Audiovisual Observatory, 'Video On Demand in Europe' (January 2008), which covered 24 Member States (including Switzerland and Turkey, which are not included in this study). The figures in table 12 are based on a methodology set out in the NPA report whereby "the same service available on various media is counted in the total as many times as it is available. The total corresponds, in a way, to a number of access points for VoD services" (pg. 5 of report). For those Member States not included in the NPA report (Latvia, Liechtenstein, Bulgaria, Romania, Malta, Lithuania and Greece), the consultants estimated the number of VoD services based on this methodology and the figures presented are our estimate based on this approach for the non-linear market as of December 2007. An update of the European Audiovisual Observatory's Video-On-Demand study is currently being carried out having commenced at the end of 2008, and initial findings suggest there are now 431 services across Europe (it is worth noting that this new study covers the 27 Member States of the EU this time, and the increase in the number of services can at least in part be attributed to the study looking at the situation a year subsequent to the period investigated in this study). A comment on this particular issue can be found in section 23.3.

Case study 1 – Digital cable ‘closed’ on-demand (Large Western European Member State)

LAUNCH:	Have been developing service for over five years. Relaunch in 2006 with a full review of the business model. Major rebranding in Feb 2007 with a new ‘dynamic interface’ introduced
AVAILABILITY:	All subscribers (3.4m) can access catch-up and pay-per-view content while only top-tier subscribers (2m) have access to archive content
LIBRARY:	4,300 hrs of content as at March '08: catch-up service with content from the main networks, 500 hrs of movies from major US studios and some European and US independents; archive content and 500-600 music videos from major music labels
BUSINESS MODEL:	Service offered to drive overall cable subscriptions. PPV Movies priced at around €4.50 per movie and are available in the first pay TV window (currently trialling day and date releases). Subscription models for top tier subscribers for movies are being considered while pre-roll sponsorship and advertising may also become a key part of business strategy moving forward
ORIGINAL CONTENT:	No content commissioned specifically for on-demand service other than a small volume of short films
USAGE:	March '08 - 48% of digital subscribers accessed VoD at least once (Jan '08 – 35%) March '08 – 21.2 VoD views per user (Jan '08 – 10 views) Breakdown of viewing: catch-up – 35%; music videos – 35%; TV archive – 21%; kids – 5%; movies – 3%; other – 1%

Case study 2 – Open access broadcaster catch-up service (Large Western European Member State)

LAUNCH:	Dec 2007
AVAILABILITY:	All broadband users in relevant member state (approx. 50%)
LIBRARY:	Last seven days of rights-cleared broadcaster content (approx 220 hours, 45% of broadcaster's schedule) – essentially everything except movies and sport. Some TV shows, mainly news bulletins and other in-house productions, are also simulcast ¹⁸⁵
BUSINESS MODEL:	Free to use. Catch up rights part of original commission. Users can stream content or download and view for up to 30 days.
ORIGINAL CONTENT:	None.
USAGE:	2.2m users in Jan '08 (1.6% of total TV viewing) 11m programmes streamed or downloaded in Jan '08 Average viewing time per show of 24 minutes Streaming: downloading ratio = 9:1

¹⁸⁵ Simulcast: one stream of programming broadcast on two platforms simultaneously i.e. a live news programme broadcast on digital terrestrial and streamed on the internet in real time.

Case study 3 – Digital cable ‘closed’ on-demand service (Large Eastern European Member State)

LAUNCH: Oct 2007

AVAILABILITY: All digital subscribers - currently around 40,000 (under 10% of total cable subscribers). No plans to launch a similar service on the web i.e. ‘open access service’

LIBRARY: Majority of content is feature films (approx. 300 with 30/40 high grossing Hollywood movies) with a limited supply of current documentaries and animations. Also supply a significant amount of adult content. Anticipate in the coming months agreeing terms with a major broadcaster for access to their library of programming.

BUSINESS MODEL: Strategy behind the launch was to be ‘continually viewed as an innovative platform’, drive extra revenue in the long term and improve customer retention rates. Model is a combination of free content (majority) and a pay rental service (for 24hr-48hr). Typically rental cost is between €1.00 and €2.50.

ORIGINAL CONTENT: None.

USAGE: Free content is around 4 times more popular than paid for content
Around 20,000 (50%) digital subscribers regularly use the service
3 to 4 popular feature films account for over 20% of total sales
< 1 rental per customer per month

Case Study 4 – Digital cable ‘closed’ on-demand service (Small Western European Member State)

LAUNCH:	Sept 2007
AVAILABILITY:	All digital cable subscribers – in excess of 500,000 however certain services are limited to subscribers of the ‘grand’ pay TV package
LIBRARY:	Content broken down into three areas: 1) transactional (TVoD) - dominated by US feature films and adult content with limited European film; 2) catch-up service - content from the publicly funded broadcaster (current rights issues with the commercial broadcasters in the market) and some international channel content; 3) 600 hrs of free on demand content - TV series from a variety of sources (both local and European).
BUSINESS MODEL:	Strategy: to add on demand to the bundle of options in the top pay-TV package and drive subscribers to upgrade, reduce overall churn and seek out new revenue streams through VoD. Films are offered for between €0.99 and €3.99 while the catch-up service and library content is free with access limited to ‘grand’ package subscribers. Interviewee admitted advertising funded on-demand is unlikely to be launched in this market under current market conditions.
ORIGINAL CONTENT:	None.
USAGE:	40% of usage has been the catch-up service Of the TVoD service, 80%-85% of viewing has been movies, while the remaining 15% is library content such as TV series/shows Overall buy rates of 0.5 movies per digital subscriber

7.2.4. TV broadcasting market

The TV channel management market (or broadcasting market, as it is often termed) can be broken down into three main types – free TV channels (available to all the audience), basic tier pay-TV channels (which are available to subscribers as part of a pay-TV subscription) and premium pay-TV channels (for which an additional subscription fee is paid).

Free TV channels can be divided into publicly funded channels and commercially – or advertiser – funded channels (some, for example France Television and ARD/ZDF, take a mixture of public funding and advertising revenue). While the majority of revenue (and viewing) to free TV channels is to the traditional networks, there are two other types of free-TV channel: network affiliated ‘spin-off’ channels, which have been launched in the last few years by broadcasters to combat falling audience shares to their main channels; and a large number of specialist channels, which despite being only available on a pay-TV platform, do not generate a subscription fee.

Pay-TV channels also take advertising, but have an element of subscription fees – paid to them by the platform operators - in their revenue mix. Premium pay-TV channels often only take a very limited amount of advertising – their main selling point is to offer uninterrupted access to sport or movies – and subscription fees form the overwhelming majority of their revenue mix.

Including news, sport, games and home shopping channels, there are estimated to be over 1300¹⁸⁶ television channels in the E30. The most popular genres – in terms of channel numbers across Europe – are news, sport, movies, music, children's, documentaries and travel/lifestyle. There are also a number of demographically targeted general entertainment channels which, among the smaller channels, usually obtain the highest audience shares and therefore are closest in scale to the primary channels. They typically have a narrower focus and a smaller programme budget than the main channels in each market, which often means they use more archive programming and imports.

Regional broadcasting exists within the free-to-air sector, as components of the main networks or as stand-alone independent stations. Within the networks, some act as federations of local TV companies and affiliates – such as ITV in the UK and ARD in Germany – while others establish centrally controlled but locally operated local news and regional programming centres, which then opt out of the main schedule at certain points in the day – such as the BBC and FR3. Even the affiliate channels tend to pool most of their monies in order to commission jointly a large proportion of the schedule.

Independent station structures – where each station is autonomous – are found in countries such as Spain, although even here they have formed an association, FORTA, which jointly acquires sport and movie rights. Very small-scale local and regional stations do exist in Italy, France and the UK, but they concentrate mostly on local news supplemented by cheap acquisitions. These regional channels include TeleG and S4C in the UK, and TV Breizh in France.

There are two more features of channels in Europe that have an important impact on overall TV economics and competition: first, the overspill of channels from one country to another – often from a large country to a smaller state sharing the same language (e.g. Germany and Austria, the UK and Ireland, and the French and Flemish Communities of Belgium and France and the Netherlands respectively); second, the existence of pan-European channels (CNN, CNBC and Turner Classic Movies) or networks of channels with slightly different versions for different territories (such as Discovery, Eurosport and MTV). Overspill channels can impact significantly on the ecology of the smaller receiving market, reducing the total audience available to channels in the market. Pan-European and European networked channels, while they only gain small audience share in each market – and therefore qualify as secondary channels in each – may actually have as large a

¹⁸⁶ Source: OBS, TVI, PWC, Kagan, National Regulators, Company Reports, Screen Digest, O&O Models, O&O Analysis, Broker Reports, press, interviews.

combined audience across Europe as a key network channel has in an individual Member State – especially in smaller Member States.

7.2.5. TV programming

TV channels have three basic choices when putting together their schedule:

- (1) **Programme sourcing** choices between specially commissioned programmes, repeats of their programmes, the use of TV programme archive libraries, or the acquisition of rights to show feature films, international ready-made programming or live events.
- (2) **Programme genre** choices between, for example, drama and news, or comedy and factual programming. Different genres appeal to different tastes and also – especially if specifically commissioned – have very different cost characteristics. Stock programmes tend to cost a great deal more to commission than flow programmes¹⁸⁷.
- (3) **Programme sub-genres** exist and there are different approaches and mixes of sub-genres to choose from: a drama soap opera versus a one-off film; or stand-up comedy versus a situation comedy, etc.

For any channel, the cost of a schedule consisting only of newly commissioned programmes is prohibitively expensive and not cost effective. Furthermore viewers tend to like to watch repeats and want a mix of home-grown and acquired material. The mix of programmes is driven by: the quality and price of programming; audience tastes; and the programming decisions of competing channels. In general, the main network channels tend to use more originally commissioned output while smaller channels tend to use more archive and imported acquired material. Premium pay-TV channels tend to use a mix of acquired feature films and sports rights.

Considering the larger markets, German network channels spend approximately €4.4 billion on new commissions (inclusive of news) while UK channels spend about €3.8 billion between them. In France, Italy, and Spain the main channels' spend on commissions was €2.0 billion, €1.4 billion, and €1.2 billion respectively. As a proportion of total programming spend, investment in originations is still high in the smaller member states. In Poland, Slovakia and the Czech Republic, over 60% of network programming spend is on originations (€298m, €64m and €157 respectively)¹⁸⁸.

¹⁸⁷ A stock programme has repeat value and can be shown again at a later date, while flow programmes have little or no further value after the first showing (narrative repeats excluded). Examples of flow programming include news, sport, games, and some entertainment programming.

¹⁸⁸ Sources: OBS, TVI, PWC, Kagan, National Regulators, Company Reports, Screen Digest, O&O Models, O&O Analysis, Broker Reports, press, interviews

Across the rest of Europe, network channel spending on new commissions rarely exceeds €600 million in any single market. The biggest four markets thus account for over 76% of total commissioning.

The average network channel in the UK and Germany spends over €700 million a year on new commissions while in France this falls to around €450 million and in Italy and Spain spending per network is around €250m. Outside the major five markets, the average channel rarely spends more than €150m on new commissions, with some of the smaller nations spending less than €5m on new commissions.

Total spending across the EU on sports rights totalled just over €6 billion in 2006, and spending on TV and film rights acquisitions was about €10.8 billion. Germany is by far the largest market for film and TV acquisitions, where the networks spent approximately €1.3 billion between them in 2006 while networks in the UK continue to push up the price of European sports rights, spending over €550 million on sports rights in 2006¹⁸⁹. Belgium's networks also had a high proportionate spend (38% of total programming spend) on film and TV imports of around €240 million. In some of the smaller markets such as Lithuania, Cyprus and Latvia programming is often sourced from neighbouring countries, therefore acquisition spend can account for over 60% of total programming for some of the networks.

The 1200 or so basic-tier pay-TV and free-to-air smaller channels in the EU (including news, basic sports and games channels) share €7.3 billion in revenue – just over €5 million per channel. While some leading smaller channels might earn €50 million to €100 million (especially pan-European channels), even these channels are unlikely to be able to afford much more than €50 million to €90 million in programming spending. With the majority running on total revenues of less than €10 million a year, many will have programming budgets of less than €5 million, or less than €600 per broadcast hour. Even if they repeat each programme 10 times – as many do – this only allows them €6,000 per purchased or commissioned hour.

Premium pay-TV sport and movie channels earn more revenue per channel – about €150 million to €350 million – but most of this goes on purchasing premium film rights (mostly, but not solely, US films) and the rights to show top sports, rather than being invested in new commissions.

Overall, the non-network¹⁹⁰ channel sector in the E30 was estimated to have spent about €5.1 billion on film and TV acquisitions in 2006, and about €3.3 billion on sports rights, while only spending about €1.8 billion on new commissions – and much of that on news, sports coverage and talk shows.

¹⁸⁹ Over €100m of this was spent on the 2006 World Cup rights

¹⁹⁰ 'Non-network' is defined as broadcasters outside those available on traditional analogue terrestrial.

7.2.6. TV content creation¹⁹¹

The European TV content creation sector was worth approximately €18.3 billion in 2006. Of this, €16.5 billion came from commissions by network channels and €1.8 billion from commissions by smaller channels¹⁹². Of this €18.3 billion, about €2.6 billion was spending on national and local news and sports coverage (spending on sports rights is excluded). Of the remaining €15.7 billion, an estimated 43% (€6.8bn) was spent on commissions from external producers and around 57% was invested in in-house production¹⁹³.

Main network channels account for about 57% of gross industry revenue but over 90% of all new commission spending. Secondary channels tend to be carried within pay-TV packages, where a large proportion of revenues either go to the platform providers or is spent on premium acquisitions, such as top feature films or sport.

Profitability of production

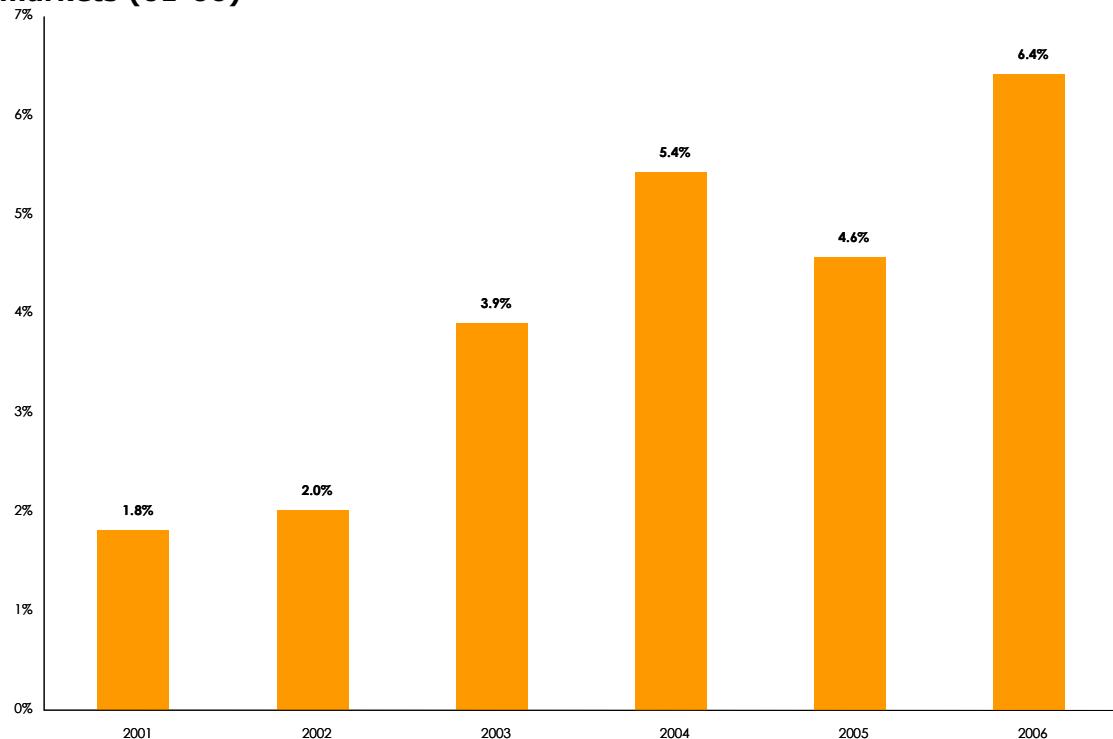
The profitability of an individual production company tends to follow a cyclical trend in terms of profit margin. Margins are disproportionately impacted by hit commissions that in the long term (depending on terms of trade) generate significant ancillary and overseas revenue for the producer. Contrastingly, a 'flop' commission will adversely impact profit margins. Over the last few years, independent producers have become increasingly reliant on secondary and ancillary revenues to drive profits, with commission spending by broadcasters generally only covering the production cost for the producer. A burgeoning programme export market both to the US and intra Europe, combined with increasing secondary revenues, has seen a rise in profit margin for independent producers (see Figure 16) in the larger markets.

¹⁹¹ The estimates in this section utilise some of the evidence from the bespoke survey in Chapter 9, such as the proportions of independent production, the mix of programme types produced in-house and by independents.

¹⁹² Revenue from direct subsidies (of approximately €0.3m), and direct income to producers from the exploitation of ancillary rights such as international programme sales, DVDs, licensing and merchandising (approx €0.8m) has been accounted for in the content creation figure detailed in the main text.

¹⁹³ External production includes broadcaster affiliates such as UFA and Studio Hamburg in Germany and Fremantle across RTL's group of channels.

Figure 16: Independent producer profitability in the largest European markets (01-06)



SOURCE: OBS, AMADEUS, COMPANY ACCOUNTS, O&O ANALYSIS

A number of larger production companies have close relationships with broadcasters and are often shielded from potential uncertainty in the market through output deals with broadcasters. Typically, these affiliated producers tend to report high profit margins due to regular commissions and better terms of trade with the broadcaster (see Table 13 below).

Table 13: Profitability of selected broadcaster affiliated producers (2006)

PRODUCER	COUNTRY	AFFILIATED BROADCASTERS	KEY GENRES	KEY STRANDS	REVENUE €M (2006)	PROFIT MARGIN (2006)
FREMANTLE	ACROSS EUROPE	ALL RTL CHANNELS	DRAMA COMEDY ENTERTAINMENT DOCUMENTARIES	DRESDEN POP IDOL GOT TALENT	1,128	11.1%
ITV PRODUCTION	UK	ITV	DRAMA VARIOUS	CORONATION ST I'M A CELEBRITY... DANCING ON ICE	632*	13.9%
STUDIO BAVARIA	GERMANY	ARD	COMEDY/CRIME DRAMA FAMILY ENTERTAINMENT DOCUMENTARY	POLICE CALL 110 WE ARE FAMILY ALL DEAR JIMMY	293	4.3%
ENDEMOL ITALY**	ITALY	MEDIASET	REALITY FAMILY ENTERTAINMENT LIMITED DRAMA	BIG BROTHER IL TRENO DEL DESIDERI THE BEAUTY AND THE GEEK	138	15.9%
ATM GRUPA	POLAND	POLSAT	DRAMA GAME SHOWS REALITY SHOWS ENTERTAINMENT	THE CASH BATTLE THE KIEPKIS' WORLD CHANCE OF A LIFETIME	92.7	27.7%
GLOBO MEDIA*** (IMAGINA GROUP)	SPAIN	LA SEXTA THEMATICS	ENTERTAINMENT DOCUMENTARIES FICTION LIVE NEWS	AVVENTURA EN AFRICA LA ISLA DE LOS FAMOSOS PLANETA FINITO	84.6	17.9%

* INCLUDES INTERNAL REVENUES FROM ITV OF €320M

**REVENUE IS FOR ITALY ONLY WHILE PROFIT MARGIN IS ENDDEMOL GROUP PROFIT MARGIN

***REVENUE FROM 2004 - HAS SINCE BECOME PART OF IMAGINA GROUP (2006 REV €575M)

SOURCE: COMPANY ACCOUNTS, AMADEUS, ANNUAL REPORTS, PRESS, O&O REPORTS

7.2.7. Terms of trade¹⁹⁴

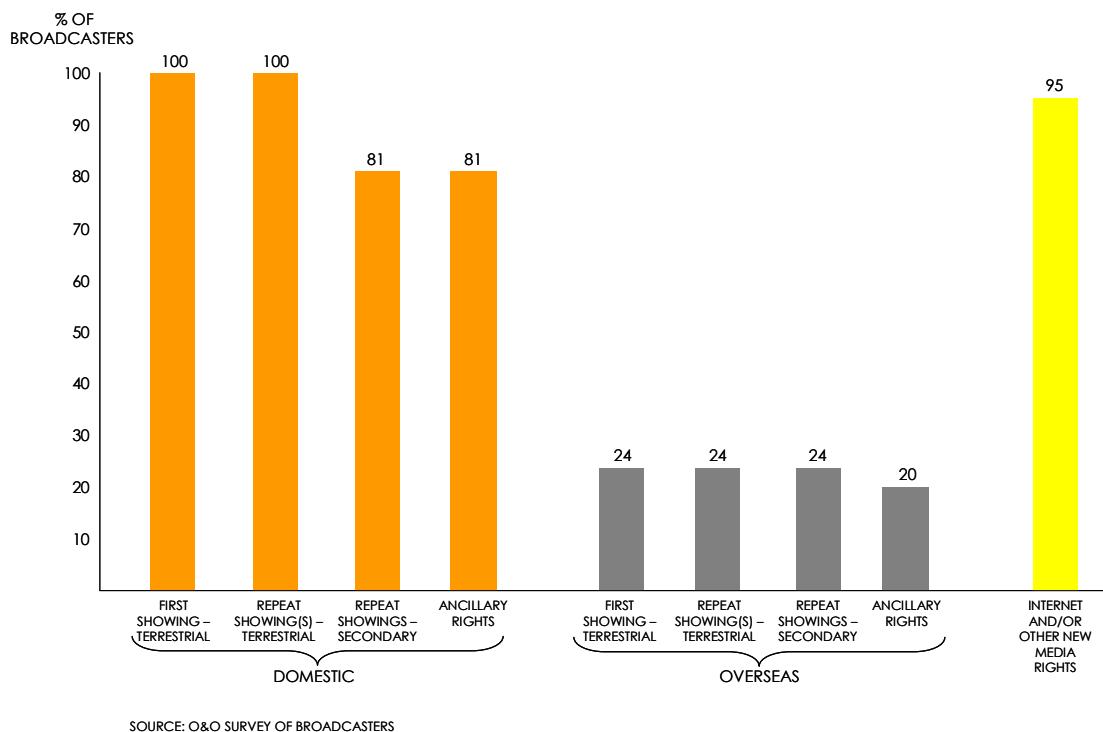
The position of the production company when it comes to retaining a financial interest in the content varies significantly by Member State. Many states do not have explicit terms of trade – all exploitation rights pass to the commissioning broadcaster. However, a small number of states (typically those with the most developed independent production sectors) allow the producer to retain some rights and for those rights to revert to the producer after a certain period of time. The UK and France are the markets where producers have most rights retention. Other markets are known to be studying the relative success of the production sector in these two markets with a view to potential changes to their own position on rights.

As is illustrated in Figure 17, the large majority of broadcasters across Europe tend to expect to retain all domestic rights for the programming they commission. In some of the larger markets, producers have some leverage around ancillary rights. Conversely, exploitation in the overseas market tends to be the responsibility of producers, with under 22% of broadcasters stating they expect to retain overseas rights for programming. Finally, and most pertinently, with the introduction of a number of on-demand services

¹⁹⁴ The comments in this section utilise some of the evidence from the bespoke survey in Chapter 9. Specifically Part 5.1 of the broadcasters' questionnaire.

across Europe, all broadcasters surveyed expect to retain internet and new media rights, which has implications for a producer's ability to drive revenue through on-demand services¹⁹⁵.

Figure 17: Broadcaster rights retention across Europe, 2007¹⁹⁶



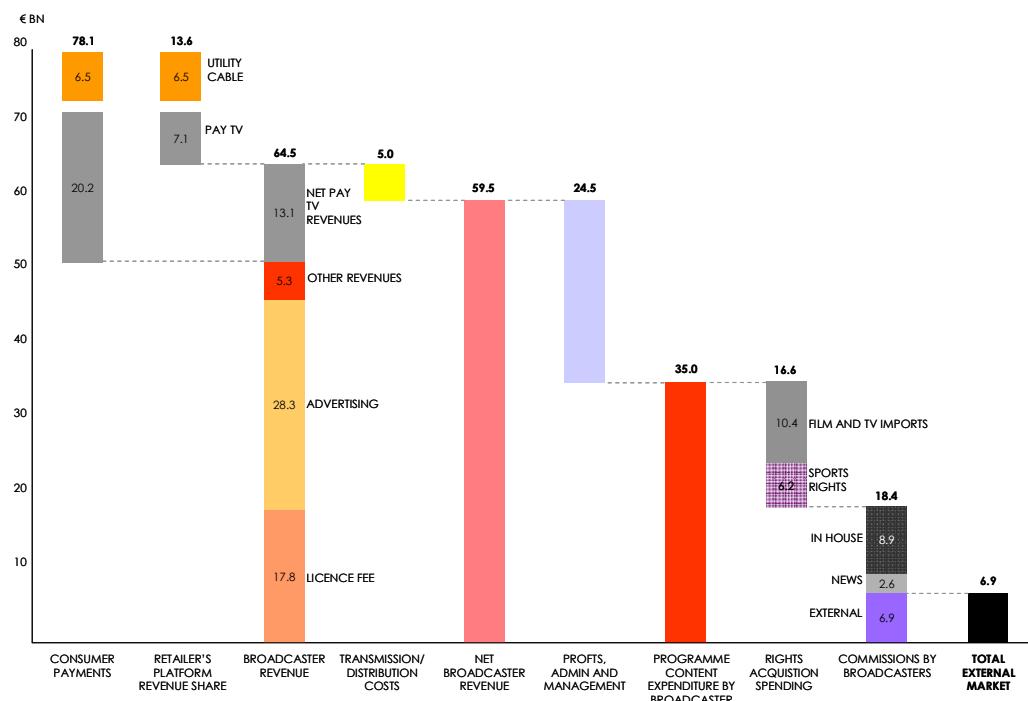
7.2.8. Current flow of funds along the supply chain

Having gone through each activity in the supply chain in turn, we set out a reconciliation of the entire funds flow along the supply chain (Figure 18).

¹⁹⁵ Relevant comments from the workshop and comments received subsequent to this can be found in Part 23.2, which relate to terms of trade and their implications for the competitive position of its members.

¹⁹⁶ 'Ancillary rights' as illustrated in Figure 17 refer to rights such as merchandising, DVD and licensing.

Figure 18: Estimated TV value chain in the European Union (€bn, 2006)¹⁹⁷



SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, PWC, KAGAN, NATIONAL REGULATORS, COMPANY REPORTS, SCREEN DIGEST, O&O MODELS, O&O ANALYSIS, BROKER REPORTS, PRESS, INTERVIEWS

Of the €78.1 billion in TV revenue, delivery platforms retain €13.6 billion¹⁹⁸ with the remainder of €64.5 billion¹⁹⁹ flowing to broadcasters. Approximately €5.0²⁰⁰ billion of this is spent on transmitting the channels and €35.0 billion²⁰¹ is invested in programming with the remaining €24.5 billion²⁰² covering all profits, administration and management costs.

Of the €35.0 billion programme spend, approximately €16.6 billion²⁰³ was spent on acquiring rights of various kinds – €6.2 billion on sports rights and €10.4 billion on film and TV acquisitions (domestic TV and film archive rights, acquisitions of films and TV programmes from the USA, acquisitions of TV programmes and films from other European countries, investment in domestic films in return for TV rights)²⁰⁴. The remaining €18.4 billion²⁰⁵ was invested in original programming in the form of news, in-house and external

¹⁹⁷ Following comments from the European Audiovisual Observatory, it is important to note that these figures are as accurate as possible given the limitations of publicly available data on the audiovisual industry.

¹⁹⁸ See the 2nd column – ‘Retailer’s platform revenue share.’

¹⁹⁹ See the 3rd column – ‘Broadcaster revenue.’

²⁰⁰ See the 4th column – ‘Transmission/distribution costs.’

²⁰¹ See the 7th column – ‘Programme content expenditure by broadcaster.’

²⁰² See the 6th column – ‘Profits, admin and management.’

²⁰³ See the 8th column – ‘Rights acquisition spending.’

²⁰⁴ In practice, co-productions are probably split between the acquisitions total and the new commissions total.

²⁰⁵ See the 9th column – ‘Commissions by broadcasters.’

production. Of the €18.4 billion, approximately €6.9 billion flows to the external production market.

7.2.9. Vertical integration along the value chain

There is considerable vertical integration along the value chain. Our analysis suggests that 57% of non-news programming is made by in-house departments within broadcasters, with the remaining 43% split between independent producers and some third-party producers owned by broadcasters²⁰⁶.

Similarly, a very high proportion of premium pay-TV channels are owned by pay-TV platform owners, while both main network channel broadcasters and pay-TV platform owners are the main owners of smaller basic tier and free-to-air channels across Europe.

The other major owners of thematic channels are the US studios, who can link their ownership of film and TV archives and already established secondary channels in the USA with the launch of new, focused European secondary channels, such as 13th Street (NBC Universal), Nickelodeon (Viacom) and Jetix (Disney). There is also some cross-ownership between platform owners and primary channel broadcasters in markets such as France and Portugal.

There are significant competitive advantages to vertical integration between larger networks, pay TV platforms and secondary channels. With their larger audiences, network channels can cross-promote platforms and smaller channels very cost-effectively. The smaller channels can access repeats of original commissions. There are also considerable advantages in the integration of programme making and broadcasting – especially network broadcasting. A regular flow of commissions from an associated channel can reduce the risks involved in programme making. For the network, an associated production house can ensure regular access to new ideas and a better fit between the channel's positioning and style and the programmes produced for it.

However, there are also disadvantages to vertical integration. Networks can find that tied production houses may have less incentive to innovate. Networks might also find it better to sell to independently owned channels than to ones in their own group, while pay-TV delivery platforms with an interest in primary free-to-air channels might have a conflict of strategic interests.

Competition policy issues may also be raised by vertical integration. Networks with ownership of production and rights libraries might use this to prevent the entry of new channels. Pay-TV platform owners may favour their own channels over those of rivals.

²⁰⁶ Sources: OBS, TVI, PWC, Kagan, National Regulators, company reports, screen digest, O&O Models, O&O Analysis, Broker Reports, Press, Interviews.

While many of the traditional (often publicly funded) main networks in Europe began as vertically integrated producers and broadcasters out of necessity – there was no independent supply of programmes – most national markets now exhibit a mix of vertically integrated and independent programme supply, with broadcaster-owned producers also producing for rival broadcasters. This may suggest that the degree of vertical integration depends very much on specific factors in each market and on the specific competitive strategy of each broadcaster, platform and programme producer.

7.2.10. Trade²⁰⁷

Traditionally there has been significant deficit in the balance of trade for programming between Europe and the rest of the world. Almost all European broadcasters acquire popular US programming (both TV series and Hollywood movies) and more recently there has been an increase in the number of imports from Asian nations, especially Japan and South Korea.

In the last few years the European programming export market has strengthened²⁰⁸ with a number of programmes being traded both intra-Europe and elsewhere.

Table 14: European formats broadcast in the United States

SHOW	ORIGINAL PRODUCER	ORIGIN OF FORMAT	NUMBER OF SEASONS	RENEWED?
SURVIVOR	PLANET 24	UK/SWEDEN	13	YES
BIG BROTHER 8	ENDEMOL	THE NETHERLANDS	8	YES
AMERICAN IDOL 6	19 TELEVISION	UK	6	YES
THE OFFICE	BBC	UK	3	YES
DANCING WITH THE STARS	BBC	UK	3	YES
HELL'S KITCHEN 3	ITV	UK	3	YES
SUPERNANNY	RICOCHET	UK	3	YES
DEAL OR NO DEAL	ENDEMOL	THE NETHERLANDS	2	YES
1 VS. 100	ENDEMOL	THE NETHERLANDS	1	YES
SO YOU THINK YOU CAN DANCE	19 TELEVISION	UK	3	NO
THE RICH LIST	12 YARD PRODUCTIONS	UK	1	NO
GREASE: YOU'RE THE ONE THAT I WANT	BBC	UK	1	NO
CREATURE COMFORTS	AARDMAN ANIMATIONS	UK	1	NO
FAT MARCH	RICOCHET	UK	1	NO

SOURCE: PRESS, VARIETY, IMDB, TV TRACKER, COMPANY WEBSITES, O&O ANALYSIS

As shown in Table 14, a number of European formats (mainly from the UK and The Netherlands) have been exported to the US, where a high proportion of them have been recommissioned for second series.

Within Europe, there is still a significant amount of trade between neighbouring nations where tastes, culture and in some cases language overlap. For example, a significant amount of programming in Belgium is

²⁰⁷ It is not possible to say whether the TV trade deficit has evolved since the 2005 study as data is very limited. In this section we therefore make some qualitative comments based on interviews, press and TV company accounts.

²⁰⁸ Data on programming trade is limited and where available often not comparable so any comments in this section are informed through responses to the industry survey.

sourced from French and Dutch broadcasters/producers, while in Sweden programming is regularly imported from Denmark and Norway (as is the case for a number of the Scandinavian nations).

8. Linear Data Analysis

8.1. Methodology

8.1.1. Overall objective and approach

Prior to describing the methodology used for this Study, it is important to note its overall objective and approach, and their effect on the findings.

The objective was not to re-do or control the findings provided at Member-State level, which are derived from the specificities of the implementation of the Directive and the methods used in each Member State, to collect and publish the findings. Rather, our objective was to provide a different measure, common to all broadcasters covered in the analysis, using compromise definitions so as to reflect in the best possible way the overall situation for European broadcasters. Also, the aim was to use research techniques that could be implemented practically in the absence of some detailed information and data that are available at Member State level but not accessible to the consultants.

Our definitions are not intended to serve as 'best practice' on how Member States should implement the Directive. A Member State's own practice is linked to its market situation, regulatory framework and political objectives. The findings of this Study should not be used to assess the accuracy or validity of Member States' declarations and specific approaches, but only as a means to understand the drivers that generally influence the proportions of qualifying, European, independent and recent independent content offered and consumed by European viewers on European channels.

Some of the most relevant reasons for the differences between the findings of this Study and the findings published at Member State level, are to be found below:

- Our findings are based on a selection of broadcasters in a selection of markets, with a focus on the largest broadcasters of each market in order to represent the largest possible share of television viewing. This means that national totals do not take account of all the broadcasters operating within each market; for example our focus on channels with large audience shares mean that niche, thematic broadcasters with (often) very specific programming policies are typically not included.
- In some markets, we have included broadcasters that are regulated by authorities from another Member State than the Member State in which it finds its audience. This is also due to our methodological choice to favour channel choice in terms of viewing. This means that some broadcasters have been included in specific Member State chapters, although from a regulatory point of view they should not

have been, for example TV3 and Kanal5 in Sweden. We stress that these channels are under the regulatory responsibility of Member States other than the Member State in which they find their viewers.

- Lastly, while our findings for European programming are very close to Member States' declarations (notwithstanding sampling distortions), our findings for independent productions sometimes show significant differences compared to Member States' declarations. The issue of independent production, which is fairly complex, is discussed in more detail later in this section.

Throughout the report, the consultants have attempted to point out specific situations encountered in given markets and broadcasters when it was considered necessary.

8.1.2. Country selection

After careful discussion with the Commission, we have built a representative sample of 11 European Member States in order to cover the main types of European markets:

- All of Europe geographically: North, South, East, West
- New and old Member States
- Varied size of audiovisual industries
- Varied intensities of the implementation measures

Table 15 shows a summary table of the 11 Member States and their characteristics.

8.1.3. Channel selection

For each of the 11 Member States we have selected a sample of channels that are representative of the mainstream market, to be coded by the criteria required for reporting on compliance with Articles 4 and 5. Our choice has been guided according to the following criteria:

- Share of national audience
- Company status (public or private)
- Origin of revenue (advertising, public fees or subscriptions)
- Representative of the main media groups
- Financial contribution to the production market

As the channels that receive the largest share of national audiences have remained largely unchanged over the past five years, a number of channels

selected for this Study are the same as those covered in the 2005 Study²⁰⁹, thus allowing us to make useful comparisons.

²⁰⁹ Study on the impact of measures concerning the promotion of the distribution and production of television programs provided for under Art 25 (a) of the Directive on Television without Frontiers, 24 May 2005.

Table 15: List of the 11 European Member States covered in the study

Member State	Market Indicators			Size****			Geography				Recency of EU membership		Neighb. Language		Channels		
	GDP Per Capita (€)*	Digital TV Penetration**	Broadband Penetration***	Large	Medium	Small	North	South	West	East	Old	New	Yes	No	National	Other	Total
Austria	31100	23%	18%			X	X		X		X		X		2	1	3
Belgium	30000	3%	24%		X		X		X		X		X		2	2	4
Bulgaria	3300	1%	6%			X		X		X			X		2	0	2
Cyprus	18900	25%	11%			X		X		X		X	X		2	1	3
Czech Republic	11100	3%	12%			X	X		X		X		X		2	0	2
Denmark	40500	14%	37%		X		X		X		X		X		2	1	3
Estonia	9800	2%	20%			X	X		X			X		X	2	0	2
Finland	31700	44%	29%			X	X		X		X		X		2	1	3
France	28400	37%	22%	X				X	X		X		X		4	4	8
Germany	28200	27%	21%	X			X		X		X		X		4	4	8
Greece	19300	5%	7%		X			X	X		X			X	2	1	3
Hungary	8900	5%	12%		X			X		X		X		X	4	2	6
Ireland	41100	45%	16%			X	X		X		X		X		2	1	3
Italy	25100	31%	16%	X				X	X		X		X		4	4	8
Latvia	7100	0%	12%			X	X			X		X		X	2	0	2
Lithuania	7000	0%	13%			X	X			X		X		X	2	0	2
Luxembourg	71600	2%	25%			X	X		X		X		X		0	0	0
Malta	12500	10%	14%			X		X	X			X		X	0	0	0
Netherlands	32700	18%	33%		X		X		X		X		X		2	2	4
Poland	7100	13%	7%	X			X			X		X		X	4	2	6
Portugal	14700	16%	15%		X			X	X		X			X	2	1	3
Romania	4500	0%	7%		X			X		X		X		X	3	1	4
Slovakia	8300	14%	7%			X	X			X		X		X	2	0	2
Slovenia	15200	1%	15%			X		X	X		X		X		2	0	2
Spain	22300	27%	17%	X				X	X		X		X		4	4	8
Sweden	34500	37%	28%			X	X		X		X		X		2	3	5
United Kingdom	31600	71%	24%	X			X		X		X		X		4	4	8
Total EU				-	-	-	-	-	-	-	-	-	-	X	65	39	104
Iceland	43500	48%	N/A			X	X		X					X	2	0	2
Liechtenstein	17000	7%	N/A			X	X		X					X	0	0	0
Norway	57500	38%	N/A			X	X		X					X	2	0	2
Total other EEA															4	0	4
Total sample															69	39	108

All data for year end of 2005 (except for Broadband penetration, where more up-to-date data is available).

*Source: Eurostat

**Source: European Audiovisual Observatory, Trends in European Television, 2006, Volume 2, Band 2

***Source: Eurostat (Data for July 2007)

****Size is based on population. Large=35M+; Medium=Less than 35M but more than 10M; Small=Less than 10M

A minimum of 3 (Estonia) and a maximum of 6 channels (France, Germany, Italy, Poland, Spain and the UK) have been covered in each market. Table 16 is a summary table of the 54 channels and their characteristics.

Table 16: List of the 54 European channels covered in the study²¹⁰

Member State	Channel	Launch Year	Share 2005	Total Share 2005	Ownership	Revenue model
Belgium (French)	La Une	1955	16.6%			Gvt/Ad
Belgium (French)	RTL-TVI	1987	4.9%			Ad
Belgium (Flemish)	VTM	1989	23.6%			Ad
Belgium (Flemish)	VRT	1953	37.6%			Gvt/Ad
Estonia	ETV	1955	18.8%			Gvt/Ad
Estonia	Kanal 2	1993	19.2%	59.3%	Private	Ad
Estonia	TV3	1993	21.3%		Private	Ad
France	TF1	1968	31.8%			Ad
France	France 2	1975	21.7%			Gvt/Ad
France	France 3	1975	15.5%			Gvt/Ad
France	M6	1987	11.9%			Ad
France	Canal+	1984	3.9%			Subs/Ad
France	Direct 8	2007	<5%			Ad
Germany	ARD1	1954	14.4%			Gvt/ad
Germany	ZDF	1963	14.1%			Gvt/Ad
Germany	Sat1	1985	10.5%			Ad
Germany	RTL	1984	14.0%			Ad
Germany	Pro7	1989	7.0%			Ad
Germany	Vox	1993	3.8%			Ad
Ireland	RTE1	1961	27.7%			Gvt/Ad
Ireland	TV3	1998	14.0%	53.1%	Private	Ad
Ireland	RTE2	1978	11.4%		Public	Gvt/Ad
Italy	Canale 5	1980	22.7%			Ad
Italy	Ita1	1981	10.2%			Ad
Italy	La7	2001	2.5%			Ad
Italy	Rai1	1954	23.7%			Gvt/Ad
Italy	Rai2	1954	12.2%			Gvt/Ad
Italy	Fox Life	2004	0.3%			Subs
Poland	TVP1	1952	25.1%			Gvt/Ad
Poland	TVP2	1970	21.1%			Gvt/Ad
Poland	Polsat	1992	15.6%			Ad
Poland	TVN	1997	15.0%			Ad
Poland	Canal+ Cyfrowy	1994	<5%			Subs/Ad
Poland	TV4	2000	2.8%			Ad
Romania	TVR1	1957	22.5%			Gvt/Ad
Romania	Pro TV	1995	16.1%			Ad
Romania	Prima TV	1997	4.6%			Ad
Romania	Antena 1	1993	12.7%			Ad
Spain	TVE1	1956	21.9%			Gvt/Ad
Spain	La 2	1965	6.7%			Gvt/Ad
Spain	Antena 3	1989	20.4%			Ad
Spain	Tele 5	1990	22.6%			Ad
Spain	Cuatro	2005	0.8%			Ad
Spain	La Sexta	2006	0.6%			Ad
Sweden	SVT1	1956	24.4%			Gvt/Ad
Sweden	TV4	1990	24.9%			Ad
Sweden	TV3	1987	10.0%			Ad
Sweden	Kanal 5	1989	8.3%			Ad
UK	BBC1	1936	25.6%			Gvt
UK	BBC2	1964	10.2%			Gvt
UK	ITV1	1955	23.4%			Ad
UK	Channel 4	1982	10.1%			Ad
UK	Five	1997	6.7%			Ad
UK	SKY One	1989	1.6%			Subs/Ad

²¹⁰ Please note that some of the channels in the sample may be under the jurisdiction of another Member State than the one the audience of which it is targeting.

Compared to the 2005 Study, this sample has the following similarities and differences:

- With regard to pay TV, the current study emphasises 'premium' pay-TV channels²¹¹ which play an important role in the funding of production. The following premium channels have been covered: CANAL+ (France and Poland), FOX LIFE (Italy) and SKY ONE (UK).
- DIRECT8 (France), CUATRO (Spain), LA SEXTA (Spain) and FIVE (UK) have been covered here for the first time.
- Channels from new Member States have been covered for the first time: Estonia (ETV, KANAL2 and TV2), Poland (TVP1, TVP2, POLSAT, TVN, CANAL+ and TV4) and Romania (TVR1, PRO TV, PRIMA TV and ANTENA1).

8.1.4. Week selection

In order to be representative of the results for 2007, we built a set of data based on two sample weeks.

While in the 2005 Study the weeks were consecutive²¹², we chose two non-consecutive weeks for this Study in order to better represent a full calendar year. As is common practice for statistical modelling of this kind, we selected the two weeks in the Spring and Fall periods, where broadcasters' schedules are more stable, and avoided periods with special events likely to impact on television scheduling or viewing, for example elections, holidays or major sporting events. Where possible we selected the same two weeks for each market, although in some cases a different week had to be selected to avoid special events. Table 17 is a summary table of the 2 weeks selected in each of the 11 sample Member States.

²¹¹ Many pay-TV channels originate no new productions, offering a schedule of domestic repeats and acquired programmes. Premium channels are defined as channels on pay television services that offer a significant volume of exclusive content, including sports.

²¹² In the 2005 Study, the consultants chose to select 2 consecutive weeks from the Spring period to represent each year (1993, 1996, 1999 and 2002). This choice, which was not as representative as the choice to select 2 non-consecutive weeks in the current Study, was explained by the need to keep the work simple, for the data had to be researched up to 10 years back for up to 17 Member States.

Table 17: Sample weeks selected to represent the 2007 situation in each market

Member State	Dates	
	Spring	Fall
Belgium	12-18 March (Flemish Community) /19-25 March (French Community) ²¹³	12-18 November
Estonia	5-11 March	12-18 November
France	19-25 March	12-18 November
Germany	19-25 March	12-18 November
Ireland	19-25 March	12-18 November
Italy	19-25 March	12-18 November
Poland	19-25 March	12-18 November
Romania	12-18 March	12-18 November
Spain	19-25 March	12-18 November
Sweden	5-11 March	12-18 November
UK	19-25 March	12-18 November

8.2. Classification of programmes

8.2.1. Origin and contents of primary linear data

Primary data for analysing the offering of linear audiovisual services have been sourced from the companies and organisations responsible for the so-called Television Audience Measurement (TAM) data in their respective countries. As a reminder, TAM services provide two main sets of information:

- Content information: TAM services provide data on the starting time, duration and genre of each programme aired on the main television channels each day of the year; they either do this independently from broadcasters or rely on broadcasters for part or all of the information (i.e. according to common specifications); in all cases, these data are called 'verified data', in the sense that they

²¹³ For TAM data, the Flemish Community of Belgium and French Community of Belgium are considered two separate markets and as a consequence were acquired as two different datasets. Unfortunately, data was unavailable for the 19-25 March for the two Flemish Community of Belgium channels (EEN and VTM), so in this chose the closest possible week where data was available (12-18 March). Before doing this we confirmed that this week did not contain any special events, and that it was thus representative, allowing for the data from the Flemish Community of Belgium channels to be collated alongside the data for the French Community of Belgium channels.

are based on what has been actually aired, rather than on advance programme schedules that are subject to last minute scheduling changes;

- Viewing information: TAM services constantly monitor the number of viewers watching each of the aired programmes; they do so by recruiting homes where they install specific measuring systems to record which channels or services the TV sets are tuned to. Household members (and guests) usually have to push their own individual button on a specially designed remote control to identify their 'presence in the room' (or 'actual watching' in some countries); TAM services extrapolate from these data to provide estimates of viewing behaviour at the national level.

It is worth noticing that TAM providers produce their data in a very consistent way across markets. Most of them are part of international research companies such as Nielsen-AGB, GfK or TNS, and tend to use the same technologies. Even when belonging to separate groups, TAM services in practice apply very similar methodologies, algorithms and statistical models. Also, with very few exceptions, only one source of data is available in a given market, which all players jointly control to provide a single reference for programme viewing and, ultimately, a currency for valuing advertising breaks.

For this project, data have been sourced mainly through Eurodata (which gathers information) and processed by Headway International, apart from the UK, where the job was done by Attentional.

As was stated above, two sample weeks have been selected to represent the 2007 situation for a sample of 54 European television channels, from the Spring and Fall period.

8.2.2. Overall approach to further coding of linear data

The coding of linear data has been managed by the same teams who coded linear data for the 2005 Study. For the 2005 Study, additional data had been sourced from companies to add to published schedules (ETS and Infomedia). The data had then been further codified using a combination of local experts in each market and the project teams.

For the current project, local experts were of less importance than in the previous project although they were used occasionally, in particular for the new Member States covered for the first time. There are several reasons for this: the team was able to capitalise on its own experience from the 2005 Study, as well as to rely on the data produced in the 2005 Study, while detailed information on recent programmes has become much easier to access thanks to the development of public information on the internet, whether from broadcast organisations, producers, distributors, associations, the press or free databases.

The coding of 2007 has been exhaustive, even when these programmes had already been coded in the 2005 Study, to check that the programmes were still produced by the same companies and that these companies still

had the same status in terms of nationality or independence. By the end of the process, the team had coded all the necessary criteria for a minimum of 90% of the programmes in each market.

The basic process involved researching information on the programmes individually, from the websites of broadcasters and those of producers and distributors. In most markets, the number of significant producers and distributors is below 40 companies, most of which publish information on their activities, including which programmes they fully produce, executive produce, co-produce, develop themselves or adapt from licence agreements with other companies. Putting all this information together enabled the consultants to build a good picture of who is producing what in each market, as well as who is linked to whom, which is the starting point of determining the country of origin, independence and recency of individual programmes. Paradoxically, the hardest to research and code were newer or smaller markets, with a less developed independent production sector, and where a limited number of national productions are produced mainly internally by broadcasters, with the help of many small individual producers.

As above, the objective of the work was not to verify the measures released every other year through the broadcasters' declarations to their regulatory authorities, and then compiled and published by the European Commission. Rather, the research team's objective was to produce a consistent measure across markets, comparable to the data from the 2005 Study, with a minimum of 90% of the programmes to be coded in order to ensure it is statistically representative, and to establish the viability of monitoring by third parties using available data sources.

8.2.3. Determining 'qualifying programmes'

The first step in the process of coding linear data was to determine the genre of each individual programme in order to identify 'qualifying programmes' – the proportion of the transmission schedule to which Articles 4 and 5 of the Directive apply, that is, all programmes 'excluding sport events, news and games' (non-qualifying programmes) as well as 'advertising, teletext services and teleshopping' (non-programme material).

TAM services do not use the same genre classification across markets, due to cultural differences. For example, a cartoon intended for children will be classified as 'fiction/animation' in one market but as 'children/series' in another. So in order to come up with consistent, comparable data across markets the team re-classified the programmes according to 'qualifying genres' (Documentary, Factual Magazine, Entertainment, Fiction and Cinema Film) and 'non-qualifying genres' (Sports events, News, Games, Teletext and Teleshopping). The genre classification, which had been created for the 2005 Study, was used again for this project after the team reviewed it and concluded that it was still valid. Definitions of these genres are provided in Appendix I (see Chapter 11 of this report).

Using this classification was quite straightforward as the team has strong international experience of programming content and genre classification

specificities in Europe. The team experienced the most challenging difficulties at the border between documentary magazines, factual magazines and entertainment, where cultural differences between Southern and Northern markets play a critical role. If this may slightly skew the results for these genres, it did not impact the split between 'qualifying' and 'non-qualifying' programmes.

8.2.4. Determining 'European works'

Article 4 of the Directive requires linear services (broadcasters) to 'reserve a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, for European works'. Article 6 of the TVWF Directive contains a set of four definitions to determine whether a production qualifies as a European work. These are:

- Geographical requirements;
- Workforce requirements;
- Requirements related to the control of production; and
- Co-production requirements.

We referred to this set of definitions when determining whether or not a programme qualified as a European work. Each definition is examined in more detail below.

Geographical requirement

Article 6²¹⁴ Paragraph 1 of TVWF Directive requires that, to qualify as a European production, a programme must 'originate' from a European country that belongs to one of three categories:

- It is one of the 27 European Union Member States; or
- It has ratified the Council of Europe treaty on Transfrontier Television and must fulfil certain conditions (cf. Art. 6(2)); or
- It is a European third country with which the Community has concluded co-production agreements related to the audiovisual sector, under certain conditions (Art 6(3)).

Table 18 lists the countries that qualify on the geographical definition.

²¹⁴ Article 6 has now become (with some amendments as regards works co-produced with third countries) Article 1(n) of the AVMS Directive. As the new definition will only be transposed in national laws by end 2009, reference to Article 6 of the TVWF Directive is made here.

Table 18: List of all countries that qualify on the geographical definition

EU Member States	Countries that have ratified the European Convention on Transfrontier Television	Other
Austria	Croatia	Iceland (EEA country)
Belgium	Liechtenstein	(did not sign The convention yet)
Denmark	Macedonia	
Finland	Moldova	
France	Norway	
Germany	San Marino	
Greece	Switzerland	
Ireland	Turkey	
Italy		
Luxembourg		
Netherlands		
Portugal		
Spain		
Sweden		
UK		
Cyprus		
Czech Republic		
Estonia		
Hungary		
Latvia		
Lithuania		
Malta		
Poland		
Slovakia		
Slovenia		
Romania		
Bulgaria		

Workforce requirement

Article 6 Paragraph 2 of the TVWF Directive adds a workforce requirement: a majority of the writers and production staff employed on a production must live in a Member State or, in cases where the production qualifies under the European Convention on Transfrontier Television or a bilateral Treaty, one of the other qualifying countries.

Control of production

Under Article 6 (2) of the TVWF Directive, programmes that originate from an EU Member State or country that has ratified the European Convention on Transfrontier Television are subject to additional controls on production in order to qualify as a European work:

- The programme must be made by one or more producers established in one (or more) of the qualifying countries; or
- The production must be supervised and actually controlled by one or more producers established in one (or more) of the qualifying countries.

Co-production requirements

In the case of co-productions with producers not located in a qualifying country, Article 6 (4) of the TVWF Directive requires that the European co-producer provides a majority of the financing and retains control of the production process if the production is to qualify as a European work.

Coding 'European Works'

As it is very difficult to find all details on a production, especially on the funding mix (i.e. what the various funding sources are for a particular production), and as Member States further refine these criteria to monitor their national activities and produce their own declarations, the team had to take a consistent and practicable approach across markets and thus elaborated the following rules:

- When local TAM providers reported the origin of production, we relied on it except for stock programmes (fiction, cinema, documentary and children's animation).
- When the origin of production was not reported, we generally found that flow programmes are most often produced nationally. Even when formats are licensed from another country, the original producer plays a minority role in the local adaptation and production of the programme.
- For stock programmes, in case of a co-production, we considered as indicators the language of the film and the country in which the program was first broadcast.
- We also researched the information displayed by individual co-production partners to find out what was the role of each in the production.
- As a final criteria, if we were unable to define a work's nationality via the aforementioned rules, we looked at the composition of the workforce. Where a majority of the writers and production staff employed on the project were resident in a Member State, the program qualified as a European work if the work was produced in the framework of a bilateral co-production treaty (Art 6(4)), and the production was controlled by a producer established in one of the Member States.

8.2.5. Determining 'Independent productions'

Article 5 of the AVMS Directive requires broadcasters to allocate at least 10% of qualifying hours to 'European works created by producers who are independent of broadcasters'. Alternatively, Member States are permitted to require broadcasters to reserve 'at least 10% of their programming budget' for European works created by independent producers.

We used transmission time and not programme budget as the unit of analysis. Indeed, effective monitoring of programme budgets would require verifiable data on the direct costs of every programme or series in a channel's schedule, while payments for production can be manipulated for reporting purposes and may be structured so payments are received in stages, distorting the true value of production. So this was both the only practicable solution and the solution adopted by most Members States, even those who offer a choice, as has already been noted in the legal analysis of First Interim Report.

Definition of independent producer

It is left to Member States to define 'independent producer', but Recital 49 of the AVMS Directive (which replicates Recital 31 of the 1997 TVWF Directive) states that the definition should take account of criteria such as 'ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights'.

In order to create a single definition of 'independent producer' that could be applied by our research team in each Member State, we defined three criteria:

- The production company must be free from a controlling interest by a broadcaster (a broadcaster owns less than 50% of the shares of the production company).
- The programme must have been made by a production company that produces a majority of its programmes outside the broadcaster's own management structure.
- The production company must provide programmes for different broadcasters (not just one).

If a production company clearly met all of the criteria, it was classified as 'independent'. If the company did not meet any one of the criteria, it was classified as 'not independent'.

Producer independence across borders

There are some cases where a production company is independent in one national market but not in another. An example of this is the producer of German police series *Derrick*, which in Germany is dependent on ZDF, but which, in any other market, is free of all control from national broadcasters. This is also the case with international production houses, such as Grundy/Fremantle (owned by broadcast group RTL, which also owns broadcasters in many European markets).

In the absence of specific indication in the TVWF/AVMS Directive regarding this point we decided to consider producers' independence country-by-country, that is, that a producer can be 'dependent' in some markets but 'independent' in others. We did so because we felt this was more consistent with the 'spirit' of the Directive.

This methodology is not the same as the one used in the 2005 study whereby a producer was considered independent if it was not linked to a broadcaster in any European Member State (a 'company-by-company' approach). We however decided to compare the past results of our 2005 Study with our new results to identify the impact of this change of methodology. We believe it does not have an impact on the general trends we mean to analyse in this study²¹⁵.

Coding 'independent productions'

In order to obtain the required details on a programme to implement these criteria, we looked for many sources of information for each programme.

For most of the programmes, the qualifying process was quite simple: we studied the offer of every broadcaster, and of the different subsidiary companies they owned and classified all their programmes as 'dependent'. We studied the catalogue of independent production companies (for this, we referred to information from the regulators, from the associations of independent producers or from the production companies directly) and classified their programmes as 'independent'.

Final decisions on status required quite extensive enquiries in some cases. For example, French production company Link Production first appeared not to be independent because its owner was an anchor of the broadcaster M6, and because it produced many programmes for M6. But, searching further for information, we learnt this company was also producing programmes for other broadcasters including TF1 and France Télévisions, so we finally classified it as 'independent'.

Another French example is that of the programme *Toute Une Histoire* on France 2. This programme is produced by an independent company named Reservoir Prod, historically one of the production companies created in the early 90s when France Télévisions decided to outsource a large share of its production. This production company is not more than 50% owned by a broadcaster and provides programmes to various channels. Reservoir Prod thus meets our criteria 1 and 3 and is considered an independent producer. However, the programme *Toute Une Histoire* is made within the production structure of France 2, raising a question as whether this production was truly independent. We solved the case by classifying the programme as independent because the AVMS Directive requires not that 'programmes' shall be independent, but 'producers', and also because the programme itself was launched in 2006, long after Reservoir Prod became independent.

In the case of a co-production (e.g. co-production between an independent production company and a broadcaster), we tried to detect

²¹⁵ A note of the impact of this methodological choice can be found in Chapter 24 of this report.

who had the control of the production. By 'control of the production', we refer to the provision of the majority of funding for the production.

As it is very difficult to find the financial details on a co-production, the team had to take a consistent and practicable approach by searching for who held the editorial control of the production.

For this, we searched for details concerning this co-production on the internet, in articles, annual reports, production company websites, etc. We especially tried to find whether the programme was a 'format' owned by the independent production company, which would classify the co-production as controlled by the independent company.

When we could not find any information via these public resources, we asked the broadcaster or the production company directly.

8.2.6. Adequate proportion of 'Recent works'

Article 5 of the TVWF Directive also requires that an 'adequate proportion' of the transmission time devoted to European independent productions should be of recent works – that is, 'works transmitted within five years of their production'. To evaluate this requirement we identified the date of production of each independent programme and recorded whether or not the programme was a recent work when broadcast.

8.2.7. Peak-time definition

In order to deepen the analysis, and considering that some European countries specify that requirements be met for peak-time hours, we were able to monitor differences between linear TV content during peak-time and the all-day schedule.

For the 2005 Study, peak-time was defined as 18:00-23:00. This rather broad definition of peak-time enables the use of a common definition for all Member States, even when local habits are different, with northern markets typically having their largest audiences at around 20:00 and southern markets having theirs at around 21:00. The definition is least appropriate for Spain, where viewing peaks at around 22:00. But, to remain consistent with the 2005 Study, we continue to define peak-time as 18:00-23:00.

8.2.8. Adding 'viewing' to 'transmission' hours

The Tender Specifications of this Study indicated that the Commission were also interested in audiences. 'Transmission' hours remain the measure for monitoring Articles 4 and 5, but 'viewing' measures have been added as an interesting complement. In the past, transmission hours

translated quite directly into viewing hours, as the majority of viewers only had a choice of a few channels. Today viewers have access to hundreds of TV channels when they subscribe to digital pay-TV services, and dozens when they access free, or nearly free, multichannel services. This development will advance even further as on-demand services offer access to thousands of titles from libraries. Thus 'viewing' is becoming less of a direct consequence of 'transmission', and therefore 'viewing' provides a more direct measure of whether works have actually been consumed by audiences.

Programmers' choices therefore have a less direct impact on consumers' viewing, and 'viewing', as an additional measure, adds value to the performance indicators.

Therefore we have doubled the number of performance indicators compared with the 2005 Study by applying to TV schedules the same performance indicators used for transmission hours (that is, share of qualifying works, share of European works, share of independent works etc.), to 'viewing' hours as well.²¹⁶

In the tables below for each performance indicator in each Member State, we have detailed the results for both transmission hours and viewer hours, for each channel in the sample. We have also provided a 'Result for Member State Sample' figure for transmission hours and viewer hours. It is important to note that this 'Result for Member State Sample' is not a simple average of the results for each channel, but a separate figure that has looked at all coded titles for the Member State as a whole. Thus the 'Result for Member State Sample' may be significantly different from what would be expected if one were simply to average the channel results, for the 'Result for Member State Sample' reflects the fact that channels contribute different proportions of the total qualifying hours (transmission and viewing hours) for a particular Member State. A simple average of the results at channel level would ignore this and present an inaccurate result for the Member State as a whole. For example: if a Member State had two channels, A (with 90 qualifying viewer hours, 80% of which were to European content) and B (with 10 qualifying viewer hours, 50% of which were to European content), a simple average of the ratios would lead to a result that 65% of qualifying viewer hours was devoted to European content. Our approach, taken by looking at all viewer hours for the Member State, would note 72 European viewer hours for channel A and 5 for channel B, giving a much more accurate result for the Member State as a whole, of 77%.²¹⁷

²¹⁶ Viewer Hours are a measure of the volume of viewing. A Viewer Hour is equivalent to one viewer watching an hour of a given channel/programme, or two viewers watching 30 minutes, or 60 viewers watching one minute each. If only 2 hours of a channel's daily schedule are dedicated to a certain genre it will only contribute 8.33% to that channels output in terms of hours, but if those two hours get four times the channel's average audience then it will account for 33.3% of the channel's Viewer Hours.

²¹⁷ For the sake of clarity the process described here to reach our 'Result for Member State Sample' figures would give the same result as if we had prepared a weighted average of the results for each channel. This retrospective process (which works back from the channel data, rather than forwards from the individual programme-level data as we have done) would give each result for

8.3. EU-wide Analysis

8.3.1. Contents and objectives

This section is designed to offer both an overview of the findings of this study as far as linear services are concerned, and an introduction to the country-by-country analyses that follow. It is based primarily on our own estimates reached from our survey of 54 channels across 11 Member States²¹⁸. Our objective was to compare situations between different groups or types of Member State and different types of broadcaster.

This section is also designed to compare the situations for various types of broadcasters from across our sample. We have grouped the 54 channels of our sample according to channel types (leadership, ownership, revenue model) and country types (size, geography, recency of EU membership and application of Directive). More explanations about this classification are provided in Section 8.3.2. For most of these categories, the channel sample is large enough to provide robust conclusions. When possible, we also look across criteria to assess the influences of country types on the situations of individual channels, whether or not final results are influenced, for example, by the size of the market they operate in.

This section is not designed to provide findings at EU30 level, but to present the results of our representative sample of 11 Member States. Nor is it designed to compare findings between individual Member States. Although data for each Member State is robust (as can be seen in the country-by-country analysis), there is some variety in the number and type of broadcasters covered. For example the number of broadcasters covered in each market varies from 2 to 6, meaning that average findings by market may not necessarily represent each Member State well enough to allow for satisfactory comparisons between Member States themselves. Moreover, it is important to note that few thematic channels have been included in our sample, as we wanted to cover the largest possible share of European TV viewing. As thematic channels, especially those specialised in fiction, build a large proportion of their schedules with imports, they usually show lower proportions of European works. As a consequence, including more thematic channels would certainly have lowered the average proportions of European transmission hours. However, the impact in terms of European viewer hours would be much less due to thematic channels achieving relatively limited audience ratings.

Analysing findings by individual types must always take into consideration which particular channels have been grouped in each particular type. We

each channel a factor equivalent to its share of audience or share of relevant transmission hours (depending on the performance indicator in question) in order to appropriately ‘weight’ it with respect to the other channels. Thus when calculating the average across the entire sample of channels for a particular Member State, the respective size of a channel’s audience or transmission hours would be taken into account.

²¹⁸ Please note that this equates to 12 markets, as Belgium counts as two markets (the Flemish and French Communities of Belgium; see Section 8.4 for further explanations).

will always highlight such considerations when necessary in the course of this section.

8.3.2. Classification of Member States / broadcasters

Our classification of Members States is based on three criteria: geography, size and recency of EU membership.

- Geography: 7 Member States are located in the Northern part of Europe (Belgium, Estonia, Germany, Ireland, Poland, Sweden and the United Kingdom); 4 Member States are located in the Southern part of Europe (France, Italy, Romania and Spain);
- Size: this criteria takes into account the size of the population of each Member States; 6 are large-size Member States (France, Germany, Italy, Poland, Spain and the United Kingdom); 5 are small-size Member States (Belgium, Estonia, Ireland, Romania and Sweden);
- Recency of EU Membership: 8 Member States joined the EU before 2004 (Belgium, France, Germany, Italy, Ireland, Spain, Sweden and the United Kingdom) and thus are counted as 'old' Member States; 3 Member States have joined the EU after 2004 (Estonia, Poland and Romania) and thus are counted as 'new' Member States.

Our classification of Broadcasters is based on three criteria: ownership, leadership and revenue model.

- Ownership: this criteria is very straightforward as broadcasters are either privately owned (whether commercial broadcasters such as ITV, TELECINCO or TV3, or pay-TV broadcasters such as CANAL+ or SKY ONE) or publicly owned (BBC, RTE, TVP, RAI, etc.);
- Leadership: this criterion reflects the level of an individual broadcaster's share of audience, relative to that of other broadcasters in the same market. Thus in this study, a 'leader' is a broadcaster with a high share of audience compared to other broadcasters in the same Member State. This does mean that there is no set level of audience share that a broadcaster must reach in order to be classified as a 'leader', as this will vary from territory to territory. Instead, each market has been looked at individually to assess which broadcasters are leaders and which are non-leaders in their particular market, by seeing where a significant gap appears between audience shares. Generally, between 2 and 4 broadcasters have been classified as leaders in each market; for example, our German sample consists of 4 leading broadcasters (RTL, SAT1, DAS ERSTE and ZDF), while our French sample consists of 2 leading channels (TF1 and FRANCE2). M6 and FRANCE3, although their audience share is close to that of German leading broadcasters, have been considered non-leading broadcasters due to the gap between them and the leading broadcasters in France. Also, markets where fewer broadcasters have been included in our sample will include only leaders as we decided together with the Commission, to favour broadcasters with a high share of audience in these territories in order to maximize

our representativeness of television viewership; for example, the samples for Flemish and French Communities of Belgium consist only of leading broadcasters (respectively VTM/VRT, and LA UNE/RTL-TVI);

- Revenue model: this criterion indicates the primary source of revenue of the broadcasters included in our sample. 'Advertising' is the primary source of revenue for all commercial private channels whether leading or not (ANTENA3, TVN, KANAL5, FIVE, DIRECT8, etc.); 'Subscription' is the primary source of pay-TV channels, although some may complement this source with some advertising (CANAL+, FOX LIFE, etc.); lastly, all public channels have been grouped as 'Government', although it is worth noting that most of them actually rely on a mix of both public funding and advertising (FRANCE2/3, RAI1/2, TVP, etc.), even though some of them collect only a limited amount of advertising revenue (DAS ERSTE, ZDF, etc.), or no advertising revenue at all (BBC)²¹⁹.

8.3.3. Qualifying hours

Across our sample, qualifying programmes make up 68.3% of the total transmission hours and 65% of the total viewer hours on all channels studied in 2007 (see Table 19). These proportions are very similar across channel and country types, so we can say with confidence that, as a general rule, the requirements of Articles 4 and 5 of the Directive cover approximately two thirds of all hours either transmitted over television channels or watched by television viewers.

²¹⁹ Later in this report, advertising funded channels are generally referred to as "privately funded channels" while public channels, whether relying solely on public revenue or complementing that with advertising revenues as well, are generally referred to as "publicly funded channels".

Table 19: Ratio of Qualifying Hours to Total Transmission and Viewer Hours, 2007

Grouping of Sample by:			<i>Ratio of Qualifying to Total Transmission Hours (%)</i>	<i>Ratio of Qualifying to Total Viewer Hours (%)</i>
Channel Type	Leader?	No	74.9%	70.7%
		Yes	62.6%	63.0%
	Ownership	Private	68.6%	66.9%
		Public	67.6%	62.6%
	Revenue Model	Ad	66.9%	66.6%
		Gvt	67.6%	62.6%
		Subs	81.8%	81.2%
Country Type	Geography	North	68.3%	67.2%
		South	68.2%	62.8%
	Recency	New	66.6%	57.4%
		Old	68.8%	66.6%
	Size	Large	69.0%	65.5%
		Small	66.8%	59.3%
Result for Member State Sample			68.3%	65.0%

A few differences are worth pointing out at this stage:

- Qualifying programmes are less prominent on the television schedules of leaders (62.6%) compared with non-leaders (74.9%), but differences are smaller when looking at the proportion of viewer hours (respectively 63% and 70.7%);
- Qualifying programmes are more prominent on the television schedules of subscription channels (81.8%) compared with both public (67.6%) and commercial channels (66.9%);
- Qualifying programmes are relatively less successful with the audiences of public channels (62.6% of total viewer hours vs. 67.6% of total transmission hours) compared with private channels (66.9% vs. 68.6%);
- Qualifying programmes are relatively less successful with the audiences of channels from southern Member States (62.8% of total viewer hours vs. 68.2% of total transmission hours) compared to channels from northern Member States (67.2% vs. 68.3%);
- Qualifying programmes are relatively less successful with the audiences of channels from new Member States (57.4% of total viewer hours vs. 66.6% of total transmission hours) compared to channels from old Member States (66.6% vs. 68.8%);

- Qualifying programmes are relatively less successful with the audiences of channels from small Member States (59.3% of total viewer hours vs. 66.8% of total transmission hours) compared to channels from large Member States (65.5% vs. 69%);

8.3.4. European works

Across our sample, European works made up 62.4% of the total qualifying transmission hours in 2007.²²⁰ Most European broadcasters met the 50% requirement of Article 4. European works also make up an average of 74% of the total viewer hours across all studied channels in 2007, which indicates the strong appeal of European works to European audiences, and the broadcasters' reliance on European content to build their ratings. The figures are even higher when looking at peak-time only: 62.8% of the total qualifying transmission hours and 75.5% of the total viewer hours.

Table 20: Ratio of European qualifying to total qualifying hours, 2007

All Day			Peak Time	
Grouping of Sample by:			Ratio of Qualifying European to Total Qualifying Hours (%)	Ratio of Qualifying European to Total Qualifying Viewer Hours (%)
Channel Type	Leader?	No	52.5%	59.7%
	Yes		72.6%	79.6%
	Ownership	Private	54.1%	66.4%
		Public	78.0%	84.5%
	Revenue Model	Ad	57.5%	66.7%
		Gvt	78.0%	84.5%
		Subs	32.7%	53.5%
	Geography	North	60.9%	77.8%
		South	64.6%	70.2%
Country Type	Recency	New	56.2%	66.1%
		Old	64.4%	75.5%
	Size	Large	66.9%	74.6%
		Small	53.0%	67.4%
	Result for Member State Sample		62.4%	74.0%
Grouping of Sample by:			Ratio of Qualifying European to Total Qualifying Hours (%)	Ratio of Qualifying European to Total Qualifying Viewer Hours (%)
Channel Type	Leader?	No	49.7%	59.5%
	Yes		76.6%	81.9%
	Ownership	Private	55.0%	69.0%
		Public	78.6%	84.9%
	Revenue Model	Ad	59.6%	69.4%
		Gvt	78.6%	84.9%
		Subs	27.2%	50.9%
	Geography	North	63.1%	78.1%
		South	62.5%	72.5%
Country Type	Recency	New	55.4%	63.7%
		Old	64.9%	77.6%
	Size	Large	63.7%	75.8%
		Small	61.1%	72.6%
	Result for Member State Sample		62.8%	75.5%

Note on channels below the 50% requirement

Our sample estimates show that 13 European channels stand, either slightly or significantly, below the 50% requirement (see Table 21): PRO TV and PRIMA TV in Romania, FOX LIFE and ITALIA1 in Italy, TV3 and KANAL5 in Sweden, FIVE and SKYONE in the UK, KANAL2 and TV3 in Estonia, CANAL+ in Poland, RTL-TVI in the French Community of Belgium and RTE2 in Ireland.

²²⁰ Comments from stakeholders received after the workshop referenced data in the European Audiovisual Observatory's Yearbook, which identifies country-of-origin of Fiction programming and found that 32% of Fiction broadcast was of European origin. However, the consultants note that the approach here appears significantly different to the methodology for this study. The EAO study has looked at total hours of fiction content over a year (2006) across a larger sample of channels than this study. This study has instead looked at entire qualifying schedules (thus containing the full variety of genres) for a smaller sample of channels for two non-consecutive weeks in 2007.

Table 21: Channels standing below the 50% European works requirement²²¹

Country	Channel		1993	1996	1999	2002	2006/2007
BE	RTL-TVI	Reported	44.6%	43.7%	49.1%	41.5%	54.6%
		Sample estimate	25.2%	48.0%	35.7%	37.5%	42.2%
EE	Kanal 2	Reported	N/A	N/A	N/A	N/A	51.0%
		Sample estimate	N/A	N/A	N/A	N/A	35.3%
EE	TV 3	Reported	N/A	N/A	N/A	N/A	51.0%
		Sample estimate	N/A	N/A	N/A	N/A	39.3%
IE	RTE 2	Reported	68.0%	88.0%	57.0%	38.0%	43.0%
		Sample estimate	54.9%	45.3%	49.0%	36.3%	43.3%
IT	Fox Life	Reported	N/A	N/A	N/A	N/A	37.5%
		Sample estimate	N/A	N/A	N/A	N/A	16.3%
IT	Italia 1	Reported	37.6%	38.8%	41.3%	45.3%	37.5%
		Sample estimate	N/A	31.3%	40.2%	43.6%	21.8%
PL	Canal +	Reported	N/A	N/A	N/A	N/A	48.5%
		Sample estimate	N/A	N/A	N/A	N/A	29.0%
RO	Prima TV	Reported	N/A	N/A	N/A	N/A	53.8%
		Sample estimate	N/A	N/A	N/A	N/A	47.9%
RO	Pro TV	Reported	N/A	N/A	N/A	N/A	36.8%
		Sample estimate	N/A	N/A	N/A	N/A	43.0%
SE	Kanal 5	Reported	N/A	N/A	N/A	16.0%	18.0%
		Sample estimate	11.3%	23.4%	17.8%	24.4%	22.1%
SE	TV 3	Reported	N/A	N/A	N/A	N/A	21.0%
		Sample estimate	27.2%	33.3%	18.1%	21.3%	12.1%
UK	Sky One	Reported	13.0%	38.0%	46.0%	21.0%	27.0%
		Sample estimate	6.5%	31.6%	37.9%	18.7%	22.0%
UK	Five	Reported	N/A	N/A	N/A	N/A	58.0%
		Sample estimate	N/A	N/A	N/A	N/A	47.5%

Four of these channels reported proportions above the 50% requirement in 2006, the latest year available, with which we compared our 2007 estimates: these are KANAL2 and TV3 in Estonia, PRIMA TV in Romania and FIVE in the UK. Since the definition of European programmes is quite straightforward, it is likely that our estimates fall below reported data because our two-week sample misrepresents these channels' yearly schedules. In most of these cases, proportions are close to 50% anyway.

For the 9 remaining channels, although there are sometimes significant differences between our 2007 estimates and the 2006 reported data²²², both our estimates and the declarations confirm that the 50%

²²¹ Our sample data for 2007 has been compared to the 2006 reported data from the Eighth Communication, which is the most up-to-date reported data available to the consultants. Please note, as detailed before, some of these channels are not subject to legislation from the Member State in which they find their viewing. For example, Kanal 5 and TV3 are subject to regulation from UK and are therefore not the responsibility of the Swedish regulators.

²²² 2006 data for RTL-TVI have not been reported by Belgium, following the decision by TVI s.a. not to apply for a licence from the Government of Belgium's French Community when it expired on 31 December 2005. RTL-TVI's 2006 declared data have therefore been extracted from the Luxembourgian declarations.

requirement is not met by the following channels from our sample: RTL-TVI in the French Community of Belgium, RTE2 in Ireland, FOX LIFE and ITALIA1 in Italy, CANAL+ in Poland, PRO TV in Romania, KANAL5 and TV3 in Sweden, SKY ONE in the UK. The following conclusions can be derived from this finding:

- Channels below the 50% requirement can belong to any type of channel (private and public) and any country type (large or small, old or new, north or south);
- Subscription channels have a higher chance of falling below the 50% requirement (FOX LIFE, CANAL+, SKY ONE);
- Channels broadcasting from another Member State have a higher chance of falling below the 50% requirement (e.g. KANAL5).

Main conclusions on European works

The following conclusions can be derived from the findings of Table 20:

- Leading channels show, on average, higher proportions of European qualifying hours than smaller broadcasters (72.6% vs. 52.5%), a gap that widens even further in peak-time (76.6% vs. 49.7%). This is probably explained by the fact that leading channels tend to favour European programmes as the best way to attract audiences, and have the financial means to pursue such a policy, while non-leading broadcasters lack the resources to compete directly with leaders on such productions, and thus turn to non-European acquisitions to increase profitability. There are some exceptions to this: for example non-leading public channels from large Member States offer high proportions of European work like FRANCE3 (75.9%), RAI2 (82.5%) and BBC2 (85.2%), while a recent private channel like DIRECT8, based on flow entertainment and fiction classics, also shows a very high proportion (92.3%).
- Public channels offer, on average, higher proportions of European qualifying hours (78%) than private channels (54.1%), both during all-day and specifically during peak-time. Their "public service" status makes them natural flagships for the promotion of national culture and the protection of audiovisual heritage, and more open to European works in general. Again there are some exceptions to this general rule: private broadcasters that are in general in a leading position, such as TVN (80.5%), CANALE5 (81.8%), SAT1 (82.5%), TELE5 (83.2%), RTL (83.7%) and ITV1 (85,1%) show a strong appetite for European works. However, some public channels offer lower exposure of European works, such as RTE2 (43.3%), RTE1 (60.9%), LA2 (67.7%) or TVP1 (67.2%).
- Subscription channels typically feature fewer European works in their schedule (32.7% of the total qualifying transmission hours) than privately funded channels (57.5%) or publicly funded channels (78%). They often rely heavily on new American series and movies to build attractive offerings. CANAL+ of France is an exception,

though: its strong ties with French movie producers (due to legal obligations of investment in this sector) foster the presence of domestic works in its schedule, leading to a proportion of 61.2%. Also worth noting is that European works are somewhat more attractive to audiences on subscription channels: when expressed in viewer hours instead of transmission hours, the proportion reaches 53.5% across the subscription channels of our sample.

- Channels from Southern, old and large European countries show average proportions of around 65% European works, whereas channels from Northern, new and small European countries show proportions between 53% and 61%. Proportions rise when expressed in viewer hours, especially for channels from Northern countries (60.9% of total qualifying hours to 77.8% of total qualifying viewer hours) while channels from Southern countries rise from 64.6% to 70.2%.

8.3.5. Non-domestic European works

Across our sample, non-domestic European works make up 8.2% of the total qualifying transmission hours in 2007, compared to 4.3% of total qualifying viewer hours. Proportions are lower when looking specifically at peak-time: 7% of the total qualifying transmission hours and 2.9% of the total viewer hours (see Table 22).

Table 22: Ratio of non-domestic qualifying European to total qualifying hours, 2007

All Day			Peak Time	
Grouping of Sample by:			Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)
Channel Type	Leader?	No	7.1%	4.4%
		Yes	9.3%	4.3%
	Ownership	Private	6.9%	3.6%
		Public	10.7%	5.3%
	Revenue Model	Ad	6.8%	3.6%
		Gvt	10.7%	5.3%
		Subs	7.0%	5.7%
	Geography	North	9.4%	4.1%
		South	6.5%	4.5%
	Recency	New	11.1%	6.9%
		Old	7.3%	3.8%
Country Type	Size	Large	5.1%	4.0%
		Small	14.7%	9.1%
	Result for Member State Sample			8.2%
				4.3%
Channel Type	Leader?	No	6.8%	3.0%
		Yes	7.1%	2.9%
	Ownership	Private	6.5%	2.7%
		Public	7.8%	3.3%
	Revenue Model	Ad	6.2%	2.6%
		Gvt	7.8%	3.3%
		Subs	8.6%	6.2%
	Geography	North	9.3%	3.9%
		South	3.3%	1.7%
	Recency	New	9.4%	5.6%
		Old	6.3%	2.4%
	Size	Large	3.7%	2.4%
		Small	13.5%	8.3%
	Result for Member State Sample			7.0%
				2.9%

The following conclusions can be derived from the findings of Table 22:

- Leading channels show, on average, higher proportions of non-domestic European qualifying hours than non-leading broadcasters (9.3% vs. 7.1%), a gap that is reduced for peak-time (7.1% vs. 6.8%) and is reversed when looking at viewer hours both across all-day (4.3% vs. 4.4%) and specifically during peak-time (2.9% vs. 3%).

- Public channels offer, on average, higher proportions of non-domestic European qualifying hours than private channels (10.7% vs. 6.9%), a gap that is reduced in peak-time (7.8% vs. 6.5%) and reflected by the proportions for viewer hours both across all-day (5.3% vs. 3.6%) and in peak-time (3.3% vs. 2.7%).
- Subscription channels show, on average, the highest proportion of non-domestic European qualifying hours in peak-time (8.6% vs. 7.8% for publicly funded channels and 6.2% for privately funded channels). Interestingly, that strategy is paying off when we look at proportions in viewer hours (6.2% vs. 3.3% for publicly funded channels and 2.6% for privately funded channels).
- Channels from Southern, old and large European countries show average proportions between 5.1% and 7.3% non-domestic European works, whereas channels from Northern, new and small European countries show proportions between 9.4% and 14.7%. Proportions expressed in viewer hours reflect this bias except for the geography criterion, where channels from Northern countries achieve lower proportions than those from Southern countries (4.1% of total qualifying viewer hours vs. 4.5%).

8.3.6. Independent European works²²³

Across our sample, independent European works make up 31% of the total qualifying transmission hours in 2007, compared to 33.4% of total qualifying viewer hours. Proportions are higher when looking specifically at peak-time: 34.6% of the total qualifying transmission hours and 36.9% of the total viewer hours (see Table 23).

²²³ It is important to note that the proportions of independent productions have been re-calculated for Italy and Spain following the debates at the public Workshop held in Brussels on November 18. Indeed, in the draft report presented then, Endemol productions had been considered non-independent for the second half of 2007, based on inaccurate information gathered by the consultants that Mediaset owned 50% of the holding company controlling the Endemol group. Further research made clear that as Mediaset owns 33% of that holding company (together with Goldman Sachs and John de Mol owning another 33% each), Endemol cannot be considered to be controlled by Mediaset, according to our criteria as described in the methodological section of this report. It is also worth noting that during preparation of the Final Study Report, all coding was re-checked and a very small number of French programmes were re-coded in the 'independent works' criteria as they had been coded incorrectly during previous work on the study. Following these re-calculations, average proportions of independent works for our sample have increased by up to 0.9 percentage points across the Member States sample.

Table 23: Ratio of independent European to total qualifying hours, 2007

All Day			Peak Time			Grouping of Sample by:	
Grouping of Sample by:		Ratio of Qualifying Independent European to Total Qualifying Hours (%)	Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)	Grouping of Sample by:		Ratio of Qualifying Independent European to Total Qualifying Hours (%)	Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)
Channel Type	Leader?	No	31,2%	33,7%		31,4%	36,4%
		Yes	30,8%	33,3%		37,8%	37,1%
	Ownership	Private	31,9%	34,2%		34,9%	36,9%
		Public	29,3%	32,2%		33,8%	36,9%
	Revenue Model	Ad	33,5%	34,7%		38,2%	37,7%
		Gvt	29,3%	32,2%		33,8%	36,9%
		Subs	21,2%	11,6%		15,4%	7,9%
	Geography	North	32,1%	33,2%		34,6%	33,4%
		South	29,4%	33,6%		34,5%	41,1%
	Recency	New	26,7%	23,0%		29,0%	25,1%
		Old	32,3%	35,4%		36,2%	38,9%
	Size	Large	32,4%	33,5%		34,2%	36,5%
		Small	28,0%	32,6%		35,3%	40,8%
Result for Member States Sample		31,0%	33,4%	Result for Member States Sample		34,6%	36,9%

Note on channels below the 10% requirement

Only two channels from our sample fall below the requirement of 10%: TV3 in Sweden (4.7%) and TVN in Poland (5.6%). It is worth noting that these two channels are above the 10% requirement according to national definitions²²⁴ if we look at the reported data for 2006, according to which TV3 is at 12% and TVN at 22.3%. However, our sample estimates show, as a general rule, that European broadcasters are significantly above the 10% requirement of Article 5 of the Directive.

Main conclusions on independent European works

The following conclusions can be derived from the findings of Table 23:

- Differences between channel types are rather small across all-day. We observe that there are more independent productions on non-leading channels (31.2% non-leading vs. 30.8% leading), private channels (31.9% private vs. 29.3% public) from Northern (32.1% North vs. 29.4% South), old (32.3% old vs. 26.7% new) and large Member States (32.4% large vs. 28% small).
- Proportions in viewer hours reflect those for transmission hours, typically with a few more percentage points, except that independent productions are less successful in new Member States (23% of total qualifying viewer hours vs. 26.7% of total transmission hours) than in old Member States (35.4% of total qualifying viewer hours vs. 32.3% of total transmission hours). We can also see that independent productions are more successful in

²²⁴ Discrepancies between our sample estimates and reported data can be explained by the broader national definitions of independent works used in Poland and Sweden compared to the definition we applied to our pan-European study. For example, Poland applies a 'company-by-company' definition of 'independent works', which means a producer has to be independent from a *specific* broadcaster. This definition is broader than our definition which sets that 'independent works' have to be independent from any broadcasters in a given country (see Legal section of this study).

Southern Member States (33.6%) than in Northern Member States (33.2%) whereas it was the opposite in terms of transmission hours.

- Subscription channels show a somewhat different situation than other channels in our sample: their qualifying schedules are made of 21.2% of independent productions vs. 31% for the entire sample, representing 11.6% of total qualifying viewer hours (vs. 33.4% for the entire sample).
- There are important differences when we look specifically at the peak-time situation. Leading channels offer significantly more independent productions (37.8% vs. 30.8% across all-day), as well as public channels (34.5% vs. 29.3% across all-day) and channels from Southern (32.2% vs. 29.4% across all-day), small (35.3% vs. 28% across all-day) and old Member States (36.2% vs. 32.3% across all-day).

8.3.7. Recent independent European works

Across our sample, recent independent European works make up an average of 84.4% of the total independent European hours in 2007, compared to 91.7% of total independent viewer hours. Proportions are higher in peak-time: 92.4% of the total independent transmission hours and 95.5% of the total independent viewer hours (see Table 24).

Table 24: Ratio of recent independent European to total independent European, 2007

All Day				Peak Time					
Grouping of Sample by:			Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)	Grouping of Sample by:			Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)
Channel Type	Leader?	No	85,4%	92,3%	Channel Type	Leader?	No	90,7%	96,6%
		Yes	83,4%	91,4%			Yes	94,0%	95,0%
	Ownership	Private	86,7%	93,1%		Ownership	Private	91,7%	95,5%
		Public	79,6%	89,5%			Public	94,1%	95,5%
	Revenue Model	Ad	86,9%	93,1%		Revenue Model	Ad	91,7%	95,5%
		Gvt	79,6%	89,5%			Gvt	94,1%	95,5%
		Subs	84,8%	96,1%			Subs	91,4%	99,3%
	Geography	North	87,0%	92,9%		Geography	North	93,3%	95,5%
		South	80,2%	90,4%			South	91,1%	95,5%
		New	78,5%	83,4%			New	86,5%	88,1%
	Recency	Old	86,0%	92,7%			Old	93,8%	96,3%
		Large	85,5%	91,9%			Large	93,3%	95,8%
		Small	82,0%	88,8%			Small	90,7%	92,7%
Result for Member States Sample			84,4%	91,7%	Result for Member States Sample			92,4%	95,5%

The following conclusions can be derived from the findings of Table 24:

- Non-leading channels show more recent independent productions than leading channels during all-day (85.4% vs. 83.4%) but fewer of them in peak-time (90.7% vs. 94%).

- Private channels show more recent independent productions than public channels during all-day (86.7% vs. 79.6%) but fewer of them in peak-time (91.7% vs. 94.1%).
- Subscription channels show a similar picture to Advertising Funded and Government funded channels, although proportions are based on a much lower proportion of their schedules (84.8% vs. 79.6% for Subscription vs. Government funded channels and 86.9% for Advertising funded channels).
- Proportions of recent independent productions are higher on channels from Northern (87% vs. 80.2% South), old (86% vs. 78.5% new) and large Member States (85.5% vs. 82% small).

8.3.8. Stock vs flow programmes

Across our sample, qualifying European stock makes up 45.9% of the total qualifying transmission hours in 2007, compared to 50.4% of total qualifying viewer hours. Proportions are higher when looking specifically at peak-time viewing: 49.1% of the total qualifying peak-time transmission hours and 54.9% of the total qualifying peak-time viewer hours (see Table 25).

Table 25: Ratio of European stock/flow to total European hours, 2007

All Day				Peak Time				
Grouping of Sample by:			Qualifying European Stock to Total Qualifying European Hours (%)	Qualifying European Flow to Total Qualifying European Hours (%)	Total (%)	Qualifying European Stock to Total Qualifying European Hours (%)	Qualifying European Flow to Total Qualifying European Hours (%)	Total (%)
Channel Type	Leader?	No	48.1%	51.9%	100%	50.2%	49.8%	100%
	Yes		44.2%	55.8%	100%	48.4%	51.6%	100%
	Ownership	Private	43.7%	56.3%	100%	47.6%	52.4%	100%
	Public		48.7%	51.3%	100%	51.2%	48.8%	100%
	Revenue Model	Ad	41.2%	58.8%	100%	47.1%	52.9%	100%
	Gvt		48.7%	51.3%	100%	51.2%	48.8%	100%
Country Type	Subs		71.7%	28.3%	100%	54.9%	45.1%	100%
	Geography	North	50.7%	49.3%	100%	53.3%	46.7%	100%
		South	39.3%	60.7%	100%	42.5%	57.5%	100%
	New		47.8%	52.2%	100%	48.5%	51.5%	100%
	Old		45.4%	54.6%	100%	49.3%	50.7%	100%
	Size	Large	47.4%	52.6%	100%	51.2%	48.8%	100%
Result for Member State Sample			41.8%	58.2%	100%	44.7%	55.3%	100%
			45.9%	54.1%	100%	49.1%	50.9%	100%
All Day				Peak Time				
Grouping of Sample by:			Qualifying European Stock to Total Qualifying European Viewer Hours (%)	Qualifying European Flow to Total Qualifying European Viewer Hours (%)	Total (%)	Qualifying European Stock to Total Qualifying European Viewer Hours (%)	Qualifying European Flow to Total Qualifying European Viewer Hours (%)	Total (%)
Channel Type	Leader?	No	51.1%	48.9%	100%	54.7%	45.3%	100%
	Yes		50.2%	49.8%	100%	55.0%	45.0%	100%
	Ownership	Private	47.2%	52.8%	100%	51.6%	48.4%	100%
	Public		53.8%	46.2%	100%	58.9%	41.1%	100%
	Revenue Model	Ad	47.5%	52.5%	100%	52.1%	47.9%	100%
	Gvt		53.8%	46.2%	100%	58.9%	41.1%	100%
Country Type	Subs		29.4%	70.6%	100%	25.5%	74.5%	100%
	Geography	North	59.4%	40.6%	100%	61.9%	38.1%	100%
		South	40.3%	59.7%	100%	46.1%	53.9%	100%
	New		58.6%	41.4%	100%	59.1%	40.9%	100%
	Old		49.0%	51.0%	100%	54.3%	45.7%	100%
	Size	Large	51.4%	48.6%	100%	56.4%	43.6%	100%
Result for Member State Sample			36.2%	63.8%	100%	38.7%	61.3%	100%
			50.4%	49.6%	100%	54.9%	45.1%	100%

The following conclusions can be derived from the findings of Table 25:

- Non-leading channels show more European stock programming than leading channels during all-day (48.1% vs. 44.2%) and in peak-time (50.2% vs. 48.4%), but stock programming is relatively less successful on non-leading channels (51.1% of total qualifying viewer hours for non-leaders vs. 50.2% for leaders, when looking at the schedules for the entire day, and 54.7% for non-leaders vs. 55% for leaders, when looking specifically at peak-time).
- Public channels show more European stock programming than private channels during all-day (48.7% vs. 43.7%) and in peak-time (51.2% vs. 47.6%), a strategy that is successful with audiences (53.8% of total qualifying viewer hours for public channels vs. 47.2% for private channels across the all-day schedule, 58.9% vs. 51.6% in peak-time)
- Subscription channels show significantly more European stock programming than publicly funded and privately funded channels during all-day (71.7% vs. 48.7% and 41.2% respectively), although all types of channels show a similar picture in peak-time (54.9%, 51.2% and 47.1% respectively). Proportions are completely reversed when we look at viewer hours, where European stock programming attracts 29.4% of total qualifying European viewer hours to subscription channels during all-day and 25.5% in peak-time.
- Proportions of European stock programming are higher on channels from Northern (59.4% vs. 40.3% South), new (58.6% vs. 49% old) and large Member States (51.4% vs. 36.2% small).

8.3.9. Analysis of specific regulatory situations

In this section, we look at whether the specificities of the implementation of Articles 4 and 5 of the Directive at national level, as analysed in the regulatory Section of this report, have any significant influence on the proportions of European and independent European works broadcast by the channels from our sample. In order to do so, we have used the classifications described in Sections 5.1.3 and 5.1.4 of the report in terms of being flexible or prescriptive, looked at the relative proportions of the channels from our sample belonging to each category of Member State and analysed whether differences, if any, could be explained by the specific regulatory situations, in addition to the other distinguishing factors of the Member States (size, geography, recency of EU membership), or of the broadcasters in each Member State sample (leadership, ownership, revenue model).

Impact of the “where practicable” clause

Table 26 is based upon the legal work in this report (Sections 4 and 5 of this study), except that we have kept only those Member States that are

part of our sample of 11 Member States. It indicates whether Member States have included in their regulations clauses that provide broadcasters with some flexibility, often through including the statement "Where Practicable" in the legislation.

Table 26: "Where practicable" and similar flexible measures

No flexibility	Semi-flexible	Fully flexible
Belgium (French)	Ireland	Belgium (Flemish)
Estonia	Italy	Sweden
France	Poland	
Germany	Romania	
United Kingdom	Spain	

Source: Member State regulatory authorities

We first looked at whether the channels enjoying the most flexible regulation (Flemish Community of Belgium and Sweden) showed lower proportions of European and/or independent works. Findings were, however, inconclusive. Indeed, several channels operating in these markets were among the channels showing the highest proportion of European works, notably EEN, SVT and even, though to a lesser extent, VTM. Also, we found that two Swedish channels (TV3 and KANAL5) were among the channels showing the lowest proportions of European works across our sample. But these channels are not regulated in Sweden, but in the UK, where regulation has been classified as "not flexible". Findings were similar when we looked at their proportions of independent works.

We then did the reverse analysis, this time looking at the channels operating in the markets where regulation has been classified as "not flexible" (French Community of Belgium, Estonia, France, Germany and the UK). This time, a large number of channels ranked among those with the highest proportion of both European and independent works. But these channels are also operating in larger markets, which we think could be a more influential factor than the lack of flexibility in their regulation: Spanish channels, which belong to a market with a "semi-flexible" regulation but in a large country, also rank high in the list, for example. This is supported by the fact that channels from the smaller "not flexible" markets (French Community of Belgium and Estonia) tend to rank lower. Still, one should note that Italian channels, although belonging to a large market, generally score rather low, too.

Impact of higher requirements

As noted in the legal section of this report, three markets set higher requirements in their national regulation compared to the Directive: these were France, Italy and the United Kingdom. We looked at whether the channels operating in these markets were showing higher proportions of

European and independent works compared to channels operating in the other markets from our sample.²²⁵

While this is the case for French and British channels, this was not the case for Italian channels, as we have noted earlier. As this analysis can only be based on 3 markets with very specific strategic and cultural backgrounds, and as not all of them show higher proportions of European and independent works, conclusions on eventual impact of higher regulatory requirements are difficult to draw.

Impact of definition of independent producer

Table 27 is based upon Table 4 in the legal section of this report, except that we have kept only those Member States that are part of our 11 Member States sample. It indicates whether Member States have a strict or flexible definition of 'independent producer', or whether they have no definition at all.

Table 27: Member State approaches to defining 'independent producer'

No definition	Flexible definition	Strict definition
Belgium (Flemish) Germany Sweden	Estonia Spain	Belgium (French) France Ireland Italy Poland Romania United Kingdom

Source: Member State regulatory authorities

We thought a strict definition of an independent producer could possibly influence channels into increasing their proportion of independent works, as they commission productions from producers that are independent according to their national regulation, compared with Member States where there is only a loose or no definition of 'independent producer'. But in reality, there does not seem to be a clear distinction between the different situations. We have already noted that French and British channels offer high proportions of independent works, but that Italian channels do not. The case of Belgium is also interesting: LA UNE shows a high proportion but it is a public channel and a leading channel too, while RTL-TVI shows a low proportion. Then, while Ireland shows a high proportion of independent works, this is not the case for most channels operating in Poland, and especially not Romania. Important to note, these last two markets are new Member States, where independent production

²²⁵ All other markets from the sample fit into the group with 'basic requirements' (as opposed to 'higher requirements'). This group contains a wide variety of markets, unlike the group for 'higher requirements'. This has meant that conclusions cannot be drawn from this 'basic requirements' group, and instead we look to the more specific 'higher requirements' group.

is typically less developed than in older Member States, where the television environment is more competitive and mature.

In conclusion, we estimate that specific regulatory provisions designed to foster the promotion of European or independent works taken at Member State level do not provide a clear influencing factor on the proportion of such works, as far as we could estimate from the results from our sample. Of course, Articles 4 and 5 are only one part of the regulatory framework of each Member State, and how regulation can impact the realities of the programme market should certainly take into account other elements such as, for example, the mechanisms in place to support production or the policy of public broadcasters in terms of developing internal or external production.

8.3.10. A note on the impact of operating within larger markets

In general, channels in markets with larger populations have relatively more revenue to finance local production than their counterparts in smaller markets because they have more viewers, which mechanically translates into more advertising, subscription or revenue from public sources such license fees. This is especially true of the genres that are expensive to produce, like fiction programming. Leading channels also benefit from an increased impact inside each market. Notwithstanding differences such as GDP, average time spent watching television or audience profile, which also influences advertising revenue, TF1, with 30% audience share in a market of 60 million viewers, has 40 times more revenue to finance production than RTE2, a channel with 10% audience share in a market of 4 million viewers. So, TF1 enjoys the revenue necessary to produce French productions that are able to better compete against American shows, while RTE2 can only attempt that with a limited number of flagship productions, or concentrate on less expensive flow programming.

Strategic factors influencing the proportion of independent works are also linked to the size of market. Indeed, you need a large market to have enough production opportunities and volume of production for independent producers to emerge and survive. Historically, channels produced most content in-house. The independent production sector needed years to emerge. Recent EU Member States have fewer independent productions, because these are less mature markets and their independent production sector simply needs more time to develop.

If we rank the channels according to their proportions of both European and independent production and take into account the type of country in which channels operate, the overall conclusions are:

- Larger markets like France, Germany, Spain and the UK, rank higher than Ireland, Estonia, Romania or Sweden;
- Although being large markets, Poland and Italy rank relatively low, which we explain by the fact that Poland is a relatively poorer market and Italy is a relatively less competitive market;

- Although being small markets, the Flemish Community of Belgium ranks high on both criteria, which we explain by the fact that this market is very dynamic economically and culturally, with independent producers developing many formats which then travel internationally;
- Inside each market, typically, a channel in a leading position will have a higher rank: in the UK for example, Five ranks low, while ITV ranks high.

The situations for individual channels can of course differ from this general rule. For example, DIRECT8 shows the highest proportion of European works in spite of being a very small channel, which is due to their stance on entertainment programming, a genre that is typically cheaper to produce than, for example, fiction programming. Also, SVT shows among the highest proportion of European works although being in a small market, which is explained by their leading position and public service culture. RAI1 (Italy) and TVN (Poland) rank among the lowest for independent productions although they operate in markets where independent production is well developed.

8.4. Summary of Outputs by Member State

8.4.1. Flemish Community of Belgium²²⁶

Belgium has been analysed as two separated markets: The Flemish Community of Belgium and the French Community of Belgium. Indeed, the audiovisual landscape of Belgium shows two different communities, with their own language and audience, which are not in competition and, as a consequence, can not be gathered in a single market analysis.

Data summary

Our sample consists of the largest public service channel EEN and the leading private commercial channel VTM. Together (see Table 28) they account for 61.2% of total TV viewing in the Flemish Community of Belgium.

Table 28: List of channels covered in the 2007 Flemish Community of Belgium sample²²⁷

Country	Channel	Launch Year	Share of Viewing (2005)	Revenue Model	Platform	Average Daily Transmission Hours	Sample Weeks
Belgium (Flemish)	EEN (ex TV1)	1953	37.60%	Gvt/Spon	Nat. Terr./C/S	24	12-18 March (non-standard week)
Belgium (Flemish)	VTM	1989	23.60%	Ad	Cab/Sat	24	November week is standard.

Genre analysis

VTM base their offering of qualifying programmes (cinema, documentary, entertainment, factual magazines and TV fiction) largely with TV fiction (59.9% of total qualifying hours²²⁸) followed by entertainment (17.9%). In peak-time, entertainment becomes more important (32.8%), but fiction remains the central component of the schedule (46.4%). EEN shows a more balanced mix of qualifying genres with entertainment at the top

²²⁶ Belgium has been analysed as two markets: The Flemish Community of Belgium and the French Community of Belgium. Indeed, the audiovisual landscapes of Belgium are clearly independent from one another, with their own language, channels and audiences. As a consequence, TAM systems are separate, making it impossible to aggregate viewing statistics at national level.

²²⁷ In the 'Platform' column, "Terr/C/S" means "Terrestrial, Cable and Satellite". It is worth noting as well that new technologies develop, channels increasingly use a mix of carriage technologies, with terrestrial, cable and satellite being the most developed, and other technologies such as IPTV or mobile TV being used less frequently at this time.

²²⁸ For the rest of the analysis, when we use the term "total qualifying hours" we are referring to transmission hours.

(38.7%), followed by factual magazines (27.4%) and fiction (20%). Proportions are similar for peak-time.

Figures in viewer hours reflect the programming choices of both channels. On VTM, fiction and entertainment account for 81.3% of all-day qualifying viewing, with a fairly balanced split between the two genres. On EEN, 86.8% of the qualifying viewer hours are split between fiction, entertainment and factual magazines. The peak-time picture again is similar.

Table 29: Genre proportion of total qualifying hours in the Flemish Community of Belgium, 2007

All Day				Peak Time			
Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)	Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)
EEN (ex TV1)	Cinema Film	3.2%	1.7%	EEN (ex TV1)	Cinema Film	0.0%	0.0%
	Documentary	10.7%	11.5%		Documentary	10.3%	9.8%
	Entertainment	38.7%	28.8%		Entertainment	36.2%	33.3%
	Factual Magazine	27.4%	28.5%		Factual Magazine	27.3%	26.5%
	Fiction	20.0%	29.5%		Fiction	26.2%	30.4%
VTM	Cinema Film	10.7%	6.1%	VTM	Cinema Film	5.1%	1.9%
	Documentary	3.1%	5.2%		Documentary	5.4%	5.8%
	Entertainment	17.9%	35.1%		Entertainment	32.8%	40.3%
	Factual Magazine	8.4%	7.5%		Factual Magazine	10.3%	6.1%
	Fiction	59.9%	46.2%		Fiction	46.4%	45.9%

Transmission and viewing ratio analysis

In 2007, qualifying programmes (that is, all programmes excluding advertising, teleshopping, teletext, news, sport and games) made up a relatively low average of 43.6% of the total transmission hours of channels sampled (see Table 30). The figure is slightly higher on public channel EEN (45.2%), compared to VTM (41.9%). Qualifying works take a higher proportion of total viewer hours on both channels, especially VTM (57.8%) but also on EEN (53.6%).

Table 30: Ratio of qualifying hours to total transmission and viewer hours in the Flemish Community of Belgium, 2007

Channel	Ratio of Qualifying to Total Transmission Hours (%)	Ratio of Qualifying to Total Viewer Hours (%)
EEN (ex TV1)	45.2%	53.6%
VTM	41.9%	57.8%
Result for Member State Sample	43.6%	55.5%

Proportion of European works

European works make up an average of 75.5% of the total qualifying transmission hours on all channels in the sample in 2007 (see Table 31), and even more in peak-time (95.7%). EEN pushes European works throughout the day while VTM favours European works particularly during peak-time (91.8%), while the proportion of qualifying works that are European is 57.6% across the all-day schedule.

European works have a larger share of audience than their share of transmission hours, especially in peak-time (98.5 %), and also during all-day (90.9%). For the all-day schedule European works are particularly successful on VTM, where they attract 86% of qualifying viewer hours, as opposed to 57.6% for its transmission hours.

Table 31: Ratio of European qualifying to total qualifying hours in the Flemish Community of Belgium, 2007

All Day			Peak Time		
Channel	Ratio of Qualifying European to Total Qualifying Hours (%)	Ratio of Qualifying European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Qualifying European to Total Qualifying Hours (%)	Ratio of Qualifying European to Total Qualifying Viewer Hours (%)
EEN (ex TV1)	92.2%	95.3%	EEN (ex TV1)	100.0%	100.0%
VTM	57.6%	86.0%	VTM	91.8%	96.8%
Result for Member State Sample	75.5%	90.9%	Result for Member State Sample	95.7%	98.5%

On average, 12.9% of qualifying works broadcast on the Flemish Community of Belgium channels in our sample during all-day are non-domestic European works (see Table 32), down to 4.8% in peak-time. Non-domestic European works attract a lower share of European viewing, with all-day at 5.9%, and peak-time at 2.9%. The situation is very similar for EEN and VTM, although EEN have somewhat more success turning non-domestic European transmission hours into viewer hours (7.7% during all-day) than VTM (4%).

Table 32: Ratio of non-domestic qualifying European to total qualifying hours in the Flemish Community of Belgium, 2007

All Day			Peak Time		
Channel	Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)
EEN (ex TV1)	12.1%	7.7%	EEN (ex TV1)	6.3%	4.1%
VTM	13.6%	4.0%	VTM	3.5%	1.6%
Result for Member State Sample	12.9%	5.9%	Result for Member State Sample	4.8%	2.9%

Proportion of independent works

The average proportion of qualifying works produced by European independent producers and broadcast by the channels in our sample was high, at 40.4% (see Table 33) for all-day and 58.5% in peak-time. The figures expressed in viewer hours are higher or equivalent (51.3% during all-day and 56.1% in peak-time). The situations of EEN and VTM are similar. VTM shows a higher proportion of independent European works with 45% of total qualifying time during all-day and 64.6% in peak-time, and 66.2% of its peak-time qualifying viewer hours.

Table 33: Ratio of independent European to total qualifying in the Flemish Community of Belgium, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)</i>
EEN (ex TV1)	36.2%	43.6%	EEN (ex TV1)	52.1%	46.7%
VTM	45.0%	60.0%	VTM	64.6%	66.2%
Result for Member State Sample	40.4%	51.3%	Result for Member State Sample	58.5%	56.1%

Proportion of recent independent works

On average, 84.2% of all qualifying independent European transmission hours are programmes less than five years old (see Table 34). In peak-time the proportion becomes 100%. Recent works are more attractive to audiences and achieve an even higher share of total qualifying independent viewing (96.2% and 100%).

Table 34: Ratio of recent independent European to total independent European in the Flemish Community of Belgium, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)</i>	<i>Channel</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)</i>
EEN (ex TV1)	82.2%	92.9%	EEN (ex TV1)	100.0%	100.0%
VTM	85.9%	98.8%	VTM	100.0%	100.0%
Result for Member State Sample	84.2%	96.2%	Result for Member State Sample	100.0%	100.0%

Proportion of stock/flow works

The proportion of stock vs. flow programmes among total qualifying European hours is very balanced on VTM (see Table 35) where stock programmes account for 53.7% of the total qualifying European hours of all-day schedules (flow: 46.3%), with a similar 53.1% in peak-time (flow: 46.9%). EEN puts a greater emphasis on flow programmes, which account for 72.8% of its all-day qualifying hours, 63.6% during peak-time.

Figures for viewer hours reflect the situation for transmission hours, with stock programmes performing relatively well on EEN compared with its proportion of total qualifying transmission hours, with stock programmes making up 39.3% of all-time qualifying viewer hours, and 40.2% in peak-time.

Table 35: Ratio of European stock/flow to total European in the Flemish Community of Belgium, 2007

All Day				Peak Time			
Channel	Qualifying European Stock to Total Qualifying European Hours (%)	Qualifying European Flow to Total Qualifying European Hours (%)	Total (%)	Channel	Qualifying European Stock to Total Qualifying European Hours (%)	Qualifying European Flow to Total Qualifying European Hours (%)	Total (%)
EEN (ex TV1)	27.2%	72.8%	100%	EEN (ex TV1)	36.4%	63.6%	100%
VTM	53.7%	46.3%	100%	VTM	53.1%	46.9%	100%
Result for Member State Sample	36.9%	63.1%	100%	Result for Member State Sample	44.7%	55.3%	100%

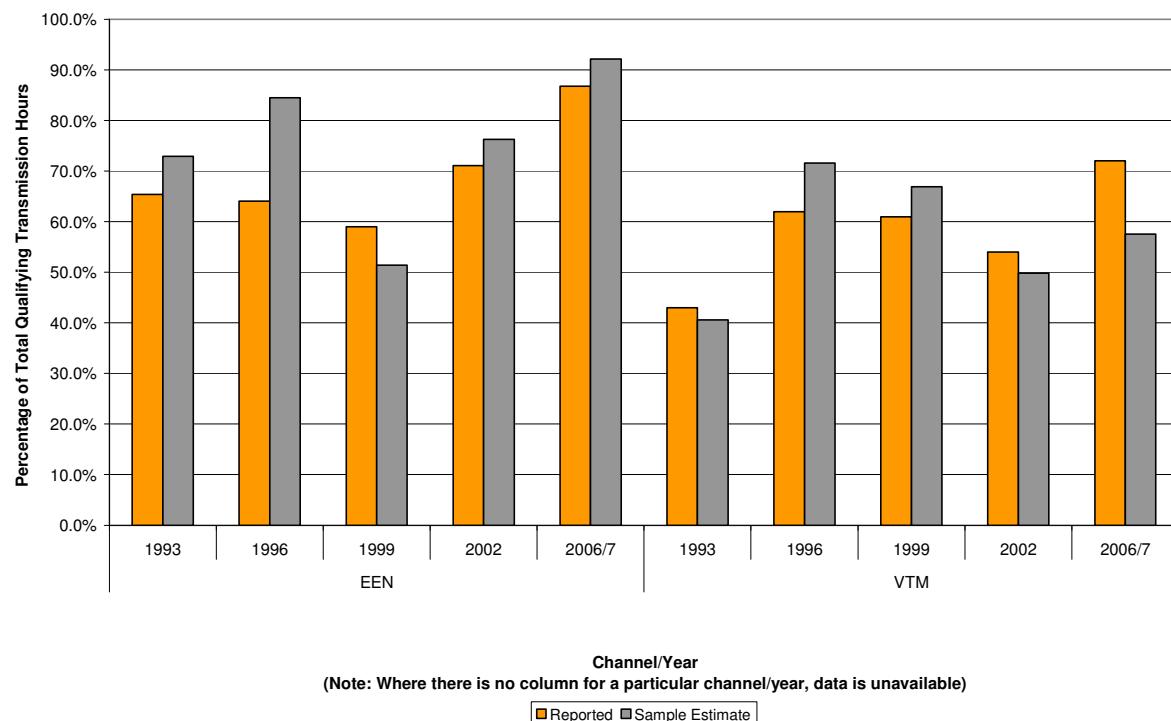
All Day				Peak Time			
Channel	Qualifying European Stock to Total Qualifying European Viewer Hours (%)	Qualifying European Flow to Total Qualifying European Viewer Hours (%)	Total (%)	Channel	Qualifying European Stock to Total Qualifying European Viewer Hours (%)	Qualifying European Flow to Total Qualifying European Viewer Hours (%)	Total (%)
EEN (ex TV1)	39.3%	60.7%	100%	EEN (ex TV1)	40.2%	59.8%	100%
VTM	50.5%	49.5%	100%	VTM	52.1%	47.9%	100%
Result for Member State Sample	44.3%	55.7%	100%	Result for Member State Sample	45.9%	54.1%	100%

Comparison with past data and declarations

The ratio of qualifying European works to total qualifying hours provided by our 2007 estimates are in line with the trends estimated in the 2005 Study (see Figure 19). It shows that channel EEN, and to a lesser extent VTM have been increasing their proportion of European works during the past years.

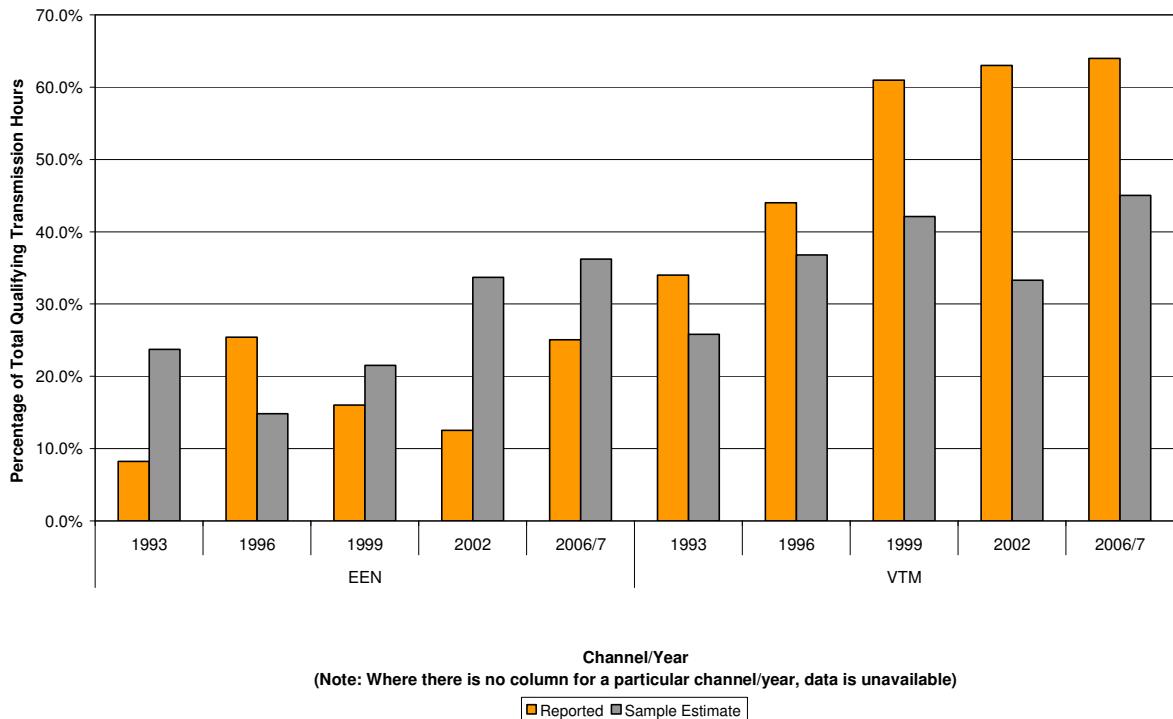
As noted before, our sample data for 2007 will be compared to the 2006 reported data from the Eighth Communication, which is the most up-to-date reported data available to the consultants.

Figure 19: Ratio of reported vs. estimated European qualifying transmission hours to total qualifying transmission hours in the Flemish Community of Belgium, 2007/2006



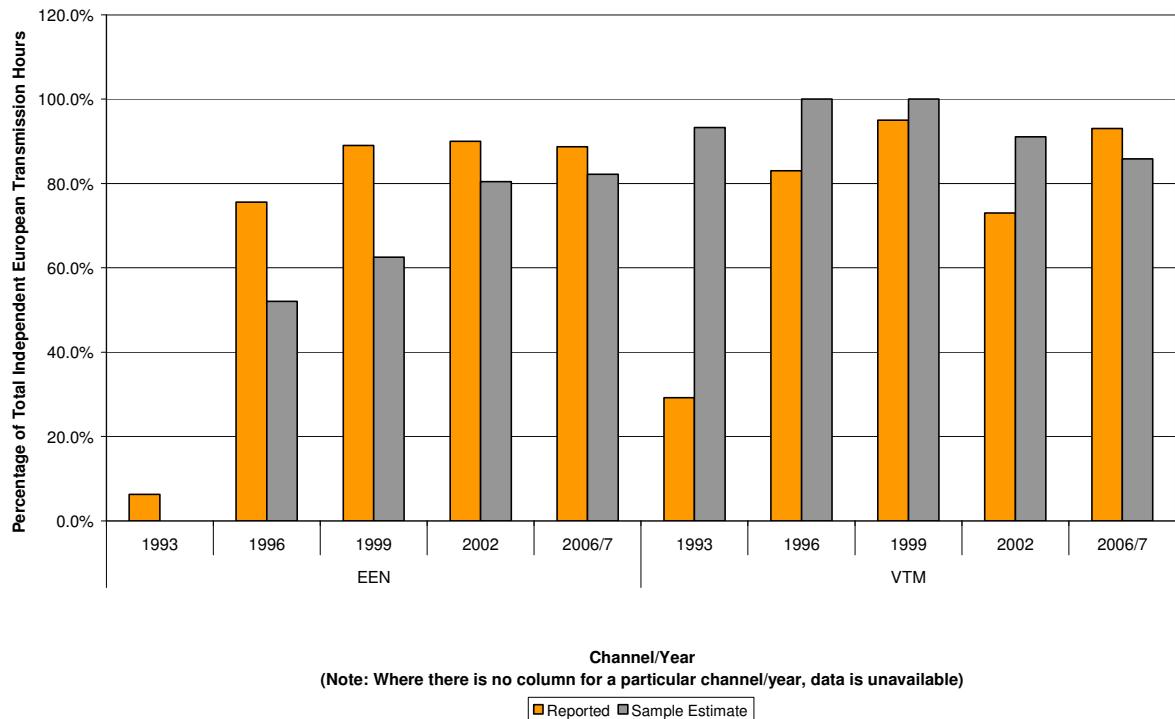
The 2007 ratio of qualifying independent European works to total qualifying hours is also consistent with past findings (see Figure 20). Figures for both channels are going up slowly over time, with VTM standing significantly above EEN. An interesting finding is that sample estimates are consistently above the reported data for EEN, but systematically below them for VTM. So the large gap between EEN and VTM in the reported data is much lower when we look at sample estimates.

Figure 20: Ratio of reported vs. estimated independent European qualifying transmission hours to total qualifying transmission hours in the Flemish Community of Belgium, 2007/2006



The ratio of recent independent European works to total qualifying independent European hours provided by our 2007 estimates are in line with the trends estimated in the 2005 Study (see Figure 21). It shows that channel EEN has been increasing its proportion of European works during the past years while VTM is relatively stable over the past years. Proportions for 2006/2007 are very similar between EEN and VTM.

Figure 21: Ratio of reported vs. estimated recent independent European qualifying transmission hours to total independent European transmission hours in the Flemish Community of Belgium, 2007/2006



8.4.2. French Community of Belgium²²⁹

Data summary

Our sample consists of the largest public service channel LA UNE and the leading private commercial channel RTL-TVI. Together (see Table 36) they account for 39.5% of total TV viewing in the French Community of Belgium.

We included RTL-TVI in this chapter as it is the leading channel in the French Community of Belgium and thus accounts for a large share of the Belgian audience. However, it is important to note that both Belgium and Luxembourg claim jurisdiction for RTL-TVI and this is the subject of ongoing legal action.

²²⁹ Belgium has been analysed as two markets: The Flemish Community of Belgium and the French Community of Belgium. Indeed, the audiovisual landscapes of Belgium are clearly independent from one another, with their own language, channels and audiences. As a consequence, TAM systems are separate, making it impossible to aggregate viewing statistics at national level.

Table 36: List of channels covered in the 2007 French Community of Belgium sample

Country	Channel	Launch Year	Share of Viewing (2005)	Revenue Model	Platform	Average Daily Transmission Hours	Sample Weeks
Belgium (French)	La1	1955	14.90%	Gvt/Ad	Nat. Terr.	24	Standard
Belgium (French)	RTL-TVI	1987	24.60%	Ad	Cab/Sat	20	

Genre analysis

Both LA1 and RTL-TVI base their offering of qualifying programmes (documentary, entertainment, factual magazines and TV fiction) largely around factual magazines and TV fiction, which together account for about 76% of total qualifying genres on each (see Table 37). The proportion of factual magazines loses between 10 and 20 percentage points when proportions are measured in viewer hours. While the rest of the schedule for LA1 is fairly balanced between documentary, entertainment and cinema, RTL-TVI puts a larger emphasis on cinema, which accounts for 18.7% of all qualifying transmission hours across the all-day schedule, and 23.2% in peak-time. Besides cinema, RTL-TVI has a successful offering of entertainment in peak-time, which attracts 20.3% of the total qualifying viewing, compared with 10.7% of its total qualifying transmission hours.

Table 37: Genre proportion of total qualifying hours in the French Community of Belgium, 2007

All Day				Peak Time			
<i>Channel</i>	<i>Genre</i>	<i>Genre Proportions of Total Qualifying Hours (%)</i>	<i>Genre Proportions of Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Genre</i>	<i>Genre Proportions of Total Qualifying Hours (%)</i>	<i>Genre Proportions of Total Qualifying Viewer Hours (%)</i>
La1	Cinema Film	3.3%	9.1%	La1	Cinema Film	13.3%	16.8%
	Documentary	9.0%	10.4%		Documentary	13.7%	14.9%
	Entertainment	4.7%	9.3%		Entertainment	14.1%	15.8%
	Factual Magazine	43.5%	25.5%		Factual Magazine	31.0%	23.8%
	Fiction	39.5%	45.6%		Fiction	27.9%	28.6%
RTL-TVI	Cinema Film	18.7%	19.0%	RTL-TVI	Cinema Film	23.2%	19.7%
	Documentary	3.7%	4.4%		Documentary	5.7%	4.6%
	Entertainment	6.9%	15.4%		Entertainment	10.7%	20.3%
	Factual Magazine	22.2%	19.0%		Factual Magazine	15.2%	17.0%
	Fiction	48.4%	42.1%		Fiction	45.3%	38.3%

Transmission and viewing ratio analysis

In 2007, qualifying programmes (that is, all programmes excluding advertising, teleshopping, teletext, news, sport and games) made up a relatively low 49.4% of the total transmission hours across all channels sampled for The French Community of Belgium (see Table 38). The figure is pulled up by public channel LA1 (62.4%), while that of RTL-TVI is

particularly low (33.9%), showing the importance of information, teleshopping and game shows on that channel.

The figure becomes higher when we look at the ratio of qualifying viewing, with 62.5% of LA1 total viewer hours coming from qualifying genres, and 50.7% for RTL-TVI, where qualifying programmes thus represent substantially more of the total audience than total transmission time.

Table 38: Ratio of qualifying hours to total transmission and viewer hours in the French Community of Belgium, 2007

<i>Channel</i>	<i>Ratio of Qualifying to Total Transmission Hours (%)</i>	<i>Ratio of Qualifying to Total Viewer Hours (%)</i>
La1	62.4%	62.5%
RTL-TVI	33.9%	50.7%
Result for Member State Sample	49.4%	55.7%

Proportion of European works

European works make up an average of 69.4% of the total qualifying transmission hours on all channels in the sample in 2007 (see Table 39) and slightly less in peak-time (67%). Again LA1 is highest, with 82.3% of all-day qualifying hours being European works, and even 87.2% in peak-time, while RTL-TVI has 42.2% for all-day and 42.6% for peak-time.

European works have a larger share of audience than their share of transmission hours in peak-time where they compose 88.8% of LA1's qualifying viewer hours, while RTL-TVI, though at a lower level, reaches 43.1%.

Table 39: Ratio of European qualifying to total qualifying hours in the French Community of Belgium, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>
La1	82.3%	80.4%	La1	87.2%	88.8%
RTL-TVI	42.2%	41.3%	RTL-TVI	42.6%	43.1%
Result for Member State Sample	69.4%	59.3%	Result for Member State Sample	67.0%	60.7%

Across all channels in the sample for the French Community of Belgium, a relatively high 25.8% of qualifying works broadcast during the all-day schedule are non-domestic European works (see Table 40), up to 30.1% in peak-time. Non-domestic European works, however, attract a lower

share of European viewing in peak-time with 23.1%, and also across the entire day with 25.1%.

The situation is very different for LA1 compared with RTL-TVI. On LA UNE 30.9% of European works broadcast during all-day are non-domestic, up to 38.4% in peak-time. Expressed as viewer hours the figures become 40.9% and 41.1% respectively. In comparison, RTL-TVI offers non-domestic works as 14.8% of all European works during all-day, and 20% in peak-time, attracting a lower share of audience with 11.5% and 11.8% respectively. Looking at these numbers, while keeping in mind that LA1 has twice the amount of European programming and twice as many qualifying transmission hours as RTL-TVI, it shows how the situation is different between the two leaders in the French Community of Belgium.

Table 40: Ratio of non-domestic qualifying European to total qualifying hours in the French Community of Belgium, 2007

All Day			Peak Time		
Channel	Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)
La1	30.9%	40.9%	La1	38.4%	41.1%
RTL-TVI	14.8%	11.5%	RTL-TVI	20.0%	11.8%
Result for Member State Sample	25.8%	25.1%	Result for Member State Sample	30.1%	23.1%

Proportion of independent works

The proportion of qualifying works produced by European independent producers and broadcast across all the channels in our French Community of Belgium sample was 29.9% (see Table 41) during all-day and 33.3% in peak-time. The figures expressed in viewer hours are slightly lower, at 27.8% and 26.7% respectively.

Again the situations of LA1 and RTL-TVI are extremely different from one another. LA1's share of independent works is high (35.7% for all-day and 41.8% in peak-time) and translates into higher shares of qualifying viewing (44.2% and 45.4%). By contrast, RTL-TVI offers fewer independent European works during all-day (17.2%) and peak-time (22.4%), attracting a lower share of audience with 12.9% and 14.2% respectively.

Table 41: Ratio of independent European to total qualifying in the French Community of Belgium, 2007

All Day			Peak Time		
Channel	Ratio of Qualifying Independent European to Total Qualifying Hours (%)	Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Qualifying Independent European to Total Qualifying Hours (%)	Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)
La1	35.7%	44.2%	La1	41.8%	45.4%
RTL-TVI	17.2%	12.9%	RTL-TVI	22.4%	14.2%
Result for Member State Sample	29.9%	27.8%	Result for Member State Sample	33.3%	26.7%

Proportion of recent independent works

For our sample of French Community of Belgium channels, 88% of all qualifying independent European transmission hours are programmes less than five years old (see Table 42). In peak-time the proportion is 86.4%. Recent works are generally more attractive to audiences and here achieve an even higher share of total qualifying independent viewing (89.3% for all-day and 90.7% for peak-time).

The situations of LA1 and RTL-TVI are very similar this time, although LA1 again shows higher figures.

Table 42: Ratio of recent independent European to total independent European in the French Community of Belgium, 2007

All Day			Peak Time		
Channel	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)	Channel	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)
La1	88.1%	91.0%	La1	89.6%	95.2%
RTL-TVI	87.9%	85.4%	RTL-TVI	79.3%	82.0%
Result for Member State Sample	88.0%	89.3%	Result for Member State Sample	86.4%	90.7%

Proportion of stock/flow works

The proportion of stock vs. flow programmes among total qualifying European hours is, across the sample, very balanced (see Table 43). Stock programmes account for 41.2% of total qualifying European hours for all-day schedules (flow: 58.8%) and 53.4% in peak-time (flow: 46.6%). LA1 and RTL-TVI look very similar as far as their offerings are

concerned, with slightly more stock on LA1 in peak-time (55.9%), and slightly more flow for RTL-TVI during all-day (65%).

The differences between the two channels grow when we look at the figures expressed as viewer hours. European stock makes up 60.5% of total qualifying European viewing on LA1 during peak-time, while European flow makes up 72.5% of RTL-TVI during peak-time.

Table 43: Ratio of European stock/flow to total European in the French Community of Belgium, 2007

All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>
La1	42.7%	57.3%	100%	La1	55.9%	44.1%	100%
RTL-TVI	35.0%	65.0%	100%	RTL-TVI	47.0%	53.0%	100%
Result for Member State Sample	41.2%	58.8%	100%	Result for Member State Sample	53.4%	46.6%	100%

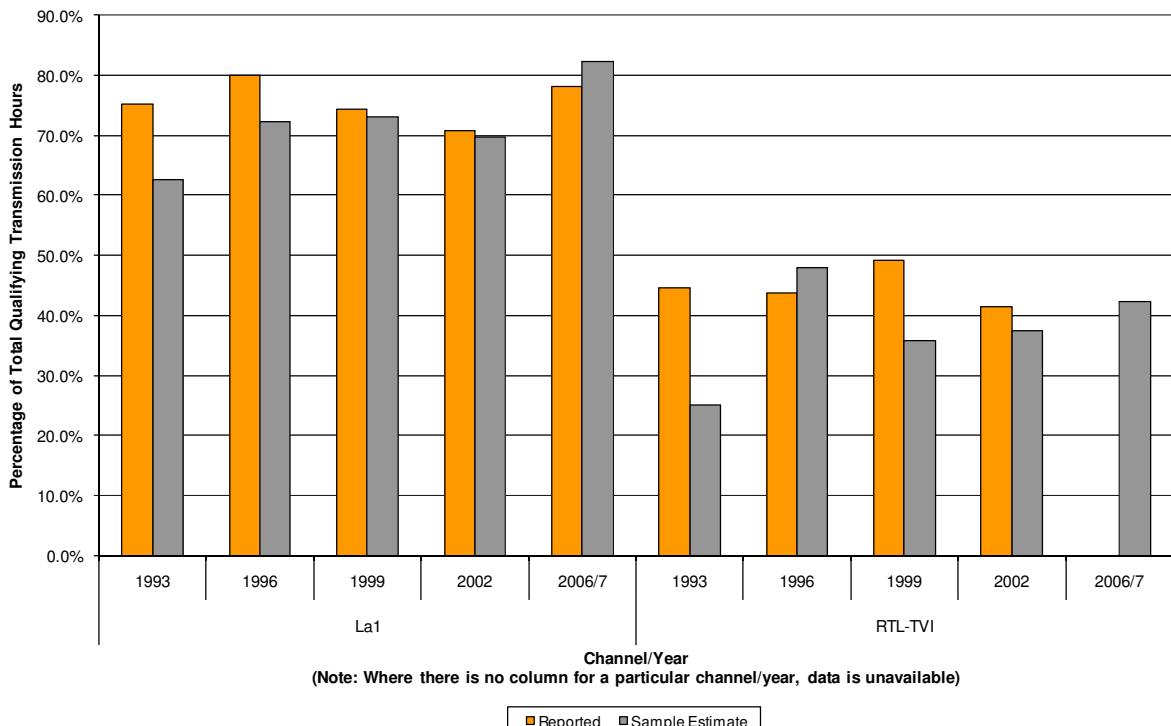
All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>
La1	59.8%	40.2%	100%	La1	60.5%	39.5%	100.0%
RTL-TVI	27.9%	72.1%	100%	RTL-TVI	27.5%	72.5%	100.0%
Result for Member State Sample	47.8%	52.2%	100%	Result for Member State Sample	46.0%	54.0%	100.0%

Comparison with past data and declarations²³⁰

The ratio of qualifying European works to total qualifying hours provided by our 2007 estimates are in line with the trends estimated in the 2005 Study (see Figure 22). It confirms that public channel LA1 offers approximately twice as much European programming as its private counterpart RTL-TVI, with proportions being relatively stable over the years, although it can be argued that there is a slow upward trend on both channels.

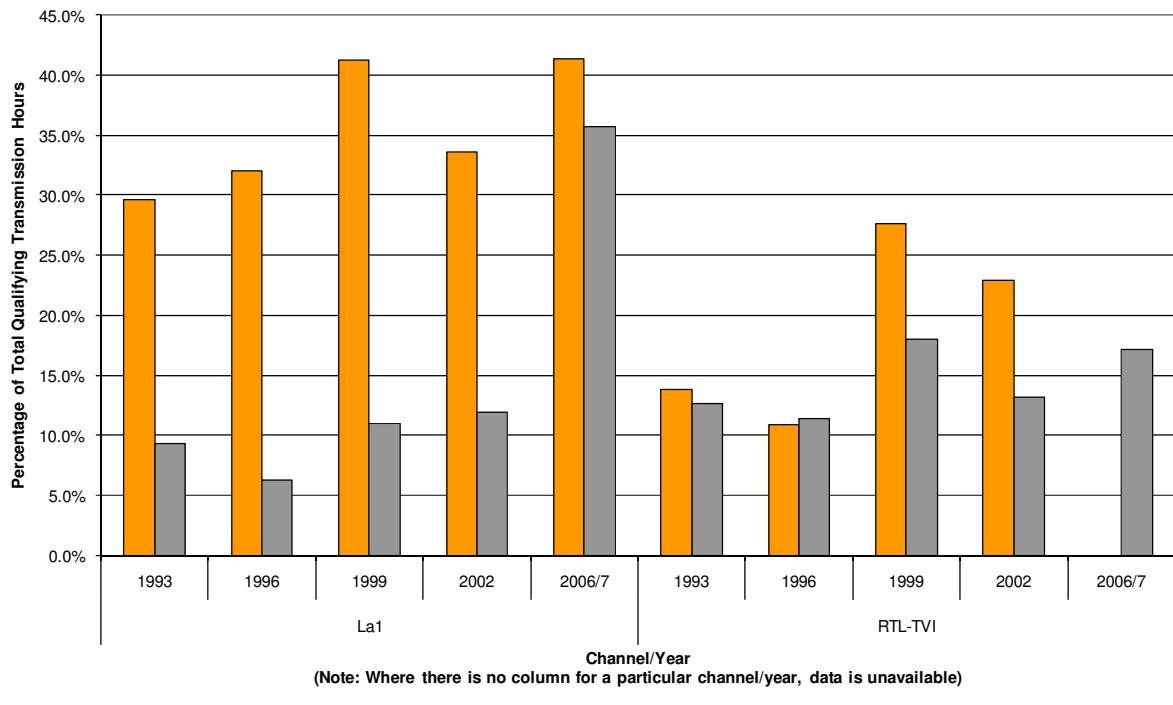
²³⁰ 2006 data for RTL-TVI have not been reported by Belgium, following the decision by TVI s.a. not to apply for a licence from the Government of Belgium's French Community when it expired on 31 December 2005. RTL-TVI's 2006 declared data used in the following graphs have therefore been extracted from the Luxembourgian declarations.

Figure 22: Ratio of reported vs. estimated European qualifying transmission hours to total qualifying transmission hours in the French Community of Belgium, 2007/2006



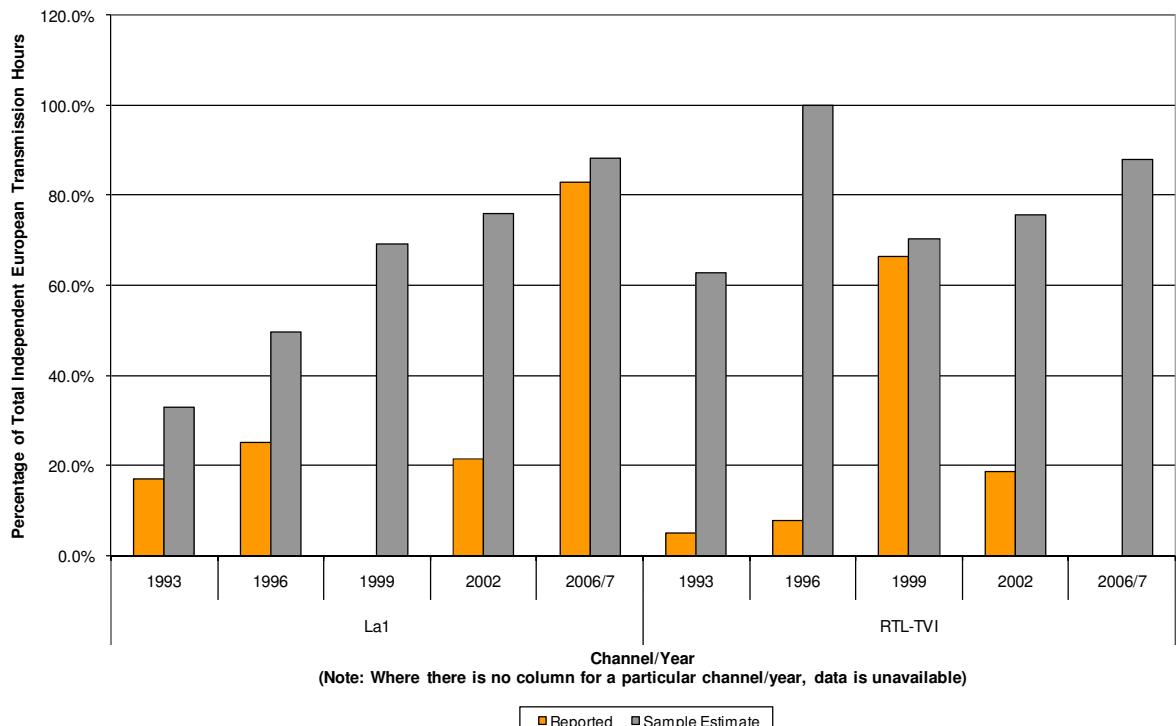
The 2007 ratio of qualifying independent European works to total qualifying hours is very consistent with past findings (see Figure 23) if we look at RTL-TVI, but shows a significant difference for the figures for LA1 in the 2007 sample estimate. However, our sample estimate is very much closer to reported data in 2007 vs. 2006 than it used to be in previous years. On the whole, we observe a general growth in the proportions for both channels, with LA1 offering twice as high a proportion of independent European works as RTL-TVI.

Figure 23: Ratio of reported vs. estimated independent European qualifying transmission hours to total qualifying transmission hours in the French Community of Belgium, 2007/2006



The ratio of recent independent European works to total qualifying independent European hours provided by the 2007 sample estimates are difficult to compare systematically with the reported data, as there are no declarations available for LA1 in 1999 and as declarations for RTL-TVI come from different sources (see Figure 24). Still, comparing 2007 estimates with past data from the 2005 Study shows that proportions are both very similar between LA1 and RTL-TVI and are, on the whole, on the rise.

Figure 24: Ratio of reported vs. estimated recent independent European qualifying transmission hours to total independent European transmission hours in the French Community of Belgium, 2007/2006



8.4.3. Estonia

Data summary

Our sample consists of one publicly funded channel ETV and two commercial channels, KANAL2 (owned by the Norwegian group Schibsted) and TV3 (MTG). These three leading channels account for 59.3% of total Estonian viewing (see Table 44).

Table 44: List of channels covered in the 2007 Estonian sample

Country	Channel	Launch Year	Share of Viewing (2005)	Revenue Model	Platform	Average Daily Transmission Hours	Sample Weeks
Estonia	ETV	1955	18.80%	Gvt	Nat. Terr.	24	Non-standard sample week for March (05-03-07 to 11-03-07); November sample week is standard
Estonia	Kanal 2	1993	19.20%	Ad	Nat. Terr.	24	
Estonia	TV3	1993	21.30%	Ad	Nat. Terr.	24	

Genre analysis

As shown in Table 45, public free-to-air channel ETV offers a balanced mix of genres with entertainment and fiction at the top (32.2% and 25.9% of

total qualifying hours) followed by factual magazines (20%), documentary (14.6%) and by a low 7.4% for cinema films.

Conversely, the two private free-to-air channels show more specific offerings, relying primarily on TV fiction programmes to fill their all-day schedules. This genre indeed accounts for 51.6% of total qualifying transmission hours both on KANAL2 and TV3.

The second most common genre on private channels is cinema films with proportions of 20.1% for KANAL2 and 24.3% for TV3, followed by entertainment (13.3% and 16.3% respectively) and factual magazines (11.4% and 4.8%). Documentary is the least common genre on these two channels, ranging between 3% and 3.6% of the total qualifying hours.

In peak-time, the two private channels put a greater emphasis on cinema films (with KANAL2 and TV3 doubling their proportions up to 41.6% on KANAL2 and 42.7% on TV3) at the expense of TV fiction.

Conversely, public channel ETV increases its proportion of factual magazines in peak-time (from 20% to 35%) at the expense of entertainment (which goes down from 32.2% to 17.3%).

In peak-time, the ratio based on viewer hours shows a poorer appeal of cinema films for all channels (31.4% of viewer hours vs. 41.6% of transmission hours on KANAL2, 34.7% of viewer hours vs. 42.7% of transmission hours on TV3 and 7.8% of viewer hours vs. 12.3% of transmission hours on ETV) to the benefit of entertainment and TV fiction.

Table 45: Genre proportion of total qualifying hours in Estonia, 2007

All Day		Peak Time					
Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)	Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)
ETV	Cinema Film	7.4%	5.6%	ETV	Cinema Film	12.3%	7.8%
	Documentary	14.6%	11.2%		Documentary	9.1%	7.7%
	Entertainment	32.2%	33.8%		Entertainment	17.3%	21.9%
	Factual Magazine	20.0%	24.5%		Factual Magazine	35.0%	35.3%
	Fiction	25.9%	24.9%		Fiction	26.3%	27.3%
Kanal2	Cinema Film	20.1%	23.8%	Kanal2	Cinema Film	41.6%	31.4%
	Documentary	3.6%	3.0%		Documentary	4.6%	4.3%
	Entertainment	13.3%	21.2%		Entertainment	20.9%	30.9%
	Factual Magazine	11.4%	8.4%		Factual Magazine	6.2%	6.4%
	Fiction	51.6%	43.7%		Fiction	26.7%	27.0%
TV 3	Cinema Film	24.3%	26.8%	TV 3	Cinema Film	42.7%	34.7%
	Documentary	3.0%	2.6%		Documentary	4.1%	3.6%
	Entertainment	16.3%	9.5%		Entertainment	12.7%	14.5%
	Factual Magazine	4.8%	5.5%		Factual Magazine	6.6%	7.8%
	Fiction	51.6%	55.7%		Fiction	33.9%	39.4%

Transmission and viewing ratio analysis

In 2007, qualifying programmes (that is, all programmes excluding advertising, teleshopping, teletext, news, sport and games) made up an average of 80.2% of total transmission hours of channels sampled (see Table 46). The two private broadcasters KANAL2 and TV3 have the

highest figure with 82.1% and 88.9% respectively, while the public service channel ETV is around 70%.

The picture is significantly different when we look at the ratio of qualifying to total viewer hours. While public broadcaster ETV sees its proportion jump up to 75.4% of viewer hours reflecting the success of its factual magazines and entertainment programming, the two private channels see their proportions go down to 78.2% for KANAL2 and 84% for TV3, showing the relatively higher attractiveness of information, sports and game shows on these channels.

Table 46: Ratio of qualifying hours to total transmission and viewer hours in Estonia, 2007

Channel	Ratio of Qualifying to Total Transmission Hours (%)	Ratio of Qualifying to Total Viewer Hours (%)
ETV	69.6%	75.4%
Kanal2	82.1%	78.2%
TV 3	88.9%	84.0%
Result for Member State Sample	80.2%	79.2%

Proportion of European works

European works made up an average of 50.9% of the total qualifying transmission hours on all channels in our sample in 2007 (see Table 47). The public channel allocates the highest proportion of its grid to European programmes (83.4%), whereas private broadcasters show much lower proportions with 35.3% for KANAL2 and 39.3% for TV3. This gap between private and public channels as far as proportions of European works are concerned, is reinforced in peak-time.

European works have a larger share of audience than their share of schedules, especially in peak-time, where they reach 53.5% of total viewer qualifying hours across our sample, compared to 50% of total transmission hours. This trend is true of all three channels in our sample.

Table 47: Ratio of European qualifying to total qualifying hours in Estonia, 2007

All Day			Peak Time		
Channel	Ratio of Qualifying European to Total Qualifying Hours (%)	Ratio of Qualifying European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Qualifying European to Total Qualifying Hours (%)	Ratio of Qualifying European to Total Qualifying Viewer Hours (%)
ETV	83.4%	89.3%	ETV	86.4%	91.1%
Kanal2	35.3%	38.0%	Kanal2	29.9%	40.9%
TV 3	39.3%	40.6%	TV 3	35.4%	39.4%
Result for Member State Sample	50.9%	53.3%	Result for Member State Sample	50.0%	53.5%

Across our sample, 17.5% of qualifying works broadcast on the Estonian channels during all-day are non-domestic European works (see Table 48).

Private broadcasters show the lowest proportion in all-day, with 11.5% for KANAL2 and 17.2% for TV3. Proportions go down during peak-time, with only 3.6% for KANAL2 and 11.2% for TV3. Conversely, ETV shows the largest proportion of non-domestic European works during all-day (24.8%) and during peak-time (26.6%) too.

Non-domestic European works attract a lower share of European viewing across the sample both during all-day (15.8%) and in peak-time (10.3%), with the exception of TV3, which shows a higher share for total qualifying viewer hours during all-day (21.6% compared to 17.2% for total qualifying hours).

Table 48: Ratio of non-domestic qualifying European to total qualifying hours in Estonia, 2007

All Day			Peak Time		
Channel	Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)
ETV	24.8%	19.3%	ETV	26.6%	22.6%
Kanal2	11.5%	8.5%	Kanal2	3.6%	3.3%
TV 3	17.2%	21.6%	TV 3	11.2%	9.7%
Result for Member State Sample	17.5%	15.8%	Result for Member State Sample	13.6%	10.3%

Proportion of independent works

The average proportion of qualifying works produced by independent European producers and broadcast by the channels across our sample is high, reaching 33.4% during all-day and 30.6% in peak-time (see Table 49).

Private channels KANAL2 and TV3 show the largest proportions of independent European productions during all-day with respectively 32.8% and 37.7%, whereas ETV is slightly behind with 28.8%. However, this trend reverses in peak-time with ETV broadcasting more European independent productions (33.4%) than KANAL2 and TV3 (respectively 26.3% and 32.2%).

European Independent productions are more attractive for the viewers on private channels both during all-day (34.8% for KANAL2 and 38% for TV3) and in peak-time (37.1% for KANAL2 and 34.9% for TV3) than on the public broadcaster ETV (24.5% during all-day and 29.4% in peak-time).

Table 49: Ratio of independent European to total qualifying in Estonia, 2007

All Day			Peak Time		
Channel	Ratio of Qualifying Independent European to Total Qualifying Hours (%)	Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Qualifying Independent European to Total Qualifying Hours (%)	Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)
ETV	28.8%	24.5%	ETV	33.4%	29.4%
Kanal2	32.8%	34.8%	Kanal2	26.3%	37.1%
TV 3	37.7%	38.0%	TV 3	32.2%	34.9%
Result for Member State Sample	33.4%	32.8%	Result for Member State Sample	30.6%	34.4%

Proportion of recent independent works

Across our sample, 85.7% of all qualifying independent European transmission hours are programmes less than five years old (see Table 50) during all-day and in peak-time.

Private broadcasters show the lowest proportions of recent independent European works with numbers between 80 and 85% while public channel ETV is at the top with 94.5%. In peak-time, proportions decline for ETV and TV3 (down to 89.7% and 70.5% respectively), but increase for KANAL2, reaching 100%.

The proportions are higher when expressed in viewer hours for private channels, with 86.9% for KANAL2 and 84.1% for TV3 during all-day (100% and 76.7% in peak-time), reflecting the success of recent works on the commercial channels, but are lower for ETV (92.6% during all-day and 88.9% in peak-time).

Table 50: Ratio of recent independent European to total independent European in Estonia, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)</i>	<i>Channel</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)</i>
ETV	94.5%	92.6%	ETV	89.7%	88.9%
Kanal2	82.1%	86.9%	Kanal2	100.0%	100.0%
TV 3	83.5%	84.1%	TV 3	70.5%	76.7%
Result for Member State Sample	85.7%	87.1%	Result for Member State Sample	85.7%	90.3%

Proportion of stock/flow works

The proportion of stock vs. flow programmes among total qualifying European hours is, across the sample, skewed toward flow (see Table 51). Flow programming accounts for 59.6% of total qualifying European hours of all-day schedules (stock: 40.4%) and 63.4% in peak-time (stock: 36.6%).

However, it is worth noting that, while both ETV and KANAL2 are skewed toward flow (with proportions of 60/70% flow vs. 40/30% stock), TV3 shows quite a balanced mix, with 51.8% of stock vs. 48.2% of flow, a balance mostly due to the higher presence of series on this channel. These proportions are reinforced in peak-time, with a significant rise for KANAL2 (93.6% of flow vs. 6.4% of stock).

During all-day, European stock does better with the audience than European flow on TV3 (with a proportion of 69.7%), reflecting the success of American shows on this channel. On the other hand, flow programming attracts more audience on the two other channels ETV and KANAL2 in all-day. In peak-time, flow increases on KANAL2, up to 94.2%, while TV3 comes back to a more balanced proportion of stock and flow (52.8% stock vs. 47.2% flow).

Table 51: Ratio of stock/flow to total European in Estonia, 2007

All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>
ETV	38.3%	61.7%	100%	ETV	39.5%	60.5%	100%
Kanal2	30.9%	69.1%	100%	Kanal2	6.4%	93.6%	100%
TV 3	51.8%	48.2%	100%	TV 3	55.2%	44.8%	100%
Result for Member State Sample	40.4%	59.6%	100%	Result for Member State Sample	36.6%	63.4%	100%

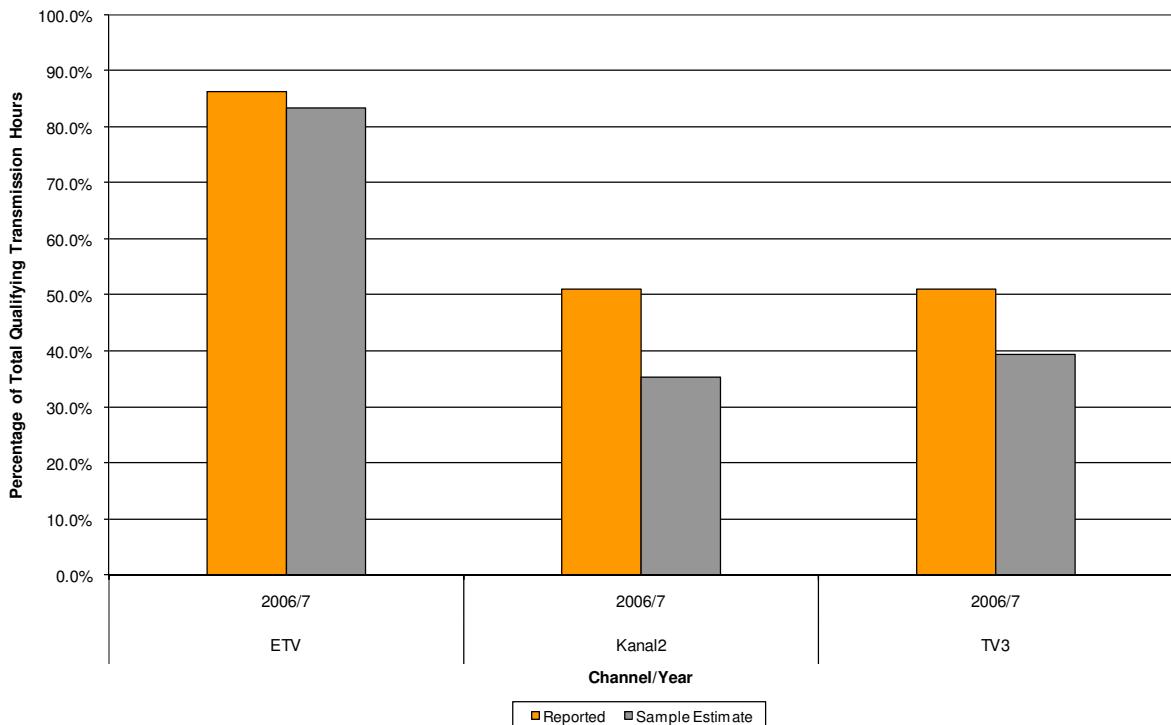
All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>
ETV	35.0%	65.0%	100%	ETV	37.3%	62.7%	100%
Kanal2	20.8%	79.2%	100%	Kanal2	5.8%	94.2%	100%
TV 3	69.7%	30.3%	100%	TV 3	52.8%	47.2%	100%
Result for Member State Sample	39.6%	60.4%	100%	Result for Member State Sample	30.4%	69.6%	100%

Comparison with past data and declarations

As Estonia was not part of the 2005 Study, any comparison with past data is impossible. However, we can elaborate comparisons between the data from our sample estimates of 2007 and that from the channels' declarations of 2006.

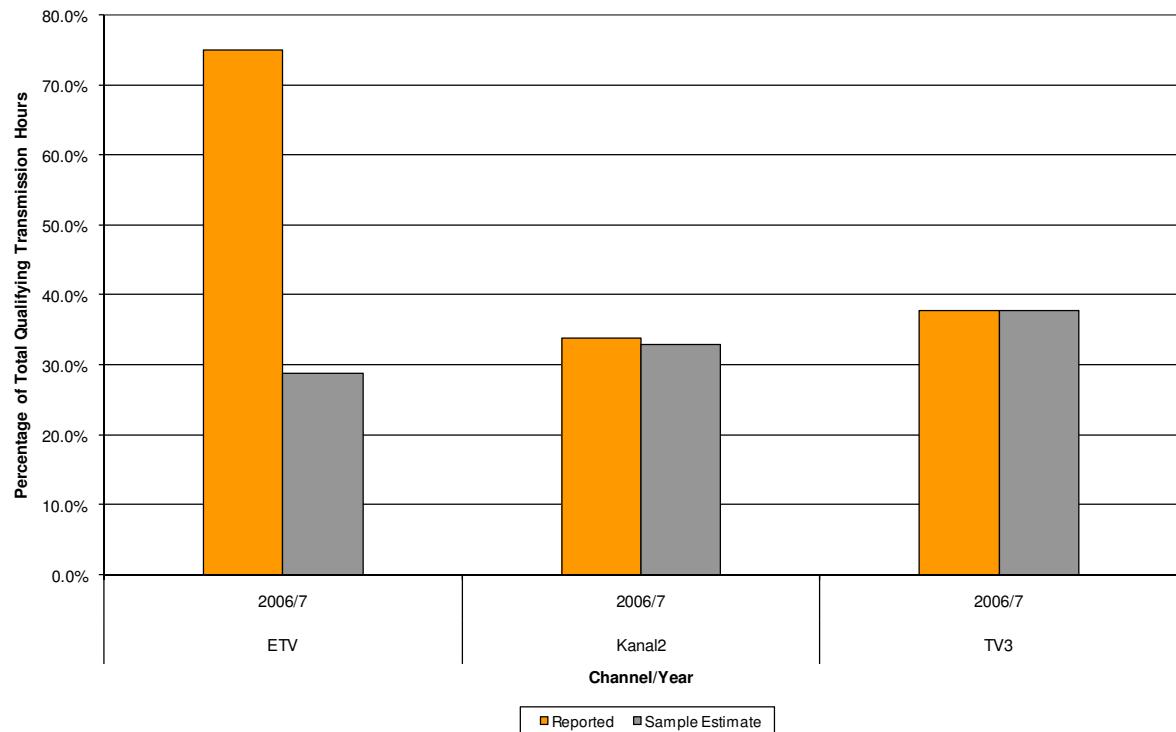
The ratio of qualifying European works to total qualifying hours provided by our 2007 estimates is consistent with the 2006 declarations for the three channels of our sample (see Figure 25).

Figure 25: Ratio of reported vs. estimated European qualifying transmission hours to total qualifying transmission hours in Estonia, 2007/2006



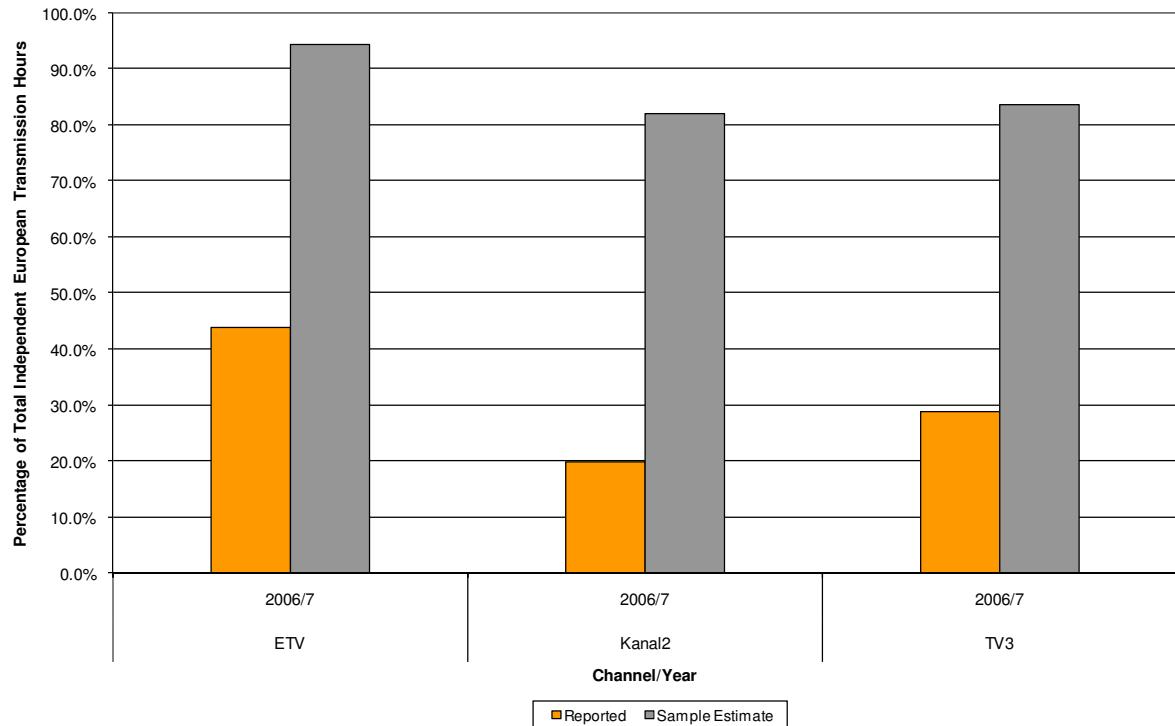
The 2007 ratio of qualifying independent European works to total qualifying hours is very consistent with the 2006 data for the two private Estonian broadcasters KANAL2 and TV3. However, the figure estimate for qualifying independent European works for ETV is far lower than the one reported. The proportion of Independent works on ETV is 75% according to reported data, but 28.8% according to the sample estimate. We provide explanations for this difference in Appendix IX (Part 21 of this report).

Figure 26: Ratio of reported vs. estimated independent European qualifying transmission hours to total qualifying transmission hours in Estonia, 2007/2006



The ratio of recent qualifying independent works to total European independent qualifying hours provided by our 2007 estimates show strong differences with the 2006 data for every channel of our sample (see Figure 27), 2007 sample estimates being higher than 2006 reported figures.

Figure 27: Ratio of reported vs. estimated recent independent European qualifying transmission hours to total qualifying independent European transmission hours in Estonia, 2007/2006



8.4.4. France

Data summary

Our sample consists of two publicly funded public service channels (FRANCE2 and FRANCE3), three advertising funded channels (TF1, M6 and DIRECT8) and a pay TV channel (CANAL+). Together (see Table 52) they account for 85% of total French TV viewing.

Table 52: List of channels covered in the 2007 French sample²³¹

Country	Channel	Launch Year	Share of Viewing (2005)	Revenue Model	Platform	Average Daily Transmission Hours	Sample Weeks
France	TF1	1968	31.80%	Ad	Terr.	24	Standard
France	France 2	1975	21.70%	Gvt/Ad	Terr.	24	
France	France 3	1975	15.50%	Gvt/Ad	Terr.	24	
France	M6	1987	11.90%	Ad	Terr.	24	
France	Canal+	1984	3.90%	Subs/Ad	Cab/Sat	24	
France	Direct 8	2005	<5%	Ad	DTT	24	

Genre analysis

Leading free-to-air channels, especially private ones, tend to rely primarily on TV fiction programmes to fill their all-day schedules (see Table 53). This genre indeed accounts for 57.9% of total qualifying transmission hours on TF1, 45.9% on M6, 42.1% on FRANCE3 and 28.2% on FRANCE2. Cinema film is the least common genre on all these channels, ranging between 3.2% and 6% of the total qualifying hours.²³²

The second most common genre on public channels is factual magazine with FRANCE2 (34.1%) and FRANCE3 (25.4%), followed by documentary (17.6% and 19% respectively). Leading private free-to-air channels put entertainment as their second most important genre (31.2% on M6 and 12.8% on TF1).

In comparison, CANAL+ and DIRECT8 propose more specialised schedules. CANAL+ relies on cinema film for 50.2% of its all-day schedule, while that of DIRECT8 is 66.2% factual magazines.

Channels propose a similar offering in peak-time compared to the all-day schedule, although generally more balanced between the various genres. Another important change in peak-time is that cinema films are generally given a higher share of the schedules. This is especially the case of DIRECT8 (21.6% peak vs. 4.9% all-day) and TF1 (20.3% peak vs. 5.6% all-day), but is also true of FRANCE2 (11% peak vs. 4.8% all-day) and FRANCE3 (11.3% peak vs. 6% all-day).

²³¹ In the 'Platform' column, "Terr/Cab/Sat" means "Terrestrial, Cable and Satellite". "DTT" refers to "Digital Terrestrial."

²³² When we use the term "total qualifying hours" we are referring to transmission hours.

Table 53: Genre proportion of total qualifying hours in France, 2007

Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)		
Canal+	Cinema Film	50.2%	30.0%	Canal+	Cinema Film	43.5%	32.7%
	Documentary	10.5%	4.6%		Documentary	3.8%	1.6%
	Entertainment	9.4%	24.4%		Entertainment	16.6%	27.3%
	Factual Magazine	14.2%	28.0%		Factual Magazine	16.3%	25.4%
	Fiction	15.6%	13.1%		Fiction	19.8%	13.0%
Direct 8	Cinema Film	4.9%	26.4%	Direct 8	Cinema Film	21.6%	40.8%
	Documentary	4.3%	2.0%		Documentary	0.0%	0.0%
	Entertainment	10.2%	6.5%		Entertainment	10.3%	3.9%
	Factual Magazine	66.2%	40.7%		Factual Magazine	49.3%	29.7%
	Fiction	14.4%	24.4%		Fiction	18.9%	25.6%
France 2	Cinema Film	4.8%	7.7%	France 2	Cinema Film	11.0%	12.3%
	Documentary	17.6%	10.2%		Documentary	11.3%	11.5%
	Entertainment	15.4%	23.7%		Entertainment	33.7%	30.3%
	Factual Magazine	34.1%	22.0%		Factual Magazine	11.9%	7.6%
	Fiction	28.2%	36.4%		Fiction	32.1%	38.3%
France 3	Cinema Film	6.0%	9.4%	France 3	Cinema Film	11.3%	13.9%
	Documentary	19.0%	17.3%		Documentary	17.4%	16.5%
	Entertainment	7.5%	4.5%		Entertainment	1.3%	0.7%
	Factual Magazine	25.4%	21.1%		Factual Magazine	25.2%	17.0%
	Fiction	42.1%	47.8%		Fiction	44.8%	51.9%
M6	Cinema Film	3.2%	4.4%	M6	Cinema Film	3.6%	4.1%
	Documentary	9.6%	14.4%		Documentary	13.1%	15.3%
	Entertainment	31.2%	14.9%		Entertainment	20.3%	18.9%
	Factual Magazine	10.1%	9.7%		Factual Magazine	8.4%	9.3%
	Fiction	45.9%	56.6%		Fiction	54.5%	52.4%
TF1	Cinema Film	5.6%	11.6%	TF1	Cinema Film	20.3%	23.5%
	Documentary	17.0%	8.0%		Documentary	12.0%	9.9%
	Entertainment	12.8%	16.7%		Entertainment	32.7%	24.0%
	Factual Magazine	6.7%	5.9%		Factual Magazine	2.3%	2.6%
	Fiction	57.9%	57.8%		Fiction	32.7%	40.1%

Transmission and viewing ratio analysis

In 2007, qualifying programmes (that is, all programmes excluding advertising, teleshopping, teletext, news, sport and games) made up an average of 71.9% of the total transmission hours of channels sampled (see Table 54). For the largest free-to-air generalist broadcasters (TF1, FRANCE2, M6 and FRANCE3) the figure was around 65%, while for 'smaller' broadcasters (CANAL+ and DIRECT8) the number was around 85%.

When comparing the proportions based on transmission hours to those based on viewing hours, the ratio of qualifying to total hours is nearly identical for CANAL+, DIRECT8 and FRANCE2. For the leading channel TF1 and for the smaller channel FRANCE3, we observe a decrease from around 65% for transmission hours to around 50% for viewing hours. This can be explained by the importance of news and sports programming on these channels, two genres, that do not count as 'qualifying' programmes although they attract large audiences, while FRANCE2, another leading channel has a more balanced offer of genres with limited sports contents. M6, on the opposite hand, sees its figure climb from 64.1% (in transmission hours) to 73.9% (in viewing hours), which can be explained by a limited offering of news and sports in general, and a high presence of fiction, entertainment and magazines in peak-time.

Table 54: Ratio of qualifying hours to total transmission and viewer hours in France, 2007²³³

<i>Channel</i>	<i>Ratio of Qualifying to Total Transmission Hours (%)</i>	<i>Ratio of Qualifying to Total Viewer Hours (%)</i>
Canal+	84.4%	82.2%
Direct 8	85.7%	85.3%
France 2	65.9%	61.8%
France 3	65.1%	50.8%
M6	64.1%	73.9%
TF1	66.1%	50.4%
Result for Member State Sample	71.9%	58.2%

Proportion of European works

European works make up an average of 73.8% of the total qualifying transmission hours on all channels in the sample in 2007 (see Table 55). Private broadcasters CANAL+ (61.2%), TF1 (61.7%) and M6 (64.7%) showed the smallest proportion of European works, while public broadcasters FRANCE3 (75.9%) and FRANCE2 (84.8%) showed the highest proportion, excluding DIRECT8 (92.3%). The latter airs a very high proportion of factual magazines (66.2% of the qualifying schedule), which are, by nature, nearly always national productions.

When comparing the proportions based on transmission hours to those based on viewing hours, the ratio of qualifying European to total qualifying works highlights the differences in acquisition policies between the channels in our sample. This ratio is lower for M6 (only all-day figures), and TF1 (both all-day and peak-time) for viewing hours vs. transmission hours. This shows the impact of a successful US import policy by these channels compared to other channels: US imports, which achieve high ratings on TF1 and M6, uplift viewing hours relative to transmission hours.

²³³ Please note here and in subsequent tables that, as detailed in Part 8.2.8, the 'Grand Total' is not a simple average of the results for each channel, but the total across the sample as a whole. Thus it takes into account such factors as, for example, the varying contributions to total viewing hours provided by each channel in the sample. This can lead to the results in the 'Grand Total' being different from a simple average of the channel figures in each table, but the Grand Total is accurate for the sample as a whole.

Table 55: Ratio of European qualifying to total qualifying hours in France, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>
Canal+	61.2%	70.5%	Canal+	61.4%	68.1%
Direct 8	92.3%	89.6%	Direct 8	93.1%	86.0%
France 2	84.8%	84.0%	France 2	83.2%	80.1%
France 3	75.9%	79.9%	France 3	83.7%	82.2%
M6	64.7%	53.7%	M6	55.2%	55.5%
TF1	61.7%	51.4%	TF1	72.3%	64.0%
Result for Member State Sample	73.8%	66.0%	Result for Member State Sample	75.0%	70.0%

All channels show a similar proportion of European works in peak-time as they do in the rest of their schedule. FRANCE3 (83.7% peak vs. 75.9% all-day) and TF1 (72.3% peak vs. 61.7% all-day) devote more scheduling time to European works in peak-time, whereas M6 does the reverse (55.2% peak vs. 64.7% all-day).

On average, 9% of qualifying works broadcast on the French channels in our sample are non-domestic European works (see Table 56). If we exclude DIRECT8 (0%) and M6 (7.5%), the figure ranges from 10% to 13%. This is consistent with a large broadcasting market that can support indigenous programme production. In peak-time, the ratio of non-domestic qualifying European works is significantly lower (between 2% and 4%), except for FRANCE3 (only slightly higher with 9.9%), and CANAL+ (significantly higher with 17.1%). Non-domestic European programmes represent an even lower proportion of qualifying hours when looking at viewer hours rather than transmission hours, especially in peak-time where it falls to 2.8% of total (compared to 6% when expressed in transmission hours), reflecting the lower appeal of non-domestic programmes to domestic audiences.

Table 56: Ratio of non-domestic qualifying European to total qualifying hours in France, 2007

All Day			Peak Time		
Channel	Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)
Canal+	12.9%	7.6%	Canal+	17.1%	8.4%
Direct 8	0.0%	0.0%	Direct 8	0.0%	0.0%
France 2	12.6%	11.1%	France 2	3.0%	1.3%
France 3	10.6%	11.4%	France 3	9.9%	7.3%
M6	7.5%	7.2%	M6	3.6%	2.0%
TF1	12.1%	6.5%	TF1	1.9%	1.0%
Result for Member State Sample	9.0%	8.6%	Result for Member State Sample	6.0%	2.8%

Proportion of independent works

The proportion of qualifying works produced by European independent producers and broadcast by the channels in our sample was high, reaching 33.9% (see Table 57). TF1 and FRANCE2 have by far the highest proportion of independent works with respectively 46.1% and 42.5%, while DIRECT8 has the lowest (20.9%). Other channels show a proportion of around 30%. All channels show more independently produced European programmes in peak-time than during the rest of their schedule, except CANAL+, where the proportion goes down from 30.5% to 16.9%, and M6 where the proportion is also halved, from 36.7% to 27.5%.

When comparing the proportions based on transmission hours to those based on viewing hours, the ratio of qualifying independent European to total qualifying works shows differences in commissioning policies between the channels in our sample. This ratio is higher for FRANCE2 (only all-day figures), FRANCE3 (both all-day and peak-time), DIRECT8 (mainly all-day figures) and M6 (only in peak-time) when we look at figures in viewing hours vs. transmission hours, showing that these channels outsource an important share of their prime content to independent producers.

Table 57: Ratio of independent European to total qualifying in France, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)</i>
Canal+	30,5%	12,4%	Canal+	16,9%	8,2%
Direct 8	20,9%	35,0%	Direct 8	41,4%	43,9%
France 2	42,5%	46,9%	France 2	57,6%	51,3%
France 3	32,6%	44,0%	France 3	46,6%	54,3%
M6	36,7%	25,8%	M6	27,5%	28,3%
TF1	46,1%	36,1%	TF1	54,5%	47,1%
Result for Member State Sample	33,9%	36,6%	Result for Member State Sample	39,1%	42,7%

Proportion of recent independent works

Across the French sample as a whole, 81.4% of all qualifying independent European transmission hours are programmes less than five years old (see Table 58). Leading broadcasters show the highest proportion of recent independent works with M6 reaching 97.9%, CANAL+ reaching 88.9%, TF1 reaching 85.2% and FRANCE2 reaching 79.7%. FRANCE3 and DIRECT8 rely more on older reruns than their competitors (recent productions represent 69.7% and 59.2% respectively of all European independent productions). In peak-time hours, the proportion of recent works reaches 100% for all channels. However, DIRECT8, a newcomer with lower ratings and programme budget, relies more heavily on archive programmes for an important part of its independent works.

Looking at the figures for viewing hours compared to figures for transmission hours, we can see the audience appeal of fresh productions compared to productions older than five years. Indeed, the figures in viewing hours are higher for all broadcasters, with the highest increase for FRANCE3 whose all-day proportion goes from 69.7% if we look at transmission hours, up to 83.2% if we look at viewer hours. The only exception is DIRECT8, showing that this recent channel is comparatively more attractive to viewers for its fiction classics than for its recent productions.

Table 58: Ratio of recent independent European to total independent European in France, 2007

All Day			Peak Time		
Channel	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)	Channel	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)
Canal+	88,9%	98,4%	Canal+	100,0%	100,0%
Direct 8	59,2%	53,0%	Direct 8	50,6%	50,1%
France 2	79,7%	86,0%	France 2	100,0%	100,0%
France 3	69,7%	83,2%	France 3	100,0%	100,0%
M6	97,9%	99,0%	M6	100,0%	100,0%
TF1	85,1%	97,4%	TF1	100,0%	100,0%
Result for Member State Sample	81,4%	91,1%	Result for Member State Sample	87,6%	99,6%

Proportion of stock/flow works

The proportion of stock vs. flow programmes among total qualifying European hours is, on average, very balanced (see Table 59). Stock programmes account for 44.9% of total qualifying European hours of all-day schedules (flow: 55.1%) and 48.5% in peak-time (flow: 51.5%). There are broad differences between the channels with TF1 (69.7% stock), CANAL+ (63% stock) and FRANCE3 (60.7% stock) relying more on stock programmes for their all-day schedules (on the opposite side of the scale, the figure is 17.1% for DIRECT8 and 36.3% for M6). Differences are less visible in peak-time with most channels being in between 40% and 60%). It is interesting to note that the proportions are reversed when we look at the viewer hour ratio: stock then represents 53.5% of total European qualifying hours in all-day, and up to 57.7% in peak-time.

Table 59: Ratio of European stock/flow to total European in France, 2007

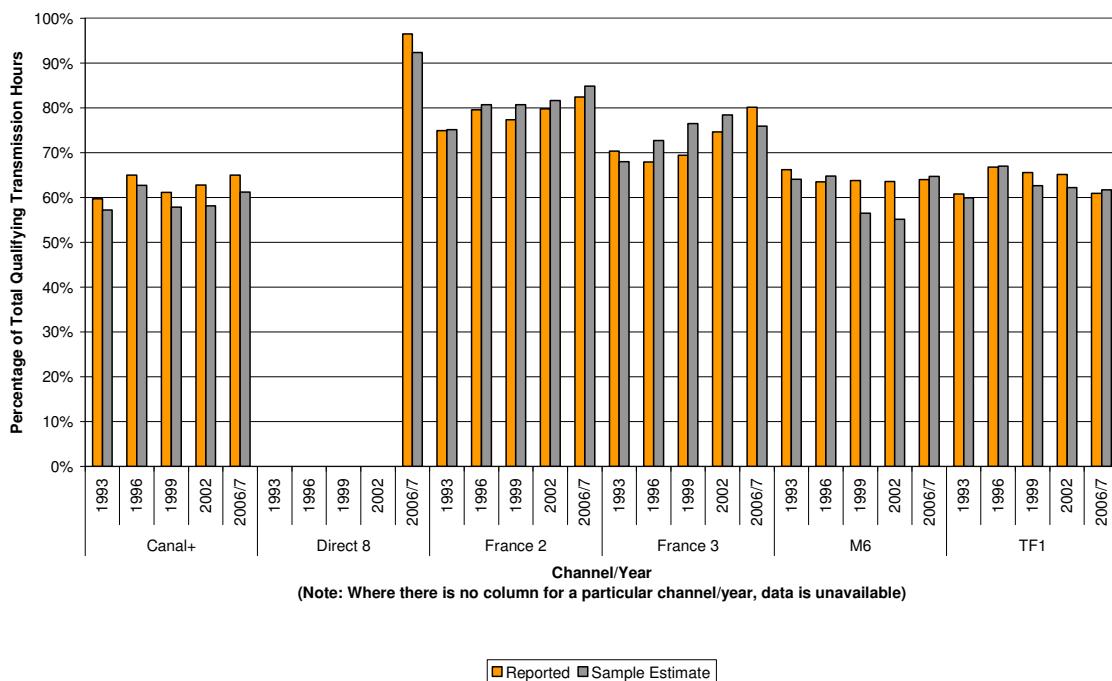
All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>
Canal+	63.0%	37.0%	100%	Canal+	50.9%	49.1%	100%
Direct 8	17.1%	82.9%	100%	Direct 8	36.1%	63.9%	100%
France 2	42.3%	57.7%	100%	France 2	49.7%	50.3%	100%
France 3	60.7%	39.3%	100%	France 3	68.4%	31.6%	100%
M6	36.3%	63.7%	100%	M6	48.1%	51.9%	100%
TF1	69.7%	30.3%	100%	TF1	51.7%	48.3%	100%
Result for Member State Sample	44.9%	55.1%	100%	Result for Member State Sample	48.5%	51.5%	100%

All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>
Canal+	26.3%	73.7%	100%	Canal+	23.2%	76.8%	100%
Direct 8	47.3%	52.7%	100%	Direct 8	61.0%	39.0%	100%
France 2	47.6%	52.4%	100%	France 2	56.2%	43.8%	100%
France 3	68.4%	31.6%	100%	France 3	78.5%	21.5%	100%
M6	54.2%	45.8%	100%	M6	49.2%	50.8%	100%
TF1	56.3%	43.7%	100%	TF1	58.4%	41.6%	100%
Result for Member State Sample	53.5%	46.5%	100%	Result for Member State Sample	57.7%	42.3%	100%

Comparison with past data and declarations

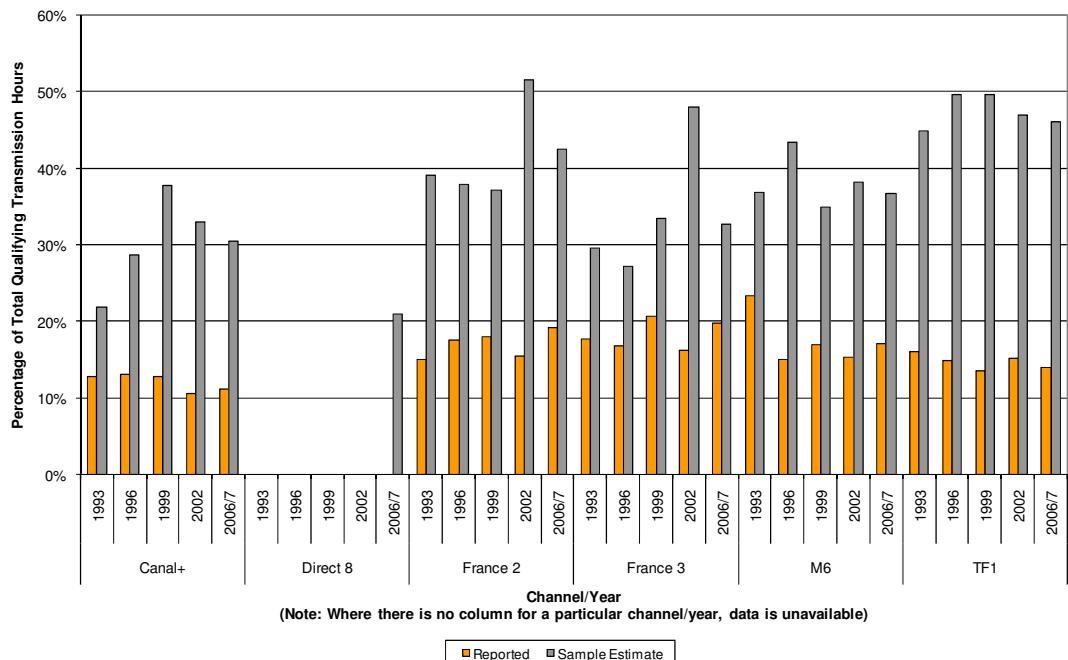
The ratio of qualifying European works to total qualifying hours provided by our 2007 estimates are in line with the trends estimated in the 2005 Study (see Figure 28). It shows that public channels FRANCE2 and FRANCE3, and to a lesser extent CANAL+ continue to increase their proportion of European works, while TF1 and M6 are in slight decline. Comparing data reported by the Member State to our sample estimates shows a strong consistency as far as the ratio of European works is concerned: here, differences between reported data and sample estimates are most of the time below 2-3%.

Figure 28: Ratio of reported vs. estimated European qualifying transmission hours to total qualifying transmission hours in France, 2007/2006



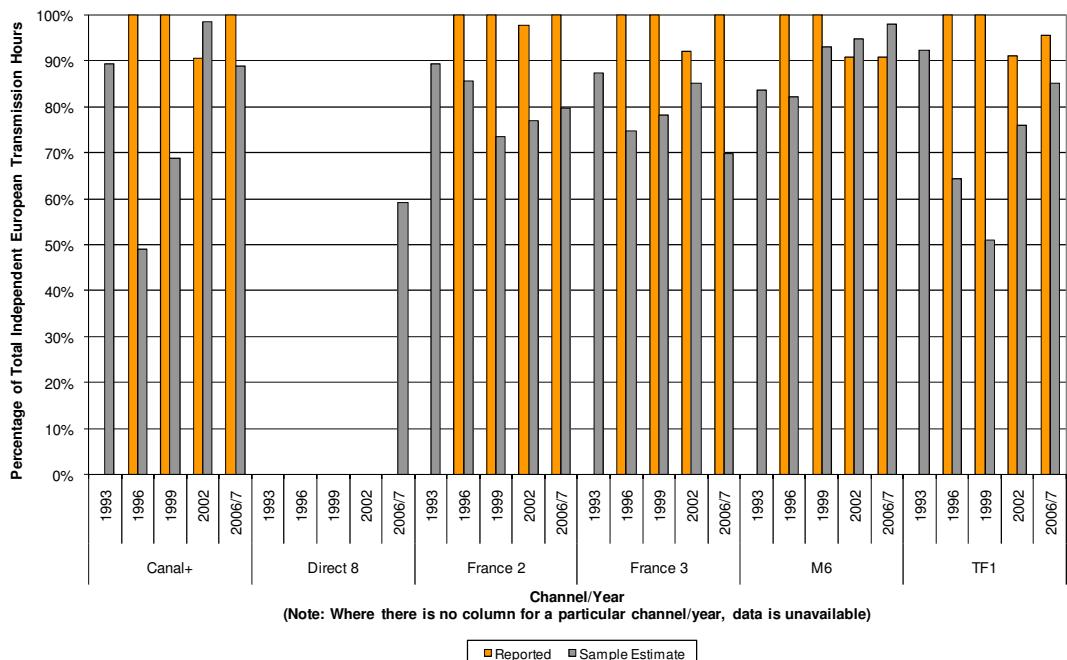
The 2007 ratio of qualifying independent European works to total qualifying hours is also consistent with past findings (see Figure 29). On the whole, we observe a general stability in the figures, with a possible long-term decline for TF1 and CANAL+. Comparing data for independent productions shows that our estimates are approximately twice as high as the declarations (nearly 3 times for TF1). This can in part be explained by the fact that the French regulation uses a stricter definition than the one we have designed to be used consistently across all the markets. However, it should also be noted that the reported data in the 8th communication on independent productions for France is calculated on the basis of the channel's revenues (previous year's turnover) for these channels, whereas our sample is calculated on the basis of transmission hours.

Figure 29: Ratio of reported vs. estimated independent European qualifying transmission hours to total qualifying transmission hours in France, 2007/2006



The 2007 ratio of recent qualifying independent European works to total qualifying hours is the most difficult to estimate and thus the most unstable year after year (see Figure 30). On the whole, estimated data are stable over time for CANAL+ and FRANCE3, on the rise for TF1, FRANCE2 and M6. The rise on TF1 and FRANCE2 comes after a relative decline in 1999-2002.

Figure 30: Ratio of reported vs. estimated recent independent European qualifying transmission hours to total independent European transmission hours in France, 2007/2006



8.4.5. Germany

Data summary

Our sample consists of the main two public service channels (ARD1 and ZDF), the two leading private commercial channel channels (RTL, SAT.1) and two other key channels from the RTL and ProSiebenSat1 portfolios, with VOX and PRO7 respectively. Together (see Table 60) they account for 63.8% of total German TV viewing.

Table 60: List of channels covered in the 2007 German sample²³⁴

Country	Channel	Launch Year	Share of Viewing (2005)	Revenue Model	Platform	Average Daily Transmission Hours	Sample Weeks
Germany	ARD 1	1954	14.40%	Gvt/Ad	Terr./C/S	24	Standard
Germany	ZDF	1963	14.10%	Gvt/Ad	Terr./C/S	24	
Germany	Sat 1	1985	10.50%	Ad	Terr./C/S	24	
Germany	RTL	1984	14.00%	Ad	Terr./C/S	24	
Germany	Pro 7	1989	7.00%	Ad	Terr./C/S	24	
Germany	Vox	1993	3.80%	Ad	Terr./C/S	24	

Genre analysis

As shown in Table 61, private free-to-air leader RTL offers a very balanced mix of genres, other than a low 5.7% for cinema films: the remaining four genres (documentary, entertainment, factual magazines and TV fiction) represent in-between 20-25% of total qualifying genres each. Sister channel VOX's grid looks fairly similar, with a greater emphasis on documentaries and TV fiction (74.9% in total). SAT.1 offers a mix very similar to that of its direct competitor RTL, except it airs more factual magazines (30.1%) and less entertainment (12.8%). PRO7 also has a balanced mix of genres although it historically offers a large amount of cinema films (21.9%), at the expense of documentaries (6.9%).

In peak-time, all private channels put a greater emphasis on cinema films (up to 30.1% on PRO7 and 14.7% on SAT.1) and TV fiction (35.2% on RTL, 30.8% on SAT.1 and 29.5% on PRO7), except VOX, which puts increased emphasis on entertainment and documentaries. In peak-time, TV fiction accounts for 1/3 of the viewing for these four private channels. Together with cinema viewing, fiction content accounts for 63.7% of PRO7 viewing and 51.5% on SAT.1.

The heart of ARD1 and ZDF's peak-time grids is TV fiction: this genre represents around 43% of their total qualifying hours and around 52% of their viewing. If you add their second most important genre, factual magazines, these numbers go up to 70% of hours and 73% of viewing. Across the entire day, ZDF puts the emphasis on factual magazines (45% of the grid) while ARD1 offers more documentaries (28.6%) and cinema (15.2%).

²³⁴ In the 'Platform' column, "Terr/C/S" means "Terrestrial, Cable and Satellite".

Table 61: Genre proportion of total qualifying hours in Germany, 2007

All Day				Peak Time			
Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)	Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)
ARD	Cinema Film	15.2%	7.9%	ARD	Cinema Film	3.1%	5.1%
	Documentary	28.6%	17.6%		Documentary	7.7%	5.7%
	Entertainment	8.1%	12.8%		Entertainment	15.6%	14.6%
	Factual Magazine	17.9%	15.2%		Factual Magazine	24.1%	17.1%
	Fiction	30.2%	46.5%		Fiction	49.5%	57.5%
PRO 7	Cinema Film	21.9%	26.6%	PRO 7	Cinema Film	30.1%	35.6%
	Documentary	6.9%	5.5%		Documentary	3.8%	2.0%
	Entertainment	25.3%	20.7%		Entertainment	16.9%	15.2%
	Factual Magazine	26.3%	24.4%		Factual Magazine	19.6%	19.1%
	Fiction	19.5%	22.9%		Fiction	29.5%	28.1%
RTL	Cinema Film	5.7%	6.1%	RTL	Cinema Film	8.5%	9.1%
	Documentary	23.3%	18.7%		Documentary	16.9%	16.1%
	Entertainment	24.0%	27.9%		Entertainment	22.4%	24.0%
	Factual Magazine	21.7%	20.0%		Factual Magazine	16.9%	13.3%
	Fiction	25.2%	27.4%		Fiction	35.2%	37.5%
SAT.1	Cinema Film	6.7%	7.2%	SAT.1	Cinema Film	14.7%	14.1%
	Documentary	24.9%	35.1%		Documentary	19.8%	19.9%
	Entertainment	12.8%	15.9%		Entertainment	18.6%	17.0%
	Factual Magazine	30.1%	20.8%		Factual Magazine	16.0%	11.6%
	Fiction	25.5%	21.0%		Fiction	30.8%	37.4%
VOX	Cinema Film	7.0%	4.4%	VOX	Cinema Film	7.4%	4.5%
	Documentary	30.8%	33.8%		Documentary	26.8%	23.6%
	Entertainment	12.4%	25.1%		Entertainment	27.0%	37.6%
	Factual Magazine	15.7%	10.7%		Factual Magazine	16.2%	7.7%
	Fiction	34.1%	26.0%		Fiction	22.6%	26.6%
ZDF	Cinema Film	11.0%	9.5%	ZDF	Cinema Film	13.7%	11.0%
	Documentary	10.6%	9.3%		Documentary	8.7%	7.4%
	Entertainment	11.1%	10.2%		Entertainment	11.5%	10.0%
	Factual Magazine	45.0%	32.4%		Factual Magazine	27.9%	24.8%
	Fiction	22.3%	38.5%		Fiction	38.2%	46.8%

Transmission and viewing ratio analysis

In 2007, qualifying programmes (that is, all programmes excluding advertising, teleshopping, teletext, news, sport and games) made up 74.5% of the total transmission hours of all channels sampled (see Table 62). The two public service broadcasters ARD1 and ZDF have the highest figures, with 81.2% and 80.2% respectively, while commercial channels are around 70-75%.

The picture is different when we look at the ratio of qualifying viewer hours. For example, qualifying genres contribute towards 68.9% of ARD's viewer hours, showing the higher attractiveness of ARD's information, sports and game shows. However, ZDF only goes down to 75.3% of viewer hours. On the other hand, VOX and PRO7 see their figures jump up to 81.8% and 77.3% respectively, reflecting the success of VOX's entertainment shows, and PRO7's cinema and fiction.

Table 62: Ratio of qualifying hours to total transmission and viewer hours in Germany, 2007

<i>Channel</i>	<i>Ratio of Qualifying to Total Transmission Hours (%)</i>	<i>Ratio of Qualifying to Total Viewer Hours (%)</i>
ARD	81.2%	68.9%
PRO 7	73.2%	77.3%
RTL	70.0%	70.1%
SAT.1	66.5%	72.4%
VOX	75.9%	81.8%
ZDF	80.2%	75.3%
Result for Member State Sample	74.5%	73.2%

Proportion of European works

European works make up 78.2% of the total qualifying transmission hours across all channels in the sample in 2007 (see Table 63). Public broadcasters ARD1 and ZDF are the highest with 91.9% and 90.2% respectively. Even more strikingly, European works account for 100% of both transmission and viewer hours in peak-time on both ARD1 and ZDF during the 2 weeks selected for this sample.

The channels with the lowest proportion of European works in their schedules are VOX (59.8%) and PRO7 (60.9%). PRO7 has 43.4% of its peak-time schedule made up of European works, and even less for its peak-time viewing (38.7%) showing that PRO7's success is largely based on foreign acquisitions in peak-time.

RTL, SAT.1 and VOX have around 70-80% of their qualifying transmission and viewer hours being European works during peak-time. The figures for RTL and SAT.1 are in the region of 85% for all-day schedules.

Table 63: Ratio of European qualifying to total qualifying hours in Germany, 2007

All Day			Peak Time		
Channel	Ratio of Qualifying European to Total Qualifying Hours (%)	Ratio of Qualifying European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Qualifying European to Total Qualifying Hours (%)	Ratio of Qualifying European to Total Qualifying Viewer Hours (%)
ARD	91.9%	97.9%	ARD	100.0%	100.0%
PRO 7	60.9%	53.5%	PRO 7	43.4%	38.7%
RTL	83.7%	84.8%	RTL	79.3%	78.7%
SAT.1	82.5%	87.5%	SAT.1	76.8%	77.3%
VOX	59.8%	69.2%	VOX	70.0%	68.9%
ZDF	90.2%	96.5%	ZDF	100.0%	100.0%
Result for Member State Sample	78.2%	85.2%	Result for Member State Sample	77.1%	81.5%

Across all channels in our German sample, 3.8% of qualifying works broadcast during all-day are non-domestic European works (see Table 64). This goes down to 3.1% in peak-time. Non-domestic European works attract a larger share of European viewing in peak-time with 3.7%, but a lower one during all-day (3.2%).

ARD1 (7.1%) then SAT.1 (5.3%), ZDF (4.8%) and VOX (4.4%) show the largest proportion of non-domestic European works during all-day. ZDF puts a particular emphasis on these programmes in peak-time, building 11.1% of its peak-time schedule, and attracting 9.4% of its peak-time viewing, from non-domestic European works. Another interesting case is that of RTL: showing fewer non-domestic European works in its all-day and peak-time grids (1.1% and 1.7%) it manages to attract a larger share of viewing with non-domestic programmes (2.7% and 3.7%). SAT.1 has the second highest share of non-domestic European works in peak-time (3.2% of transmission hours), which is successful as it attracts 4.3% of its qualifying peak-time viewing.

Table 64: Ratio of non-domestic qualifying European to total qualifying hours in Germany, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)</i>
ARD	7.1%	3.8%	ARD	1.6%	1.3%
PRO 7	0.0%	0.0%	PRO 7	0.0%	0.0%
RTL	1.1%	2.7%	RTL	1.7%	3.7%
SAT.1	5.3%	3.0%	SAT.1	3.2%	4.3%
VOX	4.4%	1.2%	VOX	1.2%	0.5%
ZDF	4.8%	6.0%	ZDF	11.1%	9.4%
Result for Member State Sample	3.8%	3.2%	Result for Member State Sample	3.1%	3.7%

Proportion of independent works

The proportion of qualifying works produced by European independent producers and broadcast by the channels for our German sample as a whole was high, at 38.6% (see Table 65) for all-day and 41.8% for peak-time. The figures are even higher when looking at the viewer hour ratio, at 42.7% and 44.6% respectively. SAT.1, VOX and RTL are driving these high figures, with 59.1% for SAT.1 during all-day, 48.9% for VOX and 38% for RTL. These two last channels put more independent productions in peak-time (VOX: 66% and RTL: 41.1%) and independent productions are always more attractive to the viewers during peak-time (66.8% and 46.1%).

ARD is also offering an important share of independent productions: 35.3% during all-day and 59.3% in peak-time. The lowest proportion of independent works comes from PRO7 in peak-time, where independent productions represent 12.4% of the total qualifying transmission time and 13.5% of the total qualifying viewing.

Table 65: Ratio of independent European to total qualifying in Germany, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)</i>
ARD	35.3%	45.8%	ARD	59.3%	63.2%
PRO 7	28.6%	24.0%	PRO 7	12.4%	13.5%
RTL	38.0%	42.3%	RTL	41.1%	46.1%
SAT.1	59.1%	61.0%	SAT.1	48.8%	53.8%
VOX	48.9%	61.7%	VOX	66.0%	66.8%
ZDF	23.0%	23.2%	ZDF	24.6%	22.0%
Result for Member State Sample	38.6%	42.7%	Result for Member State Sample	41.8%	44.6%

Proportion of recent independent works

Across the German sample, 93% of all qualifying independent European transmission hours are programmes less than five years old (see Table 66). In peak-time the proportion increases to 96.7%.

Public channels show more independent programmes more than five years old, as their all-day proportions are 73.8% for ARD1 and 85.3% for ZDF. In peak-time RTL has the lowest proportion of recent independent European works with 85.7% of its transmission hours.

Besides these cases, all figures for the German sample channels are very high, in-between 95% and 100%.

Table 66: Ratio of recent independent European to total independent European in Germany, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)</i>	<i>Channel</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)</i>
ARD	73.8%	86.4%	ARD	94.2%	92.4%
PRO 7	100.0%	100.0%	PRO 7	100.0%	100.0%
RTL	95.0%	89.7%	RTL	85.7%	82.2%
SAT.1	97.1%	99.5%	SAT.1	100.0%	100.0%
VOX	100.0%	100.0%	VOX	100.0%	100.0%
ZDF	85.3%	92.2%	ZDF	100.0%	100.0%
Result for Member State Sample	93.0%	94.0%	Result for Member State Sample	96.7%	94.3%

Proportion of stock/flow works

The proportion of stock vs. flow programmes among total qualifying European hours is, across the German sample, very balanced (see Table 67). Stock programmes account for 47.9% of total qualifying European hours for all-day schedules (flow: 52.1%) and 50.9% in peak-time (flow: 49.1%). Channels look very much alike, except ARD1, which offers more European stock (72.7% during all-day and 65.8% in peak-time), and PRO7, which offers more flow (83.8% during all-day and 84.2% in peak-time). In total, European stock programming does slightly better with the audience in Germany (55.4% of qualifying viewer hours during all-day, and 58.7% in peak-time) than European flow.

Table 67: Ratio of European stock/flow to total European in Germany, 2007

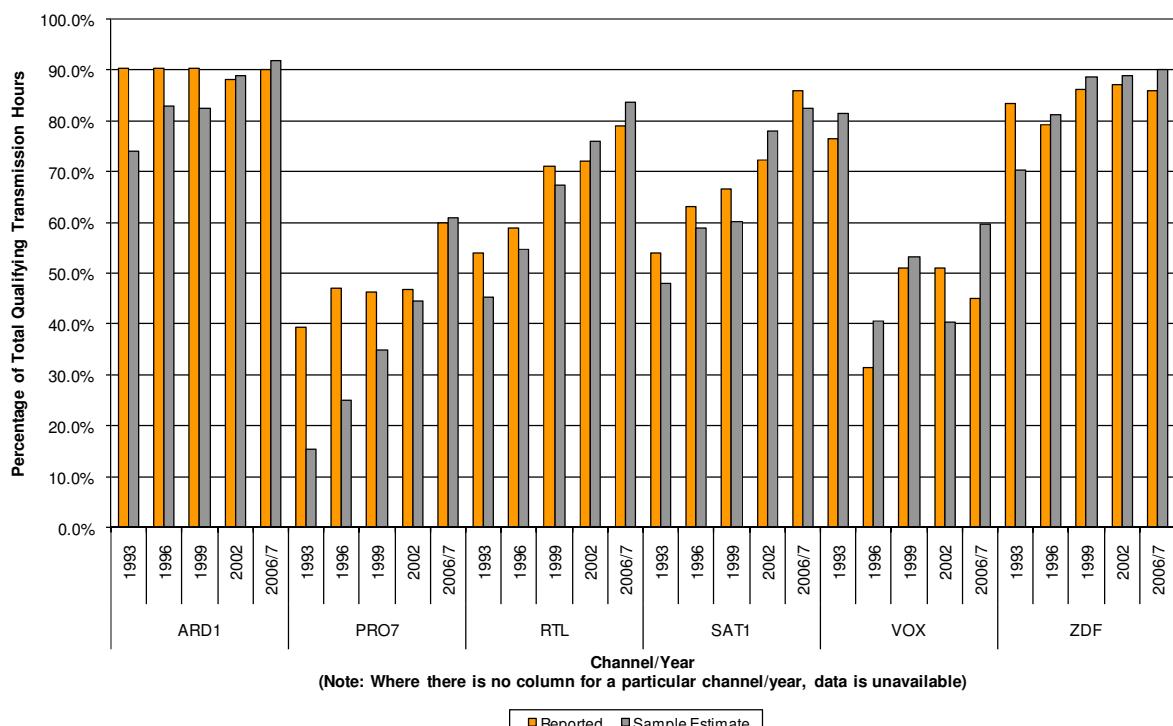
All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>
ARD	72.7%	27.3%	100%	ARD	65.8%	34.2%	100%
PRO 7	16.2%	83.8%	100%	PRO 7	15.8%	84.2%	100%
RTL	47.7%	52.3%	100%	RTL	56.2%	43.8%	100%
SAT.1	48.2%	51.8%	100%	SAT.1	55.6%	44.4%	100%
VOX	56.1%	43.9%	100%	VOX	38.3%	61.7%	100%
ZDF	36.8%	63.2%	100%	ZDF	57.6%	42.4%	100%
Result for Member State Sample	47.9%	52.1%	100%	Result for Member State Sample	50.9%	49.1%	100%

All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>
ARD	73.5%	26.5%	100%	ARD	72.5%	27.5%	100%
PRO 7	16.3%	83.7%	100%	PRO 7	11.2%	88.8%	100%
RTL	49.3%	50.7%	100%	RTL	61.5%	38.5%	100%
SAT.1	58.3%	41.7%	100%	SAT.1	63.6%	36.4%	100%
VOX	48.6%	51.4%	100%	VOX	34.3%	65.7%	100%
ZDF	53.5%	46.5%	100%	ZDF	61.8%	38.2%	100%
Result for Member State Sample	55.4%	44.6%	100%	Result for Member State Sample	58.7%	41.3%	100%

Comparison with past data and declarations

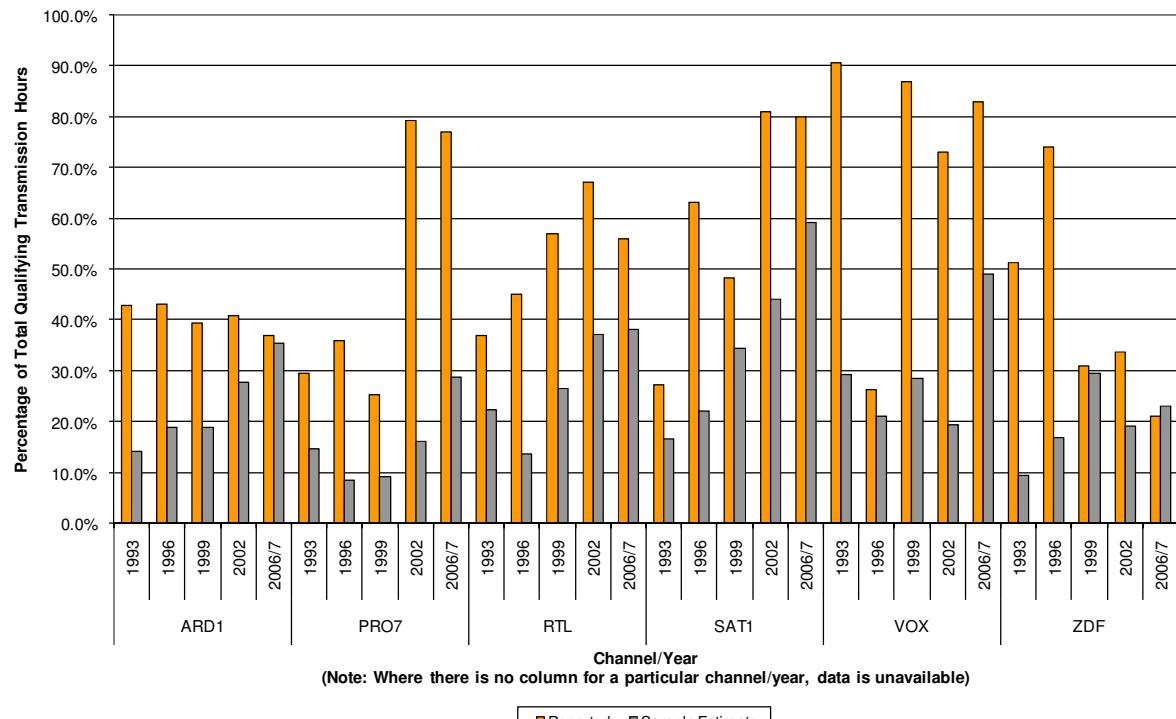
The ratio of qualifying European works to total qualifying hours provided by our 2007 estimates are very consistent with the reported data and the trends estimated in the 2005 Study (see Figure 31). While public channels ARD1 and ZDF offer the highest proportions of European works and seem to have reached a ceiling, private channels in the sample (RTL, VOX, SAT.1) continue to increase their proportion of European works, with RTL and SAT.1 now being nearly at the same level as the two public leaders.

Figure 31: Ratio of reported vs. estimated European qualifying transmission hours to total qualifying transmission hours in Germany, 2007/2006



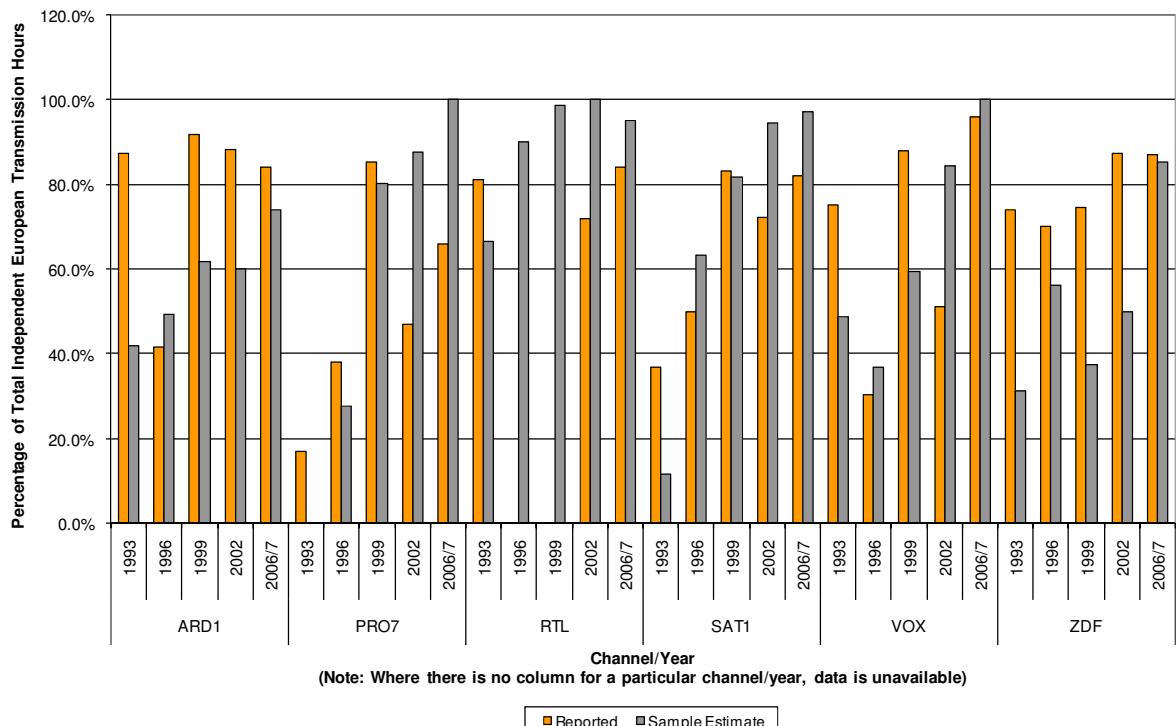
On the whole, the ratio of qualifying independent European works to total qualifying hours is also consistent with past findings and between sample and reported data (see Figure 32). It confirms that the proportion of independent European works is increasing on all channels over time, and is higher on private channels than on public channels. Also worth noting is that while reported data are significantly higher than sample estimates on private channels, they are very similar on public channels. As there is no legal definition of an independent producer in Germany, it is possible that private channels use a more flexible definition than the pan-European definition created by the Consortium for this study.

Figure 32: Ratio of reported vs. estimated independent European qualifying transmission hours to total qualifying transmission hours in Germany, 2007/2006



The 2007 ratio of qualifying recent independent European works to total independent European qualifying hours in Germany is relatively consistent over time (see Figure 33). On the whole, the proportion of recent independent Productions is rising on all channels year after year, and was very similar between the channels in our sample in 2006/2007.

Figure 33: Ratio of reported vs. estimated recent independent European qualifying transmission hours to total independent European transmission hours in Germany, 2007/2006



8.4.6. Ireland

Data summary

Our sample consists of the two publicly funded Irish channels, RTE1 and RTE2, and of one commercial channel TV3. These three leading channels in Ireland account for 53.1% of total Irish viewing (see Table 68).

Table 68: List of channels covered in the 2007 Irish sample

Country	Channel	Launch Year	Share of Viewing (2005)	Revenue Model	Platform	Average Daily Transmission Hours	Sample Weeks
Ireland	RTE 1	1961	27.70%	Gvt/Ad	Nat. Terr.	24	Standard
Ireland	RTE 2	1978	11.40%	Gvt/Ad	Nat. Terr.	24	
Ireland	TV3	1998	14.00%	Ad	Nat. Terr.	20.5	

Genre analysis

Fiction is clearly the most important qualifying genre for all three broadcasters, with a proportion of 62.4% of total qualifying hours for RTE2, 40.6% for TV3 and 39.6% on RTE1 (see Table 69).

Factual magazines, entertainment and cinema are the most important genres after fiction. Factual magazines account for 26.8% of all-day qualifying programmes on TV3, and 15% on RTE1. Entertainment accounts for 19.7% of all-day qualifying programming on TV3, 20.3% on RTE1 and 10.9% on RTE2. Lastly, in the Irish schedules, documentary is the least important genre, with a proportion of only 1.5% of all-day qualifying programming on TV3, 9.6% on RTE1 and 7.7% on RTE2.

Proportions are quite different in peak-time. While fiction remains the top genre on all three channels in our sample especially TV3 (43.6%) and RTE2 (43%), documentary is a much more important genre on both public channels RTE1 (22.6%) and RTE2 (23%), and cinema film also increases its share of qualifying transmission hours on TV3 (23%) and RTE2 (20.8%).

These scheduling strategies are reflected in the proportion of qualifying viewer hours acquired by each of the various genres. Fiction accounts for 44.1% of all-day viewer hours on TV3, 33.9% on RTE1 and 57% on RTE2. On TV3, the most important genre after fiction in terms of viewer hours is entertainment (29.7% for all-day). Viewer hours are more balanced on public channels in the all-day schedules, where entertainment is the second most important genre on RTE1 (22.9%), while cinema is the second most important genre on RTE2 (16.6%).

Table 69: Genre proportion of total qualifying hours in Ireland, 2007

Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)	Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)
RTE 1	Cinema Film	15.5%	12.3%	RTE 1	Cinema Film	11.8%	10.8%
	Documentary	9.6%	15.7%		Documentary	22.6%	19.7%
	Entertainment	20.3%	22.9%		Entertainment	20.2%	23.7%
	Factual Magazine	15.0%	15.2%		Factual Magazine	17.6%	14.9%
	Fiction	39.6%	33.9%		Fiction	27.7%	30.9%
RTE 2	Cinema Film	12.8%	16.6%	RTE 2	Cinema Film	20.8%	14.7%
	Documentary	7.7%	10.0%		Documentary	23.0%	15.0%
	Entertainment	10.9%	10.9%		Entertainment	7.6%	8.5%
	Factual Magazine	6.2%	5.6%		Factual Magazine	5.6%	5.2%
	Fiction	62.4%	57.0%		Fiction	43.0%	56.7%
TV3	Cinema Film	11.4%	10.2%	TV3	Cinema Film	23.0%	12.4%
	Documentary	1.5%	1.9%		Documentary	3.5%	2.8%
	Entertainment	19.7%	29.7%		Entertainment	24.2%	33.3%
	Factual Magazine	26.8%	14.1%		Factual Magazine	5.7%	2.8%
	Fiction	40.6%	44.1%		Fiction	43.6%	48.6%

Transmission and viewing ratio analysis

Qualifying programmes account for 78.3% of total transmission hours across our Irish sample (see Table 70). TV3 shows a higher proportion of qualifying hours (82.9%) than the public channels (78.1% for RTE1 and 74.5% for RTE2).

The figures slightly decrease when observing viewer hours, with a proportion of 70.8% for our entire sample. The public channels show the largest drops, falling to 66.4% for RTE1 and 68.9% for RTE2, a decline mostly due to the high proportion of news on RTE1 and sports events on RTE2.

Table 70: Ratio of qualifying hours to total transmission hours in Ireland, 2007

<i>Channel</i>	<i>Ratio of Qualifying to Total Transmission Hours (%)</i>	<i>Ratio of Qualifying to Total Viewer Hours (%)</i>
RTE 1	78.1%	66.4%
RTE 2	74.5%	68.9%
TV3	82.9%	80.2%
Result for Member State Sample	78.3%	70.8%

Proportion of European works

Across our Irish sample European works account for 54.1% of total qualifying hours (see Table 71). The two leading channels show the highest proportion of European works, which account for around 60% of total qualifying hours on both channels, whereas RTE2 shows a figure of 43.3%, which is explained largely by the importance of non- European imports (for fiction, factual magazines and Entertainment)on this channel.

During Peak-time, the proportions remain the same for RTE2 and TV3. However RTE1, , shows a significant increase in European works during peak-time, up to 81.6% from 60.9% during all-day.

When comparing the proportions based on transmission hours to those based on viewer hours, a general increase can be seen for RTE1 and TV3 (both during all-day and peak-time). Conversely, RTE2 goes from 43.3% of total qualifying hours down to 38.4% of total viewer hours during all-day (the same proportions can be observed in peak-time).

Table 71: Ratio of European qualifying to total qualifying hours in Ireland, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>
RTE 1	60.9%	76.8%	RTE 1	81.6%	84.6%
RTE 2	43.3%	38.4%	RTE 2	44.1%	38.7%
TV3	57.8%	69.9%	TV3	56.7%	75.0%
Result for Member State Sample	54.1%	65.7%	Result for Member State Sample	59.5%	72.3%

Non-domestic European works account for 25.1% of total qualifying hours across our entire Irish sample (see Table 72). TV3 show the highest figure of non-domestic works with a proportion of 36% (while RTE1 and RTE2 are around 20%). The gap between the public channels and TV3 becomes more pronounced during peak-time: on TV3, the proportion of non-domestic European works rises to 52.5%, while on RTE1 and RTE2 this proportion is around 9.5%. This difference is largely explained by the importance of UK-originated programmes on private channel TV3.

This difference between public and private channels is more significant when looking at non-domestic European works as a proportion of viewer hours. Non-domestic European works account for 59% of all-day qualifying viewer hours on TV3 (up to 73.5% in peak-time), while they account for 12.9% and 12.8% of all-day qualifying viewer hours on RTE1 and RTE2, respectively. This shows the success of UK-originated programmes on TV3, while non-domestic European works, mostly programmed during the night, are relatively less successful on RTE1 and RTE2, especially across the all-day schedule.

Table 72: Ratio of non-domestic qualifying European to total qualifying hours in Ireland, 2007

All Day			Peak Time		
Channel	Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)
RTE 1	19.1%	12.9%	RTE 1	8.9%	10.0%
RTE 2	21.1%	12.8%	RTE 2	9.8%	9.4%
TV3	36.0%	59.0%	TV3	52.5%	73.5%
Result for Member State Sample	25.1%	27.5%	Result for Member State Sample	26.1%	30.6%

Proportion of independent works

Across our Irish sample, 38.5% of total qualifying hours are independent European productions (see Table 73). TV3 shows the highest proportion with 53.3%, mostly due to the numerous Granada productions broadcast on this channel.²³⁵ RTE1 and RTE2 are behind this with 33.1% and 29.3% respectively. Peak-time proportions are along the same lines.

Differences between the proportions when based on viewing hours widen further, as independent European productions account for 67.6% of all-day qualifying viewer hours on TV3, compared to 35.8% on RTE1 and 25.1% on RTE2.

²³⁵ As a reminder here, for this study we considered the independence criteria at Member State level, that is, a producer with no link to broadcasters in a given market will be considered independent in that market even if it is dependent on a broadcaster in another market, whereas in the previous study, producers were considered dependent in any Member State as soon as they were found dependent in one single Member State.

Table 73: Ratio of independent European to total qualifying in Ireland, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)</i>
RTE 1	33.1%	35.8%	RTE 1	38.0%	37.3%
RTE 2	29.3%	25.1%	RTE 2	22.9%	22.8%
TV3	53.3%	67.6%	TV3	52.5%	73.5%
Result for Member State Sample	38.5%	43.9%	Result for Member State Sample	39.6%	46.9%

Proportion of recent independent works

The proportions of recent independent European works in our sample range from 72.3% for RTE1 to 96.8% for TV3 (see Table 74). RTE2 stands between these with 82.5%. The proportions often decrease in peak-time, for RTE2 especially (down to 68.5%), and TV3 to a lesser extent (down to 91.1%). RTE1, conversely, shows an increase from 72.3% for all-day, to 100% in peak-time.

The proportions based on viewer hours are very close to those based on transmission hours for all broadcasters except RTE1, which shows an increase during all-day, where recent independent European productions account for 91.9% of qualifying independent European viewer hours, compared with 72.3% when expressed in viewer hours.

Table 74: Ratio of recent independent European to total independent European in Ireland, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)</i>	<i>Channel</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)</i>
RTE 1	72.3%	91.9%	RTE 1	100.0%	100.0%
RTE 2	82.5%	83.7%	RTE 2	68.5%	68.5%
TV3	96.8%	96.1%	TV3	91.1%	94.9%
Result for Member State Sample	85.9%	93.0%	Result for Member State Sample	89.9%	94.4%

Proportion of stock/flow works

The proportion of stock vs. flow programmes among total qualifying European hours is, across the sample, very balanced during all-day (52.7% stock vs. 47.3% flow). Stock programmes account for around 48% on the two leading channels RTE1 and TV3, while RTE2 devotes 65.4% of its schedule to stock programmes (see Table 75), another consequence of its focus on fiction.

In peak-time, the balance of stock and flow remains the same for RTE2 but is reversed on RTE1 and TV3. Indeed, the two leading channels both favour stock programmes rather than flow during peak-time (55.1% of stock for RTE1 and 58.1% for TV3).

The proportions expressed in viewer hours show that stock programmes are relatively more successful than flow programmes on RTE1 (52.1% stock vs. 47.9% flow during all-day and 55.9% stock vs. 44.1% flow in peak-time) and TV3 (53.7% stock vs. 46.3% flow during all-day and 57.8% stock vs. 42.2% flow in peak-time). On RTE2 stock programmes are less successful, although they still represent the majority of qualifying viewer hours with proportions nearly identical to its two counterparts (54.7% stock vs. 45.3% flow during all-day and 55.9% stock vs. 44.1% flow in peak-time).

Table 75: Ratio of European stock/flow to total European in Ireland, 2007

All Day				Peak Time			
Channel	Qualifying European Stock to Total Qualifying European Hours (%)	Qualifying European Flow to Total Qualifying European Hours (%)	Total (%)	Channel	Qualifying European Stock to Total Qualifying European Hours (%)	Qualifying European Flow to Total Qualifying European Hours (%)	Total (%)
RTE 1	47.9%	52.1%	100%	RTE 1	55.1%	44.9%	100%
RTE 2	65.4%	34.6%	100%	RTE 2	64.1%	35.9%	100%
TV3	48.3%	51.7%	100%	TV3	58.1%	41.9%	100%
Result for Member State Sample	52.7%	47.3%	100%	Result for Member State Sample	58.4%	41.6%	100%

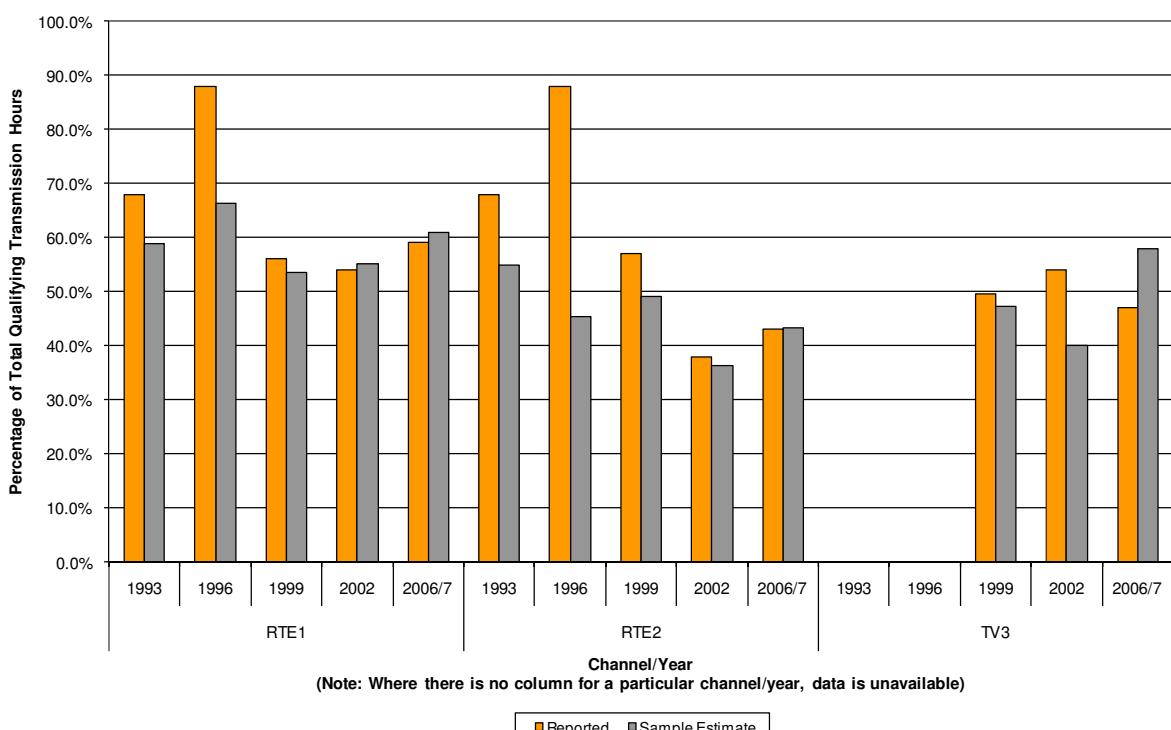
All Day				Peak Time			
Channel	Qualifying European Stock to Total Qualifying European Viewer Hours (%)	Qualifying European Flow to Total Qualifying European Viewer Hours (%)	Total (%)	Channel	Qualifying European Stock to Total Qualifying European Viewer Hours (%)	Qualifying European Flow to Total Qualifying European Viewer Hours (%)	Total (%)
RTE 1	52.1%	47.9%	100%	RTE 1	55.9%	44.1%	100%
RTE 2	54.7%	45.3%	100%	RTE 2	55.9%	44.1%	100%
TV3	53.7%	46.3%	100%	TV3	57.8%	42.2%	100%
Result for Member State Sample	53.0%	47.0%	100%	Result for Member State Sample	56.6%	43.4%	100%

Comparison with past data and declarations

The ratio of qualifying European works to total qualifying hours provided by our 2007 estimates are in line with the trends estimated in the 2005 Study (see Figure 34). It shows that public channel RTE1 is increasing its proportion of European works over time, contrary to RTE2, while TV3 is relatively stable.

Also worth noting is that while in the past sample estimates were slightly lower than reported data, in 2006/07 they are slightly higher.

Figure 34: Ratio of reported vs. estimated European qualifying transmission hours to total qualifying transmission hours in Ireland, 2007/2006



The 2007 ratio of qualifying independent European works to total qualifying hours is also consistent with past findings for RTE1 and RTE2, but not as consistent for TV3 (see Figure 35). On the whole, we observe an increase of independent European works on RTE1, and RTE2 to a lesser extent, with sample estimates typically higher than reported data. For TV3 the picture is not as clear: while reported data show a slow decrease over time, our 2007 estimate is significantly higher and contradicts this downward trend. This is explained by a change in the definition of independent productions for this Study, by which for example Granada productions have this time been considered independent, while according to the Irish definition such companies continue to be considered dependent.

Figure 35: Ratio of reported vs. estimated independent European qualifying transmission hours to total qualifying transmission hours in Ireland, 2007/2006

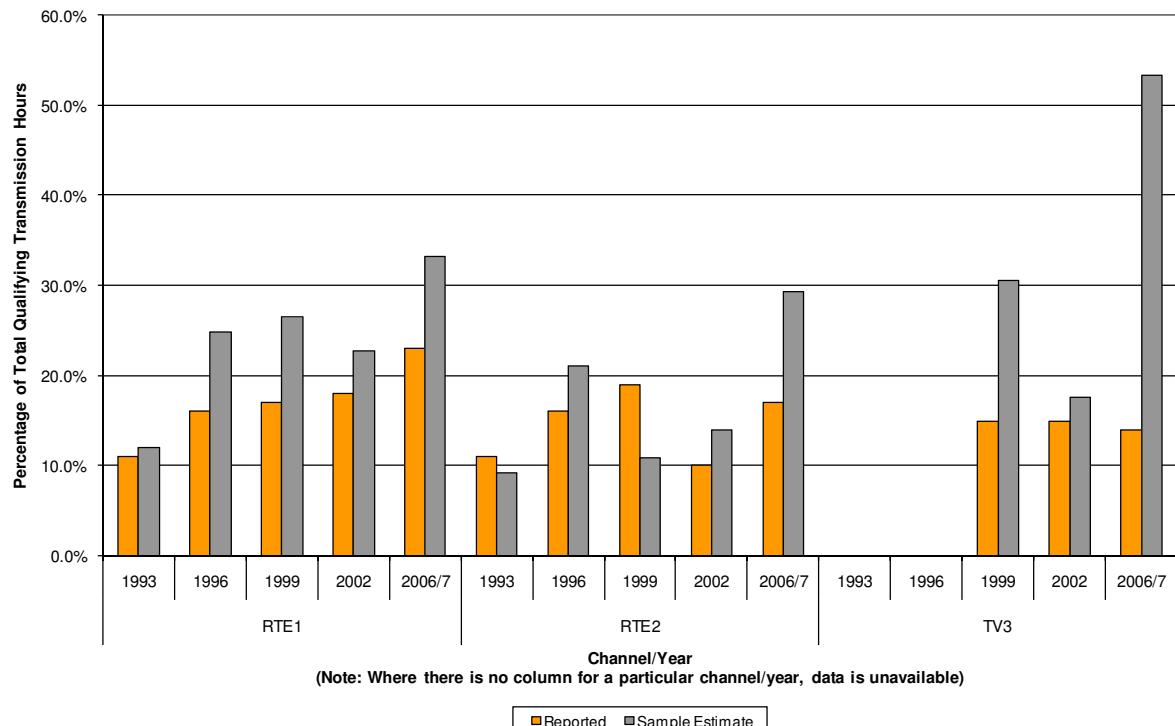
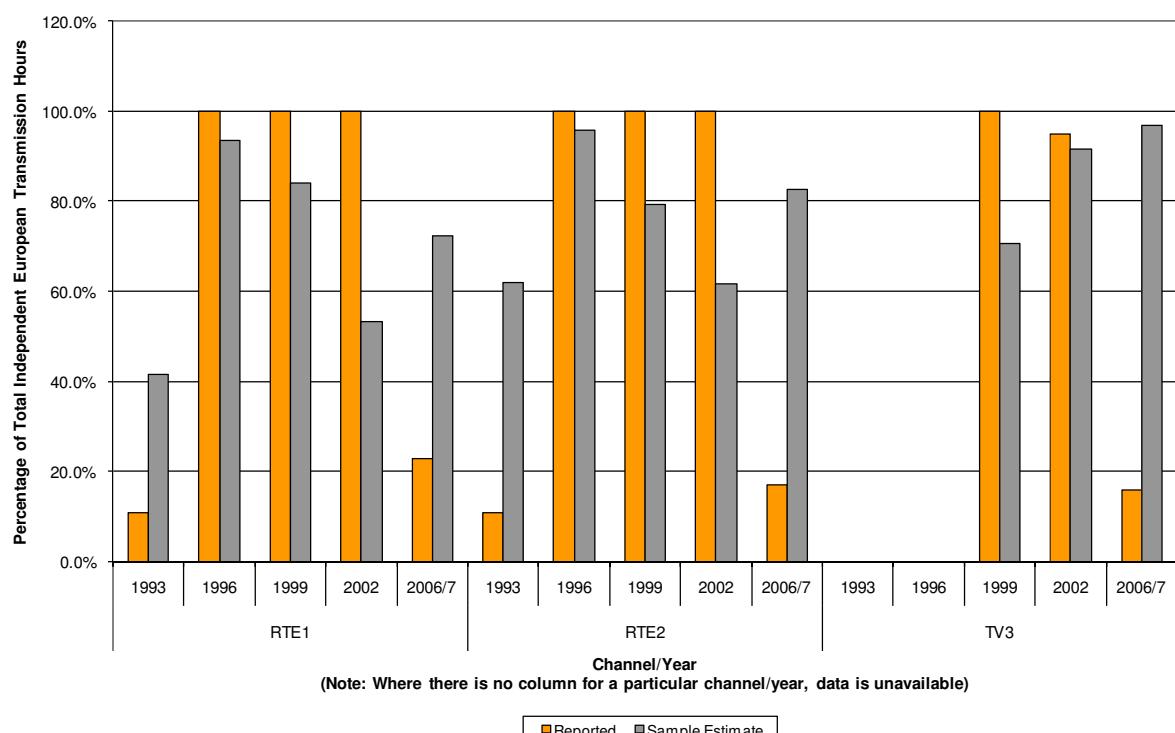


Figure 36: Ratio of reported vs. estimated recent independent European qualifying transmission hours to total independent European transmission hours in Ireland, 2007/2006



8.4.7. Italy

Data summary

Our sample consists of two publicly funded public service channels, RAI1 and RAI2, two commercial channels from the Mediaset group, CANALE5 and ITALIA1, Telecom Italia's commercial channel, LA7, and premium pay channel FOX LIFE. Together they account for more than 71% of total TV viewing in Italy (see Table 76).

Table 76: List of channels covered in the 2007 Italian sample

Country	Channel	Launch Year	Share of Viewing (2005)	Revenue Model	Platform	Average Daily Transmission Hours	Sample Weeks
Italy	Canale 5	1980	22.70%	Ad	Terr.	24	Standard
Italy	Fox Life	2004	0.25%	Subs	Cab/Sat	24	
Italy	Ita1	1981	10.20%	Ad	Terr.	24	
Italy	La7	2001	2.50%	Ad	Terr.	24	
Italy	Rai1	1954	23.70%	Gvt/Ad	Terr.	24	
Italy	Rai2	1954	12.20%	Gvt/Ad	Terr.	24	

Genre analysis

Entertainment, fiction and factual magazines are the dominant genres on leading Italian channels (see Table 77). The qualifying programmes of CANALE5 consist of 44% entertainment, 33.7% fiction and 16.1% factual magazines. On RAI1 the proportions are 48.2% factual magazines, 16.7% for fiction and 20.3% for entertainment. RAI2's schedule is build along similar lines, although it gives the highest share of its qualifying offer to documentary among the channels from our sample: 13.3% compared to 31% for factual magazines, 27.1% for entertainment and 26.9% for fiction.

Each of the three remaining channels in our sample generally have a specific genre emphasis. ITALIA1 is clearly centred on fiction (69.1%) and cinema (18%). FOX LIFE also relies heavily on fiction (67.3%) but this time complemented by entertainment (21.3%). Lastly, LA7 offers a relatively balanced mix of all genres except entertainment, with factual magazines (31%) and documentary (12.1%) on the one hand and fiction (28.4%) and cinema film (22.3%) on the other.

In peak-time, fiction is really put at the forefront of qualifying schedules. Fiction makes up 75.8% of peak-time qualifying programmes on FOX LIFE, 55.5% of ITALIA1, 55.4% of RAI2, 44.1% RAI1, 41.7% of LA7 and 30.3% of CANALE5. Entertainment is the main complement to fiction on leading channels with 56.8% on CANALE5 and 47.2% on RAI1. Entertainment is also important on FOX LIFE (17.2%) and ITALIA1 (18.3%), the latter also proposing an important proportion of cinema (26.2%). Lastly, LA7 complements fiction with essentially factual magazines (35.1%) and some cinema film (10.3%).

The genre proportions for total qualifying viewer hours very much reflect the emphasis on fiction and entertainment of most Italian channels, especially in peak-time, and the also specificities of each channel, whether on factual magazines or on cinema film.

Table 77: Genre proportion of total qualifying hours in Italy, 2007

<i>Channel</i>	<i>Genre</i>	<i>Genre Proportions of Total Qualifying Hours (%)</i>	<i>Genre Proportions of Total Qualifying Viewer Hours (%)</i>	<i>Genre Proportions of Total Qualifying Hours (%)</i>	<i>Genre Proportions of Total Qualifying Viewer Hours (%)</i>
Can5	Cinema Film	4.9%	5.3%	Can5	Cinema Film
	Documentary	1.3%	0.1%		Documentary
	Entertainment	44.0%	52.4%		Entertainment
	Factual Magazine	16.1%	10.9%		Factual Magazine
	Fiction	33.7%	31.3%		Fiction
Fox Life	Cinema Film	6.9%	9.8%	Fox Life	Cinema Film
	Documentary	4.0%	2.0%		Documentary
	Entertainment	21.3%	19.5%		Entertainment
	Factual Magazine	0.5%	0.2%		Factual Magazine
	Fiction	67.3%	68.4%		Fiction
Ita1	Cinema Film	18.0%	18.0%	Ita1	Cinema Film
	Documentary	1.0%	0.8%		Documentary
	Entertainment	8.9%	12.9%		Entertainment
	Factual Magazine	3.0%	1.6%		Factual Magazine
	Fiction	69.1%	66.8%		Fiction
La7	Cinema Film	22.3%	27.7%	La7	Cinema Film
	Documentary	12.1%	11.9%		Documentary
	Entertainment	6.1%	6.4%		Entertainment
	Factual Magazine	31.0%	28.8%		Factual Magazine
	Fiction	28.4%	25.2%		Fiction
Rai1	Cinema Film	6.5%	2.2%	Rai1	Cinema Film
	Documentary	8.2%	5.5%		Documentary
	Entertainment	20.3%	31.8%		Entertainment
	Factual Magazine	48.2%	40.4%		Factual Magazine
	Fiction	16.7%	20.2%		Fiction
Rai2	Cinema Film	1.8%	1.5%	Rai2	Cinema Film
	Documentary	13.3%	16.6%		Documentary
	Entertainment	27.1%	30.4%		Entertainment
	Factual Magazine	31.0%	24.1%		Factual Magazine
	Fiction	26.9%	27.5%		Fiction

Transmission and viewing ratio analysis

For our Italian sample as a whole, qualifying programmes make up 72% of total transmission hours of the channels in our sample (see Table 78). This proportion is lower on the two leading commercial channels of the Mediaset group as it reaches 62.5% on CANALE5 and 63.8% on ITALIA1, which can be explained by the high proportion of news and teleshopping on these two channels. On the other hand, FOX LIFE, LA7 and RAI2 allocate around 78% of their grids to qualifying programmes.

Qualifying programmes are not as successful with the audience as a whole, representing 64% of total qualifying viewing across the channels of our sample. This total figure is, however, not very representative of individual situations. LA7 and FOX LIFE show much higher figures, going up from 77.5% in transmission hours to 84% in viewer hours for LA7, and from 78.1% to 83.7% for FOX LIFE. Conversely, RAI1 falls from 72.4% to 58.2%, a consequence of the high audiences for the first Italian channel's news programming.

Table 78: Ratio of qualifying hours to total transmission hours in Italy, 2007

Channel	Ratio of Qualifying to Total Transmission Hours (%)	Ratio of Qualifying to Total Viewer Hours (%)
Can5	62.5%	63.5%
Fox Life	78.1%	83.7%
Ita1	63.8%	62.1%
La7	77.5%	84.0%
Rai1	72.4%	58.2%
Rai2	77.5%	73.5%
Result for Member State Sample	72.0%	64.0%

Proportion of European works

Leading channels RAI1, RAI2 and CANALE5 reach the highest proportions of European works with 91.9%, 82.5% and 81.8% of total qualifying hours during all-day respectively (see Table 79). While LA7 also allocates a majority proportion of its all-day transmission hours to European works, with 61.7%, FOX LIFE (16.3%) and ITALIA1 (21.8%) are below the 50%. As we have noted previously, these two channels' schedules are very much centred on fiction and cinema, with an important share of non-European acquisitions. In peak-time, the proportions are very similar, although in slight decline across the sample as a whole, with the two Mediaset group channels presenting a slight increase (88.9% of European works for CANALE5 and 27.6% for ITALIA1) and RAI2 in decline, down to 60.2%.

The proportions of European viewer hours to total qualifying viewer hours are significantly higher, reaching 77.1% during all-day and 75.2% in peak-time for the entire sample. The highest increase can be seen on RAI1 where European viewer hours reach 97.7% during all-day and 94.7% in peak-time, a consequence of its entertainment and factual magazines policy. On the opposite side, the proportion of European works on FOX LIFE is even lower when expressed in viewer hours with 12.5% during all-day and 11.9% in peak-time.

Table 79: Ratio of European qualifying to total qualifying hours in Italy, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>
Can5	81.8%	86.4%	Can5	88.9%	87.4%
Fox Life	16.3%	12.5%	Fox Life	14.4%	11.9%
Ita1	21.8%	21.9%	Ita1	27.6%	32.4%
La7	61.7%	61.4%	La7	58.1%	65.8%
Rai1	91.9%	97.7%	Rai1	91.3%	94.7%
Rai2	82.5%	80.5%	Rai2	60.2%	63.6%
Result for Member State Sample	59.1%	77.1%	Result for Member State Sample	50.5%	75.2%

All the Italian channels show a low proportion of non-domestic European works: for our sample as a whole we see 3.8% of total qualifying hours during all-day and 2.3% in peak-time (see Table 80). CANALE5 and LA7 show the highest proportions with 5.2% and 6.8% during all-day, compared to 2.4% and 7.1% in peak-time respectively.

The proportions are even lower when expressed in viewer hours, with 1.8% during all-day and 0.9% in peak-time for our sample as a whole. In peak-time, non-European works account for 0% of qualifying viewer hours on RAI1, 0.2% on FOX LIFE, 0.4% on ITALIA1, 0.8% on CANALE5, and 1% on RAI2.

Table 80: Ratio of non-domestic qualifying European to total qualifying hours in Italy, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)</i>
Can5	5.2%	2.7%	Can5	2.4%	0.8%
Fox Life	3.4%	2.5%	Fox Life	0.8%	0.2%
Ita1	3.0%	1.8%	Ita1	0.7%	0.4%
La7	6.8%	7.4%	La7	7.1%	5.9%
Rai1	1.7%	0.1%	Rai1	0.0%	0.0%
Rai2	2.5%	1.5%	Rai2	1.7%	1.0%
Result for Member State Sample	3.8%	1.8%	Result for Member State Sample	2.3%	0.9%

Proportion of Independent works²³⁶

For the entire Italian sample, 19.2% of total all-day qualifying hours are produced by independent European production companies (see Table 81). Proportions range from 10.8% on ITALIA1, 13.8% on FOX LIFE and 19.6 on RAI1, to 20.6% on RAI2, 25% on LA7 and 26.5% on CANALE5. In peak-time, these proportions reach 30.6% on RAI1, 31.8% on RAI2 and 34.8% on CANALE5, but are lower for some channels, with 12.9% on FOX LIFE and 12% on ITALIA1.

The proportions of independent European works are generally higher when expressed in viewer hours, reaching 22.6% during all-day and 28.6% in peak-time. RAI2 is the channel where the increase is the highest, reaching 26.1% during all-day and 39.6% in peak-time. On the other hand, independent European works take a lower share of viewer hours than transmission hours on FOX LIFE, down to 10.8% during all-day and 10% in peak-time and on CANALE5 in peak-time (down to 30.2%). ITALIA1 also see a decrease during all-day (8.2%), although the proportion is increased in peak-time (13.6%).

Table 81: Ratio of independent European to total qualifying in Italy, 2007

All Day			Peak Time		
Channel	Ratio of Qualifying Independent European to Total Qualifying Hours (%)	Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Qualifying Independent European to Total Qualifying Hours (%)	Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)
Can5	26,5%	27,8%	Can5	34,8%	30,2%
Fox Life	13,8%	10,8%	Fox Life	12,9%	10,0%
Ita1	10,8%	8,2%	Ita1	12,0%	13,6%
La7	25,0%	28,9%	La7	29,6%	29,7%
Rai1	19,6%	21,5%	Rai1	30,6%	30,9%
Rai2	20,6%	26,1%	Rai2	31,8%	39,6%
Result for Member State Sample	19,2%	22,6%	Result for Member State Sample	23,2%	28,6%

²³⁶ It is important to note that the proportions of independent productions have been re-calculated for Italy following the debates at the public Workshop held in Brussels on November 18. Indeed, in the Draft report presented then, Endemol productions had been considered non-independent for the second half of 2007, based on inaccurate information gathered by the consultants that Mediaset owned 50% of the holding company controlling the Endemol group. Further research made clear that as Mediaset owns 33% of that holding company (together with Goldman Sachs and John de Mol owning another 33% each), Endemol cannot be considered to be controlled by Mediaset, according to our criteria as described in the methodological section of this report. Following this re-calculation, proportions of independent works have increased by up to 2.2 percentage points across the Member State sample.

Proportion of recent independent works

On average, 75.8% of all qualifying independent European hours are less than five years old (see Table 82). FOX LIFE shows the highest proportion of recent independent works (100%) while ITALIA1 shows the lowest (15.2%), a consequence of the high proportion of older films and series offered by ITALIA1. LA7 shows the second lowest proportion with 54.5% during all-day. Other channels show high proportions of recent works: 80.8% for RAI1, 86% for CANALE5 and 95.7% for RAI2 during all-day.

All channels show higher proportions of recent independent works in peak-time, with an average of 93.1% for our sample. RAI1, RAI2 and FOX LIFE reach 100% while the channels with the lowest figures, ITALIA1 and LA7, reach 54.1% and 88.8 % respectively.

When comparing the ratio for total qualifying hours to total qualifying viewer hours, the picture is quite similar, during all-day and peak-time, except for ITALIA1 which shows an increase from 15.2% of total qualifying hours to 29.6% of total viewer hours during all-day, and a decrease from 54.1% to 35.9% during peak-time, revealing the relative lack of interest for recent independent programming in the most exposed slots of the day on a channel whose European Independent offering consists primarily of old fiction and cinema acquisitions.

Table 82: Ratio of recent independent European to total independent European in Italy, 2007

All Day			Peak Time		
Channel	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)	Channel	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)
Can5	86,0%	86,5%	Can5	96,3%	98,5%
Fox Life	100,0%	100,0%	Fox Life	100,0%	100,0%
Ita1	15,2%	29,6%	Ita1	54,1%	35,9%
La7	54,5%	55,5%	La7	88,8%	90,2%
Rai1	80,8%	98,8%	Rai1	100,0%	100,0%
Rai2	95,7%	98,6%	Rai2	100,0%	100,0%
Result for Member State Sample	75,8%	86,9%	Result for Member State Sample	93,1%	93,4%

Proportion of stock/flow works

The proportion of stock vs. flow programmes among total qualifying European hours is skewed towards flow, with an average of 65.4% of flow vs. 34.6% of stock (see Table 83). The three leading broadcasters RAI1, RAI2 and CANALE5 show the highest proportion of flow programmes with 68.7%, 71.8% and 74.5% respectively. LA7 and FOX LIFE are showing a more balanced mix of flow and stock during all-day.

In peak-time, the proportions remain the same except for the two RAI channels and for FOX LIFE. RAI1 and RAI2 are showing a more balanced mix than during all-day (48.3% of stock vs. 51.7% of flow for RAI1 in

peak-time, and 40.2% of stock vs. 59.8% of flow for RAI2). FOX LIFE which was showing a major proportion of stock during day time (53.6%) switches to a majority of flow during peak-time (79.5%).

In general, the same proportions can be observed in viewer hours during all-day and peak-time, except for FOX LIFE, RAI1 and RAI2. On FOX LIFE, flow programmes are more successful with the audience, reaching 58.5% of all-day European viewer hours compared to 46.4% of transmission hours, reflecting the success of day-time flow programmes on this channel. Situation is similar on RAI2 except this happens in peak-time: there, flow programmes reach 73.4% of total European viewer hours compared to 59.8% of transmission hours. On the opposite, RAI1 show a relatively higher success of its stock programmes, which represent 35.5% of its all-day European viewer hours compared to 31.3% for transmission hours, and 54.1% vs. 48.3% in peak-time.

Table 83: Ratio of European stock/flow to total European in Italy, 2007

All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>
Can5	25.5%	74.5%	100%	Can5	27.4%	72.6%	100%
Fox Life	53.6%	46.4%	100%	Fox Life	20.5%	79.5%	100%
Ita1	70.4%	29.6%	100%	Ita1	78.3%	21.7%	100%
La7	41.6%	58.4%	100%	La7	35.0%	65.0%	100%
Rai1	31.3%	68.7%	100%	Rai1	48.3%	51.7%	100%
Rai2	28.2%	71.8%	100%	Rai2	40.2%	59.8%	100%
Result for Member State Sample	34.6%	65.4%	100%	Result for Member State Sample	38.6%	61.4%	100%

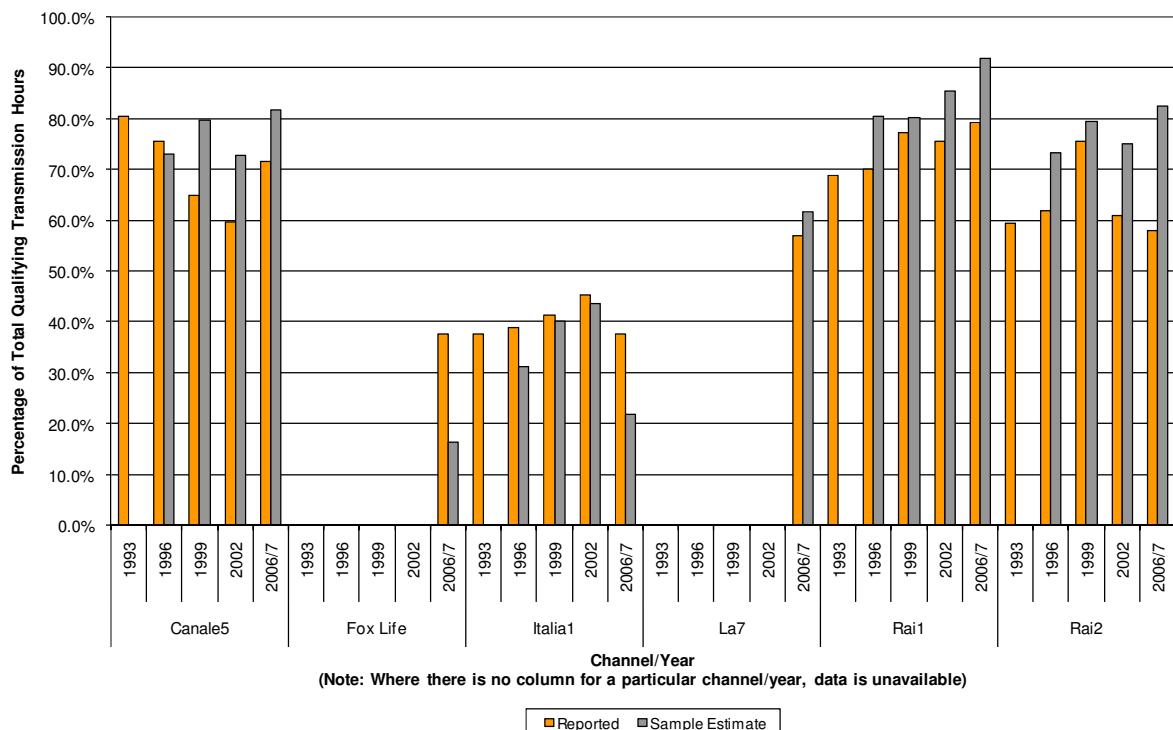
All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>
Can5	26.2%	73.8%	100%	Can5	25.0%	75.0%	100%
Fox Life	41.5%	58.5%	100%	Fox Life	25.1%	74.9%	100%
Ita1	78.2%	21.8%	100%	Ita1	84.8%	15.2%	100%
La7	47.0%	53.0%	100%	La7	32.5%	67.5%	100%
Rai1	35.5%	64.5%	100%	Rai1	54.1%	45.9%	100%
Rai2	28.9%	71.1%	100%	Rai2	26.6%	73.4%	100%
Result for Member State Sample	33.3%	66.7%	100%	Result for Member State Sample	38.3%	61.7%	100%

Comparison with past data and declarations

As regards the proportion of European works, our 2007 estimates are in line with our past findings (see Figure 37). It shows a general increase of transmission time devoted to European works over the time for each broadcaster except ITALIA1, which registers a clear decline in 2007.

The ratio of qualifying European works to total qualifying hours provided by our 2007 estimates are also in line with the trends estimated in the 2005 Study. It shows that leading channels RAI1, RAI2 and CANALE5, as well as LA7, show the highest proportion of European works. Also worth noting is that the sample estimate are higher than reported data for these channels, while they are lower for FOX LIFE and ITALIA1.

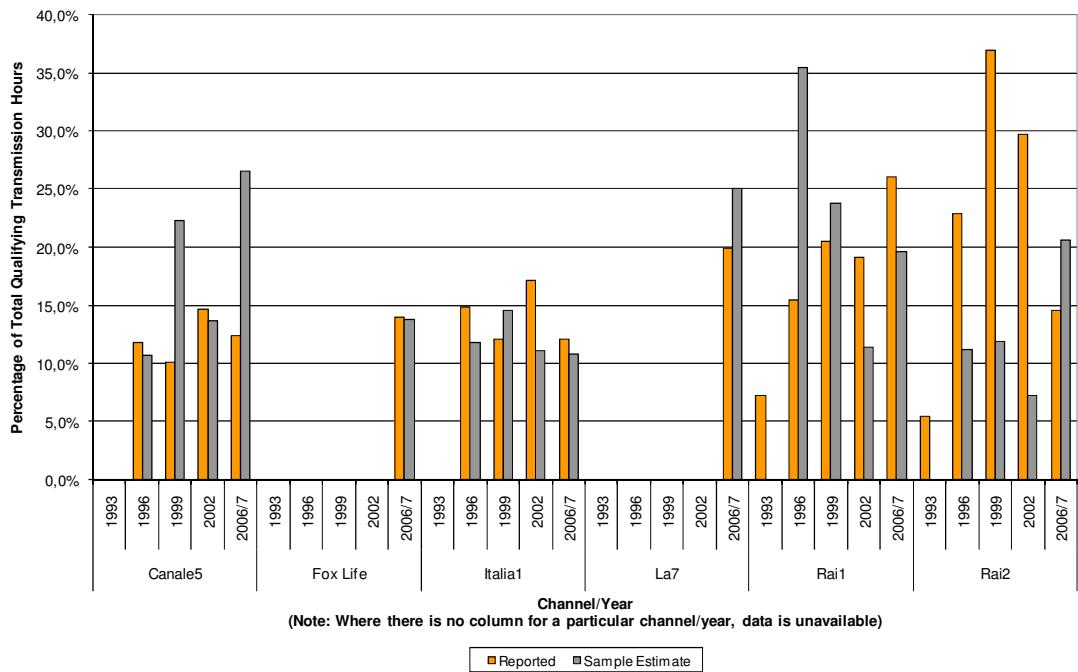
Figure 37: Ratio of reported vs. estimated European qualifying transmission hours to total qualifying transmission hours in Italy, 2007/2006



The 2007 ratio of qualifying independent European works to total qualifying hours is consistent with past findings and reported data for ITALIA1, LA7 and FOX LIFE (see Figure 38). But it shows significant differences between sample estimates and reported data for the three leading channels. On CANALE5, the 2007 sample estimate is significantly higher than the 2006 reported data, as it was the case for the 1999 data while other years were consistent, showing that the 2007 sample estimates may have been overestimated. On RAI1, sample estimates show a decrease over time, contrary to reported data, resulting in a possible underestimation of the 2007 sample estimate. On RAI2 the situation is reversed: sample estimates are on the rise over time, while reported data are decreasing. As differences are not consistent over time

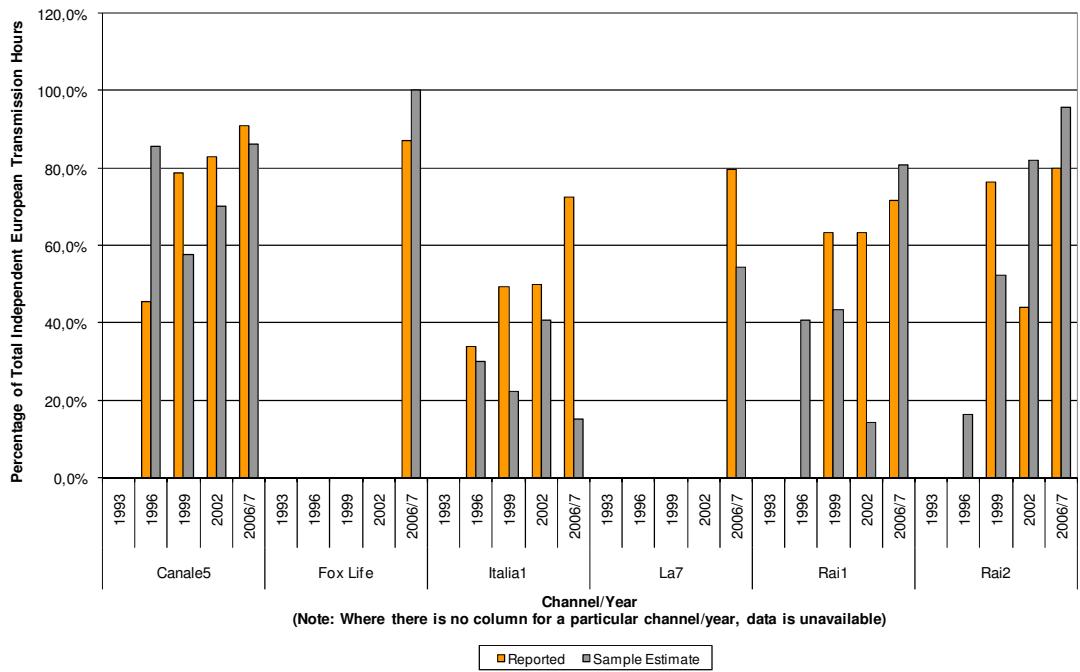
and between channels, we estimate that sampling may not always reflect yearly situations accurately and that analyses on these three channels should just look at the bigger picture rather than at the detailed findings years after year.

Figure 38: Ratio of reported vs. estimated independent European qualifying transmission hours to total qualifying transmission hours in Italy, 2007/2006



When comparisons with past findings are possible, we can observe a general trend towards an increase of qualifying independent European transmission time devoted to recent works (see Figure 39). Sample estimates are in line with past data from the 2005 Study, and with reported data, except for ITALIA1 and LA7 which show strong differences between sample estimates and reported data in 2006/2007.

Figure 39: Ratio of reported vs. estimated recent independent European qualifying transmission hours to total independent European transmission hours in Italy, 2007/2006



8.4.8. Poland

Data summary

Our sample consists of two publicly funded public service channels (TVP1 and TVP2), three advertising funded channels (POLSAT, TVN and TV4 – the latter being part of the Polsat Group), and pay TV channel CANAL+ (see Table 84).

Table 84: List of channels covered in the 2007 Polish sample²³⁷

Country	Channel	Launch Year	Share of Viewing (2005)	Revenue Model	Platform	Average Daily Transmission Hours	Sample Weeks
Poland	TVP1	1952	25.10%	Gvt/Ad	Terr./C/S	24	Standard
Poland	TVP2	1970	21.10%	Gvt/Ad	Terr./C/S	24	
Poland	Polsat	1992	15.60%	Ad	Terr./C/S	24	
Poland	TVN	1997	15.00%	Ad	Terr./C/S	24	
Poland	Canal +	1994	<5.00%	Subs/Ad	Terr./C/S	24	
Poland	TV4	2000	2.80%	Ad	Cab/Sat	24	

²³⁷ In the 'Platform' column, "Terr/C/S" means "Terrestrial, Cable and Satellite".

Genre analysis

Leading public channels TVP1 and TVP2 both present a wide variety of genres in their schedules. However, differences can be seen between the two channels, especially during peak-time (see Table 85). TVP1 airs a high proportion of fiction (36.3% of qualifying hours during peak-time) and cinema films (36.4%), whereas TVP2 concentrates more on entertainment (26.2% peak) than TVP1, but still has a large proportion of cinema films.

The offering of the private free-to-air channels are more varied. Each private channel distinguishes itself via a specific offering. TVN relies more on factual magazines (10.8% peak) and entertainment (18.6% peak) than others, although it also airs a significant volume of fiction (36.7% peak). POLSAT favours cinema films and fiction (respectively 51.6% and 41.4% peak), while TV4 puts the emphasis on entertainment (39.4% peak).

Lastly, CANAL+ presents an extremely specialised schedule, with the proportion of cinema films reaching 70.1% of total qualifying hours during peak-time, to which fiction adds another 18.9%.

As is clear, all Polish channels' programming specificities are more prominent during peak-time, whereas their schedules present a more balanced offering of genres across the day as a whole (with the exception of Canal+, as noted above).

Table 85: Genre proportion of total qualifying hours in Poland, 2007

Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)	Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)
Canal +	Cinema Film	78.4%	87.7%	Canal +	Cinema Film	70.1%	85.7%
	Documentary	6.6%	1.7%		Documentary	2.8%	0.2%
	Entertainment	2.2%	1.0%		Entertainment	5.0%	1.2%
	Factual Magazine	4.1%	0.9%		Factual Magazine	3.3%	0.6%
	Fiction	8.8%	8.6%		Fiction	18.9%	12.2%
Polsat	Cinema Film	19.7%	30.0%	Polsat	Cinema Film	51.6%	48.1%
	Documentary	1.7%	1.9%		Documentary	0.0%	0.0%
	Entertainment	17.7%	11.4%		Entertainment	5.3%	7.7%
	Factual Magazine	2.9%	1.4%		Factual Magazine	1.7%	1.1%
	Fiction	58.1%	55.3%		Fiction	41.4%	43.2%
TV4	Cinema Film	12.8%	25.0%	TV4	Cinema Film	23.7%	29.3%
	Documentary	4.6%	5.2%		Documentary	7.7%	6.5%
	Entertainment	38.5%	33.1%		Entertainment	39.4%	36.4%
	Factual Magazine	16.7%	7.7%		Factual Magazine	5.3%	4.2%
	Fiction	27.4%	29.0%		Fiction	23.9%	23.7%
TVN	Cinema Film	14.6%	20.6%	TVN	Cinema Film	27.5%	24.8%
	Documentary	13.6%	11.1%		Documentary	6.4%	5.5%
	Entertainment	17.4%	17.1%		Entertainment	18.6%	21.8%
	Factual Magazine	26.8%	18.9%		Factual Magazine	10.8%	10.5%
	Fiction	27.6%	32.4%		Fiction	36.7%	37.3%
TVP1	Cinema Film	24.1%	27.3%	TVP1	Cinema Film	36.4%	40.6%
	Documentary	14.0%	8.5%		Documentary	9.1%	4.9%
	Entertainment	16.3%	16.4%		Entertainment	10.5%	5.9%
	Factual Magazine	17.7%	10.2%		Factual Magazine	7.7%	3.4%
	Fiction	27.9%	37.6%		Fiction	36.3%	45.2%
TVP2	Cinema Film	16.5%	16.6%	TVP2	Cinema Film	33.9%	24.9%
	Documentary	12.1%	9.1%		Documentary	7.4%	7.0%
	Entertainment	15.0%	19.5%		Entertainment	26.2%	28.1%
	Factual Magazine	14.7%	9.8%		Factual Magazine	13.7%	8.5%
	Fiction	41.6%	45.0%		Fiction	18.8%	31.5%

Transmission and viewing ratio analysis

In 2007, qualifying programmes (that is, all programmes excluding advertising, teleshopping, teletext, news, sport and games) made up 63.9% of the total transmission hours of the channels sampled (see Table 86).

POLSAT shows a figure of 51.9% of qualifying programmes, which can be explained by the high proportion of sports, a non-qualifying genre, on this channel. On CANAL+ the proportion is 88.8%, a figure which is explained by the dominance of cinema and fiction in this channel's programming.

When comparing the proportions based on transmission hours to those based on viewing hours, the ratio of qualifying to total hours is nearly identical for CANAL+ and TV4. For leading public channels TVP1 and TVP2, we observe a decrease from around 61% for transmission hours to around 53% for viewing hours. This can be explained by the importance of news programming on these channels, a genre which does not count as 'qualifying' programming although it attracts large audiences.

Commercial private channels POLSAT and TVN, on the other hand, see their figures climb (from 51.9% in transmission hours to 63.9% in viewing hours for POLSAT, and from 60.7% to 67% for TVN), an increase explained by a high presence of fiction, cinema films and entertainment in peak-time.

Table 86: Ratio of qualifying hours to total transmission hours in Poland, 2007

<i>Channel</i>	<i>Ratio of Qualifying to Total Transmission Hours (%)</i>	<i>Ratio of Qualifying to Total Viewer Hours (%)</i>
Canal +	88.8%	89.2%
Polsat	51.9%	63.9%
TV4	59.1%	59.2%
TVN	60.7%	67.0%
TVP1	61.4%	50.6%
TVP2	61.4%	57.7%
Result for Member State Sample	63.9%	58.7%

Proportion of European works

The majority of the Polish channels show high proportions of European works, with an average of 58.8% of the total qualifying transmission hours for our 2007 sample (see Table 87). The only exception is CANAL+, which shows a low proportion of European works of 29%. This proportion is explained by the high presence of American programming in the

CANAL+ offering, as opposed to the situation of their sister channel in France, which funds a wide volume of locally-made cinema films.

TVN and TVP2 air the highest proportion of European works (respectively 80.5% and 71.2% of the total qualifying transmission hours), mostly because of the high proportion of entertainment programming they offer during peak-time.

The leading channel in terms of share of viewing, TVP1, also stands quite high, with the proportion of European works at 67.2% of the total qualifying transmission hours. This figure is, on the one hand, usual for leading public broadcasters who tend to offer a high proportion of national works as part of their public service mission. On the other hand, it is also explained by the exclusive rights over Polish television's archives, historically held by TVP.

During peak-time, a small decrease can be noticed in the proportion of European works on all the channels, except for TVN and TVP2. This decrease is quite significant for POLSAT with its proportion of European works reducing from 50% for its whole schedule to 39.9% during peak-time. For TVP1, this decrease can be explained by the higher presence of cinema films during peak-time compared to its all-day schedule.

When comparing the proportions of European works based on transmission hours to those based on viewing hours, the viewing ratio is lower than the transmission ratio for the majority of the channels, except for TVN and TVP2, both of which air a lot of entertainment and fewer fiction programmes. On the other hand, CANAL+, which airs 29% European works during all-day, only gets a viewing ratio of 13.4%. The same trends can be observed during peak-time.

Table 87: Ratio of European qualifying to total qualifying hours in Poland, 2007

All Day			Peak Time		
Channel	Ratio of Qualifying European to Total Qualifying Hours (%)	Ratio of Qualifying European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Qualifying European to Total Qualifying Hours (%)	Ratio of Qualifying European to Total Qualifying Viewer Hours (%)
Canal +	29.0%	13.4%	Canal +	27.9%	8.9%
Polsat	50.0%	47.6%	Polsat	39.9%	40.9%
TV4	66.7%	54.1%	TV4	55.3%	49.1%
TVN	80.5%	82.1%	TVN	81.9%	87.5%
TVP1	67.2%	57.7%	TVP1	53.0%	47.5%
TVP2	71.2%	78.5%	TVP2	71.2%	79.8%
Result for Member State Sample	58.8%	66.0%	Result for Member State Sample	52.7%	62.7%

For our sample as a whole, 8.6% of qualifying works broadcast on the Polish channels are non-domestic European works (see Table 88).

TVN, POLSAT and TV4 air the lowest proportion of non-domestic European works, with 5% of the total transmission hours for TVN, 3.9% for POLSAT and 6.8% for TV4; whereas the two public channels air around 11% non-domestic European works during their total schedule, as does CANAL+.

In peak-time, the ratio of non-domestic qualifying European works remains approximately the same for POLSAT and TV4. This ratio goes down for TVP1 and TVP2, while CANAL+ and TVN see their proportions of non-domestic European works go up (from 10.8% all-day to 19.5% peak for CANAL+ and 5% all-day to 10.9% peak for TVN).

When comparing the proportions based on transmission hours to those based on viewing hours, the ratio of non-domestic qualifying European to total qualifying viewer hours in our sample as a whole is lower than the ratio to total transmission hours (all-day and peak-time). Only TV4 and TVN see their proportions slightly rising in their all-day schedules (up to 8% for TV4 and 6.6% for TVN). In peak-time, all channels see their ratios go down.

Table 88: Ratio of non-domestic qualifying European to total qualifying hours in Poland, 2007

All Day			Peak Time		
Channel	Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)
Canal +	10.5%	5.8%	Canal +	19.5%	7.1%
Polsat	3.9%	2.7%	Polsat	3.4%	1.3%
TV4	6.8%	8.0%	TV4	6.0%	4.6%
TVN	5.0%	6.6%	TVN	10.9%	10.4%
TVP1	10.5%	8.2%	TVP1	7.0%	6.0%
TVP2	13.2%	10.3%	TVP2	6.5%	6.0%
Result for Member State Sample	8.6%	7.1%	Result for Member State Sample	9.4%	6.0%

Proportion of independent works

Across our Polish sample as a whole, 25.6% of qualifying hours are produced by independent production companies (see Table 89). The proportion is approximately the same in peak-time.

However, proportions vary significantly between the channels of our sample. TV4 and TVP2 show the highest proportions of independent works (48.5% and 37.7% during all-day respectively), CANAL+, POLSAT and TVP1 air around 20% of independent works, whereas TVN show the lowest proportion of our sample (5.6%). In peak-time, all channels show slightly lower or same proportions except TVN and TVP2, whose figures rise to respectively 13.1% and 43.2%.

When comparing the proportions based on transmission hours to those based on viewing hours, the proportions are generally lower except for TVP2 which shows a significant rise in all-day and peak-time (52% during all-day and 61% in peak-time). For the sample as a whole, the proportion of qualifying viewer hours that are captured by independent European works is 21.9% during all-day and 22% in peak-time.

Table 89: Ratio of independent European to total qualifying in Poland, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)</i>
Canal +	23.8%	11.5%	Canal +	22.7%	7.5%
Polsat	18.6%	16.8%	Polsat	19.0%	15.8%
TV4	48.5%	44.6%	TV4	40.8%	41.1%
TVN	5.6%	7.1%	TVN	13.1%	11.4%
TVP1	20.5%	14.5%	TVP1	17.8%	13.3%
TVP2	37.7%	52.0%	TVP2	43.2%	61.0%
Result for Member State Sample	25.6%	21.9%	Result for Member State Sample	25.4%	22.0%

Proportion of recent independent works

For the Polish sample, 77.9% of all qualifying European independent transmission hours comprise programmes less than five years old (see Table 90). However, whereas this high proportion is true for the main private free channels, it is not the case for the leading public channel TVP1 which shows a proportion of recent works of 58.6%, this smaller proportion of recent independent works could be explained by the exclusive access to the Polish film archives that TVP enjoys. CANAL+, because of its strong offering of cinema films, also stays at a quite low proportion of recent independent works (66.2%).

In peak-time hours, the proportion of recent works increases, up to 85.5%. This can be explained by the channels' willingness to place their more recent, and thus more attractive, works during peak-time slots, where more viewers are likely to be reached.

When comparing the proportions based on transmission hours to those based on viewing hours, the ratio of recent independent European to total qualifying independent European viewer hours is increasing, rising from 77.9% to 84.4% during all-day, and from 85.5% to 90.2% during peak.

Table 90: Ratio of recent independent European to total independent European in Poland, 2007

All Day			Peak Time		
Channel	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)	Channel	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)
Canal +	66.2%	40.5%	Canal +	75.7%	66.2%
Polsat	87.3%	94.9%	Polsat	100.0%	100.0%
TV4	88.1%	84.7%	TV4	85.2%	88.8%
TVN	100.0%	100.0%	TVN	100.0%	100.0%
TVP1	58.6%	71.7%	TVP1	94.3%	91.9%
TVP2	78.9%	83.6%	TVP2	77.5%	83.8%
Result for Member State Sample	77.9%	84.4%	Result for Member State Sample	85.5%	90.2%

Proportion of stock/flow works

The proportion of stock vs. flow programmes to total qualifying European hours is fairly evenly split (see Table 91). Stock programmes account for 54.6 % of total qualifying European hours of all-day schedules (flow: 45.4%) and 57.4% in peak-time (flow: 42.6%). However, there are differences between the channels, with TVP1 and TVP2 having around 60% stock programming, POLSAT reaching 70.5% stock, but TVN being at 47% stock. TV4 is mostly composed of flow programmes, with a proportion of 81.4% of total qualifying European transmission hours. In peak-time, two channels reverse their trends, TVN and TVP2. TVN, which was skewed towards flow in all-day air more stock in peak-time (65.1% stock in peak vs. 47% all-day). Conversely, TVP2 that airs 37.6% of flow in its all-day schedule switches to 53.3% of flow during peak-time.

When comparing the proportions based on transmission hours to those based on viewing hours, the proportion of stock programmes is 66.3% (flow: 33.7% - with much the same proportion during peak-time). All channels have a higher proportion of stock programmes when looking at viewer hours in all-day. In peak-time, the proportion of stock programmes in terms of viewer hours is slightly lower, except for the two public channels and for CANAL+.

Table 91: Ratio of European stock/flow to total European in Poland, 2007

All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>
Canal +	88.2%	11.8%	100%	Canal +	73.7%	26.3%	100%
Polsat	70.5%	29.5%	100%	Polsat	82.3%	17.7%	100%
TV4	18.6%	81.4%	100%	TV4	19.2%	80.8%	100%
TVN	47.0%	53.0%	100%	TVN	65.1%	34.9%	100%
TVP1	59.7%	40.3%	100%	TVP1	70.2%	29.8%	100%
TVP2	62.4%	37.6%	100%	TVP2	46.7%	53.3%	100%
Result for Member State Sample	54.6%	45.4%	100%	Result for Member State Sample	57.4%	42.6%	100%

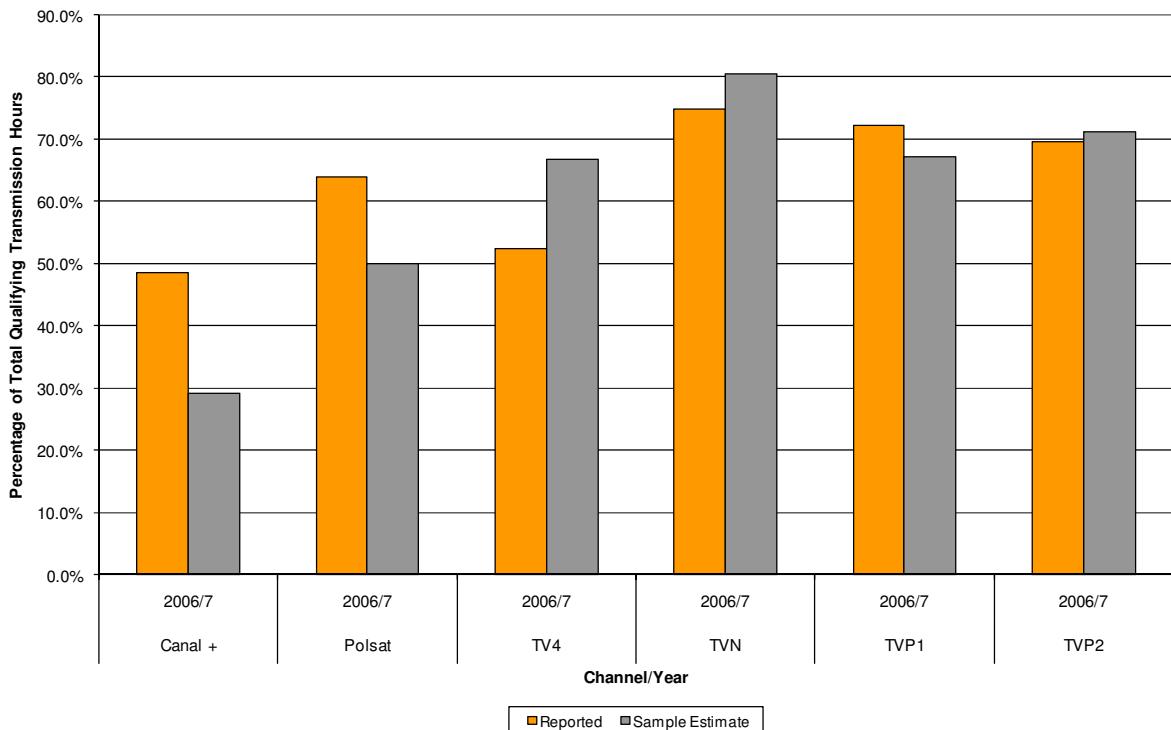
All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>
Canal +	88.9%	11.1%	100%	Canal +	80.4%	19.6%	100%
Polsat	82.2%	17.8%	100%	Polsat	78.5%	21.5%	100%
TV4	24.6%	75.4%	100%	TV4	17.3%	82.7%	100%
TVN	56.9%	43.1%	100%	TVN	63.6%	36.4%	100%
TVP1	70.2%	29.8%	100%	TVP1	82.1%	17.9%	100%
TVP2	67.9%	32.1%	100%	TVP2	58.8%	41.2%	100%
Result for Member State Sample	66.3%	33.7%	100%	Result for Member State Sample	67.3%	32.7%	100%

Comparison with past data and declarations

As Poland was not part of the 2005 Study, any comparison with past data is impossible. However, we can elaborate comparisons between the data from our sample estimates of 2007 and that from the channels' declarations of 2006.

Differences are quite small as far as the ratio of European works to total qualifying hours is concerned (see Figure 40).

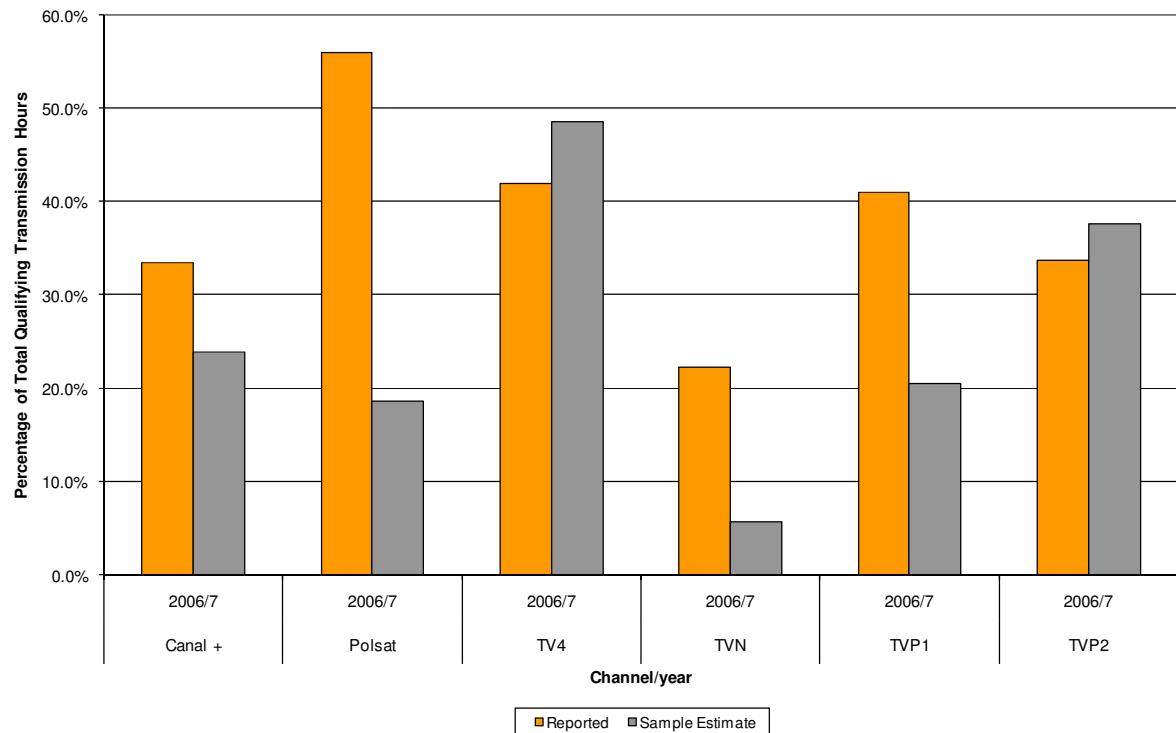
Figure 40: Ratio of reported vs. estimated European qualifying transmission hours to total qualifying transmission hours in Poland, 2007/2006



The 2007 ratio of qualifying independent European works to total qualifying hours is consistent with the 2006 reported data for TVP2, TV4 and CANAL+ (see Figure 41). But for TVP1, TVN and POLSAT, sample estimates are significantly below the 2006 reported data. The broader definition of 'independent works' applied in Poland could explain these disparities²³⁸.

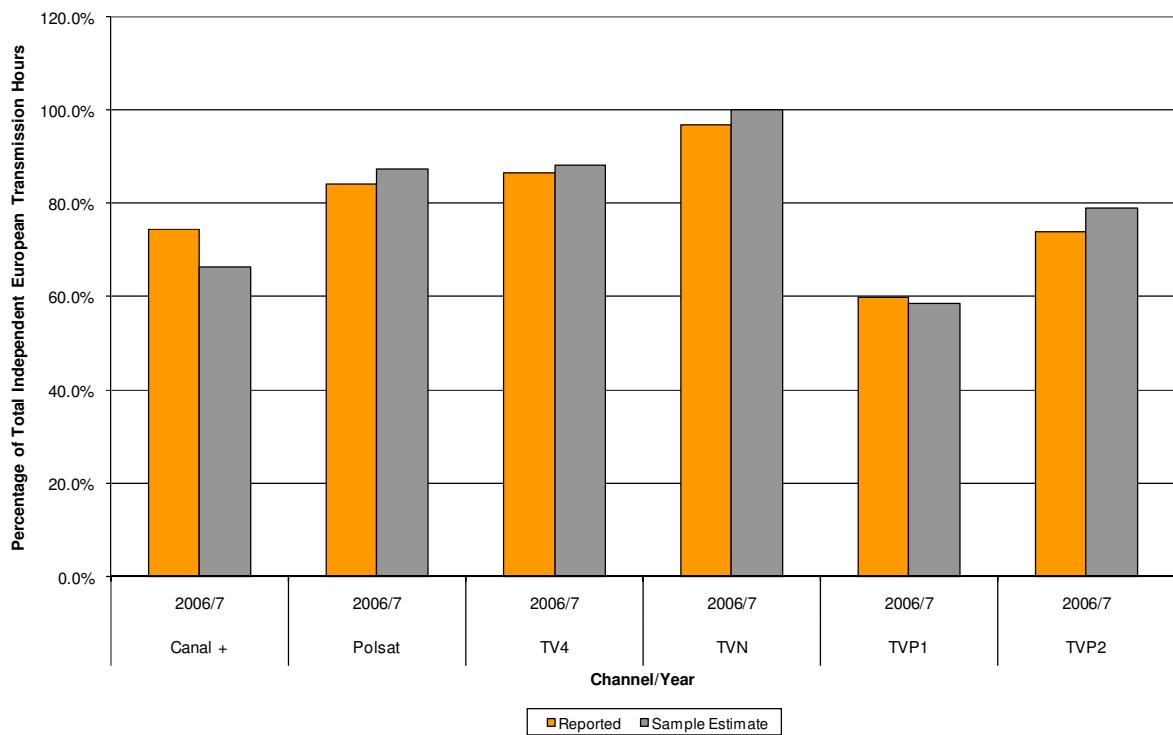
²³⁸ Poland applies a 'company-by-company' definition of 'independent works', which means a producer has to be independent from a *specific* broadcaster. This definition is broader than our definition which sets that 'independent works' have to be independent from any broadcasters in a given country.

Figure 41: Ratio of reported vs. estimated independent European qualifying transmission hours to total qualifying transmission hours in Poland, 2007/2006



The 2007 ratio of qualifying recent independent European works to total qualifying hours is very consistent with the 2006 reported data (see Figure 42).

Figure 42: Ratio of reported vs. estimated recent independent European qualifying transmission hours to total independent European transmission hours in Poland, 2007/2006



8.4.9. Romania

Data summary

Our sample consists of the largest public service channel TVR1 and 3 private commercial channels: PRO TV (Central European Media Enterprises), ANTENA 1 (Intact Media Group/ Dan Voiculescu) and PRIMA TV (ProSiebenSat1/SBS). Together all these channels account for 55.9% of total TV viewing in Romania (see Table 92).

Table 92: List of channels covered in the 2007 Romanian sample²³⁹

Country	Channel	Launch Year	Share of Viewing (2005)	Revenue Model	Platform	Average Daily Transmission Hours	Sample Weeks
Romania	TVR1	1957	22.50%	Gvt/Ad	Nat. Terr./C/S	24	Standard
Romania	PRO TV	1995	16.10%	Ad	Nat.Terr/Cab	24	
Romania	PRIMA TV	1997	4.60%	Ad	Nat.Terr/Cab	24	
Romania	Antena 1	1993	12.70%	Ad	Nat.Terr/Cab	24	

²³⁹ In the 'Platform' column, "Terr/C/S" means "Terrestrial, Cable and Satellite".

Genre analysis

Cinema film accounts for a large share of total qualifying programmes (cinema, documentary, entertainment, factual magazines and TV fiction) on all channels in the sample: around 20-23% for PRIMA TV, TVR1 and ANTENA 1, and up to 34.3% for PRO TV during all-day. PRO TV offers 79% cinema film in its qualifying peak-time schedule, and offers cinema films which are very attractive with the audience, as it represents 55.1% of its total qualifying viewer hours during all-day, 89.7% in peak-time. Each channel then has its specific mix of genres to complement their qualifying schedules.

PRO TV complements cinema film with television fiction, its main genre during all-day with 40.8% of total qualifying hours. In peak-time, cinema film and fiction combined account for 99.3% of PRO TV total qualifying viewing.

TVR1 shows the most balanced sub-mix of qualifying genres with entertainment and factual magazines at the top (24.9% and 23.7% of total), followed by documentaries (18%). The entertainment and factual focus is stronger in peak-time especially for entertainment, which represents 29.6% of the qualifying schedule and attracts 49.8% of the qualifying viewing.

ANTENA 1 has a strong focus on entertainment and fiction (37.5% and 29%) during all-day, and puts a particular emphasis on entertainment in peak-time (51.2% of qualifying transmission hours and 68.2% of viewer hours). Entertainment on this channel accounts for 64.4% of total qualifying viewer hours during all-day.

PRIMA TV is largely focusing on fiction across the all-day schedule (39% of total qualifying hours), and on entertainment in peak-time (46.5%). Entertainment on this channel accounts for 42.6% of total qualifying viewer hours during all-day.

Table 93: Genre proportion of total qualifying hours in Romania, 2007

All Day		Peak Time	
Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)
Antena 1	Cinema Film	19.9%	12.0%
	Documentary	3.1%	3.9%
	Entertainment	37.5%	64.4%
	Factual Magazine	10.6%	6.3%
	Fiction	29.0%	13.4%
Prima TV	Cinema Film	23.9%	11.7%
	Documentary	12.2%	20.3%
	Entertainment	20.3%	42.6%
	Factual Magazine	4.6%	2.9%
	Fiction	39.0%	22.4%
Pro TV	Cinema Film	34.3%	55.1%
	Documentary	5.2%	1.7%
	Entertainment	6.7%	8.5%
	Factual Magazine	13.0%	5.7%
	Fiction	40.8%	28.9%
TVR1 (ex Romania 1)	Cinema Film	22.0%	16.5%
	Documentary	18.0%	10.2%
	Entertainment	24.9%	44.1%
	Factual Magazine	23.7%	21.2%
	Fiction	11.5%	8.2%

Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)
Antena 1	Cinema Film	27.6%	12.7%
	Documentary	4.5%	6.3%
	Entertainment	51.2%	68.2%
	Factual Magazine	0.0%	0.0%
	Fiction	16.6%	12.9%
Prima TV	Cinema Film	13.1%	4.7%
	Documentary	17.8%	25.8%
	Entertainment	46.5%	50.7%
	Factual Magazine	5.6%	3.0%
	Fiction	17.1%	16.0%
Pro TV	Cinema Film	79.0%	89.7%
	Documentary	2.2%	0.7%
	Entertainment	0.0%	0.0%
	Factual Magazine	0.0%	0.0%
	Fiction	18.9%	9.6%
TVR1 (ex Romania 1)	Cinema Film	17.2%	13.8%
	Documentary	10.4%	6.5%
	Entertainment	29.6%	49.8%
	Factual Magazine	29.3%	22.1%
	Fiction	13.4%	7.8%

Transmission and viewing ratio analysis

In 2007, qualifying programmes (that is, all programmes excluding advertising, teleshopping, teletext, news, sport and games) made up 60.6% of the total transmission hours on the channels sampled (see Table 94). Qualifying viewing is in general lower, at 51.5% of total qualifying viewer hours.

While all four channels have a very similar proportion of qualifying transmission hours, ratios for qualifying viewer hours show two interesting cases. PRO TV, leading private channel, is deriving only 41.3% of its total viewing from qualifying programmes, as opposed to 59.2% of its total transmission hours, showing that this channel's most successful programmes are from non-qualifying genres. The same conclusion can be made observing the lower proportions of TVR1 in terms of viewer hours (54%) than in terms of transmission hours (63.1%).

Table 94: Ratio of qualifying hours to total transmission and viewer hours in Romania, 2007

<i>Channel</i>	<i>Ratio of Qualifying to Total Transmission Hours (%)</i>	<i>Ratio of Qualifying to Total Viewer Hours (%)</i>
Antena 1	59.2%	55.4%
Prima TV	61.0%	65.2%
Pro TV	59.2%	41.3%
TVR1 (ex Romania 1)	63.1%	54.0%
Result for Member State Sample	60.6%	51.5%

Proportion of European works

European works make up 57.2% of the total qualifying transmission hours for all-day across all channels in the sample in 2007 (see Table 95), and more in peak-time (66.8%). During all-day, PRO TV and PRIMA TV have a lower proportion of European works, at 43% and 47.9% respectively, while TVR1 and ANTENA 1 reach 72.2% and 64.8%. While PRIMA TV has a higher proportion in peak-time, PRO TV does the reverse, reducing to 26.3%, a consequence of its focus on fiction and cinema imports.

European works have, for most of the sampled Romanian channels, a larger share of audience than their share of schedules, especially during all-day where they reach 67.9% of total viewer qualifying hours compared to 57.7% of total transmission hours. In peak-time 68.9% of the qualifying viewing is made of European works. PRO TV is the only channel to encounter audience issues with its European programmes especially in

peak-time, where it accounts for 26.3% of its qualifying offering, but for only 17.8% of its qualifying viewing.

Table 95: Ratio of European qualifying to total qualifying hours in Romania, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>
Antena 1	64.8%	84.2%	Antena 1	78.8%	89.3%
Prima TV	47.9%	76.7%	Prima TV	78.3%	89.2%
Pro TV	43.0%	31.9%	Pro TV	26.3%	17.8%
TVR1 (ex Romania 1)	72.2%	80.3%	TVR1 (ex Romania 1)	75.9%	82.2%
Result for Member State Sample	57.2%	67.9%	Result for Member State Sample	66.8%	68.9%

For the Romanian sample as a whole, a relatively high 9% of qualifying works broadcast on the Romanian channels in our sample during all-day are non-domestic European works (see Table 96), reducing to 4.7% in peak-time. Non-domestic European works attract a lower share of European viewing in peak-time with 3.6%, and during all-day with 5.1%.

Situations are relatively similar for PRO TV, TVR1 and ANTENA 1 in terms of their all-day offering, with the proportion of non-domestic European programming at 12%, 10.8% and 8.6% respectively. PRIMA TV is the channel with the lowest proportion of non-domestic European works, with 4.7% of its qualifying offering during all-day, dropping to 0% in peak-time.

Table 96: Ratio of non-domestic qualifying European to total qualifying hours in Romania, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)</i>
Antena 1	8.6%	2.4%	Antena 1	6.5%	2.0%
Prima TV	4.7%	1.5%	Prima TV	0.0%	0.0%
Pro TV	12.0%	8.1%	Pro TV	8.6%	8.3%
TVR1 (ex Romania 1)	10.8%	7.1%	TVR1 (ex Romania 1)	6.5%	3.8%
Result for Member State Sample	9.0%	5.1%	Result for Member State Sample	4.7%	3.6%

Proportion of independent works

Qualifying independent works make up 21.9% of the all-day schedules across all the channels in our sample (see Table 97). In peak-time the figure is 33.5%. Independent works are relatively more successful, as they attract 25.7% of the total qualifying European viewing during all-day, 34.5% in peak-time.

PRIMA TV is offering the largest proportion of independent works, with a proportion of 37.7% during all-day and 58.3% in peak-time. This accounts for 64.2% of total qualifying viewer hours during all-day, and up to 74.9% in peak-time. ANTENA 1 is similar, especially in peak-time, where independent works make up 38.2% of its qualifying offering and 51.3% of its qualifying viewing, showing the attractiveness of its peak-time entertainment produced by independent producers. Conversely, PRO TV and TVR1 have 8.6% and 11.4% independent works among their peak-time European qualifying offering, which attract 8.3% and 7.5% of their peak-time qualifying viewing respectively.

Table 97: Ratio of independent European to total qualifying in Romania, 2007

All Day			Peak Time		
Channel	Ratio of Qualifying Independent European to Total Qualifying Hours (%)	Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Qualifying Independent European to Total Qualifying Hours (%)	Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)
Antena 1	19.2%	29.9%	Antena 1	38.2%	51.3%
Prima TV	37.7%	64.2%	Prima TV	58.3%	74.9%
Pro TV	13.3%	8.4%	Pro TV	8.6%	8.3%
TVR1 (ex Romania 1)	17.6%	16.3%	TVR1 (ex Romania 1)	11.4%	7.5%
Result for Member State Sample	21.9%	25.7%	Result for Member State Sample	33.5%	34.5%

Proportion of recent independent works

For our Romanian sample as a whole 69.1% of all qualifying independent European transmission hours are programmes less than five years old (see Table 98). In peak-time the number is significantly higher (88.5%). As would be expected, recent works are more attractive to audiences and achieve a higher share of total qualifying independent viewing during all-day (80.2%), reducing slightly when looking only at peak-time (83.3%).

ANTENA 1 and PRO TV, the two private leaders, have smaller proportions of recent independent works, with 37.4% and 37.8% of their all-day independent schedules (but 59.1% and 59.6% of their all-day independent viewer hours). In peak-time, all figures are at 100% except ANTENA 1 (56.5% of transmission hours, and 61% of viewer hours, are recent).

Table 98: Ratio of recent independent European to total independent European in Romania, 2007

All Day			Peak Time		
Channel	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)	Channel	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)
Antena 1	37.4%	59.1%	Antena 1	56.5%	61.0%
Prima TV	87.2%	97.1%	Prima TV	100.0%	100.0%
Pro TV	37.8%	59.6%	Pro TV	100.0%	100.0%
TVR1 (ex Romania 1)	86.6%	91.9%	TVR1 (ex Romania 1)	100.0%	100.0%
Result for Member State Sample	69.1%	80.2%	Result for Member State Sample	88.5%	83.3%

Proportion of stock/flow works

The proportion of stock vs. flow programmes among total qualifying European hours is relatively balanced (see Table 99). Stock programmes account for 43% of total qualifying European hours of all-day schedules (flow: 57%) and 45.3% in peak-time (flow: 54.7%) for the Romanian sample as a whole. PRO TV and PRIMA TV favour stock (56.1% and 62.7% respectively), with a complete focus on stock for PRO TV in peak-time (100%). Conversely, ANTENA 1 and TVR1 favour flow 68.7% and 67.2% during day-time).

Situations for both categories of channels are confirmed by the figures expressed in viewer hours. European stock makes up 57.1% of PRO TV qualifying European viewing and 54% for PRIMA TV during all-day, a lower proportion than their share of the schedule. ANTENA 1 and TVR1 offer 81.2% and 77% of European flow as a proportion of their European all-day viewer hours, higher figures than those for transmission hours.

Table 99: Ratio of European stock/flow to total European in Romania, 2007

All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>
Antena 1	31.3%	68.7%	100%	Antena 1	35.0%	65.0%	100%
Prima TV	62.7%	37.3%	100%	Prima TV	53.7%	46.3%	100%
Pro TV	56.1%	43.9%	100%	Pro TV	100.0%	0.0%	100%
TVR1 (ex Romania 1)	32.8%	67.2%	100%	TVR1 (ex Romania 1)	22.3%	77.7%	100%
Result for Member State Sample	43.0%	57.0%	100%	Result for Member State Sample	45.3%	54.7%	100%

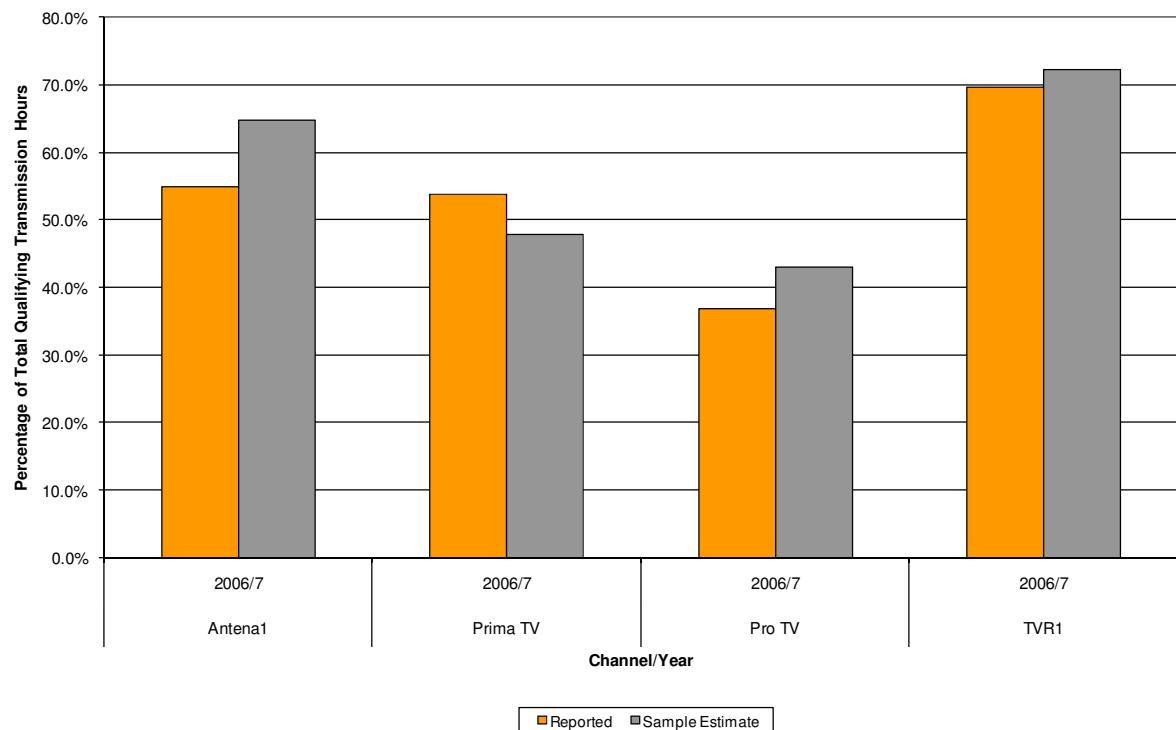
All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>
Antena 1	23.0%	77.0%	100%	Antena 1	23.6%	76.4%	100%
Prima TV	54.0%	46.0%	100%	Prima TV	54.2%	45.8%	100%
Pro TV	57.1%	42.9%	100%	Pro TV	100.0%	0.0%	100%
TVR1 (ex Romania 1)	18.8%	81.2%	100%	TVR1 (ex Romania 1)	12.5%	87.5%	100%
Result for Member State Sample	31.4%	68.6%	100%	Result for Member State Sample	33.9%	66.1%	100%

Comparison with past data and declarations

As Romania was not part of the 2005 Study, any comparison with past data is impossible. However, we can elaborate comparisons between the data from our sample estimates of 2007 and that from the channels' declarations of 2006.

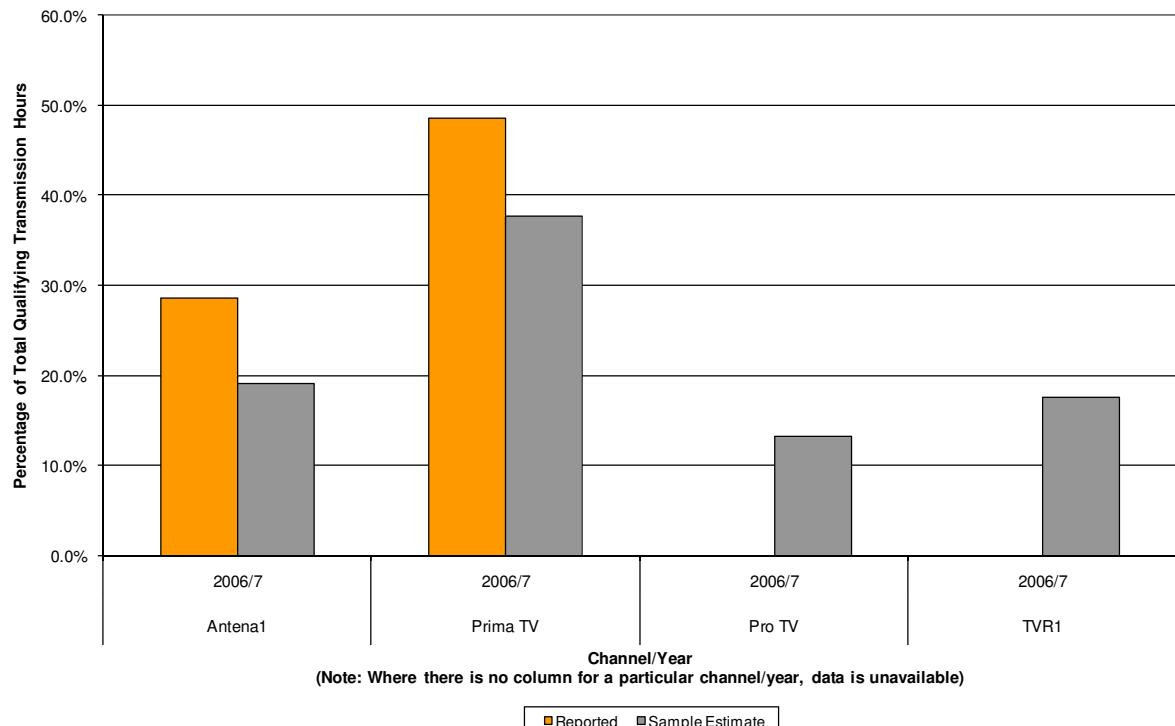
The ratio of qualifying European works to total qualifying hours provided by our 2007 estimates are very consistent with the 2006 declarations for all the four channels of our sample (see Figure 43).

Figure 43: Ratio of reported vs. estimated European qualifying transmission hours to total qualifying transmission hours in Romania, 2007/2006



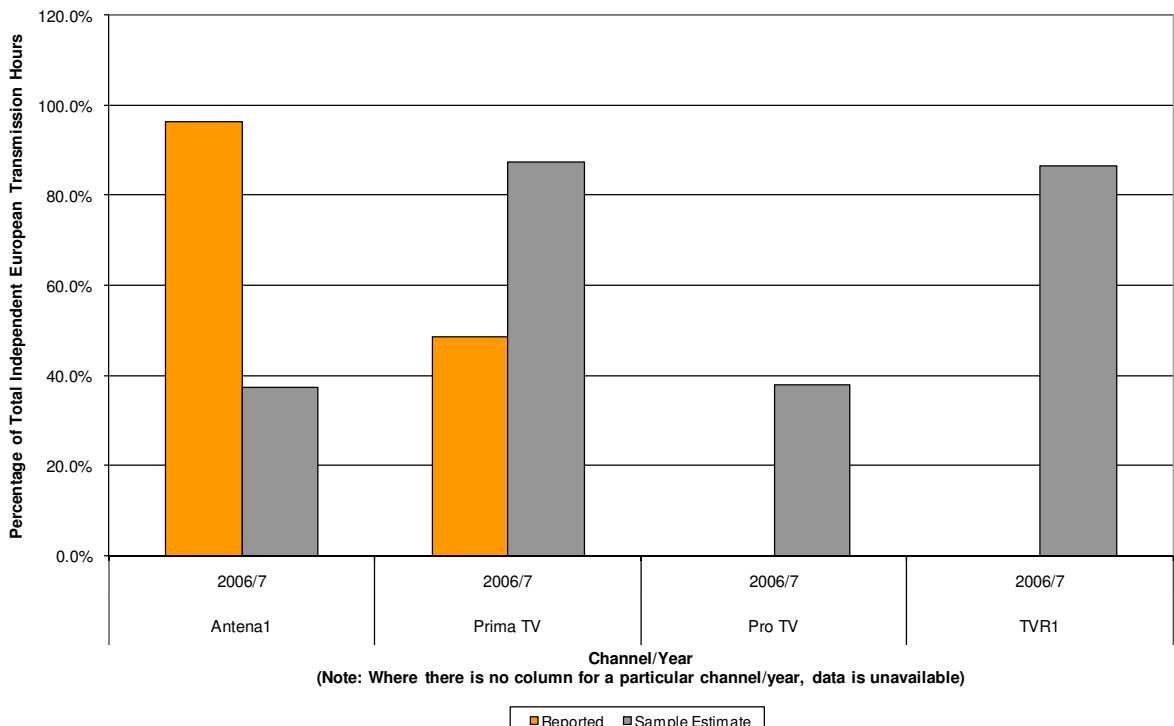
The 2007 ratio of qualifying independent European works to total qualifying hours is also consistent with the 2006 data reported by two channels from our sample PRIMA TV and ANTENA1 (see Figure 44). Based on these two channels, sample estimates are slightly lower than reported data in Romania.

Figure 44: Ratio of reported vs. estimated independent European qualifying transmission hours to total qualifying transmission hours in Romania, 2007/2006



The ratio of recent qualifying independent works to total independent qualifying hours provided by our 2007 estimates are not very consistent with the 2006 data reported by the two channels from our sample (see Figure 45). 2007 sample estimates are lower than 2006 reported data for ANTENA1 and higher for PRIMA TV.

Figure 45: Ratio of reported vs. estimated recent independent European qualifying transmission hours to total independent European transmission hours in Romania, 2007/2006



8.4.10. Spain

Data summary

Our sample consists of two publicly funded public service channels (TVE1 and LA2) and four advertising funded channels (ANTENA3, CUATRO, LA SEXTA and TELE5). Together (see Table 100) they account for more than 72.4% of total Spanish TV viewing.

Table 100: List of channels covered in the 2007 Spanish sample

Country	Channel	Launch Year	Share of Viewing (2005)	Revenue Model	Platform	Average Daily Transmission Hours	Sample Weeks
Spain	Antena 3	1989	20.40%	Ad	Nat. Terr.	24	Standard
Spain	CUATRO	2005	0.80%	Ad	Cab/Sat	24	
Spain	La 2	1965	6.70%	Gvt/Ad	Nat. Terr.	24	
Spain	LA SEXTA	2006	N/A	Ad	Cab/Sat	24	
Spain	Tele 5	1990	22.60%	Ad	Nat. Terr.	24	
Spain	TVE 1	1956	21.90%	Gvt/Ad	Nat. Terr.	24	

Genre analysis

All Spanish channels in our sample (except LA SEXTA) rely strongly on factual magazines and fiction programmes to fill their all-day schedules (see Table 101). The comparative importance of these two genres varies, however, from one channel to another, factual magazines being more prominent on channels commanding a larger proportion of Spanish viewing (it accounts for 35.2% of total qualifying transmission hours on TELE5 and 48.5% on TVE1), while TV fiction is favoured on smaller channels (44.5% on ANTENA3, 41.5% on CUATRO, 32.9% on LA2 and 30.2% on LA SEXTA).

Cinema film, entertainment and documentary offerings allow channels to differentiate themselves from one another more substantially. Cinema is indeed a significant genre on TVE1 (18.1%), LA2 (20%) and ANTENA3 (18%), while entertainment is a major programming component on LA SEXTA (40.3%), TELE5 (31.3%) and, to a lesser extent, CUATRO (17.2%). Documentary has a weaker exposure on all channels except LA2 (17.8%) and LA SEXTA (16.9%).

In peak-time, new scheduling balances occur: cinema and TV fiction often gain ground at the expense of factual magazines and, sometimes, entertainment. TELE5 shifts towards TV fiction (40.8%) while cutting down factual magazines (23.7%). LA SEXTA puts emphasis on cinema (16.9%) and TV fiction (41.1%) at the expense of entertainment (31.5%) and factual magazines (0%). LA2 significantly increases the proportion of TV fiction within its schedule (53% peak, 32.9% all-day), lowering the level of documentary (13.8%), entertainment (4.3%) and factual magazines (7.9%).

The more significant change appears in CUATRO's peak-time schedule. The channel strongly cuts down on TV fiction (29.4% peak, 41.5% all-day) and gives up factual magazines completely during peak-time (0% peak, 23.3% all-day) to favour cinema (21% peak, 8.8% all-day), and documentary (29.1% peak, 9.2% all-day). ANTENA3 also reduces dramatically the importance of TV fiction (18.8% peak, 44.5% all-day), putting emphasis on factual magazines (43.7% peak, 27.2% all-day) and cinema (28.9% peak, 18% all-day). TVE1's schedule, on the contrary, hardly changes in peak-time.

Table 101: Genre proportion of total qualifying hours in Spain, 2007

All Day

<i>Channel</i>	<i>Genre</i>	<i>Genre Proportions of Total Qualifying Hours (%)</i>	<i>Genre Proportions of Total Qualifying Viewer Hours (%)</i>
Antena 3	Cinema Film	18.0%	25.8%
	Documentary	2.1%	4.9%
	Entertainment	8.3%	2.9%
	Factual Magazine	27.2%	27.8%
	Fiction	44.5%	38.5%
CUATRO	Cinema Film	8.8%	10.3%
	Documentary	9.2%	13.0%
	Entertainment	17.2%	17.1%
	Factual Magazine	23.3%	17.0%
	Fiction	41.5%	42.6%
La 2	Cinema Film	20.0%	15.9%
	Documentary	17.8%	30.4%
	Entertainment	10.7%	7.6%
	Factual Magazine	18.7%	13.1%
	Fiction	32.9%	33.0%
LA SEXTA	Cinema Film	4.2%	9.8%
	Documentary	16.9%	12.1%
	Entertainment	40.3%	38.8%
	Factual Magazine	8.4%	2.1%
	Fiction	30.2%	37.3%
Tele 5	Cinema Film	6.7%	7.4%
	Documentary	0.0%	0.0%
	Entertainment	31.3%	33.9%
	Factual Magazine	35.2%	19.5%
	Fiction	26.8%	39.1%
TVE 1	Cinema Film	18.1%	24.6%
	Documentary	4.1%	1.7%
	Entertainment	8.6%	8.1%
	Factual Magazine	48.5%	39.9%
	Fiction	20.7%	25.8%

<i>Channel</i>	<i>Genre</i>	<i>Genre Proportions of Total Qualifying Hours (%)</i>	<i>Genre Proportions of Total Qualifying Viewer Hours (%)</i>
Antena 3	Cinema Film	28.9%	26.0%
	Documentary	6.1%	9.5%
	Entertainment	2.4%	2.3%
	Factual Magazine	43.7%	38.6%
	Fiction	18.8%	23.6%
CUATRO	Cinema Film	21.0%	10.7%
	Documentary	29.1%	25.8%
	Entertainment	20.6%	21.6%
	Factual Magazine	0.0%	0.0%
	Fiction	29.4%	41.9%
La 2	Cinema Film	21.0%	24.7%
	Documentary	13.8%	14.6%
	Entertainment	4.3%	3.4%
	Factual Magazine	7.9%	7.3%
	Fiction	53.0%	50.0%
LA SEXTA	Cinema Film	16.9%	23.1%
	Documentary	10.4%	10.0%
	Entertainment	31.5%	32.3%
	Factual Magazine	0.0%	0.0%
	Fiction	41.1%	34.6%
Tele 5	Cinema Film	3.5%	1.5%
	Documentary	0.0%	0.0%
	Entertainment	31.9%	27.4%
	Factual Magazine	23.7%	15.1%
	Fiction	40.8%	56.0%
TVE 1	Cinema Film	25.1%	29.5%
	Documentary	0.0%	0.0%
	Entertainment	13.0%	14.8%
	Factual Magazine	46.7%	38.9%
	Fiction	15.2%	16.8%

Transmission and viewing ratio analysis

In 2007, qualifying programmes (that is, all programmes excluding advertising, teleshopping, teletext, news, sport and games) made up 65.2% of the total transmission hours of the Spanish channels sampled (see Table 102). LA2 was the channel showing the highest proportion of qualifying hours with 72.3%, followed by LA SEXTA (72%) and CUATRO (71.6%). Commercial broadcaster ANTENA3 showed the lowest proportion with only 54.4%, while TVE1 and TELE5 stood in-between (56.3% and 64.8% respectively).

The ratio based on viewer hours is, on the whole, higher than that based on transmission hours (70.7% vs. 65.2%). LA SEXTA and TELE5 show the most important uplift (87.8% of viewer hours versus 72% of transmission hours and 80.3% vs. 64.8% respectively), which is explained largely by the fact that these two channels build their peak-time schedules around very successful TV fiction. On the other hand, public broadcaster LA2, whose peak-time schedule is also dominated by TV fiction, sees its viewing go down to 69% compared to 72.3% for its transmission ratio.

Table 102: Ratio of qualifying hours to total transmission and viewer hours in Spain, 2007

<i>Channel</i>	<i>Ratio of Qualifying to Total Transmission Hours (%)</i>	<i>Ratio of Qualifying to Total Viewer Hours (%)</i>
Antena 3	54.4%	65.0%
CUATRO	71.6%	72.9%
La 2	72.3%	69.0%
LA SEXTA	72.0%	87.8%
Tele 5	64.8%	80.3%
TVE 1	56.3%	61.7%
Result for Member State Sample	65.2%	70.7%

Proportion of European works

European works made up 65% of the total qualifying transmission hours for all channels in the sample in 2007 (see Table 103). TELE5, which belongs to Mediaset, shows the highest proportion of European qualifying hours with 83.2%. We also observe a clear divide between public broadcasters, who favour European programmes more strongly (74.5% of qualifying hours on TVE1, 67.7% on LA2), and commercial channels that are much closer to the objective of 50% (51.9% on ANTENA3, 54.7% on LA SEXTA and 58.8% on CUATRO).

During peak-time hours, the divide between channels tends to increase: TELE5 keeps the lead with 91.5% and TVE1 rises to 82.3%, while CUATRO and LA SEXTA fall below 50%, with 47% and 39% respectively. ANTENA3 and LA2, though, follow a different path: ANTENA3 rises up to 70.2%, while LA2 drops to 32.4% during peak-time, due to the increased programming of imported TV fictions in this time slot.

The ratio based on viewer hours is very close from that based on transmission hours for all three leading broadcasters during all-day: 83.5% of viewer hours vs. 83.2% of transmission hours for TELE5, 71.3% vs. 74.5% for TVE1 and 53.4% vs. 51.9% for ANTENA3. Smaller channels, on the contrary, see their viewing ratios decrease significantly compared to their transmission ratios: 49.4% of viewer hours vs. 58.8% of transmission hours for CUATRO, 60% vs. 67.7% for LA2 and 46.4% vs. 54.7% for LA SEXTA. This reflects the fact that these broadcasters rely heavily on imports to build their ratings. In peak-time, the difference between the two ratios is minor for all channels (ranging between 0.3% and 4.5%).

Table 103: Ratio of European qualifying to total qualifying hours in Spain, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>
Antena 3	51.9%	53.4%	Antena 3	70.2%	71.1%
CUATRO	58.8%	49.4%	CUATRO	47.0%	46.7%
La 2	67.7%	60.0%	La 2	32.4%	33.2%
LA SEXTA	54.7%	46.4%	LA SEXTA	39.0%	40.5%
Tele 5	83.2%	83.5%	Tele 5	91.5%	90.7%
TVE 1	74.5%	71.3%	TVE 1	82.3%	77.8%
Result for Member State Sample	65.0%	66.6%	Result for Member State Sample	61.4%	73.1%

The proportion of non-domestic qualifying European works to total qualifying works is 5% for our Spanish sample as a whole (see Table 104). The figures range during all-day from 1.2% (TVE1) to 9.2% (LA2). They are lower when looking at viewer hours rather than transmission hours, except for LA2 (17.8% for viewer hours vs. 9.2% for transmission hours), which succeeds in appealing to domestic audiences with non-domestic programmes across the all-day schedule. In peak-time, the ratio of non-domestic qualifying European works is often nil (for LA SEXTA, CUATRO, TELE5 and TVE1) or very low (0.7% for LA2). ANTENA3 is the only channel to broadcast a substantial amount of non-domestic European works in peak-time (5.7% of total qualifying transmission hours, and 3.8% of total qualifying viewer hours).

Table 104: Ratio of non-domestic qualifying European to total qualifying hours in Spain, 2007

All Day			Peak Time		
Channel	Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)	Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)
Antena 3	7.3%	6.1%	Antena 3	5.7%	3.8%
CUATRO	6.9%	2.2%	CUATRO	0.0%	0.0%
La 2	9.2%	17.8%	La 2	0.7%	0.4%
LA SEXTA	2.2%	1.3%	LA SEXTA	0.0%	0.0%
Tele 5	2.8%	1.7%	Tele 5	0.0%	0.0%
TVE 1	1.2%	0.7%	TVE 1	0.0%	0.0%
Result for Member State Sample	5.0%	3.4%	Result for Member State Sample	1.3%	1.0%

Proportion of independent works²⁴⁰

The average proportion of qualifying works produced by independent European producers and broadcast by the channels in our sample is high, reaching 40.2% in transmission hours (see Table 105). TELE5 shows the highest proportion of independent works in all-day schedules (55.4%), with TVE1 the lowest (27.5%); other channels stand between 30% and 50% : LA2 (31%), CUATRO (36.1%), ANTENA3 (40.2%) and LA SEXTA (49.3%). Half of the broadcasters show a higher proportion of independent programmes during their peak-time than is seen when looking at the proportion across the schedule for the entire day (TELE5, ANTENA3, TVE1) and half of them show less independent programmes (CUATRO, LA SEXTA, LA 2). The divide is important between the channel with the largest audiences, TELE5 (which increases to 77%) and the smaller channel LA2 (which decreases to 7.5%). ANTENA3 (58.5% peak-time, 40.2% all-day) and LA SEXTA (32.5% peak-time, 49.3% all-day) also show strong evolutions of their independent production ratios.

When looking at the proportions based on viewer hours, figures tend to increase by a few percentage points compared to the proportion of

²⁴⁰ It is important to note that the proportions of independent productions have been re-calculated for Italy following the debates at the public Workshop held in Brussels on November 18. Indeed, in the Draft report presented then, Endemol productions had been considered non-independent for the second half of 2007, based on inaccurate information gathered by the consultants that Mediaset owned 50% of the holding company controlling the Endemol group. Further research made clear that as Mediaset owns 33% of that holding company (together with Goldman Sachs and John de Mol owning another 33% each), Endemol cannot be considered to be controlled by Mediaset, according to our criteria as described in the methodological section of this report. Following this re-calculation, proportions of independent works have increased by up to 2.7 percentage points across the Member State sample.

transmission hours for our sample as a whole, to 45.3% (vs. 40.2%) for all-day and 54.8% (vs. 41.9%) in peak-time.

Table 105: Ratio of independent European to total qualifying in Spain, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)</i>
Antena 3	40,2%	48,4%	Antena 3	58,5%	64,3%
CUATRO	36,1%	31,4%	CUATRO	32,8%	33,7%
La 2	31,0%	31,3%	La 2	7,5%	6,6%
LA SEXTA	49,3%	41,3%	LA SEXTA	32,5%	34,1%
Tele 5	55,4%	60,0%	Tele 5	77,0%	76,7%
TVE 1	27,5%	32,3%	TVE 1	33,5%	37,1%
Result for Member State Sample	40,2%	45,3%	Result for Member State Sample	41,9%	54,8%

Proportion of recent independent works

Across the Spanish sample as a whole, 85.6% of all qualifying independent European transmission hours are programmes less than five years old (see Table 106). LA SEXTA shows the highest proportion of recent independent works with 100% and LA2 the lowest with 36.6%. All other broadcasters in our sample show a ratio between 84.4% (ANTENA3) and 94.2% (TELE5). In peak-time hours, the proportion of recent works reaches 100% for all channels but two, ANTENA3 (90.2%) and TVE1 (77%).

Figures based on viewer hours are higher for all broadcasters except TVE1 across the all-day schedule, reflecting the interest of television audiences in the most recent content. The increased appeal for new productions is clear for LA2 across the all-day schedule (72.4% viewer hours).

Table 106: Ratio of recent independent European to total independent European in Spain, 2007

All Day			Peak Time		
Channel	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)	Channel	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)
Antena 3	84,4%	91,2%	Antena 3	90,2%	94,1%
CUATRO	89,9%	95,3%	CUATRO	100,0%	100,0%
La 2	36,6%	72,4%	La 2	100,0%	100,0%
LA SEXTA	100,0%	100,0%	LA SEXTA	100,0%	100,0%
Tele 5	94,2%	97,2%	Tele 5	100,0%	100,0%
TVE 1	87,0%	86,4%	TVE 1	77,0%	79,4%
Result for Member State Sample	85,6%	93,4%	Result for Member State Sample	93,8%	94,8%

Proportion of stock/flow works

The proportion of stock vs. flow programmes among total qualifying European hours is skewed towards flow (Table 107). European flow programmes represent 64.9% of total qualifying all-day transmission hours (compared with 35.1% for stock programmes). LA SEXTA shows the highest ratio with 79.1% and LA2 the lowest, with 39.8%. In peak-time the proportion of stock vs. flow programmes is 37.9% vs. 62.1%, and the ratios expressed in viewer hours become more balanced (44.6% stock vs. 55.4% flow).

Table 107: Ratio of European stock/flow to total European in Spain, 2007

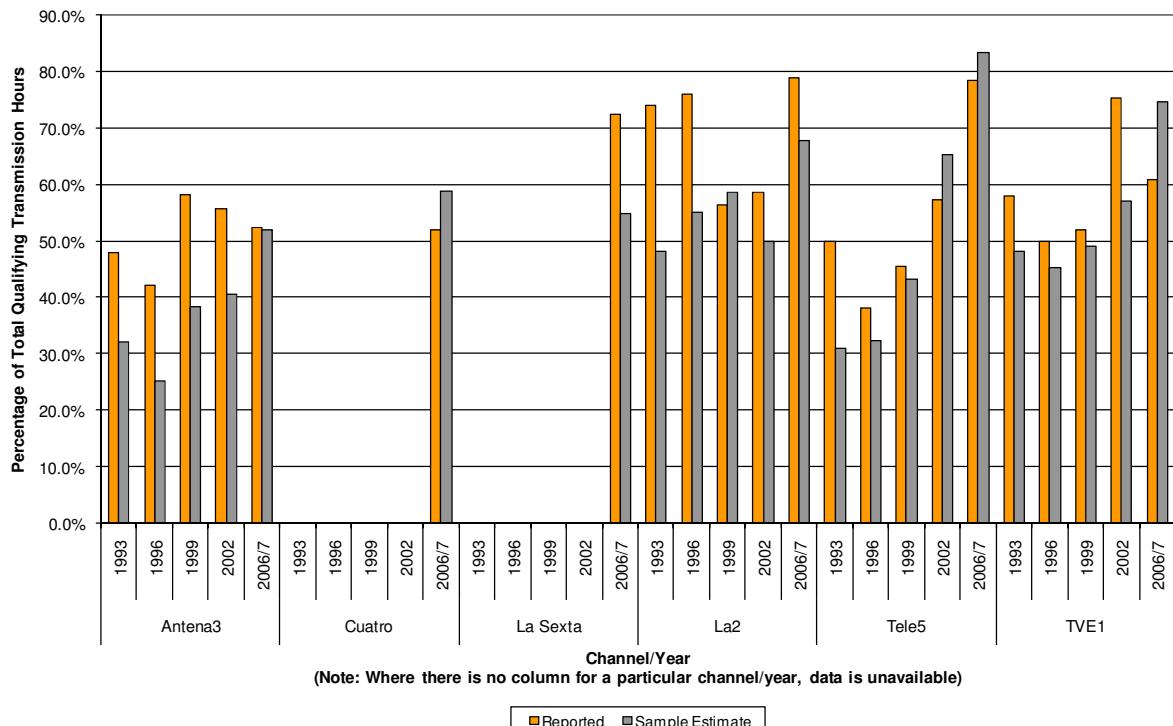
All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>
Antena 3	39.7%	60.3%	100%	Antena 3	34.2%	65.8%	100%
CUATRO	41.3%	58.7%	100%	CUATRO	68.6%	31.4%	100%
La 2	60.2%	39.8%	100%	La 2	60.7%	39.3%	100%
LA SEXTA	20.9%	79.1%	100%	LA SEXTA	27.7%	72.3%	100%
Tele 5	21.1%	78.9%	100%	Tele 5	39.2%	60.8%	100%
TVE 1	28.7%	71.3%	100%	TVE 1	27.5%	72.5%	100%
Result for Member State Sample	35.1%	64.9%	100%	Result for Member State Sample	37.9%	62.1%	100%

All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>
Antena 3	43.4%	56.6%	100%	Antena 3	42.5%	57.5%	100%
CUATRO	41.6%	58.4%	100%	CUATRO	64.5%	35.5%	100%
La 2	66.8%	33.2%	100%	La 2	67.1%	32.9%	100%
LA SEXTA	18.6%	81.4%	100%	LA SEXTA	25.4%	74.6%	100%
Tele 5	36.0%	64.0%	100%	Tele 5	53.2%	46.8%	100%
TVE 1	33.6%	66.4%	100%	TVE 1	31.0%	69.0%	100%
Result for Member State Sample	38.0%	62.0%	100%	Result for Member State Sample	44.6%	55.4%	100%

Comparison with past data and declarations

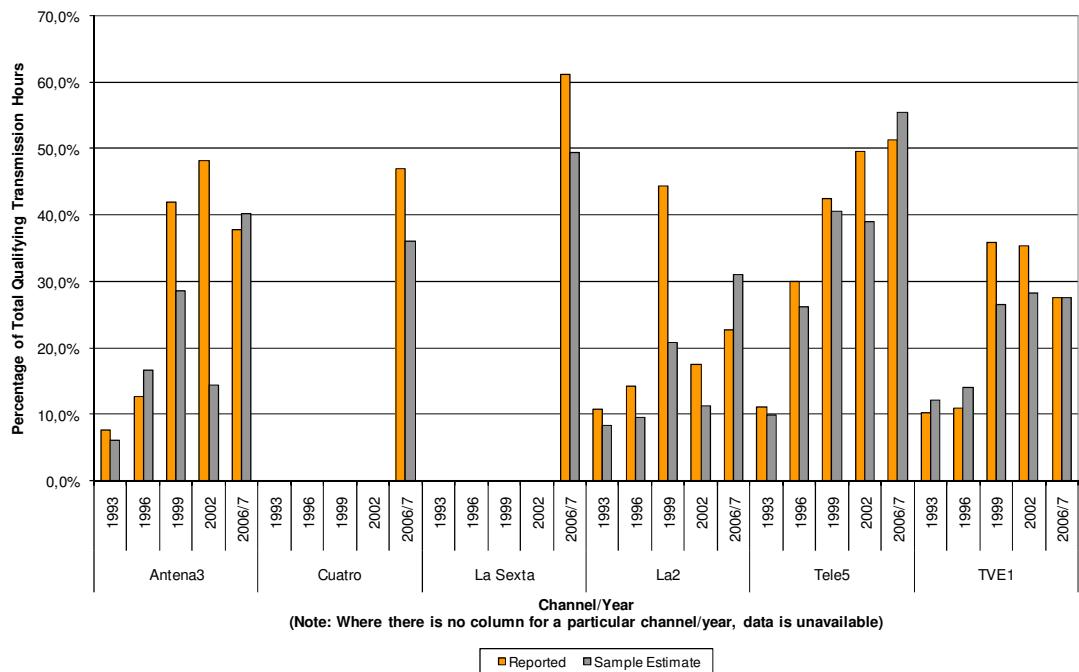
The ratio of qualifying European works to total qualifying hours provided by our 2007 estimates is in line with the trends estimated in the 2005 Study and with reported data (see Figure 46). It confirms an overall trend towards an increasing share of European programmes on most channels, especially TELE5, whose proportion of European works has steadily risen over time, from around 40% in 1993 to around 80% in 2006/07.

Figure 46: Ratio of reported vs. estimated European qualifying transmission hours to total qualifying transmission hours in Spain, 2007/2006



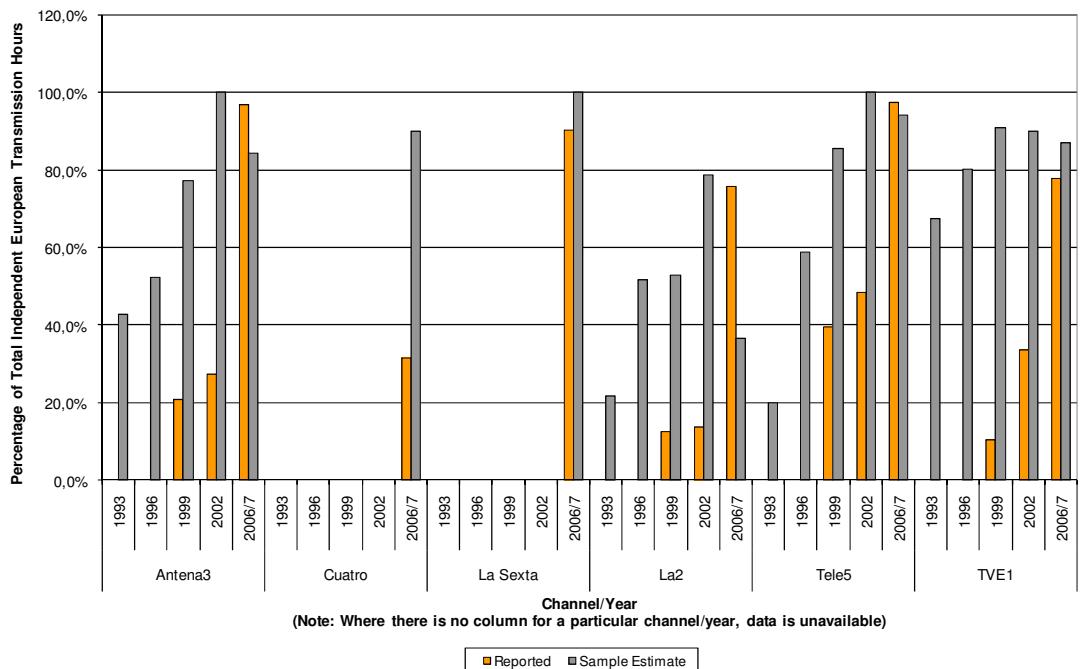
The 2007 ratio of qualifying independent European works to total qualifying hours is also consistent with past findings and reported data (see Figure 47). It shows an increase of transmission time in recent years devoted to independent productions on most channels except ANTENA3 and TVE1. Also, while sample estimates are generally slightly lower than reported data, this difference is more important for CUATRO and LA SEXTA in 2006/07, which could be explained by a greater seasonality effect on these more recent, smaller channels, whose own production could be concentrated in the heart of the TV season, where our sample weeks were selected, while filling summer schedules with acquisitions from independent producers.

Figure 47: Ratio of reported vs. estimated independent European qualifying transmission hours to total qualifying transmission hours in Spain, 2007/2006



The 2007 ratio of recent qualifying independent European works to total European independent qualifying hours is also consistent with past findings and reported data (see Figure 48) except for CUATRO and LA2 in 2006/07. On the whole, figures show a regular rise of recent independent productions as a share of total qualifying independent productions.

Figure 48: Ratio of reported vs. estimated recent independent European qualifying transmission hours to total independent European transmission hours in Spain, 2007/2006



8.4.11. Sweden

Data summary

Our sample consists of one publicly funded public service channel (SVT1) and three commercial channels (KANAL5, TV3 and TV4). Together (See Table 108), they account for 67.6% of Swedish TV viewing.

We included TV3 and Kanal 5 in this chapter as they account for a large share of the Swedish audience. However, it is important to note that these two channels are not regulated by the Swedish authorities, but are under UK jurisdiction. In Chapter 23 we have printed a copy of a statement from the Swedish Broadcasting Commission concerning this issue.

Table 108: List of channels covered in the 2007 Swedish sample

Country	Channel	Launch Year	Share of Viewing (2005)	Revenue Model	Platform	Average Daily Transmission Hours	Sample Weeks
Sweden	Kanal 5	1989	8.30%	Ad	Cab/Sat	24	March sample is non-standard: week beginning 05/03/2007
Sweden	SVT 1	1956	24.40%	Gvt/Spon	Nat. Terr.	24	
Sweden	TV 3	1987	10.00%	Ad	Cab/Sat	24	
Sweden	TV 4	1990	24.90%	Ad	Nat. Terr.	24	

Genre analysis

Most Swedish channels (SVT1, TV4 and TV3) rely strongly on factual magazines to fill their all-day schedules (see Table 109). This genre accounts for 46.6% of total qualifying transmission hours on SVT1, 43.8% on TV3 and 39.7% on TV4. Entertainment is also a major component of the schedules, representing more than half of the all-day schedule of KANAL5 (55.5%) and a substantial genre on every other channel (29.8% on TV4, 25.1% on TV3 and 17.3% on SVT1).

Documentary is has significant exposure on TV3 (25.7%), but is less visible on SVT1 (13.3%) and KANAL5 (12.9%). TV fiction is relatively low everywhere (15.8% on TV4, 14.6% on SVT1, 10% on KANAL5, 5.4% on TV3) while cinema film is nearly absent (less than 10% on all channels and 0% on TV3).

In peak-time, most channels strengthen their offering of entertainment (25.6% on SVT1, 35.3% on TV3 and 43.7% on TV4), while maintaining their position on factual magazines (except TV4, which reduces this genre down to 14.7%). TV4 also emphasises documentary (18%) and, less so, cinema film (12.5%), while SVT1 increases TV fiction (18.9%) and KANAL5 increases cinema film (18.3%).

The ratio based on viewer hours shows the very strong appeal of entertainment to Swedish audiences to the leading channels (40.4% of viewer hours vs. 17.3% of transmission hours on SVT1 and 41% of viewer hours vs. 29.8% of transmission hours on TV4) and the relatively poor appeal of TV fiction (5.6% on KANAL5, 0.5% on TV3, 7.1% on TV4). Cinema film manages, despite its weak exposure across the all-day schedule, to draw substantial audiences on KANAL5 (20.1% of viewer hours vs. only 7.4% of transmission hours) and TV4 (11.9% viewer hours vs. 6.2% transmission hours).

Table 109: Genre proportion of total qualifying hours in Sweden, 2007

All Day		Peak Time	
Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)
Kanal 5	Cinema Film	7.4%	20.1%
	Documentary	12.9%	9.9%
	Entertainment	55.5%	47.1%
	Factual Magazine	14.2%	17.3%
	Fiction	10.0%	5.6%
SVT 1	Cinema Film	8.2%	3.5%
	Documentary	13.3%	7.6%
	Entertainment	17.3%	40.4%
	Factual Magazine	46.6%	35.5%
	Fiction	14.6%	13.0%
TV 3	Cinema Film	0.0%	0.0%
	Documentary	25.7%	26.6%
	Entertainment	25.1%	26.0%
	Factual Magazine	43.8%	46.9%
	Fiction	5.4%	0.5%
TV 4	Cinema Film	6.2%	11.9%
	Documentary	8.5%	9.6%
	Entertainment	29.8%	41.0%
	Factual Magazine	39.7%	30.5%
	Fiction	15.8%	7.1%
TV 4	Cinema Film	12.5%	17.1%
	Documentary	18.0%	12.8%
	Entertainment	43.7%	53.3%
	Factual Magazine	14.7%	11.8%
	Fiction	11.1%	5.0%

Transmission and viewing ratio analysis

In 2007, qualifying programmes (that is, all programmes excluding advertising, teleshopping, teletext, news, sport and games) made up 74.5% of the total transmission hours of the Swedish channels sampled (see Table 110). TV3 and KANAL5 show the highest proportion of qualifying hours with 87.2% and 83.8% respectively, while the leading channels showed lower proportions (57.3% on SVT1, 69.5% on TV4).

The ratio based on viewer hours is, on the whole, very similar to that based on transmission hours (74.5% transmission hours vs. 73.4% viewer hours). All broadcasters show an increase except TV4, which falls from 69.5% transmission hours to 63.6% viewer hours.

Table 110: Ratio of qualifying hours to total transmission hours in Sweden, 2007

<i>Channel</i>	<i>Ratio of Qualifying to Total Transmission Hours (%)</i>	<i>Ratio of Qualifying to Total Viewer Hours (%)</i>
Kanal 5	83.8%	91.0%
SVT 1	57.3%	69.9%
TV 3	87.2%	88.1%
TV 4	69.5%	63.6%
Result for Member State Sample	74.5%	73.4%

Proportion of European works

European works represent 38.6% of the total qualifying transmission hours across all channels in the Swedish sample in 2007 (see Table 111). We observe a clear divide between leading broadcasters favouring European programmes (85.9% of qualifying hours on SVT1, 52.9% on TV4) and “smaller” broadcasters standing far below the 50% (22.1% on KANAL5 and 12.1% on TV3). The gap reduces when looking only at peak-time: KANAL5 and TV3 indeed go up to 35.3% and 33.9% respectively, while SVT1 lowers (75.9%) and TV4 increases (66%).

The ratio based on viewer hours is higher than that based on transmission hours for all four broadcasters in our sample (26% vs. 22.1% for KANAL5, 88.2% vs. 85.9% for SVT1, 30.1% vs. 12.1% for TV3, 71.2% vs. 52.9% for TV4). European programmes thus help the broadcasters build their ratings. This conclusion is also valid when looking only at peak-time, except for KANAL5, whose ratio slightly decreases (34.4% of viewer hours vs. 35.3% of transmission hours).

Table 111: Ratio of European qualifying to total qualifying hours in Sweden, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>
Kanal 5	22.1%	26.0%	Kanal 5	35.3%	34.4%
SVT 1	85.9%	88.2%	SVT 1	75.9%	86.2%
TV 3	12.1%	30.1%	TV 3	33.9%	46.3%
TV 4	52.9%	71.2%	TV 4	66.0%	78.6%
Result for Member State Sample	38.6%	61.1%	Result for Member State Sample	50.4%	68.8%

The proportion of non-domestic qualifying European works to total qualifying works for the Swedish sample is 6.2% (see Table 112). But the difference between SVT1's ratio, the highest (10.9%), and TV3's, the lowest (0.7%) is substantial. KANAL5 (6.3%) and TV4 (9.3%) stand in-between. In peak-time, KANAL5's ratio nearly doubles (up to 12.2%), while SVT1's falls heavily (down to 6.0%), TV3 and TV4 decrease slightly (0% vs. 0.7% and 8.3% vs. 9.3% respectively). KANAL5's openness to non-domestic European works in peak-time is mostly due to the high presence of British programming on the channel.

When looking at both all-day and peak-time the broadcasting of non-domestic European works does not draw very important audiences to Swedish channels: the viewer hours ratio is in fact half the transmission ratio on both leading channels SVT1 (4.5% vs. 10.9% all-day, 3.2% vs. 6% peak) and TV4 (5.2% vs. 9.3% all-day, 4% vs. 8.3% peak). Only KANAL5's viewing ratio is higher than the transmission ratio during all-day, and remains stable in peak-time.

Table 112: Ratio of non-domestic qualifying European to total qualifying hours in Sweden, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)</i>
Kanal 5	6.3%	8.3%	Kanal 5	12.2%	12.1%
SVT 1	10.9%	4.5%	SVT 1	6.0%	3.2%
TV 3	0.7%	0.2%	TV 3	0.0%	0.0%
TV 4	9.3%	5.2%	TV 4	8.3%	4.0%
Result for Member State Sample	6.2%	4.6%	Result for Member State Sample	6.6%	4.4%

Proportion of independent works

The proportion of qualifying works produced by independent European producers and aired by Swedish channels in our sample reaches 16.4% of total qualifying hours (see Table 113). TV4 has the highest proportion of independent works with 28.3% during all-day and 55.3% in peak-time. SVT1 is the second highest during all-day (23.3%) but is surpassed in peak-time by KANAL5 (31% peak compared to 13.7% all-day). On the opposite side of the scale, TV3 devotes only 4.7% of its schedule to independent European productions during all-day, a proportion that rises up to 12.5% when looking specifically at peak-time.

When looking at the proportions based on viewer hours, the average proportion of qualifying works produced by independent European producers shows a strong uplift: 33.1% (vs. 16.4%) during all-day and 42.9% (vs. 28.3%) in peak-time. The two leading channels show the strongest increase: TV4 reaches 53.1% (vs. 28.3%) during all-day and 74.55.3% (vs. 55.374%) in peak-time while SVT1 goes up to 33% (vs. 23.3%) during all-day and 35.3% (vs. 19.3%) in peak-time. KANAL5's viewing hours ratio is, on the contrary, lower than the transmission hours ratio (29.9% vs. 31%) in peak-time.

Table 113: Ratio of independent European to total qualifying in Sweden, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)</i>
Kanal 5	13.7%	20.7%	Kanal 5	31.0%	29.9%
SVT 1	23.3%	33.0%	SVT 1	19.3%	35.3%
TV 3	4.7%	10.0%	TV 3	12.5%	15.3%
TV 4	28.3%	53.1%	TV 4	55.3%	74.0%
Result for Member State Sample	16.4%	33.1%	Result for Member State Sample	28.3%	42.9%

Proportion of recent independent works

Across the entire Swedish sample, 79.1% of all qualifying European independent transmission hours are programmes less than five years old (see Table 114). There is a large difference between ratios for particular channels: TV3, showing the highest ratio, at 100%, and SVT1, showing the lowest one, at 59.1%. TV4 and KANAL5 stand in-between with 82.9% and 85.9% respectively. In peak-time hours, the proportion of recent independent European works reaches 91.5% on average: KANAL5 shows the lowest ratio with 80.8%. Figures based on viewer hours are generally

higher, reflecting the interest of television audiences in the most recent content.

Table 114: Ratio of recent independent European to total independent European in Sweden, 2007

All Day		Peak Time	
<i>Channel</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)</i>	<i>Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)</i>
Kanal 5	85.9%	84.3%	80.8%
SVT 1	59.1%	90.0%	94.1%
TV 3	100.0%	100.0%	100.0%
TV 4	82.9%	97.1%	96.5%
Result for Member State Sample	79.1%	93.7%	91.5%

Proportion of stock/flow works

The proportion of stock vs. flow programmes among total qualifying European hours is skewed towards flow (see Table 115). Flow programmes account for 66.6% of total qualifying European hours during all-day (stock: 33.4%) and 66.4% in peak-time (stock: 33.6%). All broadcasters show very similar ratios, ranging from 60% to 70% for stock during all-day (SVT1 is the lowest with 62.6% and KANAL5 the highest with 69.7%), with the variation in ratios widened slightly in peak-time (between 58.4% for TV4 and 78.6% for TV3). The difference between the ratios for flow and stock increases by a few percentage points when looking at the viewer hours: 70.7% vs. 29.3% during all-day, 69.2% vs. 30.8% in peak-time.

Table 115: Ratio of European stock/flow to total European in Sweden, 2007

All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Hours (%)</i>	<i>Total (%)</i>
Kanal 5	30.3%	69.7%	100%	Kanal 5	32.6%	67.4%	100%
SVT 1	37.4%	62.6%	100%	SVT 1	34.9%	65.1%	100%
TV 3	31.1%	68.9%	100%	TV 3	21.4%	78.6%	100%
TV 4	30.4%	69.6%	100%	TV 4	41.6%	58.4%	100%
Result for Member State Sample	33.4%	66.6%	100%	Result for Member State Sample	33.6%	66.4%	100%

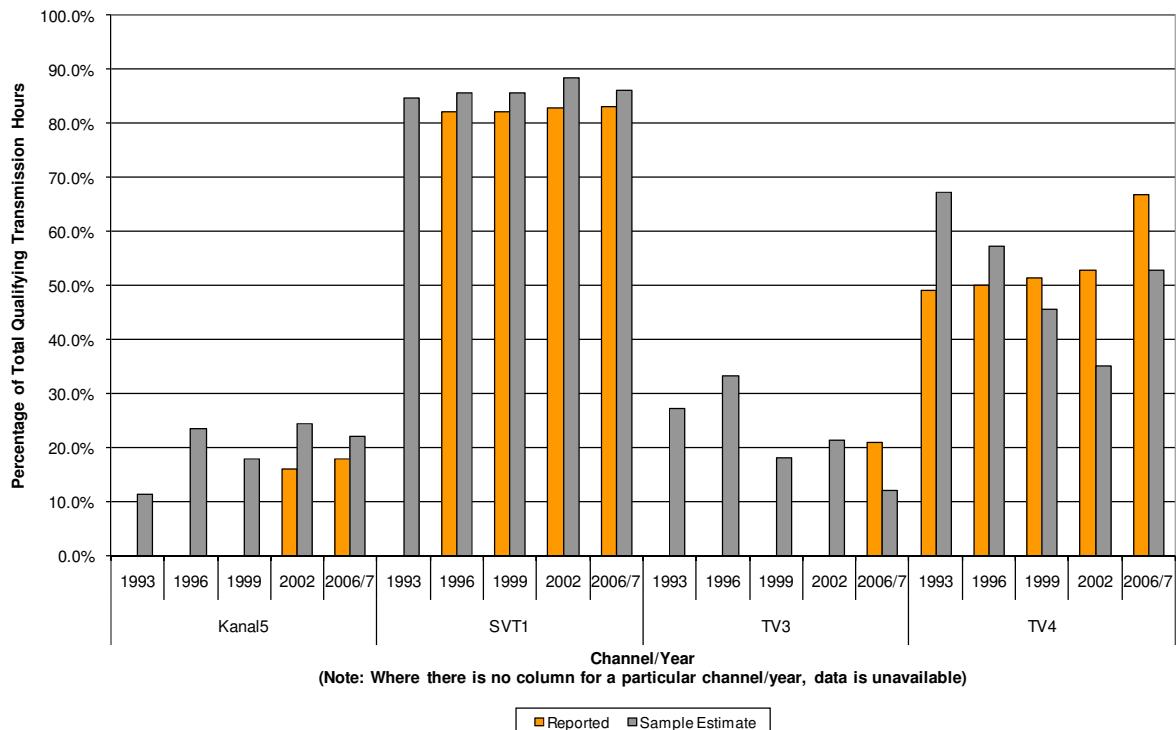
All Day				Peak Time			
<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>	<i>Channel</i>	<i>Qualifying European Stock to Total Qualifying European Viewer Hours (%)</i>	<i>Qualifying European Flow to Total Qualifying European Viewer Hours (%)</i>	<i>Total (%)</i>
Kanal 5	35.7%	64.3%	100%	Kanal 5	38.4%	61.6%	100%
SVT 1	29.3%	70.7%	100%	SVT 1	27.7%	72.3%	100%
TV 3	27.1%	72.9%	100%	TV 3	26.4%	73.6%	100%
TV 4	28.5%	71.5%	100%	TV 4	34.9%	65.1%	100%
Result for Member State Sample	29.3%	70.7%	100%	Result for Member State Sample	30.8%	69.2%	100%

Comparison with past data and declarations²⁴¹

The ratios of qualifying European works to total qualifying hours provided by our 2007 estimates are in line with the trends estimated in the 2005 Study and reported data for channels where reported data is available (see Figure 49), with the exception of TV4 where reported data are regularly increasing but where sample estimates are in decline until 2007. On the whole, figures show a stable share of European programmes over time on SVT1 and KANAL5, and a steady decrease on TV3.

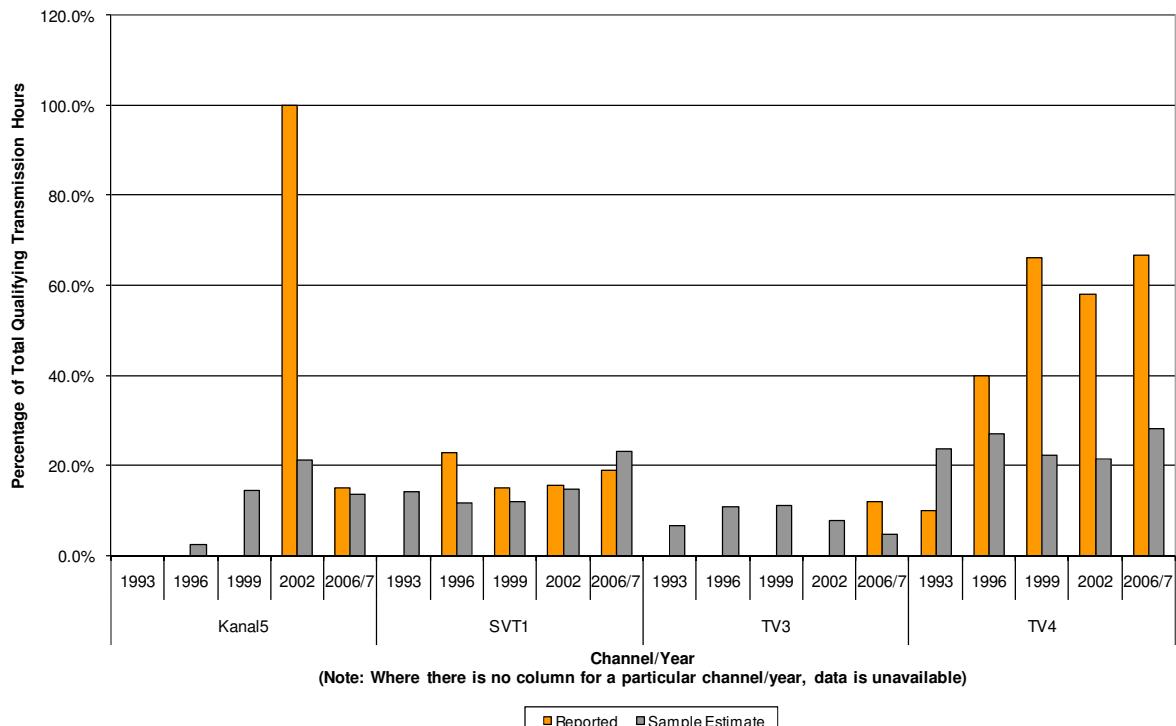
²⁴¹ As noted earlier, TV3 and Kanal 5 are regulated by the British authorities and are therefore not the responsibility of the Swedish regulatory body. The declared data for these channels used in the following graphs have been extracted from the British declarations.

Figure 49: Ratio of reported vs. estimated European qualifying transmission hours to total qualifying transmission hours in Sweden, 2007/2006



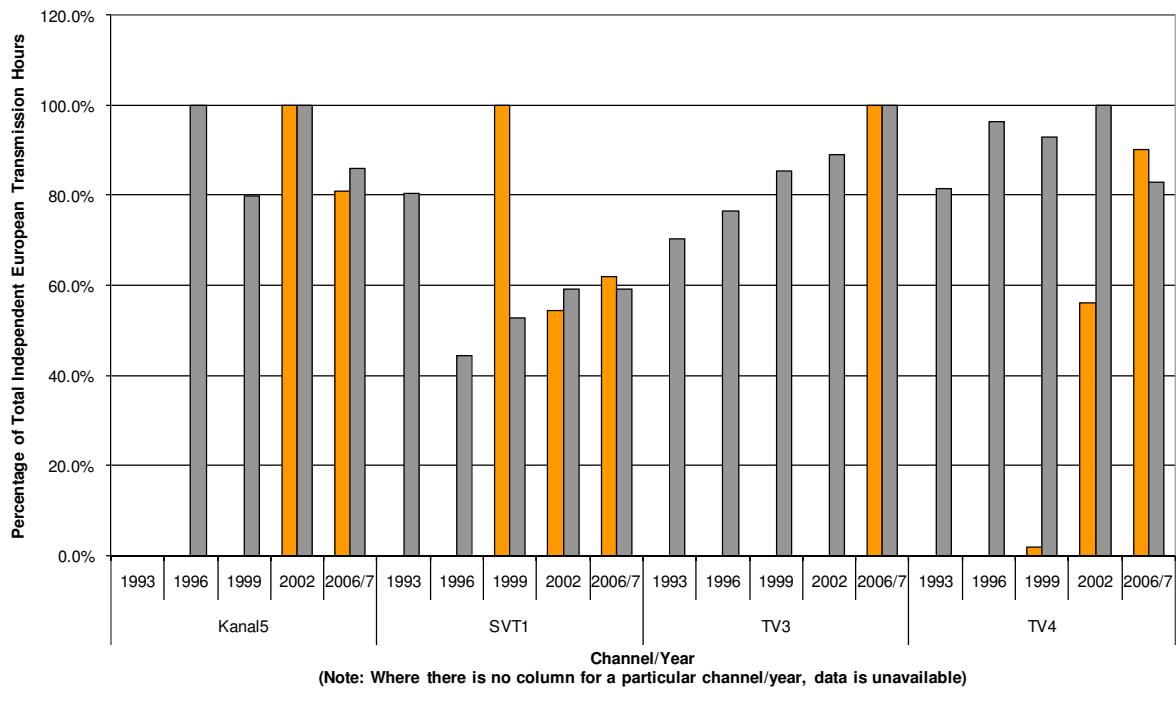
The 2007 ratio of recent qualifying independent European works to total European independent qualifying hours is very consistent with past findings and reported data (see Figure 50) except for TV4, where sample estimates are significantly lower than reported data. This could be explained by the broader definition of 'independent works' used in Sweden. On the whole, figures are either stable or slightly increasing.

Figure 50: Ratio of reported vs. estimated independent European qualifying transmission hours to total qualifying transmission hours in Sweden, 2007/2006



The 2007 ratio of recent qualifying independent European works to total qualifying European independent hours is also consistent with past findings and reported data (see Figure 51). It confirms a long-term increase for TV3, some relative stability for SVT1, and a significant decline for KANAL5 and TV4 (after a peak in 2002).

Figure 51: Ratio of reported vs. estimated recent independent European qualifying transmission hours to total independent European transmission hours in Sweden, 2007/2006



8.4.12. United Kingdom

Data summary

Our sample consists of two publicly funded public service channels (BBC1 and BBC2), two purely commercial channels (ITV1, and FIVE), one publicly-owned, commercially-funded channel, CHANNEL4²⁴², and one premium pay channel, SKY ONE. Together they account for 64% of total TV viewing in the UK (see Table 116).

²⁴² Within the UK, Channel 4 is considered somewhat different from the BBC channels and from ITV and Five because although it is entirely commercially funded (e.g. via advertising, sponsorship, etc) it is publicly owned. Thus it is considered as something in-between the BBC (publicly owned, publicly funded) and ITV/Five (privately owned, commercially funded). Its special status means it has a specific public service remit that it must meet, but is also afforded free carriage on the terrestrial spectrum, unlike ITV and Five.

Table 116: List of channels covered in the 2007 UK sample²⁴³

Country	Channel	Launch Year	Share of Viewing (2007)	Revenue Model	Platform	Average Daily Transmission Hours	Sample Weeks
UK	BBC1	1936	22.03%	Gvt	Terr./C/S	24	Standard
UK	BBC2	1964	8.55%	Gvt	Terr./C/S	24	
UK	ITV1	1955	19.22%	Ad	Terr./C/S	24	
UK	CH4	1982	8.45%	Ad	Terr./C/S	24	
UK	Five	1997	5.15%	Ad	Terr./C/S	24	
UK	SKY One	1989	0.94%	Subs/Ad	Sat	24	

Genre analysis

All leading free-to-air channels tend to offer a similar share of TV fiction programmes in their all-day schedules (see Table 117). This genre accounts for 28.2% of total qualifying hours on BBC1, 25.5% on BBC2, 26.9% on ITV1 and 26.5% on CHANNEL4. These channels differentiate themselves from one another by their offerings other than TV fiction. BBC channels put the emphasis on documentary (34.1% of total qualifying hours on BBC1 and 38.8% on BBC2), ITV1 prefers entertainment (34%) while CHANNEL4 focuses on documentary (28.7%) and cinema films (19.2%).

In peak-time, these channels adopt slightly different schedules. ITV1 puts the greatest emphasis on TV fiction (47.2%) while maintaining the importance of entertainment (30.7%). BBC1 also shifts towards family programming with a higher proportion of TV fiction (33.5%) and a greater emphasis on entertainment (23.9%). CHANNEL4 gives more room to documentary (36.4%) while maintaining its position on fiction and cinema. BBC2 is oriented towards documentary (40.1%), and factual magazines (25.8%), with also slightly more entertainment (18.7%) than during all-day, while fiction is low at 9.9%.

FIVE's schedule looks closer to that of CHANNEL4, based on a mix of fiction, cinema and documentary. But this channel puts a greater emphasis on fiction (47.1%) at the expense of entertainment (4.5%). SKY ONE is even more focused on fiction, which represents 69.9% of its schedule and up to 77% in peak-time, together with the only other genre with a significant proportion of its schedule, documentary (18.5% all-day, 12% peak).

²⁴³ In the 'Platform' column, "Terr/C/S" means "Terrestrial, Cable and Satellite".

Table 117: Genre proportion of total qualifying hours in the UK, 2007

Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)	Channel	Genre	Genre Proportions of Total Qualifying Hours (%)	Genre Proportions of Total Qualifying Viewer Hours (%)
BBC1	Cinema Film	9.3%	3.6%	BBC1	Cinema Film	7.6%	3.3%
	Documentary	34.1%	21.8%		Documentary	21.8%	15.2%
	Entertainment	14.9%	22.6%		Entertainment	23.9%	28.1%
	Factual Magazine	13.5%	11.5%		Factual Magazine	13.2%	9.3%
	Fiction	28.2%	40.5%		Fiction	33.5%	44.1%
BBC2	Cinema Film	8.0%	7.8%	BBC2	Cinema Film	5.6%	4.6%
	Documentary	38.8%	39.6%		Documentary	40.1%	41.2%
	Entertainment	11.6%	22.3%		Entertainment	18.7%	22.8%
	Factual Magazine	16.1%	17.9%		Factual Magazine	25.8%	20.3%
	Fiction	25.5%	12.4%		Fiction	9.9%	11.1%
ITV1	Cinema Film	7.9%	6.0%	ITV1	Cinema Film	7.4%	3.1%
	Documentary	13.9%	7.2%		Documentary	7.9%	4.4%
	Entertainment	34.0%	36.1%		Entertainment	30.7%	33.6%
	Factual Magazine	17.3%	8.9%		Factual Magazine	6.7%	4.1%
	Fiction	26.9%	41.9%		Fiction	47.2%	54.7%
CH4	Cinema Film	19.2%	13.1%	CH4	Cinema Film	16.1%	11.2%
	Documentary	28.7%	33.3%		Documentary	36.4%	43.2%
	Entertainment	18.6%	25.7%		Entertainment	14.3%	15.0%
	Factual Magazine	7.0%	2.6%		Factual Magazine	5.2%	2.9%
	Fiction	26.5%	25.3%		Fiction	28.0%	27.6%
Five	Cinema Film	18.4%	29.0%	Five	Cinema Film	20.9%	20.7%
	Documentary	17.6%	14.8%		Documentary	32.4%	21.8%
	Entertainment	4.5%	2.3%		Entertainment	0.0%	0.0%
	Factual Magazine	12.4%	5.1%		Factual Magazine	5.0%	3.6%
	Fiction	47.1%	48.8%		Fiction	41.7%	54.0%
Sky One	Cinema Film	1.7%	3.2%	Sky One	Cinema Film	7.4%	4.6%
	Documentary	18.5%	9.2%		Documentary	12.0%	5.9%
	Entertainment	7.9%	3.2%		Entertainment	3.6%	2.6%
	Factual Magazine	2.0%	1.0%		Factual Magazine	0.0%	0.0%
	Fiction	69.9%	83.4%		Fiction	77.0%	86.9%

Transmission and viewing ratio analysis

In 2007, qualifying programmes (that is, all programmes excluding advertising, teleshopping, teletext, news, sport and games) made up an average of 65.8% of the total transmission hours of the UK channels sampled (see Table 118). BBC2 is the channel showing the highest proportion of qualifying hours with 80%, followed by SKY ONE (72.5%) and CHANNEL4 (67.6%). Commercial broadcaster ITV1 shows the lowest proportion with 51%, while BBC1 and FIVE stood in-between (61.4% and 62% respectively).

The ratio based on viewer hours is, on the whole, higher than that based on transmission hours (66.1% vs. 65.8%). FIVE and ITV1 show the most important uplift (respectively 77.1% of viewer hours vs. 62% of transmission hours and 63.2% vs. 51%), which is explained largely by the fact that these two channels build their peak-time schedules around very successful fiction. On the other hand, BBC2, whose peak-time schedule is dominated by documentary and factual magazines, sees its viewing go down to 73.9% compared to 80% for its transmission ratio.

Table 118: Ratio of qualifying hours to total transmission hours in the UK, 2007

<i>Channel</i>	<i>Ratio of Qualifying to Total Transmission Hours (%)</i>	<i>Ratio of Qualifying to Total Transmission Viewer Hours (%)</i>
BBC1	61.4%	63.3%
BBC2	80.0%	73.9%
ITV1	51.0%	63.2%
CH4	67.6%	64.5%
Five	62.0%	77.1%
Sky One	72.5%	74.2%
Result for Member State Sample	65.8%	66.1%

Proportion of European works

European works made up an average of 64.9% of the total qualifying transmission hours on all channels in the sample in 2007 (see Table 119). We observe a clear divide between leading broadcasters overwhelmingly favouring European programmes (85.2% of qualifying hours on BBC2, 85.1% on ITV1, 83.2% on BBC1 and 70.9% on CHANNEL4) and ‘smaller’ broadcasters that stand below 50% (47.5% on FIVE and 22% on SKY ONE). This divide is even larger when looking at peak-time hours: BBC1 and BBC2 go up to 94% and 93.4% respectively, while FIVE and SKY ONE go down to 36.7% and 10.1% respectively.

The ratio based on viewer hours is higher than that based on transmission hours for all four leading broadcasters in our sample: 91.1% of viewer hours vs. 85.1% of transmission hours for ITV1, 89.8% vs. 85.2% for BBC2, 88.8% vs. 83.2% for BBC1 and 76.2% vs. 70.9% for CHANNEL4. This reflects the fact that these leading broadcasters rely heavily on European programming to build their ratings, while ‘smaller’ channels such as FIVE and SKY ONE, who rely more on imports, see their viewing ratios decrease compared to their transmission ratios: respectively from 47.5% of transmission hours to 28.1% of viewing hours and from 22.0% to 10.9%. These conclusions are even more stretched in peak-time, where qualifying European programming accounts for as high as 97.2% of total qualifying viewer hours on BBC1, and as low as 6.4% on SKY ONE.

Table 119: Ratio of European qualifying to total qualifying hours in the UK, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Qualifying European to Total Qualifying Viewer Hours (%)</i>
BBC1	83.2%	88.8%	BBC1	94.0%	97.2%
BBC2	85.2%	89.8%	BBC2	93.4%	93.9%
ITV1	85.1%	91.1%	ITV1	87.8%	92.7%
CH4	70.9%	76.2%	CH4	77.0%	78.6%
Five	47.5%	28.1%	Five	36.7%	24.2%
Sky One	22.0%	10.9%	Sky One	10.1%	6.4%
Result for Member State Sample	64.9%	81.1%	Result for Member State Sample	65.9%	85.3%

The proportion of non-domestic qualifying European works to total qualifying works is particularly low in the UK (see Table 120). Across our sample, it achieves 0.6% of transmission hours and 0.5% of viewer hours. The channel with the highest proportion is BBC2 (1.9% of transmission hours and 2% of viewing hours). Where British channels air non-domestic European works in peak-time (1.1% in our sample as a whole), audiences do not seem to follow, as the peak-time ratio becomes 0.6% when expressed in viewer hours. The only two channels to offer non-domestic European works in peak-time are CHANNEL4 (4.9% of total qualifying transmission hours and 3% of total qualifying viewer hours) and BBC2 (1.4% and 1.7%).

Table 120: Ratio of non-domestic qualifying European to total qualifying hours in the UK, 2007

All Day			Peak Time		
<i>Channel</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)</i>	<i>Channel</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Hours (%)</i>	<i>Ratio of Non-Domestic Qualifying European to Total Qualifying Viewer Hours (%)</i>
BBC1	0.1%	0.0%	BBC1	0.0%	0.0%
BBC2	1.9%	2.0%	BBC2	1.4%	1.7%
ITV1	0.2%	0.0%	ITV1	0.0%	0.0%
CH4	1.1%	1.8%	CH4	4.9%	3.0%
Five	0.0%	0.0%	Five	0.0%	0.0%
Sky One	0.0%	0.0%	Sky One	0.0%	0.0%
Result for Member State Sample	0.6%	0.5%	Result for Member State Sample	1.1%	0.6%

Proportion of independent works

The proportion of qualifying works produced by independent European producers and broadcast by the channels in our sample was relatively high, reaching 36.3% in transmission hours in 2007 (see Table 121). CHANNEL4 had by far the highest proportion of independent works with 68.7% during all-day schedules and 71.4% in peak-time. FIVE is the second highest in all-day (43.7%) but is surpassed in peak-time by BBC2 and BBC1 (respectively 37.6% and 33.9% peak, compared with 30.3% and 35.4% all-day). On the opposite side of the scale, ITV1 and SKY ONE devote 23.4% and 16.5% of their all-day qualifying schedules to independent European produced programming, a proportion that goes down to 10.9% and 10.1% in peak-time.

When looking at the proportions based on viewer hours, figures tend to decrease by a few percentage points to an average of 29% (vs. 36.3% for all-day) and of 25.4% (vs. 33.1%) in peak-time. It is worth noting that CHANNEL4 and BBC2 manage to improve their all-day ratios, respectively from 68.7% of transmission hours to 70.2% of viewing hours (all-day), and from 30.3% to 35.6% (peak-time).

Table 121: Ratio of independent European to total qualifying in the UK, 2007

All Day			Peak Time		
Channel	Ratio of Qualifying Independent European to Total Qualifying Hours (%)	Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)	Channel	Ratio of Qualifying Independent European to Total Qualifying Hours (%)	Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)
BBC1	35.4%	27.4%	BBC1	33.9%	25.7%
BBC2	30.3%	35.6%	BBC2	37.6%	34.0%
ITV1	23.4%	12.2%	ITV1	10.9%	6.7%
CH4	68.7%	70.2%	CH4	71.4%	69.4%
Five	43.7%	26.5%	Five	31.3%	22.0%
Sky One	16.5%	9.1%	Sky One	10.1%	6.4%
Result for Member State Sample	36.3%	29.0%	Result for Member State Sample	33.1%	25.4%

Proportion of recent independent works

Across the UK sample, 90.3% of all qualifying European independent transmission hours are programmes less than five years old (see Table 122). All broadcasters in our sample show a similar ratio, ranging from 85.6% for CHANNEL4 to 95.9% for SKY ONE. In peak-time hours, the proportion of qualifying European recent independent works reaches 100% for all channels except FIVE, which reaches 95.2%. Figures based on viewer hours are generally higher, reflecting the interest of television audiences in the most recent content.

Table 122: Ratio of recent independent European to total independent European in the UK, 2007

All Day			Peak Time		
Channel	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)	Channel	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Hours(%)	Ratio of Recent Qualifying Independent European to Total Qualifying Independent European Viewer Hours(%)
BBC1	93.6%	98.5%	BBC1	100.0%	100.0%
BBC2	95.3%	99.3%	BBC2	100.0%	100.0%
ITV1	94.2%	90.1%	ITV1	100.0%	100.0%
CH4	85.6%	96.8%	CH4	100.0%	100.0%
Five	86.9%	81.5%	Five	95.2%	94.3%
Sky One	95.9%	93.5%	Sky One	100.0%	100.0%
Result for Member State Sample	90.3%	95.6%	Result for Member State Sample	99.2%	99.6%

Proportion of stock/flow works

The proportion of stock vs. flow programmes among total qualifying European hours is skewed towards stock (see Table 123). European stock programmes represent 68.1% of total qualifying all-day transmission hours, compared with 31.9% for flow programmes. In peak-time these proportions become 71.8% vs. 28.2%. Similar proportions can be observed when looking at the ratios expressed in viewer hours. While this average imbalance accurately reflects the realities of individual channels, we observe that 'smaller' channels rely even more on stock than leading channels (especially in peak-time where stock accounts for 86.5% of transmission time on FIVE, 88% on CHANNEL4 and up to 100% on SKY ONE). ITV1 presents an interesting picture, as its all-day qualifying European schedule is made of a majority of flow programmes (55.8%), while its peak-time schedule goes back to 'normal' (62.8% stock).

Table 123: Ratio of European stock/flow to total European in the UK, 2007

All Day				Peak Time			
Channel	Qualifying European Stock to Total Qualifying European Hours (%)	Qualifying European Flow to Total Qualifying European Hours (%)	Total (%)	Channel	Qualifying European Stock to Total Qualifying European Hours (%)	Qualifying European Flow to Total Qualifying European Hours (%)	Total (%)
BBC1	72.0%	28.0%	100%	BBC1	67.3%	32.7%	100%
BBC2	74.7%	25.3%	100%	BBC2	62.7%	37.3%	100%
ITV1	44.2%	55.8%	100%	ITV1	62.8%	37.2%	100%
CH4	70.3%	29.7%	100%	CH4	88.0%	12.0%	100%
Five	67.1%	32.9%	100%	Five	86.5%	13.5%	100%
Sky One	87.3%	12.7%	100%	Sky One	100.0%	0.0%	100%
Result for Member State Sample	68.1%	31.9%	100%	Result for Member State Sample	71.8%	28.2%	100%

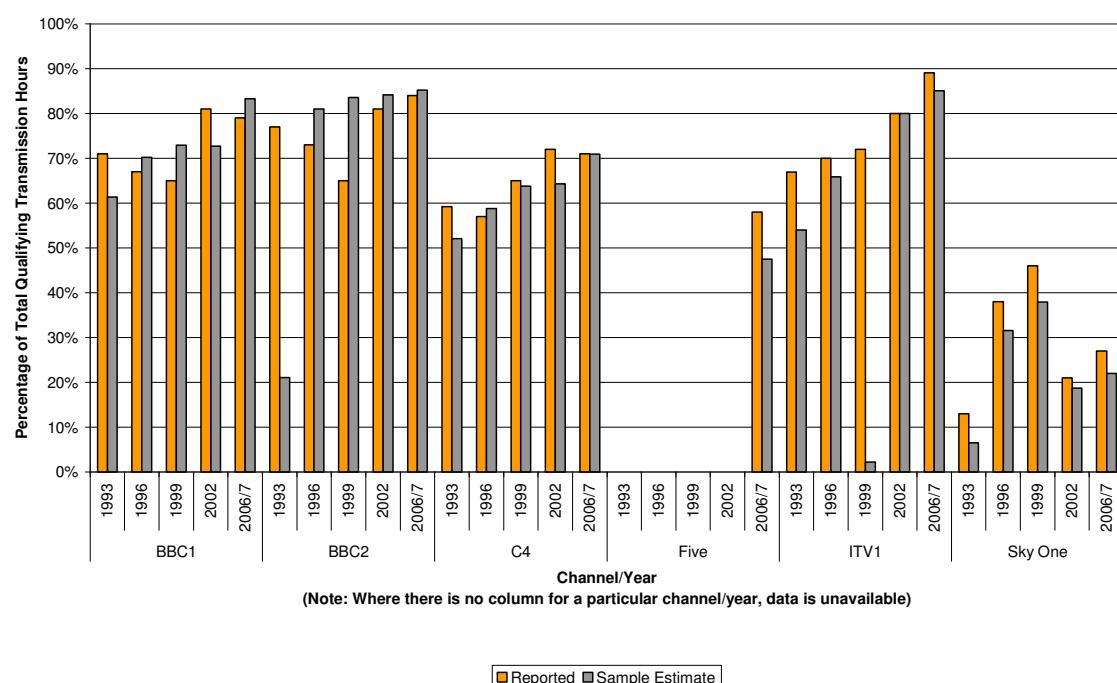
All Day				Peak Time			
Channel	Qualifying European Stock to Total Qualifying European Viewer Hours (%)	Qualifying European Flow to Total Qualifying European Viewer Hours (%)	Total (%)	Channel	Qualifying European Stock to Total Qualifying European Viewer Hours (%)	Qualifying European Flow to Total Qualifying European Viewer Hours (%)	Total (%)
BBC1	66.6%	33.4%	100%	BBC1	66.8%	33.2%	100%
BBC2	70.8%	29.2%	100%	BBC2	66.8%	33.2%	100%
ITV1	55.4%	44.6%	100%	ITV1	61.8%	38.2%	100%
CH4	73.4%	26.6%	100%	CH4	92.2%	7.8%	100%
Five	75.2%	24.8%	100%	Five	85.3%	14.7%	100%
Sky One	88.6%	11.4%	100%	Sky One	100.0%	0.0%	100%
Result for Member State Sample	64.7%	35.3%	100%	Result for Member State Sample	68.3%	31.7%	100%

Comparison with past data and declarations

The ratio of qualifying European works to total qualifying hours provided by our 2007 estimates are in line with the trends estimated in the 2005 Study and reported data (see Figure 52). It confirms an overall trend towards an increasing share of European programmes over time on leading channels BBC1, BBC2, ITV1 and CHANNEL4.

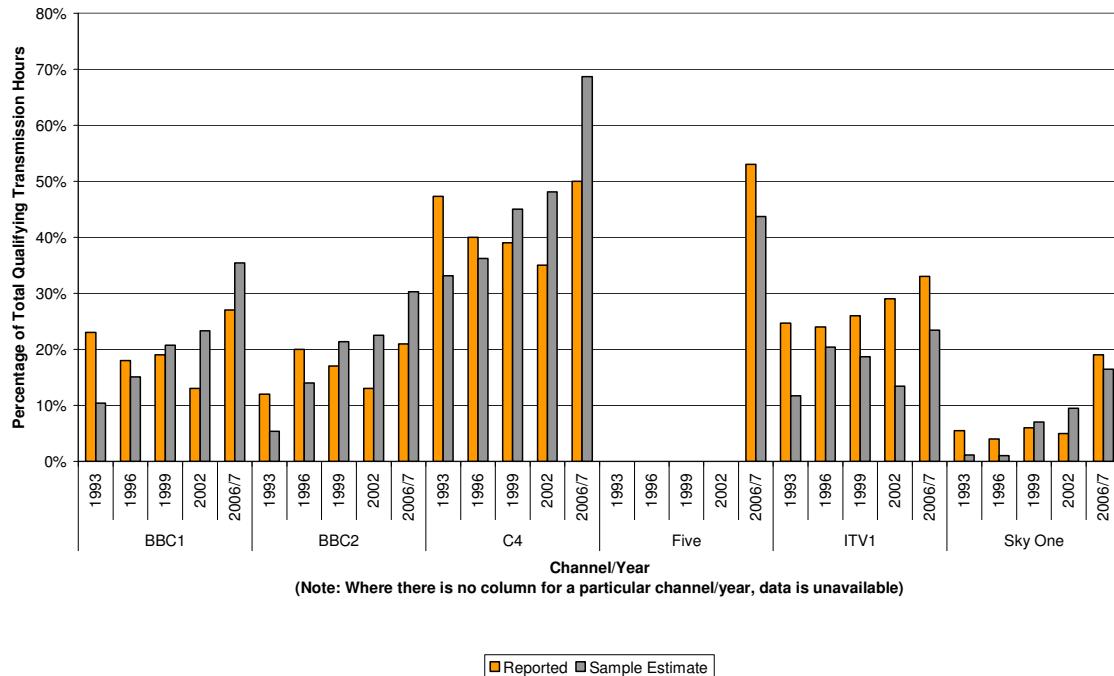
Comparing Reported data from broadcasters' Declarations (2006) to our sample estimates (2007) shows a strong consistency as far as the ratio of European works is concerned: here, differences between reported data and sample estimates are typically below 5%.

Figure 52: Ratio of reported vs. estimated European qualifying transmission hours to total qualifying transmission hours in the UK, 2007/2006



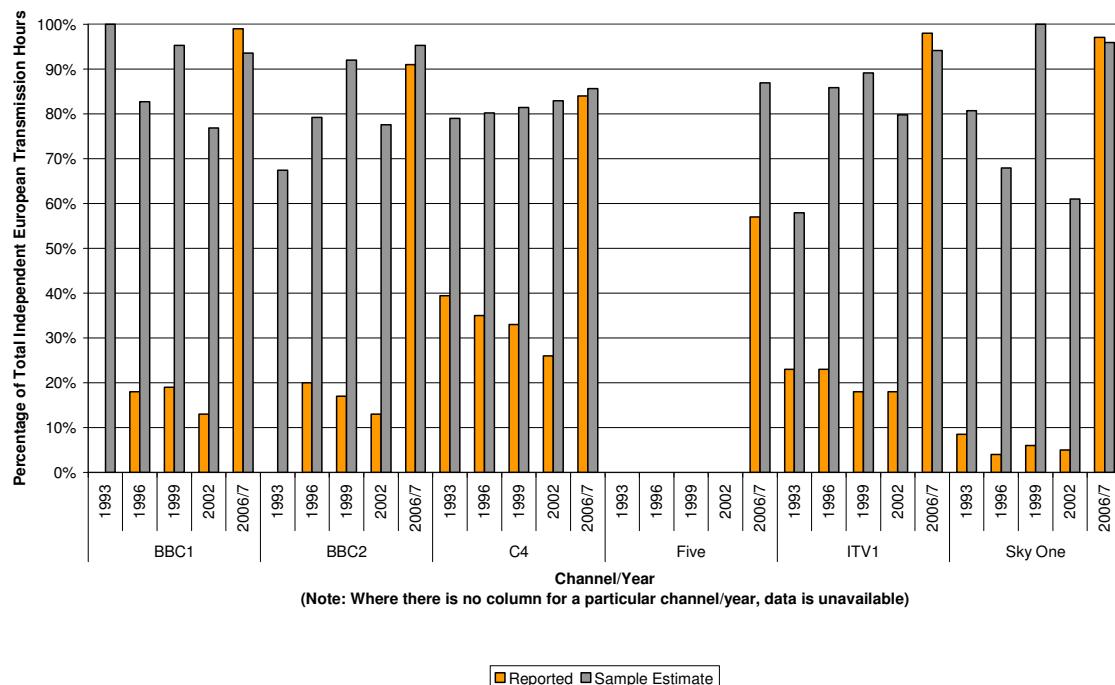
The 2007 ratio of qualifying independent European works to total qualifying hours is also consistent with past findings (see Figure 53). It shows an increase of transmission time devoted to independent producers (apart from FIVE, which has been analysed for the first time in this Study). Comparing data for independent productions shows that our estimates have a difference of typically below 10% (with the exception of CHANNEL4, which has a difference of 18%) compared with the declarations. Sample estimates are higher than reported data for BBC1, BBC2 and CHANNEL4, but lower for ITV1 and SKY ONE.

Figure 53: Ratio of reported vs. estimated independent European qualifying transmission hours to total qualifying transmission hours in the UK, 2007/2006



The 2007 ratio of recent qualifying independent European works to total European independent qualifying hours is very consistent with reported data in 2006/07, but differ from the past findings (see Figure 54). The proportion, which ranges from 85.6% to 95.9% in our 2007 estimate, has risen more on ITV1 and CHANNEL4 than on the other channels. It is worth noting that the reported figures are annual, and sample figures are weekly, and given fluctuations in schedules week-on-week, the weekly results will only very rarely match the annual average exactly.

Figure 54: Ratio of reported vs. estimated recent independent European qualifying transmission hours to total independent European transmission hours in the UK, 2007/2006



9. Views from Inside the Audiovisual Industry

9.1. Interview Sample

In the 2005 study we issued questionnaires, designed with co-operation from all members of the consortium and the European Commission, to broadcasters, producers and some trade bodies in order to develop an understanding of the key implications of Articles 4 and 5 from the TVWF Directive. For this current study, the questionnaire's focus has been shifted somewhat, with an additional section focusing specifically on the respondents' on-demand activities (see Part II in the questionnaires in the appendix). The questionnaire has been distributed to a wide variety of stakeholders, including broadcasters, producers, pure video-on-demand providers, regulators and trade bodies. Over 170 broadcasters and independent producers were approached, and we have received responses from 34. In addition, a further 62 organisations – both broadcasters and pure VoD providers, were contacted specifically with regard to their non-linear output. Of these, responses were received from 7 broadcasters (2 public and 5 commercial), and 15 pure VoD providers. The majority of completed questionnaires have been received via electronic mail; however, due to some respondents' time constraints, a small number were carried out over the telephone. We have also contacted a number of regulators and trade bodies and have received responses from 15. These interviews were in the main carried out to inform the consortium's thinking on possible monitoring methods for on-demand content. Findings from the interviews with regulators have also been incorporated into the work on monitoring on-demand services, found in Part 10. Currently our sample is weighted heavily towards broadcasters, however this was anticipated, given the limited resources of many of the independent producers we contacted (especially in the smaller nations). Over 83% of the 30 countries included in the study are represented by the current respondents, and together they account for over 88% of the total E30 TV revenue²⁴⁴. The category²⁴⁵ of organisation with whom interviews were

²⁴⁴ See Table 125.

²⁴⁵ Definitions: **Publicly funded broadcaster**: broadcaster funded in the main by a licence fee or government grant (note that some of these broadcasters carry limited advertising); **Commercial broadcaster**: a broadcaster whose funding comes primarily from advertising and sponsorship; **Independent producer**: a producer of television content that is not majority owned by a broadcaster and does not have any affiliations with a broadcaster (note that definitions of independent producer vary by member state e.g. in Germany there is no formal definition of an independent producer). **Pure VoD player**: a provider of a VoD service not linked to a service run by traditional linear broadcasters offering catch-up (and sometimes broadcaster-specific library content), generally operated by cable companies, telecommunications companies, film industries or independent internet players.

conducted or from whom questionnaires were returned is given in Table 124.

Table 124: Interview sample

ORGANISATION	INTERVIEWS CONDUCTED / QUESTIONNAIRES RETURNED
PUBLICLY FUNDED BROADCASTER	12
COMMERCIAL BROADCASTER	23
INDEPENDENT PRODUCER	6
REGULATOR	13
TRADE BODY	2
PURE VoD PLAYER	15
TOTAL	71

Table 125: List of organisations interviewed

COUNTRY	CLASSIFICATION	COMPANY
AUSTRIA	PUBLICLY FUNDED BROADCASTER REGULATOR TRADE BODY	ORF RTR FAFO
BELGIUM	COMMERCIAL BROADCASTER REGULATOR INDEPENDENT PRODUCER COMMERCIAL BROADCASTER COMMERCIAL BROADCASTER PUBLICLY FUNDED BROADCASTER	SBS CSA SKYLINE ENTERTAINMENT BeTV VMMa EEN
CYPRUS	PUBLICLY FUNDED BROADCASTER	CYBC
CZECH REPUBLIC	REGULATOR COMMERCIAL BROADCASTER	RRTV TV NOVA
DENMARK	COMMERCIAL BROADCASTER REGULATOR	KANAL 5 BIBLIOTEK OG MEDIER
ESTONIA	PUBLICLY FUNDED BROADCASTER	ETV
FINLAND	PUBLICLY FUNDED BROADCASTER	YLE
FRANCE	COMMERCIAL BROADCASTER COMMERCIAL BROADCASTER COMMERCIAL BROADCASTER COMMERCIAL BROADCASTER PURE VoD PLAYER PURE VoD PLAYER PURE VoD PLAYER PURE VoD PLAYER PURE VoD PLAYER PURE VoD PLAYER	13 ÈME RUE TF1 ARTE CANAL ACTIVE ZOOLOO KIDS ORANGE VIDEO (LBA) W4TCH MK2 UNIVERS CINE
GERMANY	COMMERCIAL BROADCASTER REGULATOR INDEPENDENT PRODUCER INDEPENDENT PRODUCER	PRO7SAT1 BLM CONSTANTIN MME MOVIMENT
HUNGARY	COMMERCIAL BROADCASTER	TV2
ICELAND	COMMERCIAL BROADCASTER INDEPENDENT PRODUCER	SKJAR ONE ZIK ZAK FILMWORKS
IRELAND	PUBLICLY FUNDED BROADCASTER REGULATOR	RTE BCI
ITALY	TRADE BODY COMMERCIAL BROADCASTER PURE VoD PLAYER PURE VoD PLAYER PURE VoD PLAYER PURE VoD PLAYER	ANICA FOX INTERNATIONAL WIND TISCALI FILM IS NOW FASTWEB
LATVIA	INDEPENDENT PRODUCER	VFS
MALTA	REGULATOR PUBLICLY FUNDED BROADCASTER	MALTA BROADCASTING AUTHORITY PBS
NETHERLANDS	COMMERCIAL BROADCASTER* REGULATOR COMMERCIAL BROADCASTER	UPC CVDM SBS (NL)
NORWAY	REGULATOR COMMERCIAL BROADCASTER	NORWEGIAN MEDIA AUTHORITY TVNORGE AS
PORTUGAL	PUBLICLY FUNDED BROADCASTER	RTP
POLAND	REGULATOR COMMERCIAL BROADCASTER* PUBLICLY FUNDED BROADCASTER PURE VoD PLAYER	KRRIT MULTIMEDIA POLSKA TVP MULTIMEDIA POLSKA
ROMANIA	COMMERCIAL BROADCASTER	PRIMA TV
SLOVAKIA	PUBLICLY FUNDED BROADCASTER	STV
SLOVENIA	PUBLICLY FUNDED BROADCASTER REGULATOR COMMERCIAL BROADCASTER	RTV APEK KANAL A
SWEDEN	PUBLICLY FUNDED BROADCASTER COMMERCIAL BROADCASTER REGULATOR PURE VoD PLAYER PURE VoD PLAYER	SVT SBS (SE) RTVV COMHEM HEADWEB
UNITED KINGDOM	COMMERCIAL BROADCASTER COMMERCIAL BROADCASTER COMMERCIAL BROADCASTER REGULATOR INDEPENDENT PRODUCER PURE VoD PLAYER PURE VoD PLAYER	ITV VIRGIN MEDIA NBC UNIVERSAL OFCOM ALL3MEDIA BT VISION FILMFLEX

* DENOTES PLATFORM OPERATOR

9.2. Building a European On-Demand Sample

Whereas for respondents from the linear broadcasting world the 2005 Study provided a good basis for identifying a sample, in order to evaluate on-demand content we had to carefully construct a new sample. As on-demand is a nascent industry, and Article 3i is new legislation, we had to take special care in constructing a questionnaire for the non-linear providers. The following section identifies some key issues regarding the collection of data from on-demand providers.

9.2.1. A 'lighter' regulation

Non-linear services are subject to "lighter regulation" under the terms of the AVMS Directive, which sets out criteria for the selection of qualifying on-demand services:

According to the AVMS Directive, "On-demand audiovisual media service" (i.e. a nonlinear audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service" (Art 1 (g)). As a consequence, catch-up TV will be a non-linear service, along with, for example, on-demand access to archived content, while NVOD is considered to be a linear service, as the consumer must select to watch content at one of a set of pre-defined times (thus not, strictly speaking, 'at the moment chosen by the user.').

According to Article 3i of the AVMS Directive, Member States must ensure that on-demand services "promote, where practicable and by appropriate means, production and access to European works".²⁴⁶ It specifies that such means may include:

- The financial contribution made to the production and rights acquisition of European works;
- The share/prominence of such works in the catalogues of programmes proposed for the service.

It is further suggested that Member States may pay attention to "minimum share in catalogues", "attractive presentation in electronic programme guides", and, in a further reference to consumption measures in the context of reports on the application of this provision, "effective users' consumption of European works by such services" (Recital 48 of AVMS Directive).

One last element to be noticed is that the AVMS Directive has to be implemented in Member States' national regulation by the end of 2009 so that, apart from a few exceptions (see legal analysis in First Interim

²⁴⁶ Chapter IIb, Article 3i of the AVMS Directive.

Report), these definitions have no legal existence and have sometimes not even been fully debated at Member State level yet.

So our general objective, to research the current realities and future prospects of the non-linear world as far as Article 3(i) is concerned, needed to reflect the fact that this Study anticipates a legal reality that will take shape during 2008 and 2009, that definitions are tentative, that market players have no obligations yet, and that they sometimes have no clear view on Article 3i, to help us feed the research with clear facts and opinions.

In light of these considerations, we decided to:

- Research a wider range of digital audiovisual services including, for example, some NVOD or Content Sharing platforms, in order to put our findings regarding non-linear services in the broader context of digital convergence. All our discussions with these players will be taken into account from a qualitative viewpoint, but their questionnaires will not be included in the quantitative analysis.
- Use and apply, where possible, the same performance indicators as those used for linear services in order to build a first picture of the non-linear situation that allows comparisons with the better-known world of linear media;
- Develop a prospective approach to designing performance indicators that could be applied, today and in the future, to the specificities on non-linear services;

9.2.2. Collecting on-demand data

Collecting data on non-linear services presents two important challenges:

- The lack of programme and consumption data available from third-party, independent organisations comparable with that which TAM companies are able to provide on linear services;
- The fact that the AVMS Directive is still at an early stage of being debated and not yet implemented, so players have no obligations to display information, which they sometimes do not even have internally.

We thus had to rely heavily on service providers' goodwill to share data on the content on offer and its consumption, as well as their views on the most appropriate procedures that could be developed in the future to monitor and assess activities at periodic intervals.

Therefore we prepared an official request to collaborate in the Study, requesting on-demand services to share internal data and views in confidence, focusing on 5 areas²⁴⁷:

²⁴⁷ The complete questionnaire is available in Appendix V (chapter 17 of this report).

- The description of their on-demand services;
- The types of programmes available in their catalogue and actually consumed by their consumers;
- The share of European programmes within that;
- Their programming strategies and motivations behind programming decisions;
- Their views on how Article 3(i) of the AVMS Directive should be technically implemented.

It is important to note early on that we have indeed received a number of refusals to take part, from companies who either said that the information needed for the Study was too confidential to be shared, even if strict confidentiality was ensured, or because they felt that they were not concerned with the AVMS Directive, of which they were frequently even unaware. In some markets, the reason was simply that on-demand services had not yet been launched in the market (or, in some cases, had not been launched during 2007).

9.3. Objectives of Qualitative Information Gathering

The objectives of the qualitative information gathering via the surveys of broadcasters, producers, regulators and pure VoD players²⁴⁸ were:

9.3.1. To identify the determinants of programme spending decisions:

- How broadcasters allocate overall programme spending by genre;
- How broadcasters decide on the balance between commissioned and acquired programmes in the schedule;
- Any major changes in budgetary decisions over the last five years;
- How spend varies by programme type i.e. acquisitions versus commissions;
- How funding for programming varies by genre;
- Whether broadcasters have been investing any monies in producing programming specifically for on-demand services.

²⁴⁸ To be specific, all the below objectives were targeted with questions in the survey given to broadcasters and producers. The survey of pure VoD players did not contain questions designed to address points 8.3.1, 8.3.2 or 8.3.3, instead focussing on questions to collect data on the objectives detailed in 8.3.4 and 8.3.5.

9.3.2. To understand the dynamics of co-productions

This part of the questionnaire was designed to assess whether broadcasters were participating in more or less co-productions and with whom they tend to work, in terms of the organisation type (film studio, independent producer or broadcaster) and geography of the organisation (domestic, European, US, other).

9.3.3. To find out more about the economic performance of the audiovisual sector and content producers

We also gathered information and data about the economic performance of the independent production sector along with developments around terms of trade and its impact on the independent sector's business.

9.3.4. To find out more about the programming policies of on-demand contents service providers

As detailed above, we collected information on the content available on non-linear services, via the questionnaires for broadcasters, producers and pure VoD players. Data were requested on type of content available, country of origin, consumption of content and financing of content. Respondents were also asked to discuss their programming policies specifically as well, for example being asked what their policy was towards European content. Data acquired from this research will be used to attempt to create a snapshot of on-demand content in Europe as of the end of 2007.

9.3.5. To assess the level of awareness around Article 3i and respondents' views on methods for monitoring compliance

This section of the questionnaire gave respondents (broadcasters, producers and pure VoD players) the opportunity to comment on potential ways to monitor on-demand services in order to ensure compliance with Article 3i. We invited comments on a number of key areas surrounding new media and asked respondents to include any information currently available about their own on-demand services.

The questionnaires and interviews provide quantitative and qualitative information that add significant depth and colour to our picture of the sector. They enhance our understanding of the commercial imperatives under which the broadcasting and production industries operate, and offer the views of the different constituencies affected by Articles 4 and 5 of the TVWF (and AVMS) Directive and Article 3i of the AVMS Directive.

9.4. Determinants of Programme Spending Decisions

There are three important sets of decisions made by broadcasters that we wanted to explore. The first of these is the balance between commissioned and acquired programmes in the channel schedule; this is influenced by the cost of commissioning programmes compared with the cost of acquiring ready-made programmes. The second decision is from whom broadcasters commission new programmes; and the third decision is the source of acquired programmes (particularly the balance between European-made programmes and programmes from the US).

9.4.1. Overall programming spend and the balance between commissions and acquisitions

Firstly we asked broadcasters about how spending on programming varies by genre. Our study revealed that the most capital-intensive is production of fiction, subsequently entertainment and news programming (see Table 126). In addition, these genres were also identified by a majority of broadcasters (over 60%) as cheaper to produce in-house (see Figure 55).

Table 126: 2007 spend on programmes by genre

GENRE	PROPORTION OF TOTAL SPEND
FICTION	32%
ENTERTAINMENT	16%
NEWS	13%
SPORT	10%
CINEMA FILM	8%
FACTUAL MAGAZINES	8%
DOCUMENTARIES	8%
GAMES	4%

Within this section, broadcasters were asked how that spend is broken down in terms of programmes produced in-house, externally and acquired programming²⁴⁹. We found that broadcasters invested the majority (61%)

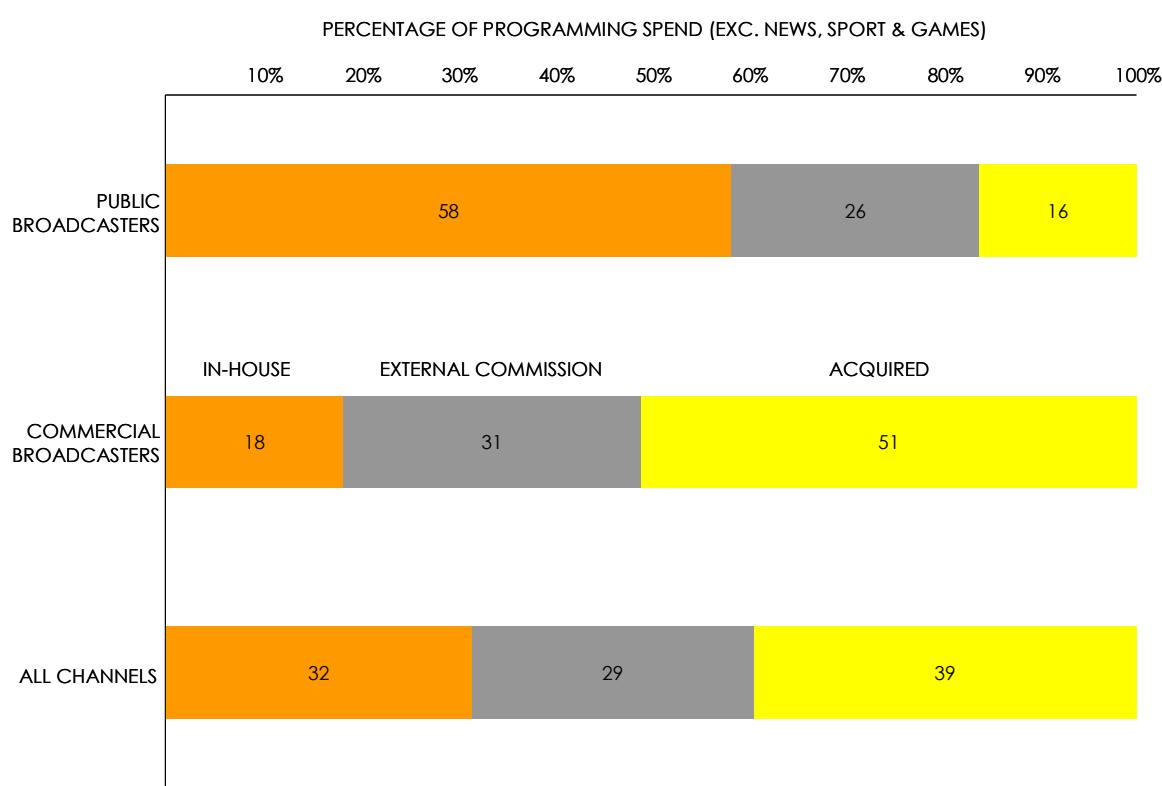
²⁴⁹ Definitions: In-house is defined as programming commissioned by the broadcaster and produced using the broadcaster's own production facilities, staff and equipment; External is defined as commissioned programming produced by a producer unaffiliated with the commissioning broadcaster (e.g. an independent producer or another broadcaster's production house); Acquired is ready-made programming, whereby the broadcaster purchases the rights to broadcast a show/film/event a certain number of times (normally specific to a particular territory) e.g. US drama, sporting events, feature films.

of their programme budget on commissioned programmes (external commissions and in-house), with the remainder (39%) spent on the acquisition of ready-made programmes.

Commissioning spend of the broadcasters we surveyed was equally balanced between in-house (32%) and external spend (29%). In this case, the external market is defined as both productions by independent producers and productions by the production facilities of other broadcasters²⁵⁰.

One key finding was the difference in programme budget allocation between public and commercial broadcasters. Commercial broadcasters tend to allocate a higher proportion of their programme budget (51%) to acquired programmes, and a significantly lower proportion (18%) to in-house production. Contrastingly, publicly funded broadcasters tend to invest heavily in in-house production (58%) and far less on acquisitions (16%). It is worth noting that the low in-house production spend for commercial broadcasters may simply reflect the fact that many of them have no in-house production capability. The data is summarised in Figure 55.

Figure 55: Channel programme spend allocation (2007)²⁵¹



In order to assess how the development of formatted programming has impacted the programme portfolio, we asked broadcasters more specifically what proportion of their programming budget was spent on

²⁵⁰ Production facilities of other domestic broadcasters do not qualify as independent production spend.

²⁵¹ Response to Q1.2: 'What percentage of your programme budget was spent on each of the following categories of programme.'

commissioning formats.²⁵² We found the majority of format commissioning is by commercial broadcasters with an average of 10% of their total programming budget invested in commissioning formatted programming. For the publicly funded broadcasters, only 6%²⁵³ of their programming budget was spent on commissioning formats. This gap in format investment between publicly funded and advertising funded broadcasters is down to balancing risk. Advertising funded broadcasters typically opt for tried and tested formats in order to guarantee audience share (and thus satisfy advertisers), whereas publicly funded broadcasters often have a remit to adhere to that ensures they must promote innovation, education and invest in local programming. Publicly funded broadcasters are also typically less focussed on audience share and can therefore afford to take on more risk and invest in more ‘risky programming’, such as high quality dramas or controversial documentaries.

This part of the questionnaire also identified that there has been a general shift across both publicly and commercially funded broadcasters towards external commissioning, with over 70% of respondents stating that the proportion of external commissioning had increased over the last five years²⁵⁴. Around 47% of respondents stated that the proportion of acquisition spend had increased over the last five years, while only a quarter of the panel stated that the proportion of in-house spend had increased. We also put the same question to a number of independent producers across Europe and received a similar response, with around 50% of respondents stating that the number of external/independent commissions has increased over the last five years.

We also assessed how the cost of programming for the broadcaster varies by commissions and acquisitions. We found that the majority of broadcasters felt that almost all genres²⁵⁵ were cheaper to produce in-house, with over 60% of respondents stating that news, sport and entertainment are cheaper to produce in-house than externally. The only genre all respondents felt is cheaper to produce externally was cinema film. The results are summarised in Figure 56.

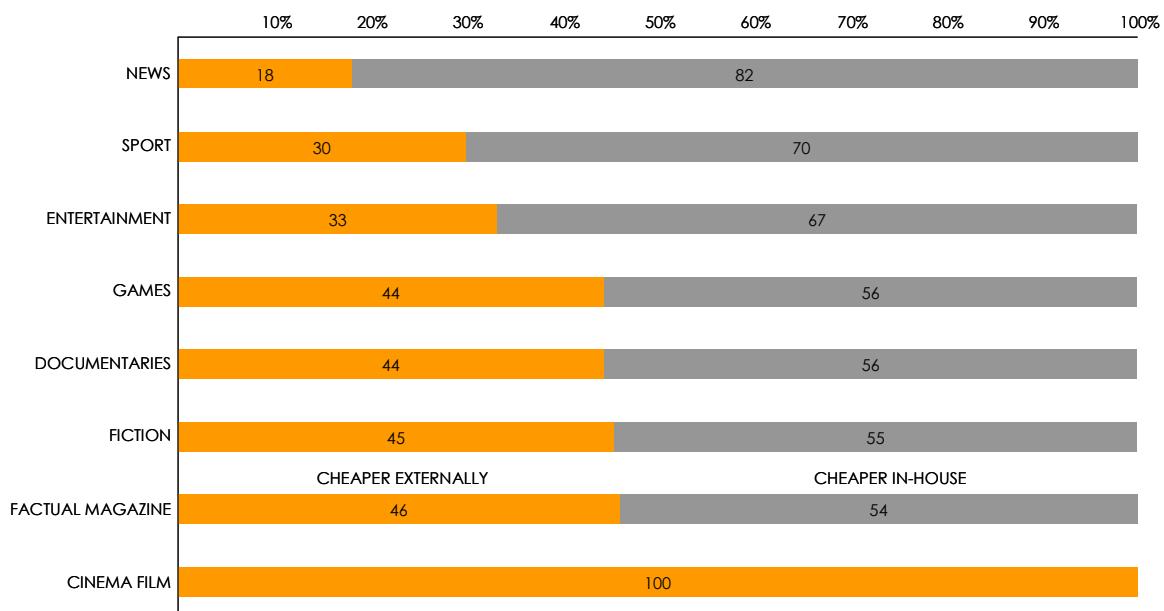
²⁵² A format is defined as any programme locally adapted for broadcast in at least one other market than the market of origin and for which a licensing fee is payable, e.g. *Who Wants to Be a Millionaire*, *Betty la Fea*.

²⁵³ This figure was skewed slightly by two publicly funded broadcasters who both reported high levels of investment in formatted programming. Generally, the level of investment sits between 0% and 3%.

²⁵⁴ There are a number of potential explanations for increased commissioning spend across Europe including: changing regulation in Member States ensuring broadcasters spend a specific proportion of programme budgets on external production; a more competitive independent environment reducing commissioning prices for broadcasters; a shift of talent into a burgeoning independent sector; and/or a reduction in in-house production capacity forcing broadcasters to ‘outsource’ certain types of production.

²⁵⁵ Entertainment, fiction, documentaries, factual magazine and news programming.

Figure 56: Price differentials for commissioned programmes²⁵⁶
 RESPONSE TO QUESTION 5.1



9.4.2. Commissioning new programmes

We then asked broadcasters to focus on their decisions about commissioning new programmes, and specifically the decision-making processes that determine the mix of programmes produced in-house and commissioned externally.

Broadcasters have three basic sources of new programmes: established broadcasters (particularly publicly funded channels) typically have an in-house production capability; a broadcaster may commission programmes from the in-house production unit of another broadcaster; or alternatively the broadcaster may commission a producer independent of the broadcasters to make a new programme.

²⁵⁶ Response to Q5.1: 'If you produce programmes in-house, please indicate whether these are cheaper to produce in-house or to commission externally.'

Figure 57: Commissioning by production category (2007)²⁵⁷

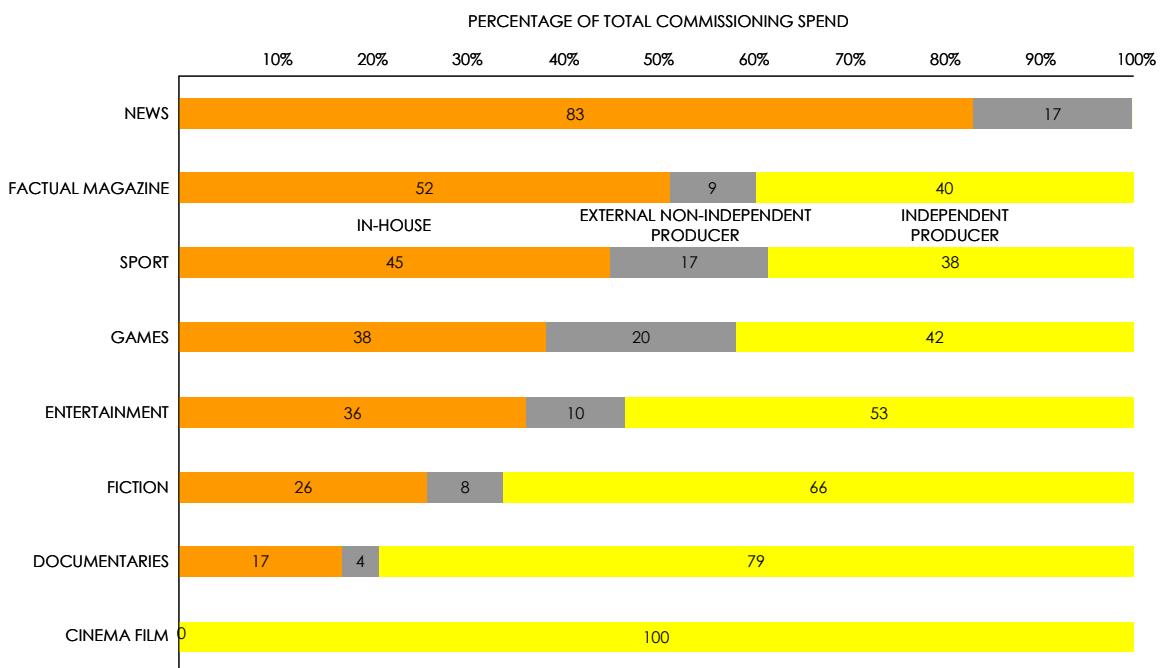


Figure 57 illustrates the proportion of commissioned programming spend from each source identified above. The figure shows that the vast majority of news programming is produced in-house, while cinema film and documentaries tend to be produced externally. Fiction, entertainment and factual magazine programming have a more balanced mix in terms of sourcing, with 20% to 50% produced in-house and 40% to 70% produced by independent producers. Documentaries are rarely produced in-house and cinema film is always sourced from the external market (typically Hollywood studios or local/domestic independent producers). In news, games and sport over 15% of programming is made by other broadcasters e.g. Five in the UK sourcing their news programming from Sky.

We also asked broadcasters how commissioning spend has changed over the last five years. Over 82% of broadcasters stated that external spend has grown, with 38% claiming in-house spend has fallen in the past five years. Approximately 79% of the broadcasters polled stated that increased commissioning spend was particularly pronounced in fiction, while 57% said it was also pronounced in entertainment, implying that these genres in particular are being more regularly outsourced to the external production market.

In addition, we were keen to investigate how spending on format-based commissions varied by genre in 2007 and whether there had been a major shift in format spending over the last five years. Over 64% of format commissioning was invested in entertainment and games formats such as

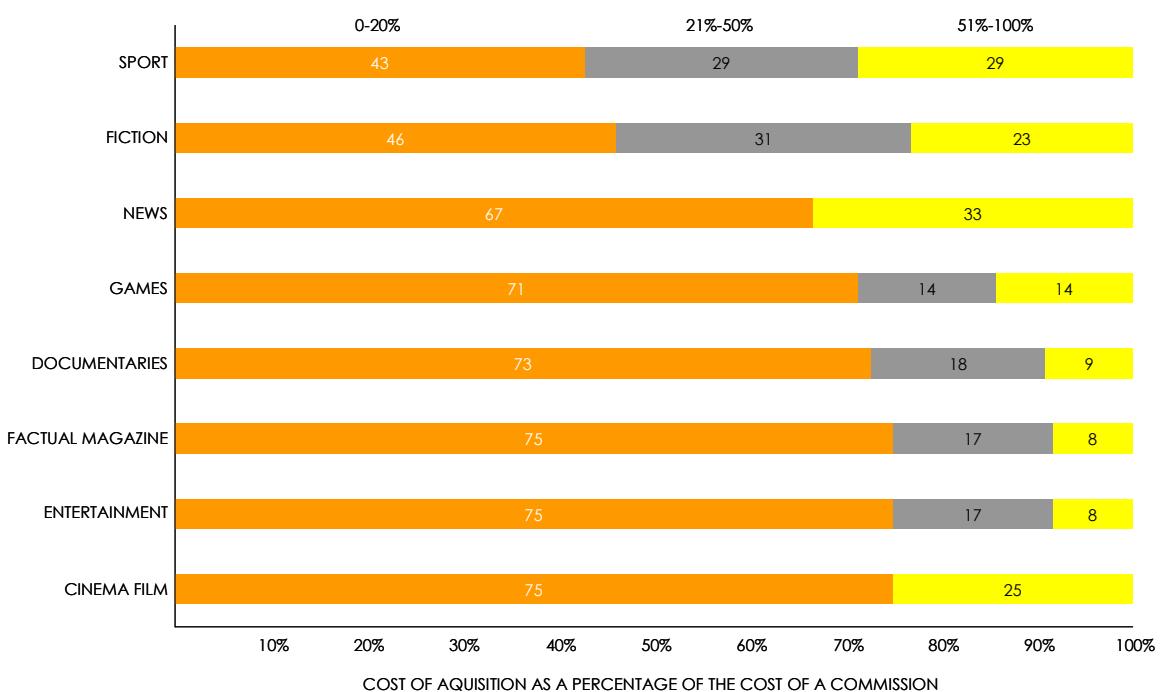
²⁵⁷ Response to Q2.2: 'Divide commissioned programmes in each genre according to the three production categories of: in-house production, programmes produced externally by non-independent producers, or programmes produced externally by independent producers.'

Pop Idol or *Deal Or No Deal*, while over a third of broadcasters stated they had spent less on format commissioning over the last few years, both in-house and externally.

9.4.3. Decisions about programme acquisitions

We also wanted to understand more about the decision to acquire programming rather than commission, either in-house or externally. In the first section of the questionnaire we asked broadcasters to give a rough estimate of the cost of acquiring ready-made programming as a percentage of the cost of commissioning a similar type of programme. The results are summarised in Figure 58:

Figure 58: Cost of acquisitions as a percentage of the cost of commissions (by genre)²⁵⁸

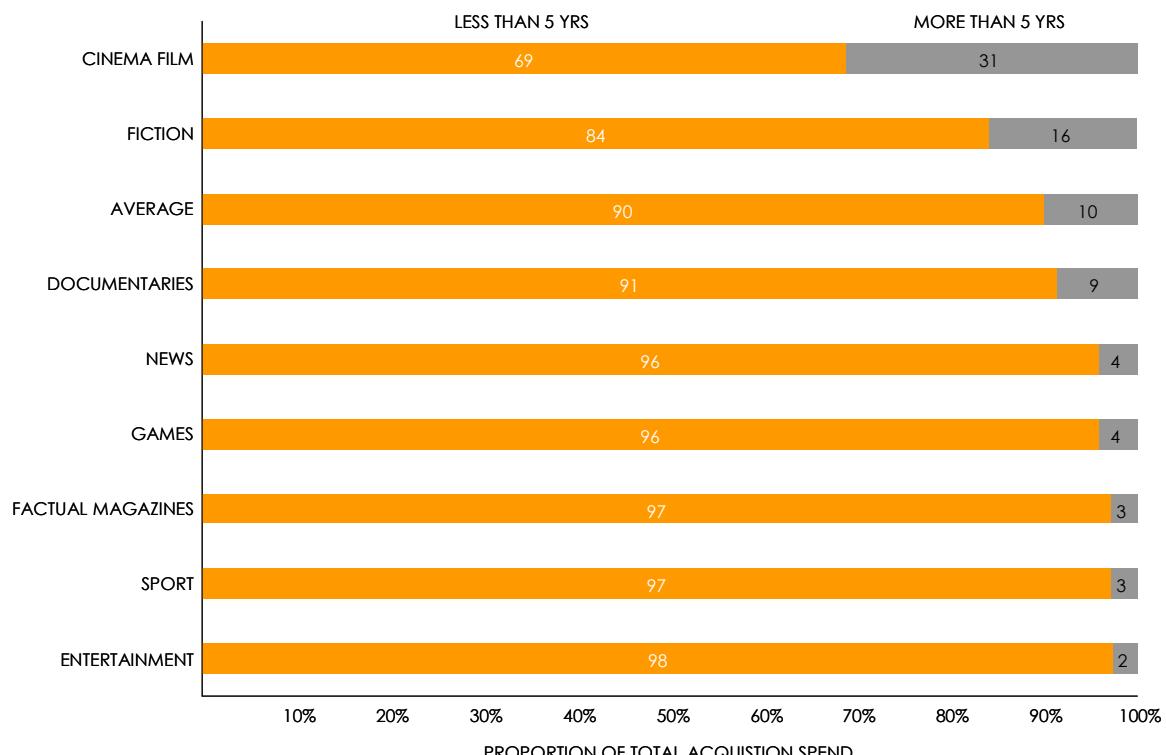


Across all genres, except sport and fiction, over 65% of broadcasters stated that acquired programming cost over 80% less than commissioned programming. Within this, 75% of respondents felt that acquiring factual magazine and entertainment programming cost under 20% of the investment required to commission a similar programme. The response for fiction was more mixed, with over 23% of respondents stating that acquired fiction programmes can cost over 50% of the cost of commissioning. This is probably a reflection of the high cost of American imports such as *24*, *Lost* and *CSI*, which are acquired at significant cost relative to standard commissioning budgets.

²⁵⁸ Response to Q1.6: 'For each genre please tell us the cost of acquiring ready-made programmes as a percentage of the cost of commissioning a similar programme.'

We also asked the broadcasters about the balance of their acquisition spend between new programming (programming made within the last five years) and library acquisitions (programming made over five years ago). With the exception of fiction and cinema film, over 95% of acquisition spend was on programming produced in the last five years. For fiction and cinema film the proportion of newer programming was slightly lower (81% and 69% respectively). The results are summarised in Figure 59.

Figure 59: The balance between new and library programme acquisitions²⁵⁹



Finally we asked broadcasters from where they source acquired programming. A summary of the results can be found in Table 127.

²⁵⁹ Response to Q6.2: 'What percentage of your 2007 spend on programme acquisitions was spent on programmes that are less than five years old.'

Table 127: Source of acquired programmes (2007)²⁶⁰

SOURCE OF ACQUIRED PROGRAMMING	PROPORTION OF TOTAL ACQUISITION SPEND
US BROADCASTERS OR PRODUCERS	56%
BROADCASTERS OR PRODUCERS OUTSIDE EUROPE AND THE US	23%
DOMESTIC PRODUCERS	14%
OTHER DOMESTIC BROADCASTERS	5%
BROADCASTERS OR PRODUCERS IN ANOTHER EUROPEAN COUNTRY	3%

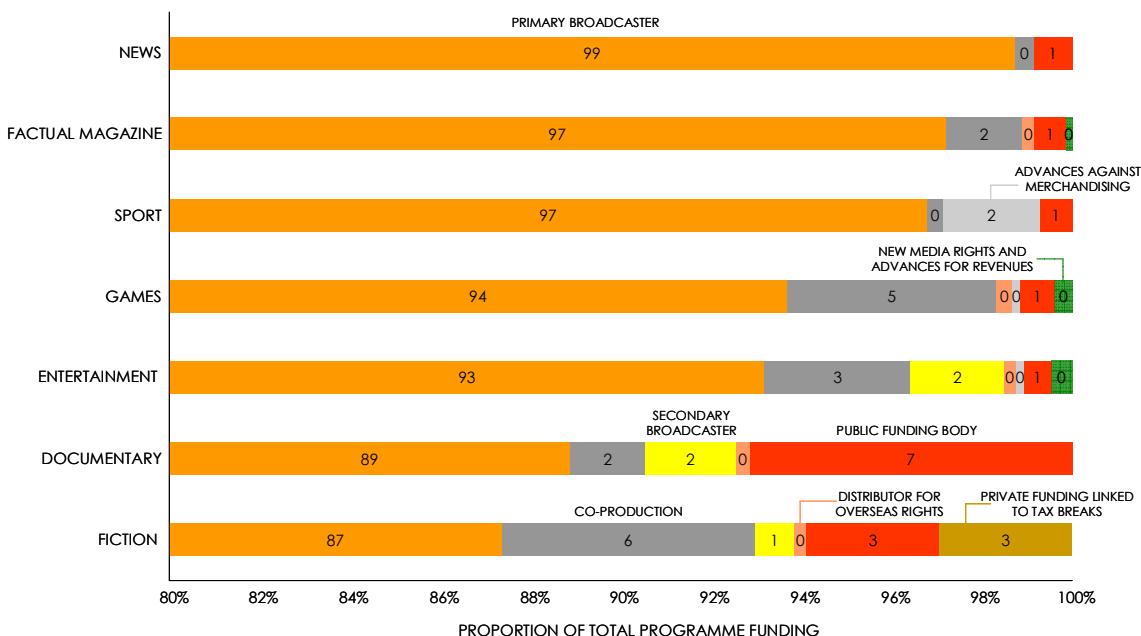
The broadcasters contributing to the study purchased over half of their acquisitions from the US and just under 25% from content owners in another European country. Only 19% of acquired programming was from the broadcasters' respective domestic market and just over 3% of acquired programming was from content owners outside Europe and the US (mostly from Asia).

9.5. Financing of New Programmes

We were also keen to understand how the financing of programming has changed in the face of new media developments and a rise in the number of multi-national co-productions. Figure 60 summarises this research.

²⁶⁰ Response to Q6.3: *'What percentage of the ready-made programmes you acquire do you purchase from the following sources?'*

Figure 60: Contribution to funding of new programmes²⁶¹



Across all genres, over 85%²⁶² of funding comes from the primary broadcaster, with between 1% and 7% from a secondary broadcaster or a co-producer²⁶³. Only in sport does funding flow from merchandising advances, while all genres receive limited public funding, however the large majority of this is licence fee monies rather than direct public funding.

We asked a number of European independent producers a similar question and the response was broadly similar²⁶⁴. For all genres other than fiction, producers stated that over 90% of funding was sourced from the primary broadcaster, with some from various other sources. For fiction programming 88% is sourced from the primary broadcaster, just under 3% from public subsidies and around 10% from private funding linked to tax breaks.

²⁶¹ Responses to Q3.1 – Q3.7: 'What are the sources of funding for programmes you commission?'

²⁶² Please note that on graph, scale starts at 80%

²⁶³ The primary broadcaster is the main commissioner of the programme and will typically retain the first showing domestic rights, while the secondary broadcaster or co-producer may finance some of the production in order to retain international rights.

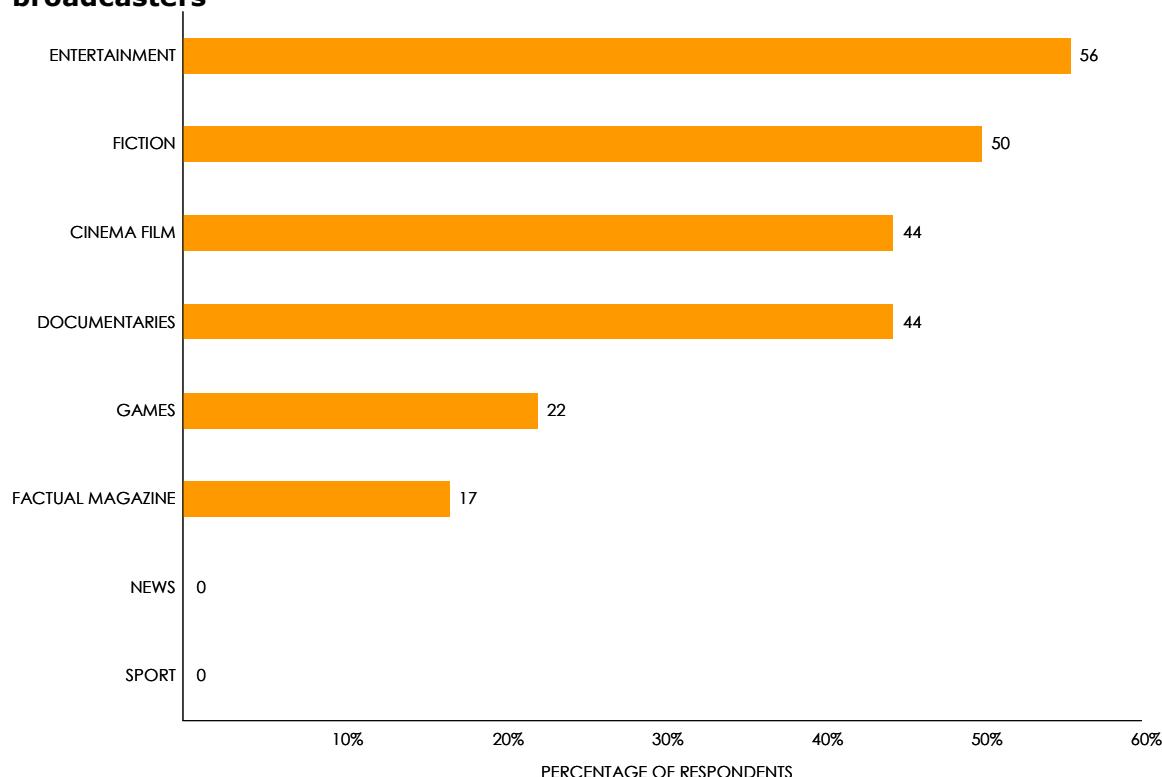
²⁶⁴ Responses to Q3.1 – Q3.7: 'What are the sources of funding for programmes you produce?'

9.6. Co-Production between Member States and Intra-Community Trade in European Works

We asked both independent producers and broadcasters a number of questions related to co-productions in order to build a better picture of the most popular co-produced genres and most common region for co-productions.

Approximately 86% of broadcasters co-produce programmes, while over three quarters of independent producers in our sample co-produce programming. The broadcasters highlighted entertainment as the most commonly co-produced genre, shortly followed by fiction and cinema film (see Figure 61). Factual magazine programming and games are rarely co-produced, while news and sport are never produced in partnership with a third party.

Figure 61: Genres most commonly co-produced by European broadcasters²⁶⁵



Both producers and broadcasters identified domestic co-productions and co-productions with other European producers as the most commonplace. For broadcasters this was closely followed by multi-country European co-productions, with broadcasters in the larger Member States often producing programming with each other and neighbouring countries. Co-productions with Canadian and US producers were far less popular and are

²⁶⁵ Response to Q4.2: 'Please indicate which genres you mainly co-produce.'

probably limited to a small number of French/Canadian co-productions and some between Western European broadcasters and cable networks in the US. These results are summarised in Table 128.

Table 128: Domestic and international co-productions²⁶⁶

CO-PRODUCTION REGION	RANKING (1 - MOST, 6 - LEAST)
DOMESTIC	1.3
OTHER EUROPEAN	1.3
MULTI-COUNTRY EUROPEAN CO-PRODUCTIONS	2.3
OTHER	2.5
CANADA	3.7
US	4.5
LATIN AMERICA	6.0

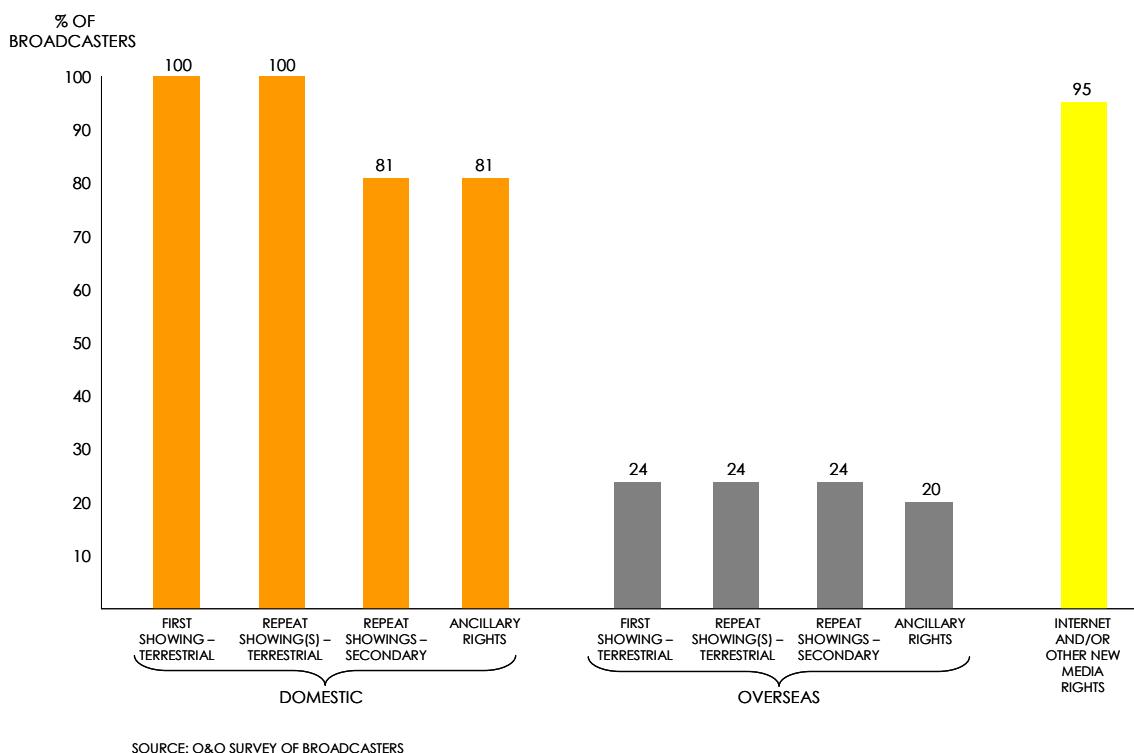
9.7. Terms of Trade

Over the last few years the terms of trade around rights ownership have become increasingly more complicated. New media rights (including on-demand) and overseas exploitation rights are fast becoming significant new revenue streams for the rights holder. We asked both broadcasters and producers about this issue in order to get a reflection of what each party expects from negotiations.

The results from one of the questions asked of the broadcasters are summarised in Figure 62.

²⁶⁶ Broadcasters were asked to rank the regions where they co-produce according to the highest number of co-productions i.e. if the majority of co-productions are with domestic producers followed by Latin American producers, the ranking would follow: domestic producers = 1 and Latin America = 2 and so on.

Figure 62: Rights ownership²⁶⁷



As is illustrated, 100% of respondents stated that they expect first (and repeat) showing domestic terrestrial and new media rights (including on-demand rights) when commissioning programmes externally. Around 81% of respondents stated that they expect repeat showings in the domestic secondary market and domestic ancillary rights. Only around 24% of broadcasters expect to negotiate overseas rights for externally commissioned programming, implying that commercial exploitation in the export market is the producer's responsibility.

The majority of broadcasters also felt that the terms of agreements negotiated with independent producers were about as favourable to both parties as agreements for other programmes commissioned externally²⁶⁸. Only 17% of broadcasters felt the terms of trade were less favourable for the independent sector.

In asking producers about similar rights issues, we found that around a third of respondents felt the payment they receive for rights is less than the value they could create from them over a given period. This implies that producers believe broadcasters do not exploit programming productions as effectively as they would do themselves, i.e. export opportunities are not currently fully exploited, because broadcasters do not pursue these opportunities as energetically as producers would do. Around three quarters of producers stated that they retain about the same level of rights to programmes as they did five years ago, while 75% of

²⁶⁷ Response to Q 5.1: 'What exclusive rights would you seek to obtain when you commission programmes from external producers?'

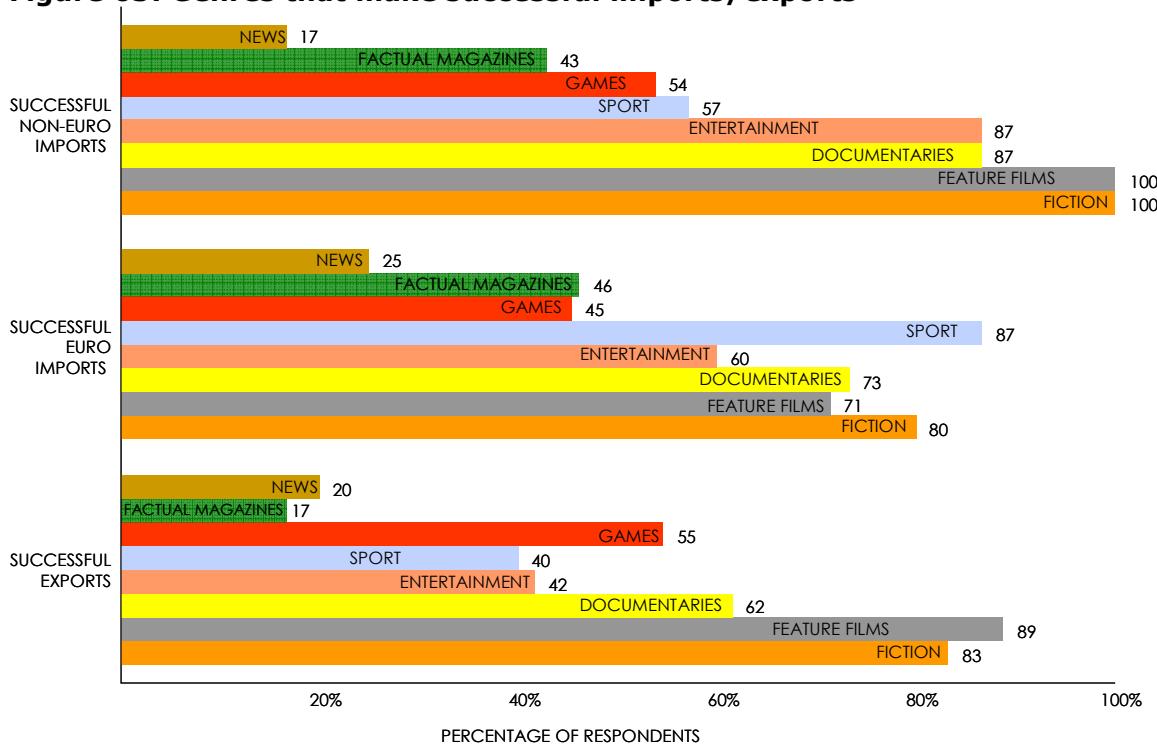
²⁶⁸ This implies both the broadcasters and the independent sector feel they are receiving an appropriate level of rights retention during the commissioning process.

respondents stated the margins they earn on programming rights has fallen over the same period. Three quarters of producers also felt there should be a statutory limit on the period that a broadcaster can have exclusive use of primary rights. The comments from producers around this question were in-depth, with a number of respondents from outside the UK (where terms of trade for producers have improved significantly in the last few years) indicating that the retention of rights for the producer would incentivise producers to improve their creative performance and encourage both producers and broadcasters to take a more international view on programme making, potentially increasing secondary revenues in the long term.

9.8. The Balance of Trade in Programming

In this section we asked broadcasters and independent producers to identify which genres and formats of programming work well in the international market (i.e. highly exportable genres) and whether there are certain genres/formats that can be successfully imported from abroad. Figure 63 and Figure 64 summarise our findings.²⁶⁹

Figure 63: Genres that make successful imports/exports²⁷⁰

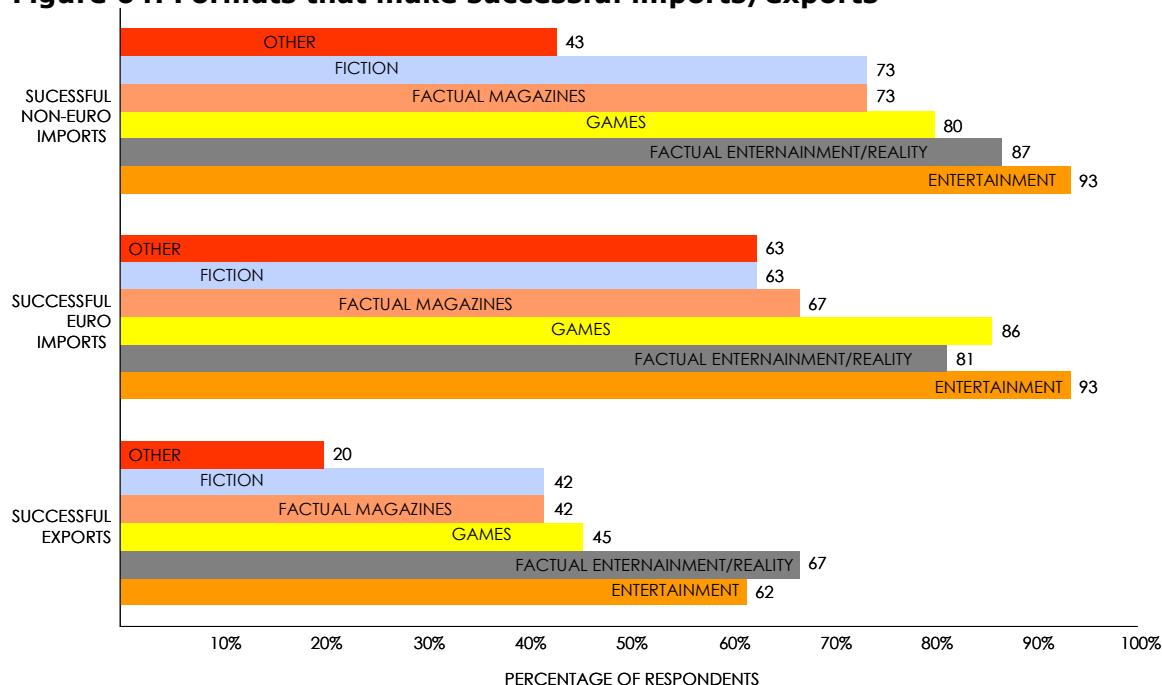


²⁶⁹ Please note that although both broadcasters and independent producers were surveyed on this issue, we have only received one response on this topic from producers. Therefore the figures and discussion in this section deal only with responses from broadcasters. We are currently making strong efforts towards gaining more responses from independent producers on this issue and others.

²⁷⁰ Response to Q7.1 – Q7.3: 'Which of the following genres: make the most successful exports; can be successfully imported from another European country; can be successfully imported from outside Europe.'

The chart above illustrates that fiction and feature films were assessed by broadcasters as being the most successful in the international market, while news and factual magazines were seen as inherently local and therefore unlikely to sell well abroad²⁷¹. Sport, documentaries, fiction and feature films were all rated highly as potential European imports, while news and factual magazines were given low ratings, with under 25% of broadcasters viewing the genres as potential imports. All broadcasters stated feature films and fiction from outside Europe (mainly from the US) were attractive and tended to be very successful in primetime schedules, driving audiences and consequently advertising revenue. Again, news and factual magazines were not seen as particularly appealing imports due to their focus on local issues.

Figure 64: Formats that make successful imports/exports²⁷²



As illustrated in Figure 64, only entertainment and factual entertainment/reality formats were rated above 50% as potentially exportable formats. The exporting of formats is a fairly recent development in television markets and there is only a small number of countries that have successfully managed to exploit formats on a global scale (UK with *Dancing With The Stars*, The Netherlands with *Big Brother* and Sweden with *Survivor*). Some of the smaller markets in Europe are still reliant on tried and tested formats from the larger nations and, with very little overall export activity, have little incentive to drive growth in formats that could potentially be sold in the international market. These smaller nations have been far more active in the import market illustrated by over 80% of respondents highlighting reality, entertainment and games as highly successful European imports. These three format genres

²⁷¹ Example from Figure 9: Top bar representing 'Fiction' indicates that 100% of respondents feel imports from non-European countries are successful while middle bar suggests 79% of respondents feel 'Fiction' imports from European states are successful.

²⁷² Response to Q7.4 – Q7.6: 'Which of the following format genres: make the most successful exports; can be successfully imported from another European country; can be successfully imported from outside Europe.'

also rated highly when broadcasters were asked about the success of formats from outside Europe (over 80% for each category).

9.9. The Development of On-Demand Services

The survey of on-demand service providers covered a wide range of quantitative and qualitative questions, aiming both to identify appropriate procedures and indicators for monitoring Article 3i (See Chapter 10 for more detail), and to collect data that performance indicators could be applied to. This section of the study presents the aggregate results from the survey of on-demand services. Results at the service-by-service level for key performance indicators are presented in Chapter 10.

Operational procedures for monitoring Article 3i will be discussed in more detail in Chapter 10. At this stage it is important to acknowledge that there are two main legal scenarios for operational procedures: self-declarations from providers, and independent evaluation, be it by a government agency or independent consultant. The work on linear services, detailed in previous chapters, exemplifies the second scenario, specifically the independent monitoring of linear services by an independent consultant (it thus acts to verify the self-declared data from linear broadcasters that the European Commission receives).

However, for non-linear services, we have not replicated this approach, instead evaluating non-linear services on the basis of self-declarations from service providers. The particular reasons for this approach, and why independent evaluation of non-linear services is not feasible at this time, are discussed in Chapter 10.

This chapter presents the aggregate data collected from self-declarations from non-linear services. It thus presents an overview of the non-linear environment, based on our sample. There is both a quantitative and a qualitative component to the research presented. Parts 9.9.1 to 9.9.5 are based on quantitative data from the self-declarations of service providers. Parts 9.9.6 and 9.9.7 present qualitative data based on opinions provided via the self-declarations. While 9.9.6 and 9.9.7 are based on data acquired through the survey of on-demand service providers, the subsequent section on prominence has been approached somewhat differently. It is predominantly based on desk research by the consultants, who looked at a selection of services and evaluated the prominence that European content had on those services (supplemented by qualitative data from the survey).

9.9.1. Distribution and content of on-demand services

Transmission mode

We asked broadcasters, producers and pure VoD players about their on-demand activities. Around two thirds of broadcasters surveyed had some form of on-demand service already implemented, while two thirds of producers supplied content to one or more on-demand services.

Obviously, 100% of the pure VoD players said they operate on-demand services.

48% of broadcasters supply content to third-party on-demand providers such as Joost, Telenor Mobile TV in Italy and C-More in Belgium. Only 22% of respondents had user-generated content on their on-demand service, ranging from forums and video uploads to a kiosk for webcam blogs and user participation in games. For pure VoD players the number is even lower, with 17% of them offering user-generated content.

We also asked respondents about the delivery platforms used for their own (or third-party) on-demand services. The results are summarised in Table 129).

Table 129: Transmission mode of on-demand services²⁷³

TYPE	PROPORTION OF RESPONDENTS	
	Broadcasters	Pure Players
INTERNET/IPTV	92%	92%
MOBILE	40%	0%
CABLE	32%	25%
SATELLITE	4%	0%
DTT	4%	0%
OTHER	0%	0%

Almost all respondents to this question, both broadcasters and pure VoD players, have content available via on-demand services distributed via the internet or IPTV. This is a striking illustration that the internet and IPTV technologies have become the preferred distribution solution for players active in the on-demand sector.

The second most used technology by broadcasters is mobile (40%), followed closely by cable (32%). Broadcasters also report using satellite and DTT (4% each). Conversely, pure VoD players from our sample only mentioned cable (25%) as another distribution technology for their on-demand services beyond the internet or IPTV. However, it is important to note that our sample may be biased here, as in general we received responses from on-demand services using internet and cable platforms. Other distribution technologies are in use by some pure VoD players, such as mobile or DTT.

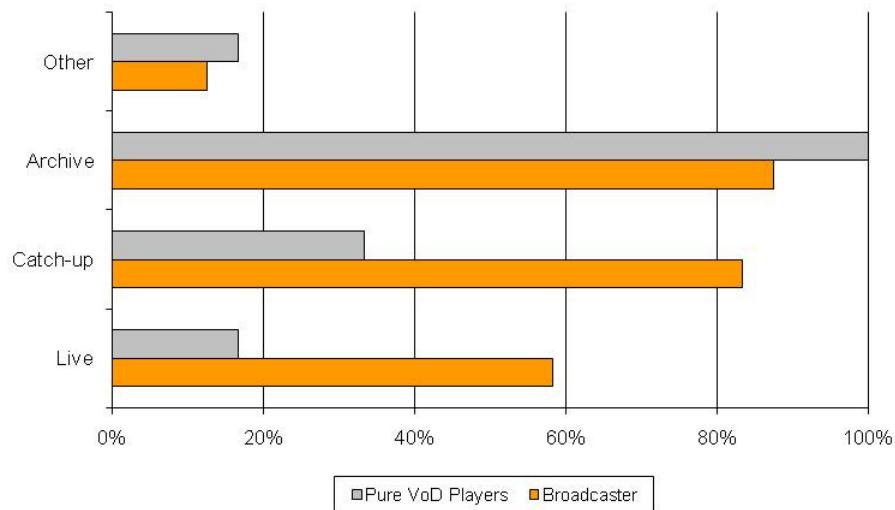
Type of programming

There is a difference in the programming offered by on-demand services from broadcasters, as compared with pure VoD players. While broadcasters generally offer a balanced mix of live, archive and, more

²⁷³ Response to Q10.5 from Broadcasters' questionnaire: '*How is the on-demand service distributed.*' (Number of respondents: 25 broadcasters, 12 pure players)

recently, catch-up services (see Figure 65)²⁷⁴, pure VoD players show a clear preference for archive material. Archive is important for broadcasters too, with 87.5% of broadcasters reporting that they have archive content on their on-demand services, while 83.3% have catch-up material (normally for 7 days), and 58.3% live streamed content (normally news, with some sport and flagship series). For pure VoD players the numbers are 100% for archive, 33.3% for catch-up and 16.7% for live.

Figure 65: Type of programming offered on the broadcasters' on-demand services, 2007²⁷⁵



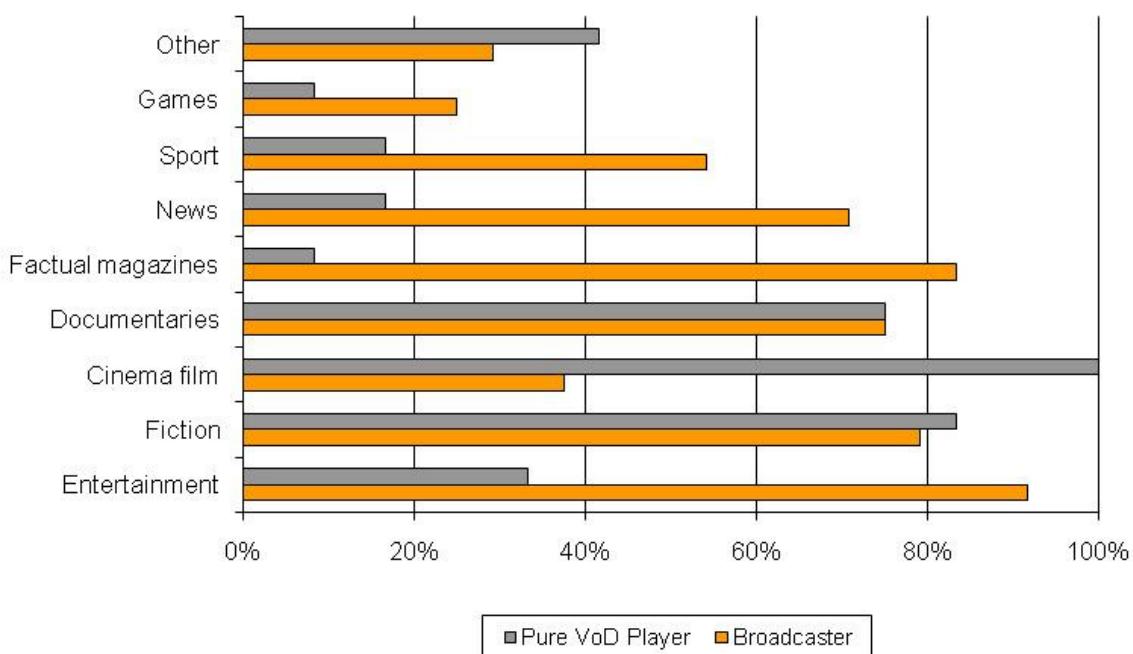
²⁷⁴ 'Other' category in Figure 65 includes contact such as clips, unseen footage, behind-the-scenes specials etc.

²⁷⁵ Response to Q10.6 from Broadcasters' questionnaire: '*What type of programming is offered on the on-demand service?*' (Number of respondents: 24 broadcasters, 12 pure players)

Genre of programming

With regards to the genre of programming (see Figure 66), the picture again looks different when we look at broadcasters as compared with pure VoD players. Broadcasters offer a more balanced mix of genres on their VoD services, reflecting the fact that a large part of their catalogue is derived from their television schedules. Entertainment, factual magazines, TV fiction, documentaries and news are present on more than 70% of the respondent broadcaster's on-demand services. Games (25%), cinema film (37.5%) and to a lesser extent sports (37.5%) were less popular, the latter two probably because of rights issues and, in the case of delivery over the internet, bandwidth restrictions. By comparison, pure VoD players predominantly offer the genres that fit with their archive focus, that is, cinema film, TV fiction and documentaries. Cinema film was the most preferred genre for the pure VoD player respondents to our survey, as 100% of them said they offer some films, compared with 83% for TV fiction and 75% for documentaries. Also worth noting, 42% of pure VoD players in this survey said they offer "other" genres of programming, consisting mostly of childrens and adult content.

Figure 66: Genres available in programming catalogue of broadcasters' on-demand service²⁷⁶

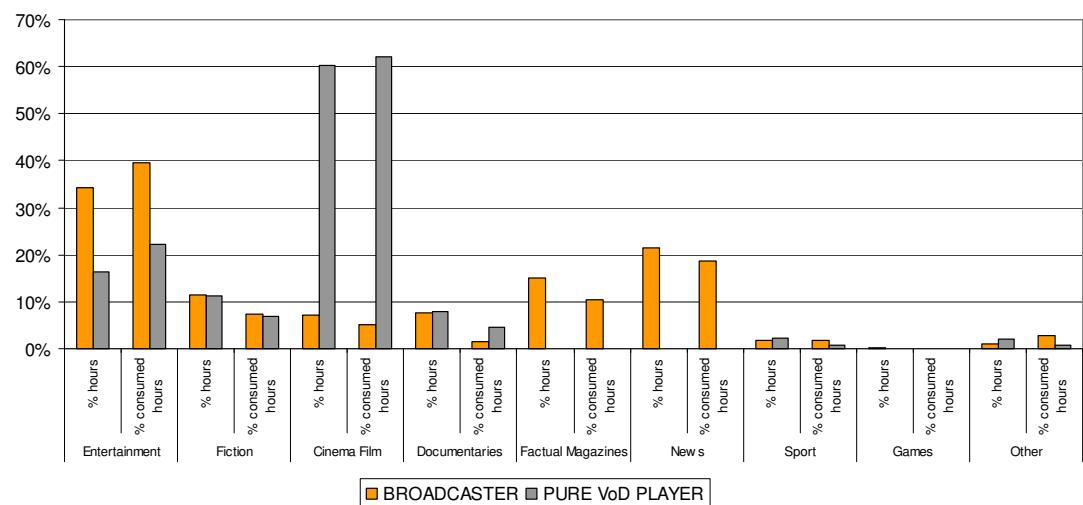


The volume of content, both in terms of hours and titles available on the respondents' services varied greatly. Some of the services boasted over 10,000 titles in their library, while others were limited to less than 10. In the cases where a large quantity of programming is made available, this is

²⁷⁶ Response to Q10.7 from Broadcasters' questionnaire: '*Which of the following genres are offered on the on-demand service?*' (Number of respondents: 24 broadcasters, 12 pure players)

typically made up of archive programming and imports, and is heavily skewed towards entertainment, fiction and feature films. A number of services also offered music videos and some short clips (or ‘tasters’) of programming.

Figure 67: Availability and consumption of programme catalogue by genre – on-demand services²⁷⁷



Not surprisingly, we found a close relationship between the availability of a particular genre and hours viewed (as shown above in Figure 67). Relative to the number of hours available, entertainment was by far the most popular genre on broadcasters’ on-demand services, with users spending 39.5% of their VoD viewing time watching programmes from this genre, followed by news (18.7%). The on-demand services of pure VoD players were even more skewed to specific genres, with cinema alone taking 62% of all viewing time spent on such services, followed by entertainment (22.3%).

9.9.2. Sourcing of on-demand services’ content

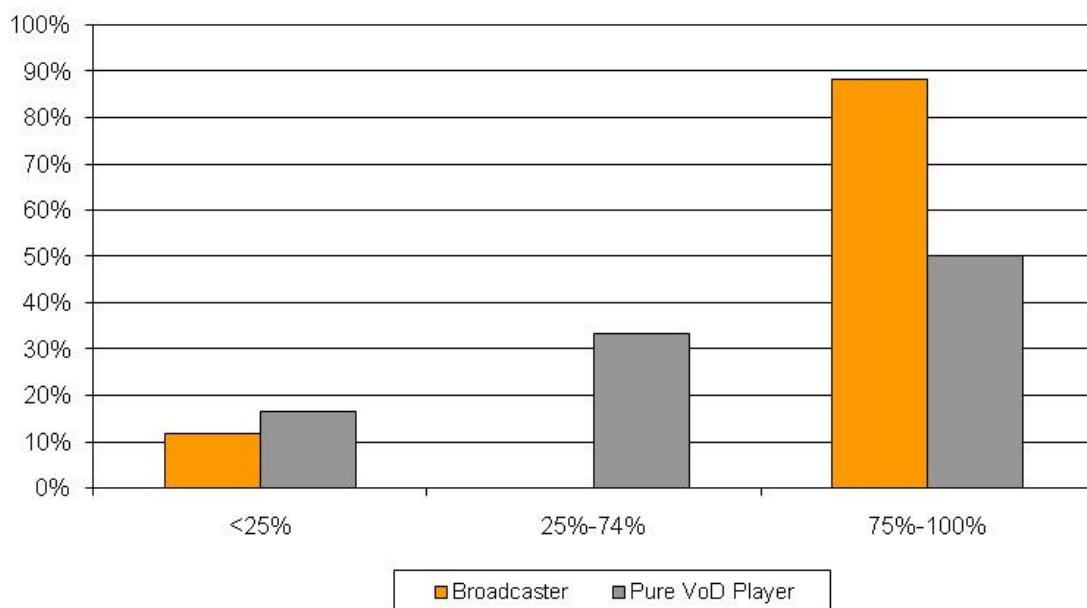
In this section we were keen to find out more about the composition of each respondent’s on-demand offering. In particular, we asked respondents to estimate the amount of European catalogue offered in their total catalogue available on their on-demand service (see Figure 68 and Figure 69).

²⁷⁷ Response to Q10.9 – Q10.10 from Broadcasters’ questionnaire: ‘Please estimate, by genre: the composition of the on-demand programmes in your catalogue; how the consumption of on-demand programmes is distributed.’ (Number of respondents: 8 broadcasters, 3 pure players)

European offering

A common feature between the on-demand catalogues of broadcasters and those of pure VoD players is that European titles are, in general, a key component of catalogues: among those interviewed for this survey, only 17% of pure VoD players and 12% of broadcasters said that their on-demand catalogues consisted of less than 25% of European titles (see Figure 68). However, some differences between the two categories of respondent can be seen when we look at which catalogues offer the greatest amount of European titles. Indeed, apart from the broadcasters who offer less than 25% European titles (which include one free-to-air player in a small new Member State and one pay-TV player in a small old Member State), all players said they offer between 75% and 100% European titles (and most of them said they exactly offered 100% European titles). This can be explained by the fact that broadcasters, which generally offer a vast majority of European programming in their TV schedules, will replicate that offering in their on-demand services, minus the titles that they do not own the on-demand rights (and which are generally not European). By contrast, 50% of the pure VoD players said they offer more than 75% European titles, the remaining 33% declaring they offer in-between 25% and 74%.

Figure 68: Proportion of titles in catalogue that are European by type of respondent as the proportion of each type of respondent²⁷⁸

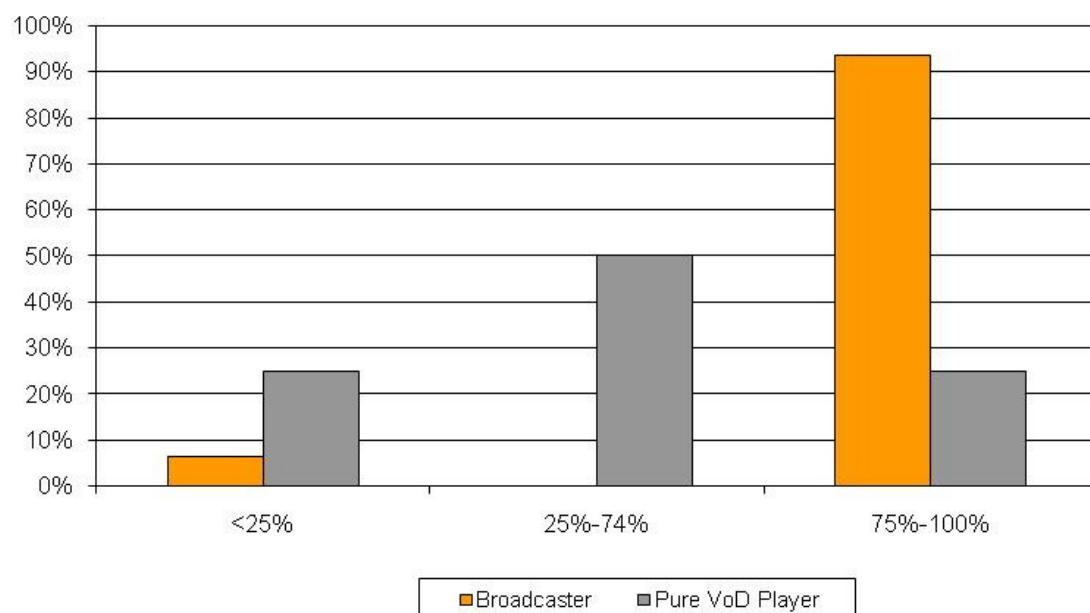


Interestingly, proportions are quite different when we look at the same figures expressed in hours as opposed to titles. This is especially the case for the pure VoD players (see Figure 69): 25% of our pure VoD player respondents say European hours represent less than 25% of their on-

²⁷⁸ Response to Q10.11 from Broadcasters' questionnaire: 'Please estimate the size of the European catalogue of programmes in your on-demand service.' (Number of respondents: 17 broadcasters, 6 pure players)

demand catalogue (compared to 17% in titles) and another 25% say European hours represent between 75% and 100% of their on-demand catalogue (compared to 50% in titles). This could be explained by a combination of factors, including a relatively higher proportion of non-European cinema (with films having, typically, longer durations than other audiovisual genres) and a relatively higher proportion of short format national productions, especially in the comedy genre. These factors seem to be confirmed by Figure 70, which shows that cinema is by far the most important genre in terms of programme spend by pure VoD players (72% of total programme spend on average across our sample) followed by TV fiction and entertainment (respectively 9% and 8%).

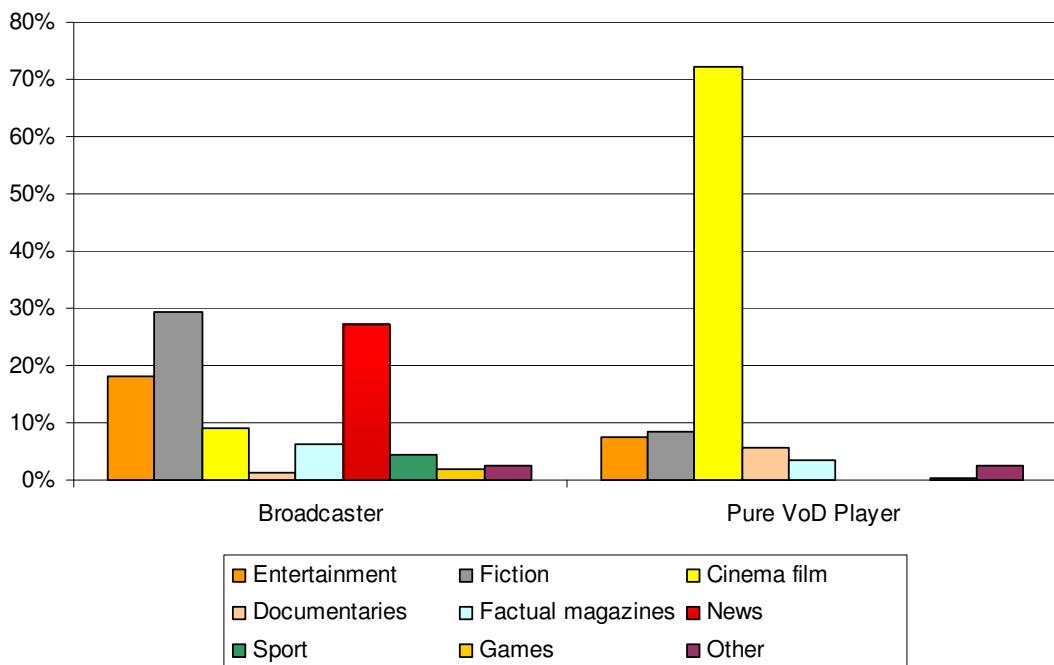
Figure 69: Proportion of hours offered by genre and by type of respondent²⁷⁹



Around 90% of broadcasters reported that the composition of their on-demand catalogues is over 75% European content. The proportion is slightly higher when expressed in hours compared to titles. This again reflects the fact that broadcasters tend to make their television offerings available on-demand, except for the content for which they do not own on-demand rights (which includes most of their foreign acquisitions and thus pulls the figures for European content further up).

²⁷⁹ Response to Q10.11 from Broadcasters' questionnaire: 'Please estimate the size of the European catalogue of programmes in your on-demand service.' (*Number of respondents:* 15 broadcasters, 4 pure players)

Figure 70: On-demand programming spend by genre²⁸⁰



Commissions and acquisitions

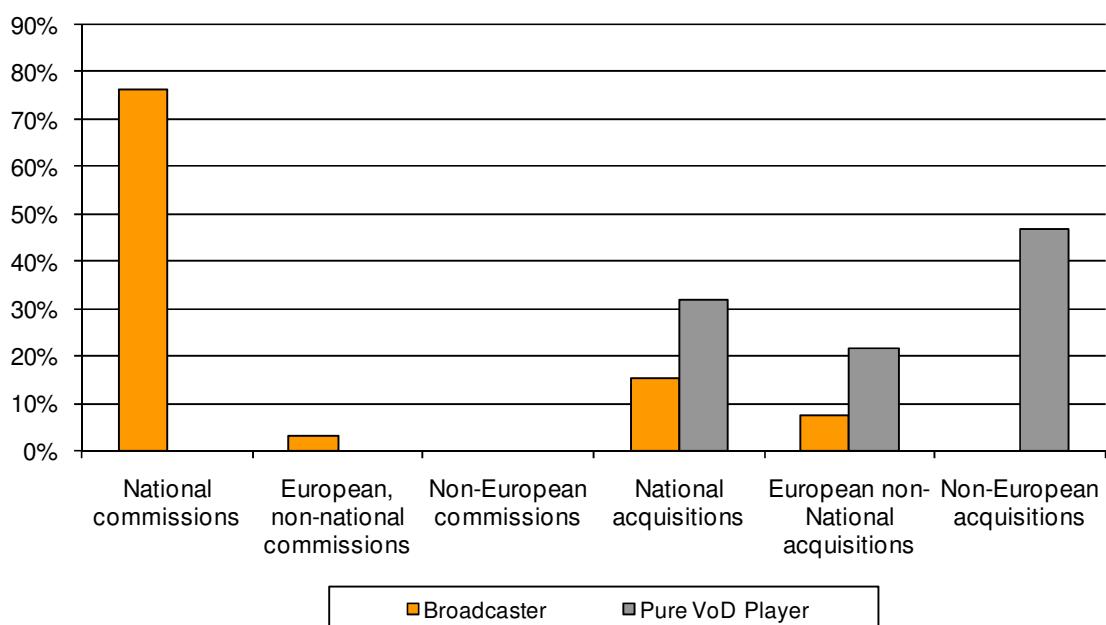
We also wanted to understand whether providers of non-linear services were dedicating resources to creating content specifically for these on-demand services. As the majority of content offered via on-demand services operated by broadcasters is programming that has originally appeared on linear services, we anticipated dedicated on-demand programming spend by them would be relatively low. As expected, the respondents stated that only 1.9% of their total programming budget was apportioned to on-demand services. With regards to pure VoD players, respondents did not provide us with clear figures in sufficient numbers for us to be able to create an equivalent robust percentage. Still, as we have seen in various section of this Study, pure VoD players tend to rely heavily on archive material and imports, and also invest a large share of their programming budget on sports rights, making it very likely that they invest even less in new content than broadcasters do. It is also worth remembering that new content is typically very expensive, meaning that the majority of pure VoD services, which are still at a nascent stage, do not have the necessary funds to acquire new content.

It is important to note that, in general, financial data was not forthcoming from respondents. This is in large part because it is considered to be highly confidential. We present the limited results below, and have reflected the difficulty of acquiring financial data in our thinking on suitable performance indicators and operational procedures in Part 10.

²⁸⁰ Response to Q10.17 from Broadcasters' questionnaire: '*How is the programme spend (including costs based on pre-defined fees and revenue sharing) on on-demand programmes distributed by genre?*' (Number of respondents: 8 broadcasters, 6 pure players)

Figure 71 provides us with another view on this. When asked how their on-demand programming budget is split between commissions or acquisitions by origin of production, we observe that the pure players who responded to our survey allocate 100% of their budget to acquisitions, with non-European imports representing almost half of the total. This means that the pure VoD players from this survey have spent no money at all to commission new programmes. By contrast, on-demand services operated by broadcasters say they spend around 75% of their on-demand budgets on national commissions. However, it is extremely important to note that the on-demand budgets for broadcasters are very small, so this 75% does not represent a significant amount. On-demand is still a very small component of the revenue model for broadcasters (Figure 15 shows that 0.5% of total revenue for broadcasters comes from non-linear services). Also important to note is that this high figure for commissions for broadcasters is likely due to broadcasters considering content that was commissioned for their linear TV channels and then put on their on-demand service as 'national commissioned' content. This reflects the fact that their programming policy is highly integrated with that of the broadcasters they belong to, and that their own, specific programming commissioning policy is limited.

Figure 71: Proportion of budget spent on particular sources of programming by type of respondent²⁸¹



An additional question was asked to broadcasters about how their 2007 on-demand programming budget varied by genre, and in terms of in-

²⁸¹ Response to Q10.16 from Broadcasters' questionnaire: '*What proportion of your programme budget for on-demand programmes was spent on the following sources? (Number of respondents: 7 broadcasters, 3 pure players)*

house commissions, external commissions and acquired programming. The results are summarised in Table 130 and Figure 70.²⁸²

Table 130: Type of programming offered through on-demand service in 2007²⁸³

PROGRAMME TYPE	PROPORTION OF TOTAL SPEND
COMMISSIONED PROGRAMMES PRODUCED IN-HOUSE	62%
COMMISSIONED PROGRAMMES PRODUCED EXTERNALLY	34%
ACQUIRED PROGRAMMES	4%

Of the limited programming expenditure invested into content specifically for on-demand services, 62% was commissioned programming made internally, 34% was externally commissioned while only 4% was acquired content.

Respondents were also asked about how this expenditure was distributed by genre. News and entertainment programming accounted for almost 60% of total on-demand programming spend, implying that a lot of spend was on exclusive, unseen entertainment footage and reversioned news stories. Fiction and cinema film accounted for approximately another quarter of spend, suggesting that some one-off dramas may have been commissioned exclusively for on-demand services, along with some acquired feature films, in order to promote the overall on-demand service.

One last question here was put to on-demand service providers, on whether they have commissioned²⁸⁴, produced or co-produced²⁸⁵ programmes for their on-demand services. Among the 18 such services who responded, only 4 declared that they have, among which 3 were services operated by broadcasters, and one was a pure VoD player.

9.9.3. Promoting European works through on-demand services

Respondents were also asked whether, and if so, how they specifically publicise European works through their on-demand service; whether they

²⁸² Reduced sample size for these figures as the questions only apply to around 20% of respondents who apportion some of their programming spend to on-demand services.

²⁸³ Response to Q10.15 from Broadcasters' questionnaire: '*What percentage of your programme budget for on-demand programmes was spent on each of the following categories of programme.*' (Number of respondents: 7 broadcasters)

²⁸⁴ "Commissioned" refers to a situation where the on-demand service has paid a third-party producer to create audiovisual content for their on-demand service.

²⁸⁵ By producing or co-producing, we mean upfront participation in a programme project, editorially and/or financially, as opposed to off-the-shelf programme acquisitions.

have run any successful promotional campaigns around European content; and how marketing spend tends to vary by a title's (or catalogue's) country of origin.

The majority of broadcasters stated they made no distinction between the promotion of European and non-European content, especially given that almost 100% of programming available through their services is European. Broadcasters especially commented that most of the key titles on their services were domestic titles (and therefore by default, European).

Pure players also indicated that they made no specific distinction between the promotion of European and non-European content; even if they conversely offered a significant proportion of non-domestic works in their catalogue. They justified this by the fact that they mainly offer search facilities on their websites by title or genre, rather than by country of origin. This classification does not directly help promotion of European works in general, though specific promotions by genre could sometimes lead to a promotion of European works.

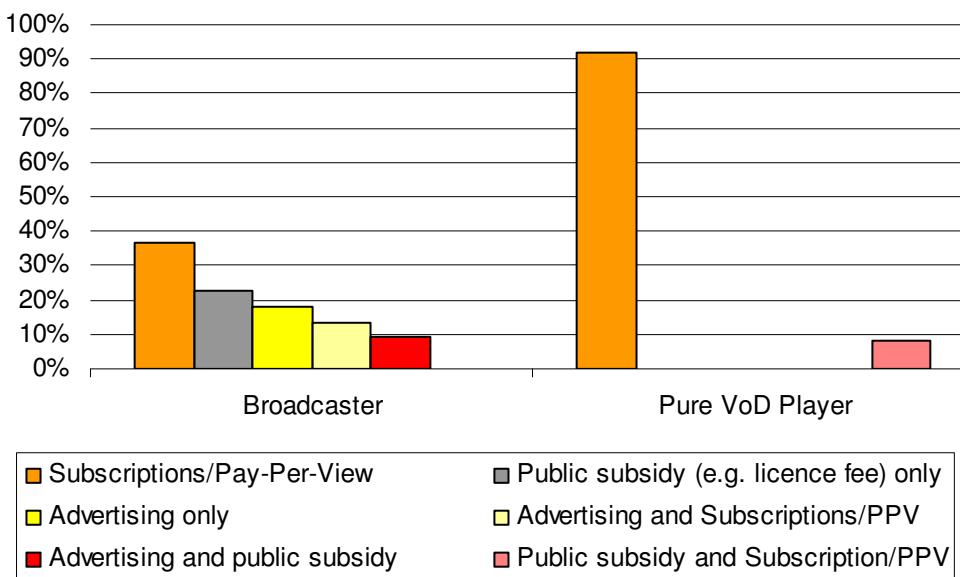
One of the pure VoD players, however, indicated that they were already proposing to allow consumers to search for content by country of origin, and another two stated they were actively evaluating this feature for the future.

The majority of the respondents indicated that marketing spend doesn't currently vary by country of origin. No respondent had run a specific promotional campaign directly to promote European works, although many commented that they indirectly do this through more general marketing campaigns for their on-demand service. Pure players especially emphasized the fact that they could only promote works that had economic 'potential,' but this could lead to the promotion of a European work, as national works were often popular.

9.9.4. Funding of on-demand services

Finally we asked respondents how their on-demand services are financed. The results are summarised in Figure 72.

Figure 72: How is the on-demand service funded?²⁸⁶



Of the respondent broadcasters, 41% use advertising to fund all or part their on-demand service (both pre/post roll and advertisements midway through a programme, although the latter was less commonly used than pre/post roll advertising). Of all the respondents, 18% funded their service only via advertising, with 14% of broadcasters also having content available via subscription or pay-per-view as well as content supported by advertising, and 9% being funded in part by advertising revenue and in part by public subsidy. Public subsidy is used as the sole revenue stream by 23% of the broadcasters who responded. For 36% of the broadcaster owned on-demand services, content was funded solely via subscription and pay-per-view charges. Therefore 64% of broadcaster owned services are essentially free-to-use for the viewer to some extent (i.e. the service is either entirely supported by public subsidy or advertising, or has some content available for free as ad-supported programming, and some content that has to be paid for, either via subscription or on a pay-per-view basis).²⁸⁷.

Pure VoD players show a completely different picture. The vast majority of the revenue of those who took part in our survey comes only from direct payments from consumers either as subscription fees (92% of pure VoD players who responded) or as pay-per-view. The remaining 8% were in part supported via subscription and pay-per-view fees, but also had money from public subsidy.

²⁸⁶ Response to Q10.21 from Broadcasters' questionnaire: '*How is the on-demand service funded?*' (Number of respondents: : 23 broadcasters, 12 pure players)

²⁸⁷ Typically these services offer a catch-up service and some limited archive programming for free and then premium content, such as movies and sport, is normally paid for through a subscription or pay-per-view model.

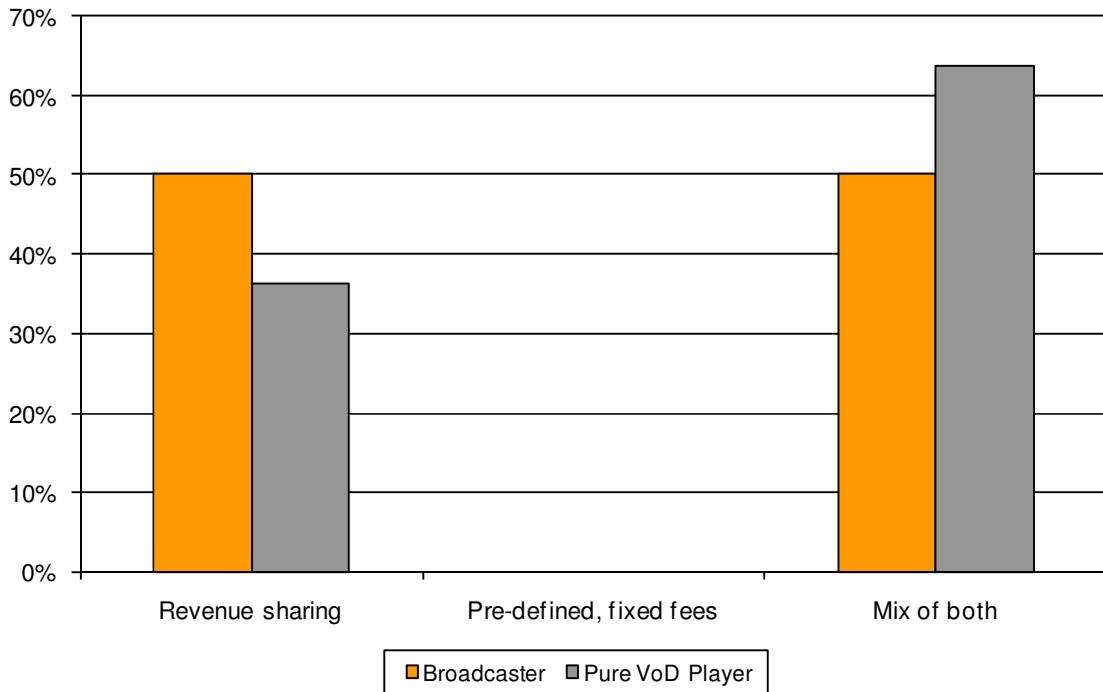
With regards to the medium term impact of on-demand services, the majority of broadcasters commented that, despite developing into an important aspect of the business, it will remain an additional service to linear television. Many commented that, although the bulk of viewing remains on traditional linear services, the younger generations are already shifting away from this medium in favour of new media platforms such as IPTV, the internet and mobile. Both publicly funded and commercial broadcasters stressed the importance of embracing on-demand and ensuring a high quality service that would attract and retain viewers.

Among respondents (both producers and broadcasters), there was still a level of uncertainty around terms of trade, rights retention and how funds will flow through the on-demand value chain. Some of the smaller thematic channels (that typically rely on programme acquisitions) registered some concern that they may be marginalised by large third-party aggregated on-demand services with targeted advertising and a wider selection of programming than they can currently offer through their linear channels. Producers also voiced some concern over the fact that the majority of broadcasters retain all domestic video-on-demand rights, and therefore may only exploit programming through their broadcaster-branded service, thus reducing the exposure of a particular strand. Conversely, a number of broadcasters viewed on-demand services as a new way to exploit content and potentially explore new revenue streams.

9.9.5. Compensation mechanisms for producers

We asked respondents how producers are compensated for allowing their programmes to be available on on-demand services. The results are summarised in Figure 73.

Figure 73: Compensation mechanisms by type of respondent ²⁸⁸



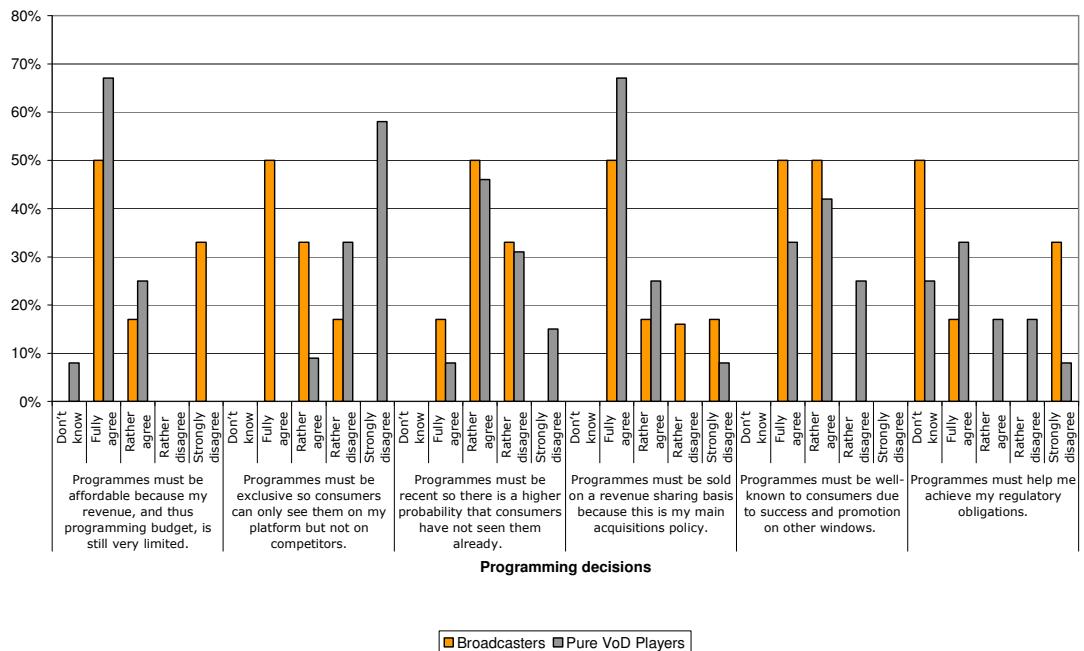
One clear finding is that not a single respondent declared that producers are being compensated by means of only pre-defined, fixed fees. Generally, compensation mechanisms rely on revenue sharing or a mix of revenue sharing and fixed fees. Interestingly, pure revenue sharing is a more common case on the on-demand services of broadcasters (50% of respondents) than on those of pure VoD players (37%). This could be explained by a better ability of broadcasters to impose revenue-sharing deals to producers thanks to their position in the market, as well as by a higher confidence of producers in the broadcasters' ability to generate fees thanks to the power of their brands and the size of their television audiences.

9.9.6. Influences on on-demand programme decisions

We asked respondents about some key influences on their programming decisions in connection to their on-demand services. We asked them to say whether they agreed or not with a few assertions. The results are summarised in Figure 74.

²⁸⁸ Response to Q2.5 from On-demand services' questionnaire: '*How do you usually compensate the owners of the programmes on your main on-demand service? (Number of respondents : 6 broadcasters, 11 pure players)*

Figure 74: Key factors influencing on-demand platforms programming decisions²⁸⁹



In general, we observe that broadcasters and pure VoD players tend to provide with similar answers to most propositions. They agree on the importance of contents being affordable and being compensated on a revenue sharing basis. The two go along together as respondents gave the same level of response to both assertions. Pure players seem more concerned by that as 67% fully agreed that programmes must be affordable to meet their limited budgets and the same proportion said they must be sold on a revenue sharing basis, compared to 50% of broadcasters fully agreeing with these assertions. They also tend to agree that the programmes must be well-known thanks to success on other platforms during other release windows: 50% of broadcasters fully agree and 50% rather agree with that assertion, compared to respectively 33% and 42% of pure VoD players. It is worth noting that while all broadcasters thought the programmes on on-demand services should be well-known, 25% of pure players rather disagree with that assertion, indicating their higher trust in the ability of consumers to spend time searching and purchasing programmes they discover for the first time on the service itself.

The assertion on which broadcasters and pure VoD players disagree the most is the one that programmes must be exclusive to their platform. Answers to this assertion are completely reversed: broadcasters either fully agree (50%) or rather agree (33%) with it, while pure VoD players strongly disagree (58%) or rather disagree (33%). This difference is

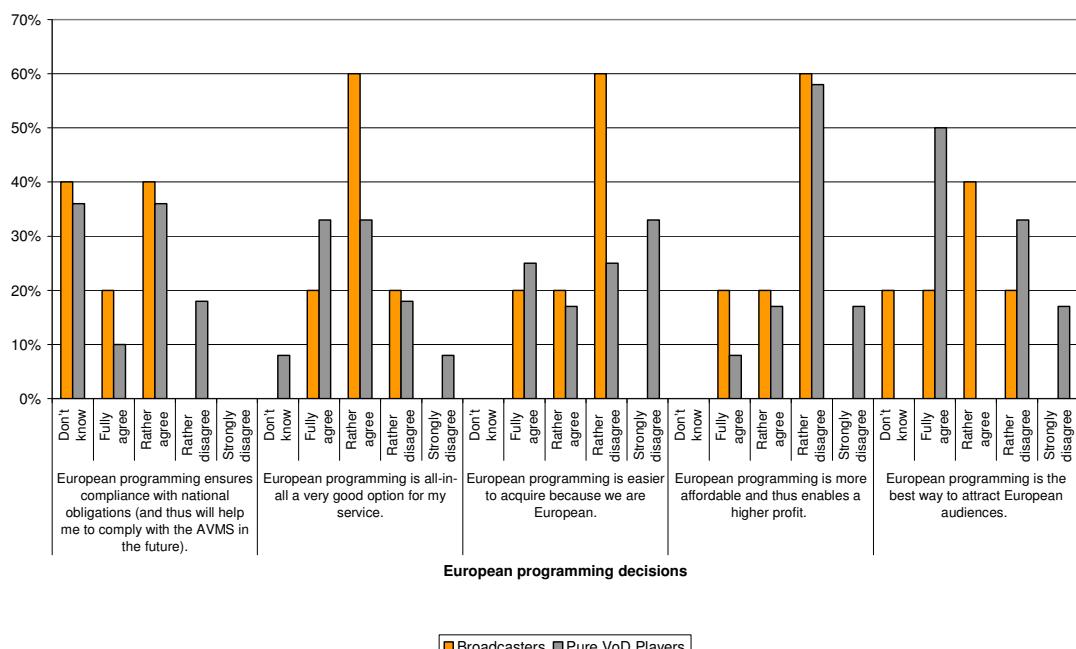
²⁸⁹ Response to Q4.1 from On-demand services' questionnaire: 'Please state whether the factors below influence which type of programmes you prefer to acquire today to feed your on-demand catalogue?' (Number of respondents : 6 broadcasters, 12 pure players)

probably explained by the dominance of subscription culture for pure VoD players, by which exclusivity of content is key to attracting consumers, while broadcasters are more influenced by an audience culture, by which consumers will be attracted to a brand and consume what they find. It is also worth mentioning that broadcasters on-demand services are generally available on many different platforms (i.e. not just via the internet, but via television set-top-boxes), which is not the case for the services of many pure VoD players.

9.9.7. Importance of European programmes

We asked respondents about their views on the importance of European programmes for their on-demand catalogue and how much European programmes help them meet some of their main strategic objectives. Again we asked them to say whether they agreed or not with a few assertions. The results are summarised in Figure 75.

Figure 75: Importance of European programming for on-demand platforms²⁹⁰



The majority of respondents think that, all-in-all, European programming is a very good option for their services: 20% of broadcasters and 33% of pure VoD players fully agree with that assertion, while 60% and 33% rather agree with it.

²⁹⁰ Response to Q4.3 from On-demand services' questionnaire: '*Please indicate the reasons why European programming, relative to non-European programming, is important or not to the success of your main on-demand service today?*' (Number of respondents : 5 broadcasters, 12 pure players)

This does not mean that there are no problems to be solved. First, European programmes are seen as expensive: when asked whether European programming is affordable, 60% of broadcasters and 58% of pure VoD players 'rather disagree'. When asked whether European programmes are easier to acquire, 60% of broadcasters 'rather disagree', while 58% of pure VoD players either 'rather' or 'strongly disagree'. Then, the idea that European programmes are the best way to attract European consumers is not clearly supported by the players we talked to. While two third of the broadcasters tend to agree with that assertion, 33% of pure VoD players 'rather disagree', and 17% of them even 'fully disagree'. This may be because pure VoD players' feel that access to European programming is difficult for them as rights are already secured by the broadcasters.

Lastly, we asked respondents whether European programming was a way to ensure compliance with national obligations and thus will help comply with the AVMS in the future. Answers to that assertion were very unclear, reflecting the fact that the debate over that part of the AVMS Directive has in most cases not started yet at the national level, so that players do not have a clear view on this: 40% of broadcasters and 36% of pure VoD players said they did not know, although a majority of those who responded tended to agree.

9.9.8. ‘Prominence’ on On-Demand Services Today: Results Based on Additional Desk Research

This section is not derived from stakeholders’ interviews as all previous conclusions on on-demand services have been so far. It is instead based on desk research, the methodology for which is described in more detail below.

Importance and limits of the concept of Prominence

Prominence is a key concept in addressing how European works are being promoted by on-demand services, and one that cannot necessarily be approached in a similar fashion to the promotion of European content on linear services.

The promotion of European works by linear services can be examined by looking at the proportion of their schedules that are European works; viewers can only choose from the programmes that are offered to them, resulting in schedules of programmes translating rather “mechanically” into actual consumption of such programmes. The fact that European viewers can choose from an increasing number of channels should of course be considered, as it provides increasing opportunities to ‘escape’ the European programmes. However, as most European viewers continue to have access to a relatively small number of channels, using the criteria of the proportion of European works in the schedules continues to be a good way to measure the promotion of such works on linear services.

But, as consumers are able to choose from hundreds or thousands of titles from on-demand catalogues, non-linear services have very limited control over which titles the consumers will choose to watch. Hence the introduction of the concept of ‘prominence’ in the AVMS Directive, in an attempt to provide a measure for the promotion of European works on non-linear services. But, as yet, that concept has not yet been precisely defined, although some possible directions have been indicated. Our discussions with on-demand players showed the difficulties of defining it in more detail (see section 10.4).

Contents and objectives of the analysis

This section is thus designed to provide an overview of what prominence looks like in practice today, in order to feed the future discussions that will eventually lead to a more precise definition of such a concept. We have analysed a selection of 29 on-demand services from our sample of Member States. We have identified 3 prominence indicators, which are contained within broad concepts: active prominence and passive prominence. The first two indicators fall within the concept of active prominence and the third indicator is used to review passive prominence.

- Active prominence relates to the ability to search for content: it is assessed by asking whether the service offers the possibility of searching titles by origin of production (indicator 1) and/or provides information on the origin of production (indicator 2);
- Passive prominence relates to the “pushing” of specific content: it is assessed by asking what is the proportion of European works among the titles that are pushed to consumers when they access the service via its homepage and browse its main sections (indicator 3).²⁹¹

We have looked at these findings in light of the search functionalities that we could observe on these on-demand services and what we learned from our discussions with market players.

The list of the 29 on-demand services covered in this analysis is provided in Table 131. Among these, 16 are services operated by pure VoD players, most of them being independent from broadcasters, while 13 are services operated by broadcasters, most of them being catch-up services from the television schedules. We have chosen to focus our analysis on services that are accessible on the public internet, so as not to limit our analysis to markets where the consultants were located. There are services from 8 of the Members States from our sample: Belgium, France, Germany, Italy, Poland, Spain, Sweden and the United Kingdom.

²⁹¹ For the sake of clarity, the terms ‘active’ and ‘passive’ are in reference to the user of the service, not the provider. So ‘active prominence’ is prominence that requires the user to do something (to be ‘active’), such as search for a programme, whereas ‘passive prominence’, does not require the user to do anything to have European content promoted to them, for example if the homepage is dominated by European content.

Table 131: List of on-demand services included in the Prominence analysis

Country	Name of on-demand service	Type	Link to broadcaster
Belgium	Belgacom	Pure VoD player	Independent
Belgium	Carrefour	Pure VoD player	Independent
Belgium	Iwatch	Broadcaster	VTM
France	Cinezime	Pure VoD player	Independent
France	Free	Pure VoD player	Independent
France	Glowria (software)	Pure VoD player	Independent
France	M6 Replay	Broadcaster	M6
France	MK2	Pure VoD player	Independent
France	TF1 Vision	Broadcaster	TF1
France	Univers Ciné	Pure VoD player	Independent
Germany	Maxdome	Pure VoD player	ProSiebenSat1
Germany	One4movie	Pure VoD player	Independent
Germany	RTLnow	Broadcaster	RTL
Germany	ZDF Mediathek	Broadcaster	ZDF
Italy	Film is now	Pure VoD player	Independent
Italy	My movies	Pure VoD player	Independent
Italy	RaiClick	Broadcaster	Rai
Italy	Rivideo & video.mediaset	Broadcaster	Mediaset
Poland	Videostrada	Pure VoD player	Independent
Spain	Accine	Pure VoD player	Independent
Spain	Cuatro Videos	Broadcaster	Cuatro
Spain	Mitele	Broadcaster	TeleCinco
Sweden	Cinemaone	Pure VoD player	Independent
Sweden	Headweb	Pure VoD player	Independent
Sweden	Telia	Pure VoD player	Independent
United Kingdom	4oD	Broadcaster	Channel4
United Kingdom	BBC iPlayer	Broadcaster	BBC
United Kingdom	Demand Five	Broadcaster	Five
United Kingdom	ITV.com	Broadcaster	ITV

Key findings

In this section, we first provide some general insight on the common features of the search functionalities and the presence of European works on the on-demand services we have analysed, and then provide detail of active and passive prominence, as we could observe them in our review of these services.

General findings regarding search functionalities and the presence of European works

An important consideration that we should first highlight is that, in general, on-demand services rarely enable consumers to select titles by origin of production. Many players with whom we have discussed this have stressed the fact that consumers are simply not interested in selecting titles based on where they have been produced. Rather, they are interested in selecting them according to genre, title, director, actor or technical criteria such as the language or the technical format in which the content can be viewed.

Also, search functionalities are highly influenced by the internet culture, with many typical internet search criteria being applied to non-linear services. So, we found many search criteria based on the “most viewed”, “top rated”, “exclusive” or “film of the month” or “our selection”. The recency of production is also common with search criteria, such as splitting content between “most recent” or “archive”.

Lastly, many on-demand services do not offer a balanced selection in terms of origin of production. As we have noted in previous parts of this report, catch-up services will tend to offer primarily national content, as broadcasters own the on-demand rights for their own productions and will most of the time exclude the foreign acquisitions aired on their television offers because on-demand rights for this content has been retained by foreign producers. For them, nearly all their catalogue will thus be of national origin. By contrast, pure VoD players will offer significantly more foreign content, which can be explained by a variety of reasons including their desire to differentiate themselves from the competing services from broadcasters, their focus on stock films (cinema, fiction and documentaries are often originated from international markets) as opposed to flow entertainment (magazines and variety are mostly national productions), or their possible lack of access to the productions of the television channels in their own country.

Active prominence

Among the 30 on-demand services included in this analysis, only 2 (7%) allow users to select titles by country of origin. It is worth noting that these 2 services are both independent and specialize in cinema films. For the rest of our sample, when we typed the names of countries into a search box, we could not access content from the corresponding country of origin, but instead found content that included the name of the country in the content description, typically because the action took place there.

We also looked at whether the country of origin was indicated in the description of the titles once selected. Half of the services from our sample provided this information, mostly pure VoD players (13), with this happening only very rarely among the services operated by broadcasters (2). It is also worth noting that for 3 of the on-demand services operated by pure VoD players, the information on the country of origin was provided directly on the homepage²⁹², together with the description of the titles, as part of the key information for the content.

Passive prominence

When considering the origin of the titles that appeared “by default” on the screen while we browsed the service without activating any specific search key word, the proportion of titles of European origin that were ‘pushed’ by the 29 on-demand services from our sample was 54%, on average²⁹³.

²⁹² ‘Homepage’ refers to the first page a consumer will be able to see when first entering the service, or the pages for the main sections of the service.

²⁹³ To get to this result, we applied the following methodology: for each on-demand service, we analysed all the titles appearing on each webpage, researched their country of origin and calculated their proportions of European

There were large differences from one service to another though, as this proportion, for our sample, ranged from 0% (on one pure VoD player's service) to 100% (on several broadcasters' services). Also, pure VoD players pushed significantly fewer European titles, as their proportion was 39% on average compared with 75% for the services operated by broadcasters.

Proportions were different depending on genres, with entertainment, animation and information typically comprising more European works than cinema and TV fiction. Differences could also be seen within specific genres: for example, in the cinema category, subgenres such as comedies and dramas typically contained more European works than action or horror movies.

Also worth noting is that not all titles were given the same level of importance, with US content being generally given a primary position both in terms of share of the screen and rank of appearance. However, some on-demand services were making significant efforts to promote European works. Some, for example, would propose a majority of European works in their 'selection', or 'film of the month'. We also found some services that put European and American content on an equal basis on their homepage, even though their complete catalogue was composed of a majority of American content.

works compared to their total works on the page. For this study, which was meant to be exploratory, we looked at homepages that were provided to us when we accessed the on-demand service for the first time. However, it is worth noting that the contents of homepages delivered by digital platforms vary depending on users due to the personalisation of profiles either activated by the users or developed by the platforms based on profiling and 'push' techniques. Thus, homepages can show different proportions of European works depending on the user.

10. Monitoring of Article 3i²⁹⁴

10.1. Introduction

As part of the current study the consortium are required to evaluate possible performance indicators and operational procedures for monitoring Article 3i of the AVMS Directive, and provide a view as to the best procedures and indicators to apply.

As has been presented above, we asked for data and opinions on various performance indicators and operation procedures from our respondents. The data we have managed to acquire has been presented above in an aggregate form. The following sections have used this information to assist us to develop our conclusions as to the most suitable indicators and procedures to monitor Article 3i of the AVMS Directive.

The following chapter has three main sections. Firstly we present an overview of possible operational procedures for monitoring Article 3i. Secondly, we have provided our evaluation of key performance indicators, giving our view on the most appropriate indicators to apply. Finally, we apply, where possible, these performance indicators to specific services. This is, as for the survey of on-demand services in the previous chapter, based on data acquired through self-declarations from the service providers.

10.1.1. Methodology for assessing procedures and indicators

These conclusions follow extensive research via questionnaires, interviews, desk research and internal discussions within the consortium. Taking Article 3i as a starting point, the consortium identified six possible performance indicators, which were included in the questionnaire (after discussion with the Commission) sent to key stakeholders. Questions were constructed around these indicators, alongside questions designed to assist our thinking about possible operational procedures. The responses were then collated, once the deadline for responses passed in early July. Since then several detailed internal teleconferences have taken place to

²⁹⁴ "Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, *inter alia*, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by on-demand audiovisual media service."

discuss which procedures and indicators the consortium believe to be the most appropriate for monitoring Article 3i of the AVMS directive.

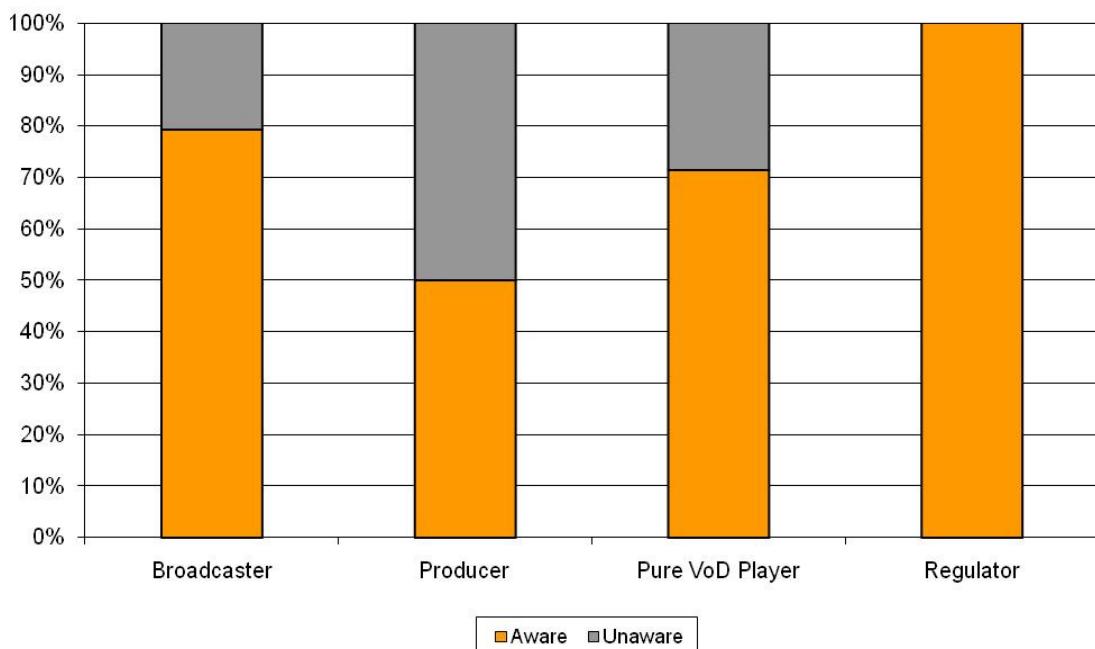
Procedures and indicators were further discussed at the public workshop in November 2008, and comments from the workshop, and comments received subsequently from stakeholders, have been taken into account throughout the preparation of the Final Study Report.

10.1.2. Awareness of Article 3i

Before discussing the performance indicators and operational procedures in detail, we present below tables to show the awareness of Article 3i from our respondents.

As Figure 76 makes clear, regulators, unsurprisingly, are fully aware of Article 3i. Broadcasters and Pure VoD Players are in general aware, with a small minority (20% of broadcasters interviewed, 30% of Pure VoD Players interviewed) saying they were unaware of Article 3i. Producers who responded to our questionnaires were equally split between those who were aware of Article 3i and those who were not.

Figure 76: Awareness of Article 3i by type of respondent (number of respondents: 31 broadcasters, 6 producers, 14 pure players, 8 regulators)



10.2. Operational Procedures

After discussion within the Consortium, and with the steering group of the European Commission, we have identified two distinct legal scenarios within which operational procedures can exist: firstly, self-declaration by service providers, and, secondly, independent evaluation. In this section

we will provide more detail on the two legal scenarios described, and explain further why we have chosen to follow the route of self-declarations by service providers.

For linear services, both types of operational procedure are applied. Broadcasters provide self-declarations detailing how they have met the requirements of Articles 4 and 5. These are typically presented to the appropriate Member State body, and then collated as a Member State report covering all broadcasters, which is presented to the Commission. The Commission also commissions independent evaluations of linear broadcast channels to verify the data supplied via the self-declarations. Such independent monitoring has been completed for a sample of linear services in this study, as seen in Chapter 8. For linear services, this sort of independent monitoring is possible largely because robust Television Audience Measurement (TAM) data is available to the consultants, which provides schedules of transmitted programmes, which can be used to evaluate the proportion of a schedule that is European, or that is independently produced.

For non-linear services, however, independent monitoring similar to that completed for linear services is not feasible at this time. In order to complete an independent evaluation, consultants require robust data on all the programming available on each service. There is currently no equivalent to TAM data for the non-linear services, meaning that data on programming (including titles, durations, and consumption data²⁹⁵) is not available to independent consultants as it is for linear programming. It is worth noting here that the development of TAM style services for non-linear programming may be limited by two key factors. Firstly, a key reason for TAM data existing for linear programming is to set values for advertising on television channels, by identifying audiences to programmes. As we have seen from our survey, a large number of non-linear services do not carry advertising, so that there will be less incentive for them to participate in a TAM-style system.²⁹⁶ Secondly, non-linear services will likely further fragment audiences, meaning sample sizes for audiences will reduce in size, and thus the data acquired will be less robust.

At the workshop for this study it was made clear by some stakeholders that robust data akin to TAM-style data will very likely become available in the future, especially as on-demand services become more popular, and take an increasingly large proportion of audiences. We are of the view that strong efforts should be made towards the development of these sources of data, and agree with statements at the workshop that support at the European and Member State level will be important here. The Commission and Member State governmental and regulatory bodies could assist non-linear service providers towards developing industry standard data for on-demand services. This process will be helped significantly if both broadcasters and pure VoD players are given clear indications of the

²⁹⁵ Further problems with consumption-level data specifically are discussed below within the section on performance indicators.

²⁹⁶ The difference between advertiser and non-advertiser funded services should be recognised. Existing Pay-per-View services, such as Sky Box Office in UK, are not reported by TAM services. The "buy rates" for films and other content on such services are confidential to Sky.

data that is required of them for the Commission and Member States to successfully monitor the services, and if the types of services and non-linear content covered are clearly defined. However, we continue to stress that at the time of this study, we do not consider there to be robust enough data available for independent monitoring of non-linear services, similar to what is done for linear services.

Taking this current lack of TAM-style data into consideration, we have investigated whether there are any other possible ways in which to complete independent monitoring of non-linear services. We have identified two possible ways in which catalogue data (that is, lists of all the titles available on an on-demand service) could be obtained. However, neither option is appropriate to use at this time in our view.

The first involves a process known as ‘web-scraping’ or ‘web-harvesting’, which involves developing software that goes into a website, or on-demand service, and copies information that is required from the website and posts it to another source. Technology such as this is in widespread use by web monitoring services.²⁹⁷ This could potentially be developed to copy all programme titles from an on-demand service and copy them into a database for an independent body (or consultant) to codify for European content. However, there are problems with this approach. Such a methodology raises some legal questions: permission would have to be obtained from the service provider before such software could be legally utilised. We believe that in order to secure this level of permission, legislation at the Member State level will be required (i.e. to stipulate exactly what will be ‘harvested’ from a website, and for what purpose). The software will also need to be developed by software designers, and in order to create trust in the software, we suspect that Member State bodies will again need to support this process. So, currently, this methodology is unsuitable for monitoring the application of Article 3i, and will require further development at the Member State level. Of course, if permission is acquired at the Member State level in the future, then using technology such as this will become more appropriate. However, one problem that will likely always exist with this system is that not all on-demand services are web-based, with some being accessed via set-top-boxes, meaning that not all services could be covered by this approach, if and when it becomes legally and operationally viable for internet-based services.

The second approach involves going directly to the services and looking for information on titles and durations of content. So, in practice, an independent evaluator (or a consultant) would sign up to a service, and look at every page available and copy every title that can be found into a database, to be analysed and further coded at a later stage. Although technically possible, this approach has two significant drawbacks: firstly it is a process that will take a very long time, and thus will be very expensive, and secondly there is a possibility that some content in the catalogue will be missed. The reason for this second concern is that on-demand services do not have set schedules, as linear services do, but instead have catalogues that can be searched. It is, in general, not possible to simply output a list of everything that is in the services’

²⁹⁷ This was made clear to the consultants in the comments on the Draft Final Report, printed as an Appendix to this study.

catalogue. Instead the user must search by various criteria (genre, date, 'most watched', etc). It is also possible that some programmes will not be available through set search criteria (such as 'Drama', or 'Kids'), and will instead be available only through title-specific searches, which could mean that some programmes are missed in the review. However, even if these accuracy concerns can be satisfactorily addressed, the fact remains that this process will be extremely time-consuming and expensive. This has put this process beyond the scope of this study. Hence it has not been utilised.

Self-declarations are possible at this time, as has been proven by the responses we have received from providers to our survey. Also importantly, 70% of our respondents explained to us that they would provide data on their on-demand service to a public body, such as a regulator, if its confidentiality was ensured. It is worth remembering that self-declarations do have their drawbacks. Primarily, they are unverified data, meaning that their accuracy cannot be guaranteed. There is also the problem that the data may be collated differently by different providers, making comparisons between data more difficult. On the other hand, self-declarations are currently used by linear service providers for Articles 4 and 5. Also, provided that self-declarations are enforced through Member State legislation, then data can be acquired from all non-linear services within a Member State. This would mean that response rates and completeness of data would be substantially higher than we have experienced from our survey.

The above has shown that at this time independent evaluation of non-linear services is not a viable operational procedure for the monitoring of Article 3i. Instead, for this study, we have utilised self-declarations, which we believe is the only appropriate and affordable procedure currently available. What we have presented for on-demand services, then, is similar to the approach applied to linear services by Member State authorities. The remaining two sections in this chapter present our suggestions on the actual indicators to be applied (essentially the data that providers will need to supply), and then apply these indicators to particular services, based on the data from self-declarations.

10.3. Performance Indicators

10.3.1. Six performance indicators

After careful review of Article 3i and internal discussions, we proposed six possible indicators in our questionnaires to broadcasters, producers, pure on-demand service providers and regulators. These were 'Title-level data for the entire catalogue', 'Hour-level data for the entire catalogue', 'Consumption level data at titles level', 'Consumption-level data at hours level', 'Prominence of European content' and 'Financial contribution to European content'. We asked respondents to rank these indicators in terms of their appropriateness for measuring adherence to Article 3i. We also gave them the opportunity to provide us with detailed reasons for

their decisions. The results of this have been included in our internal discussions.

10.3.2. What this section will show

This section of the report is designed to:

- Detail the various positive and negative arguments related to each indicator. We have also provided some information on possible ways in which the data could be acquired.
- Detail our thinking on the appropriate indicators to be applied to measure adherence to Article 3i.

We will deal with each indicator in turn. We have decided to approach the issue of consumption data as one indicator (rather than two – one at title-level and one at hours-level), and will discuss all relevant points on consumption data in one section.

10.3.3. Initial thoughts from respondents

Before discussing the performance indicators and operational procedures in detail, we present below tables to show an overview of how respondents ranked each possible indicator.

Table 132 shows the average ranking (from 1 to 6, with 6 being the highest) for each indicator, from each different respondent type. It also gives an indication of the variety in different rankings given for each method of monitoring Article 3i. Table 133 provides some key comments on each method from each type of respondent.

Table 132: Average ranking for monitoring method for Article 3i

METHOD	BROADCASTER RANKING	PRODUCER RANKING	PURE PLAYER RANKING	REGULATOR RANKING	TOTAL AVERAGE
USING TITLE-LEVEL DATA TO MONITOR THE PROPORTION OF AN ON-DEMAND CATALOGUE THAT IS EUROPEAN	4.5	3.0	3.9	5.5	4.4
	Ranked from 1 to 6	Ranked from 1 to 6	Ranked from 2 to 6	Ranked from 4 to 6	Ranked from 1 to 6
USING DATA ON TOTAL HOURS OF AVAILABLE CONTENT	3.9	3.2	3.8	4.8	3.9
	Ranked from 1 to 6	Ranked from 1 to 5	Ranked from 1 to 5	Ranked from 4 to 6	Ranked from 1 to 6
USING CONSUMPTION DATA FOR NUMBER OF TITLES VIEWED	3.8	4.4	3.2	1.9	3.4
	Ranked from 1 to 6	Ranked from 2 to 6	Ranked from 1 to 6	Ranked from 1 to 2	Ranked from 1 to 6
USING CONSUMPTION DATA FOR NUMBER OF HOURS VIEWED	3.0	3.0	2.4	1.4	2.7
	Ranked from 1 to 6	Ranked from 2 to 5	Ranked from 1 to 5	Ranked from 1 to 2	Ranked from 1 to 6
MONITORING PROMINENCE OF EUROPEAN TITLES	2.8	3.0	3.0	3.0	2.9
	Ranked from 2 to 5	Ranked from 1 to 4	Ranked from 1 to 6	Ranked from 1 to 5	Ranked from 1 to 6
PROVIDING EVIDENCE OF THE FINANCIAL CONTRIBUTION TO THE PRODUCTION AND/OR RIGHTS ACQUISITION OF EUROPEAN WORKS	2.5	4.8	1.6	4.5	2.9
	Ranked from 1 to 6	Ranked from 1 to 6	Ranked from 1 to 3	Ranked from 3 to 6	Ranked from 1 to 6

Table 133: Comments on the different monitoring methods proposed

METHOD	COMMENTS			
	BROADCASTER	PRODUCERS	PURE PLAYERS	REGULATORS
USING TITLE-LEVEL DATA TO MONITOR THE PROPORTION OF AN ON-DEMAND CATALOGUE THAT IS EUROPEAN	- EASY TO IMPLEMENT FOR THE BROADCASTERS - WILL GIVE THE MOST OBJECTIVE RESULTS	- DISTORTING METHOD: MANY TITLES CAN REPRESENT VERY FEW HOURS	- EASY TO IMPLEMENT FOR THE BROADCASTERS - WILL GIVE THE MOST OBJECTIVE RESULTS - LOGICAL, AS THE CATALOGUE IS DEALT IN TITLES	- EASY TO MEASURE (NO ADDITIONAL COST, BROADCASTERS USED TO DO IT) AND TO MONITOR FOR THE REGULATOR
USING DATA ON TOTAL HOURS OF AVAILABLE CONTENT	- GOOD QUANTITATIVE MEASURE, OBJECTIVE - BUT NOT CONSIDERING PROMOTION OR DEMAND - DATA DIFFICULT TO ESTABLISH	- FIRST STEP OF ANALYSIS HOWEVER PRODUCERS COMMENTED THAT IT IS RELATIVELY EASY TO FILL AN ON-DEMAND CATALOGUE WITH CHEAP EUROPEAN PROGRAMMING THEREFORE THIS METHOD SHOULD BE USED IN CONJUNCTION WITH ANOTHER	- EASY TO IMPLEMENT FOR THE BROADCASTERS - WILL GIVE THE MOST OBJECTIVE RESULTS	- EASY TO MEASURE (NO ADDITIONAL COST, BROADCASTERS USED TO DO IT) AND TO MONITOR FOR THE REGULATOR - IN LINE WITH THE WAY LINEAR IS REGULATED
USING CONSUMPTION DATA FOR NUMBER OF TITLES VIEWED	- SERVICE PROVIDER HAS VERY LITTLE INFLUENCE OVER VIEWING CHOICES AND TASTES OF AUDIENCE THEREFORE BROADCASTERS SHOULD NOT BEAR THE RESPONSIBILITY OF THEIR VIEWERS' CHOICES. THIS METHOD MAY NOT BE SUITABLE - METHOD THAT MEASURES CONTENT SUCCESS RATHER THAN PURE QUANTITATIVE DATA - IMPOSSIBLE TO MEASURE AND MONITOR - A GENERALLY ACCEPTED INDICATOR OF THE REACH OF THE OUTPUT AMONG THE CONSUMERS. EASIEST WAY TO VIEW THE CATALOGUE	- ALTHOUGH THIS METHOD IS IN ITSELF INSUFFICIENT AND NEEDS TO BE COMBINED WITH ANOTHER METHOD (PROMINENCE AND NUMBER OF TITLES), IT WILL GIVE THE BEST VIEW TO SEE WHETHER A CATALOGUE IS ORIENTED TOWARDS EUROPEAN CONTENT OR NOT. - CONSUMPTION BETTER METHOD THAN AVAILABILITY AS RECENCY TENDS TO DRIVE USAGE AND THEN ECONOMICS.	- NOT A GOOD METHOD: OPERATORS MIGHT BE RESPONSIBLE FOR PROMOTING ACCESS BY CREATING LIBRARIES OF EUROPEAN WORKS BUT IT IS STILL THE CONSUMER THAT HAS THE FINAL CHOICE. THIS METHOD WILL MONITOR THE TASTES OF THE CONSUMERS RATHER THAN THE COMPLIANCE OF THE OPERATORS (AND THEIR EFFORT TO BUILD A EUROPEAN CATALOGUE) - ALSO CRITICAL BECAUSE IT EMBEDS A MARKET EVALUATION OF THE QUALITY OF THE CONTENTS.	- UNFAIR CRITERION : SERVICE PROVIDER HAS VERY LITTLE INFLUENCE OVER VIEWING CHOICES AND TASTES OF AUDIENCE THEREFORE BROADCASTERS SHOULD NOT BEAR THE RESPONSIBILITY OF THEIR VIEWERS' CHOICES.
USING CONSUMPTION DATA FOR NUMBER OF HOURS VIEWED	- SERVICE PROVIDER HAS VERY LITTLE INFLUENCE OVER VIEWING CHOICES AND TASTES OF AUDIENCE THEREFORE BROADCASTERS SHOULD NOT BEAR THE RESPONSIBILITY OF THEIR VIEWERS' CHOICES. THIS METHOD MAY NOT BE SUITABLE - DATA NOT AVAILABLE - IS NOT A GOOD INDICATOR TO MEASURE EUROPEAN OFFER	- THE MEASUREMENT OF CONSUMPTION BY HOURS IS INTERESTING BECAUSE IT HELPS TO UNDERSTAND THE BASIC RELATIONSHIP BETWEEN AVAILABILITY AND CONSUMPTION. IF THERE IS A MISMATCH FURTHER INVESTIGATION MUST TAKE PLACE	- NOT A GOOD METHOD: OPERATORS MIGHT BE RESPONSIBLE OF PROMOTING ACCESS BY CREATING LIBRARIES OF EUROPEAN WORKS BUT IT IS STILL THE CONSUMER THAT HAS THE FINAL CHOICE. THIS METHOD WILL MONITOR THE TASTES OF THE CONSUMERS RATHER THAN THE COMPLIANCE OF THE OPERATORS (AND THEIR EFFORT TO BUILD A EUROPEAN CATALOGUE) - ALSO CRITICAL BECAUSE IT EMBEDS A MARKET EVALUATION OF THE QUALITY OF THE CONTENTS.	- UNFAIR CRITERION : SERVICE PROVIDER HAS VERY LITTLE INFLUENCE OVER VIEWING CHOICES AND TASTES OF AUDIENCE THEREFORE BROADCASTERS SHOULD NOT BEAR THE RESPONSIBILITY OF THEIR VIEWERS' CHOICES. - INTERFERENCE WITH BROADCASTING FREEDOM - MUCH MORE COMPLICATED AND COSTLY
MONITORING PROMINENCE OF EUROPEAN TITLES	- VERY USEFUL METHOD AS IT FAIRLY ASSESSES THE MARKETING EFFORTS TO PROMOTE EUROPEAN CONTENTS. GOOD QUALITATIVE METHOD. - HIGHLY SUBJECTIVE METHOD - DIFFICULTY TO OBTAIN DATA - DIFFICULTY TO IMPLEMENT AND NOT PERTINENT AS THE SEARCH BY COUNTRY OF ORIGIN IS NOT USED BY CONSUMERS	- GOOD METHOD IF COMBINED WITH THE MEASUREMENT OF TOTAL EUROPEAN HOURS - QUALITATIVE TEST AND THEN SUBJECTIVE - HARD TO ASSESS THE PROGRESS YEAR AFTER YEAR - ONLY MEASURES MARKETING EFFORTS	- ENFORCING METHODS TO SEARCH BY ORIGIN ARE NOT EFFECTIVE. CONSUMERS PREFER SEARCHING BY GENRE OR ARE ATTRACTED BY POPULARITY RATHER THAN ORIGIN - HIGH VISUAL IMPACT: GOOD METHOD TO ASSESS THE CONTINUOUS AND EFFECTIVE PROMOTION OF EUROPEAN WORKS	- VAGUE AND HIGHLY SUBJECTIVE CRITERION VERY HARD TO MONITOR
PROVIDING EVIDENCE OF THE FINANCIAL CONTRIBUTION TO THE PRODUCTION AND/OR RIGHTS ACQUISITION OF EUROPEAN WORKS	- VERY INTERESTING ITEM BECAUSE THE INVESTMENT IN EUROPEAN RIGHTS ACQUISITION IS THE PERFECT REFLECTION OF THE COMMITMENT IN EUROPEAN CONTENTS	- DEFINITION OF COMMON METRIC FOR FINANCIAL CONTRIBUTION LIKELY TO BE DIFFICULT AND HIGHLY COMMERCIAL SENSITIVE - RISK OF MISREPORTING - GOOD METHOD FOR MONITORING THE IMPORTANCE OF THE INVESTMENT IN EUROPEAN CONTENT	- VOD SECTOR IS IN ITS INFANCY (AND THEN ECONOMICALLY FRAGILE) AND DOES NOT HAVE THE FINANCIAL CAPABILITY TO SUSTAIN THROUGH DIRECT FINANCING OF THE DEVELOPMENT OF EUROPEAN WORKS - DOES NOT GIVE INDICATIONS ON THE CATALOGUE AVAILABLE	- HIGHLY SENSITIVE DATA - EASY TO MEASURE AND MONITOR

10.4. Evaluation of Specific Indicators

10.4.1. Title-level data

'Title-level data', for this study, reflected a situation whereby all titles in a catalogue would be coded for country-of-origin, so that a figure on the proportion of the catalogue as a whole that was European programming

could be ascertained. Thus it aims to serve as an indicator of the “access to European works” referred to in Article 3i.

Essentially this requires the relatively simple addition, if it is not yet in place, of metadata to internal databases, detailing the country-of-origin of a piece of content. Thus the technical requirements to implement this would be relatively straightforward, requiring little additional effort or expense on the part of the provider.

Title-level data was the most popular indicator from our respondents, with broadcasters, regulators and pure on-demand players giving it the highest overall score in our questionnaire. Only producers gave it a lower ranking, mainly because they would like to see more detailed data provided publicly (e.g. consumption data).

Also it is in line with the ‘lighter touch’ approach to regulating on-demand services in comparison to the indicators currently applied to traditional linear media, as it does not ask for data any more complex or revealing than is asked of television broadcasters.

There are, however, some possible negative implications for this indicator. It does not capture the actual consumption of content online (more detail on whether consumption indicators are appropriate will be provided below, in part 10.4.5).²⁹⁸ On its own (i.e. just looking at whether content is European or not) there would be no distinction between long/short content, recent/old content, etc. But since such duration and date of release data are usually included in the internal data sets of platforms which have acquired programmes rights, it would be quite straightforward to link it to the country-of-origin data (e.g. proportion of European titles in the catalogue that are less than five years old), if required.

One weakness to this measure is a consequence of the decreased costs of storage in a digital medium. Holding content in a catalogue is relatively cheap. If title-level data were the main compliance measure, it would be possible for a provider to load their service with many short, and/or cheap, European productions, in order to meet a requirement.

The following caveats, relating to this measure, reflect changes in the media industry resulting from globalisation and digitisation, which are influencing the development of on-demand services.

First in an increasingly globalised media industry, country of origin is not always straightforward and may not always be consistent with conventional industry metadata. Commercial data providers will therefore

²⁹⁸ In comments on the Draft Final Report received subsequent to the workshop, it was affirmed by a respondent that catalogue data alone will not give a reliable result as to the viewing of content on non-linear services, with arguments raised that from current data it can be seen that a small number of titles may in fact translate into a large proportion of viewing. This adds to support voiced from some respondents of utilising consumption data when monitoring non-linear services, our views on which are detailed in part 10.4.5.

need some guidance on practice (and the Commission may wish to order reviews from independent consultants from time to time).²⁹⁹

A second caveat concerns sampling. For broadcast (linear) data, total transmissions can be summed and proportions calculated for a given period. However the “catalogue” for a non-linear data service may not be fixed. Some items may only remain in the catalogue for a very short time. It might therefore be appropriate to sample the catalogue format at set intervals, rather than sum total items.

A third caveat concerns the current early stage of the evolution of on-demand services. There are potential models whereby future services are not so much “aggregators of” but “gateways to” content, in which case the notion of a “catalogue” becomes obsolete or irrelevant. If these become important as the locations where viewers make their on-demand choices, the Commission may find title level data inadequate.

However for the services surveyed for this report, which represent the current market, the concept of a “catalogue” of content remains relevant. The procedure for acquiring title-level data could be straightforward, and comparable across services. The service provider could compile the statistic internally and provide declarations to the appropriate Member State body, much in line with current linear data under Article 4 of the Television Without Frontiers Directive. This would therefore limit administrative and financial burden on regulatory and governmental services and be relatively cost effective for market players. On the other hand, as described above, evaluating title-level data from the catalogues may be possible externally of the provider, by Member State authorities or independent consultants, but without the existence of TAM style this will be very time consuming and expensive. It is worth noting as well that 75% of our respondents believed that declarations on proportion of European works were an appropriate procedure for measuring adherence to Article 3i.

10.4.2. Hour-level data

Hour-level data is a development of title-level data, adding duration data for the titles in the entire catalogue. Therefore the indicator would go beyond the proportion of all titles on an on-demand service that are European (that ‘title-level data will provide), looking at the proportion of the total *duration* of content in the catalogue. Hour-level data was generally a popular performance indicator with all types of respondent. It was the second most popular indicator for all respondents after title-level data, with the exception of producers, who gave it a slightly lower rating

²⁹⁹ In comments on the Draft Final Report, it was noted that the European Audiovisual Observatory’s LUMIERE database contains data on 17,000 feature films, including information on country-of-origin, which could be used to help make identifying a country-of-origin for this genre more straightforward. Other comments also called for data on country-of-origin to be made more readily available, likely through a single common database. However, these comments also made clear that specific metrics for defining country-of-origin would be needed here, which would help rectify the concern we raise here that it can be difficult to accurately assign country-of-origin in some cases.

than other respondents, most likely because, as mentioned before, they wanted to see more detailed data (e.g. consumption data) being made publicly available.

We expect that, for the majority of services, duration data will be included in internal data systems (as durations of programmes are typically indicated to the consumer before they are streamed or downloaded). Therefore, once data has been coded for country-of-origin (as required for title-level data) then providing an indicator based on hours should not require substantial extra administrative burdens. Hour-level data also has the benefit of combating the concern raised in the discussion on title-level data, that providers could potentially appear to provide a large amount of European content on their service by, for instance, hosting many small titles, with low average durations, on their services.

However, it is difficult at this early stage to say how important or relevant the duration of content will be to the promotion of European content via on-demand services. It may be that short-form content is more popular than long-form content (one thinks of the popularity of services such as YouTube and DailyMotion here) in the future. This does indicate one weakness of catalogue based data compared to consumption data, which could indicate whether audiences generally watch long or short-form content.

The operational procedure for hour-level data would be very similar to title-level data, essentially being an additional indicator included in a declaration from the provider to the appropriate Member State body. Again, this data could be confidential from the public, and from other service providers, eventually only being provided in an amalgamated format at the Member State level. As with title-level data, if willingness to provide data cannot be secured from the providers, Member States could possibly monitor samples of the providers' catalogues, or use independent consultants to do so, but the caveats regarding the cost and accuracy of this process that have been discussed above would have to be taken into consideration.

10.4.3. '*Prominence*'

'Prominence' is a particularly open, and therefore somewhat vague, term, which could lead to Member States adopting a wide variety of procedures and indicators. At the workshop it appeared that 'prominence' was a contentious indicator, with several stakeholders expressing concerns that it was not clear yet how it should be applied, and what form the indicators should take. We consider from this that prominence is a topic that requires further discussions throughout 2009 at the Member State and European level, involving all key stakeholders.

However, it is also the one indicator that requires providers to directly address their customers on the issue of European content and specifically meets a core requirement of the new Directive: it is after all about how European content is "promoted" to the audience, which is a central element of Article 3i. Therefore it is important in our view to find some way of including prominence in the procedures and indicators for monitoring Article 3i. Here, as at the workshop, we present the findings

of our research into possible prominence measures, designed to provide an initial view on appropriate ways forward here for further discussion. As detailed above, we believe that these discussions will continue throughout 2009 at the Member State and European level.

Given, as indicated above, that we consider that internal data contain, or will soon contain, country level data (and likely some related data on language and subtitling) it would be relatively easy for providers to supply information via 'click-throughs' from home pages and searches on relevant keywords. However, we feel there are also dangers in being prescriptive. Evaluation of prominence on a qualitative basis (for example, having regulators looking at a service to check that European content is clearly promoted on it) would be fairly subjective. Also, care must be taken when establishing fixed quantitative indicators (for example, a particular proportion of the content on the front page must be European) as they could potentially limit the creative development of non-linear services, with services starting to look similar to one another if indicators are too strict. This concern that non-linear services' 'editorial' abilities could be limited by strict rules, creating a sense of uniformity to the way European content is promoted, was echoed by some stakeholders at the workshop. Of course, if any rules set are relatively broad, then any potential limitations would be reduced.

Recital 48 gives "the attractive presentation of European works in electronic programme guides" as another possible way of promoting European content on non-linear services. This is another very open suggestion, which could be applied in a variety of fashions. For linear services, Electronic Programme Guides (EPG's) typically show what is available in the schedule channel-by-channel, so prominence is achieved by having a channel near the top of the EPG list. It is far less common to search by content, either by genre, title or country-of-origin. In the UK, the regulator Ofcom has attempted to guarantee that public-service channels have 'appropriate prominence' in EPG's.³⁰⁰ However, they only set general principles to do this, in order to avoid being overly prescriptive, given the variety of possible interpretations of 'prominence.' For on-demand services, the ways in which European content could be given 'appropriate prominence' will likely expand, as it becomes easier to have multiple EPG types on one site (e.g. one by channel, one by genre, one by country-of-origin). Even so, we believe that regulators should only set general principles rather than strict rules, as Ofcom have done for linear EPGs, to avoid limiting the creative development of non-linear services.

It is also unclear at this time what prominence measures will actually be relevant in the future. For example, several of our respondents noted that stipulating that all services should allow consumers to search by country-of-origin was unnecessary, even irrelevant, as people did not do this (they searched by title or genre typically). Once again, since Video-on-Demand models are in their infancy, other, more suitable, solutions may emerge and a better knowledge of consumer behaviour will also certainly develop.

³⁰⁰ <http://www.ofcom.org.uk/tv/ifi/codes/EPGcode/>

Because of these reasons we do not suggest that specific procedures and indicators are set out at this stage, which service providers must adhere to. What we suggest is that prominence of European content on non-linear services is self-regulated, on a model by which Member State regulators consult with stakeholders to produce guidelines. Recital 36 of the AVMS Directive explains that self-regulation is a suitable approach, if it is considered more appropriate than set legislation. Recital 36 explains that “self-regulation constitutes a type of voluntary initiative which enables economic operators, social partners, non-governmental organisations or associations to adopt common guidelines amongst themselves and for themselves.” These guidelines could cover a wide variety of issues, as noted above, including, among others, country-of-origin searching, the appearance of programme-guides, the level to which European content is pushed using recommendation systems and the advertising of European content by the provider. These prominence commitments could go alongside other commitments, for example to ensure the protection of minors. ATVOD in the UK currently have a code-of-practice that ensures the protection of minors, and users in general, that several on-demand providers adhere to.³⁰¹ These commitments would need to give providers the flexibility to develop their own service in their own way, but would be a strong step towards enforcing some prominence measures on on-demand services. This would also provide the opportunity to alter and develop commitments if changes in the technology, or uses of the service, take place.

10.4.4. Financial Contribution

Article 3i makes clear that on-demand services must promote the production of European content, and that one way to do this is to provide information on the financial contribution made by on-demand services to the production of content and to rights acquisition. Therefore, respondents were asked whether providing evidence of financial contribution to content production or rights acquisition would be a suitable indicator for Article 3i. Of all the indicators, this one split opinion most significantly, with producers strongly approving of it (as it will help them understand if money is being spent on their services), regulators varying between strong support and light opposition, and the providers themselves, broadcasters and pure on-demand players, strongly opposing it.

The main negative connotations of this indicator are that the data is highly confidential and that, as this is still a nascent industry that spends little or nothing on new content, the figures may tell us very little. For example, for an on-demand service attached to a broadcaster, the service itself may spend nothing on commissions or acquisitions as it simply presents a catch-up service of content from the broadcast channels. Another concern was that although providers may have data easily available on the amounts spent, however little, on acquisitions, co-productions and commissioned content, it can be difficult (as acknowledged earlier) to

³⁰¹ http://www.atvod.org.uk/assets/documents/general/pdf/atvod_code_of_practice.pdf

ascertain the country-of-origin of catalogue content purchased from distributors or in package deals.³⁰²

This is less the case for directly funded or commissioned content, where it is clear which country, or countries, have originated the content. However, content is often acquired in 'packages', with the rights to several pieces of content being acquired for a set amount of money. Even if country-of-origin is known here, it may be difficult for the provider to allocate the share of the fee to the content that is European.

However, it is still in our view very important to identify a financial procedure and indicator that can be applied, as it is so central to the legislation. Requiring a very strict and detailed financial indicator would seem unlikely to provide useful results. What we suggest therefore, at this stage, is that providers are required to inform regulators of the amount they have spent each year on programming for their service, and, where possible, identify the proportion of this that is spent on European content. This should first of all avoid the problem detailed above pertaining to catch-up services, which currently have little budget for content acquisition or commissioning. But secondly, and more importantly, it will provide an indicator that will clearly show how much is actually being spent by on-demand service providers on new European content.

³⁰² In a speech entitled *Should the European Audiovisual Content Industry be Transparent or Translucent*, given at the High-Level Seminar on Audiovisual Content Online in Lisbon on 7-9 October 2007, André Lange of the European Audiovisual Observatory detailed a further point of interest here. In discussing the difficulties of obtaining structural economic data from new players in the audiovisual sector, Lange explained that data on non-linear services' expenditure "is not always clear: subscription income from IPTV or VoD services is often buried under the heading "fixed services", which is virtually useless for the analysis of an economic services." This gives an indication that even top-level financial data on VoD services can be difficult to extract from a provider's accounts, especially if they are linked to a larger broadcaster. In comments on the Draft Final Report for this study it was made clear that, on the other hand, for smaller companies it may be easier to ascertain accounts through their declarations to the national companies register. However, the potentially unbalanced treatment of stakeholders here goes beyond the scope of this study, dealing with more general issues of the regulation of the transparency of economic activities.

10.4.5. Consumption data

Consumption data, on the whole, was not a popular indicator with service providers. Consumption-data at the hours-level was generally unpopular across all groups, being given a low ranking by all respondent types. At the titles-level, consumption data was opposed by all groups except producers, who were keen to see some consumption data being made publicly available.

There are positive elements to using consumption data as an indicator that should be considered alongside these negative responses from stakeholders. First of all, data would be acquired that actually showed what people were watching, allowing for a metric that identifies the extent to which European content is being successfully promoted (as we have noted, title and hour-level data at the catalogue level looks more at what is available, rather than what is viewed). Secondly, it is certainly the case that service providers will have some form of internal data on usage of their service, albeit at varying levels of detail. It is important to note that Recital 48 of the AVMS Directive notes that Member State reports on on-demand content should “take into account … the actual consumption of European works offered by such services.” This does not necessarily mean that consumption data has to be a performance indicator that sets a figure that an on-demand service must reach (e.g. a certain percentage of on-demand viewing must be to European content); instead audience data could be included in the reports on on-demand services provided at the Member State level simply give an impression as to the success of other performance indicators (e.g. title-level data indicators).

However, what of the arguments against consumption data as a performance indicator? Firstly, consumption data is more commercially sensitive than catalogue data. This would make it harder to orchestrate a successful operational procedure, as willingness on the part of the providers is often lacking.³⁰³

As has been discussed above in the section on procedures, currently, there is no equivalent to the TAM systems for television audiences in place for non-linear services. TAM systems have created both a standard form for such data, and an acceptance by providers that data on the use of their services is in the public domain. Neither of these conditions apply to non-linear data. There is currently little publicly available data on consumption of on-demand content. In addition, although providers will have some internal data on usage, it is unlikely to be in an easily

³⁰³ However, at the workshop and in subsequent comments from respondents on the Draft Final Report, it was argued that consumption data was perhaps so important that greater efforts should be made to acquire this data from service providers. Suggestions were made designed to alleviate concerns regarding confidentiality, suggesting that it may be possible to request less than 100% of their consumption data to still collect a useful indicator: for example, service providers could be asked to provide a list of the programming that makes up 50% of their viewing, allowing the central authority to code these for country-of-origin, and then request the provider to supply viewing figures by country-of-origin for these programmes.

comparable format across services (for example, does it look at ‘click-throughs’ on its site, or measure the actual viewing of content; Does it look at that use of streamed content, or downloaded content, or both? What demographics does it look at?) meaning that a common metric would need to be found before this could be successfully applied. This would likely require extensive efforts at the Member State level.

It is also currently unclear to what extent the composition of the audience is taken into account with internal non-linear data (is it one person watching or several?). Until this is taken into account (as it is with viewing figures for television), as is likely when panels are set up in Member States to measure on-demand audiences, then consumption data will not reflect the reality of the viewing audience. Providers are also concerned that it is not a ‘fair’ indicator: even if no expense is spared in promoting European content on the service, and even supporting production of European content, there is no guarantee what the audience will choose to watch. Another concern with using consumption data as an indicator is that it would appear to go beyond the deliberate ‘light touch’ approach has been proposed with regards to the regulation on non-linear services.

Considering the unpopularity of the indicator, the lack of comparability of the data in its current form and the increased regulatory work that would be needed to create an efficient operational procedure, we do not believe it would be appropriate to use consumption data as a performance indicator for Article 3i at this time. This being said, it could be asked for in country reports as additional information on the non-linear environment, if the caveats mentioned above (in particular the lack of standardised data for on-demand content) are taken into account.³⁰⁴

We do, however, believe that in the future we will likely see a standardisation of data on non-linear consumption, and that some public-domain data for on-demand consumption will eventually emerge similar to the TAM model. However, we should note that we are not convinced that services entirely funded through consumer payments will be as willing to participate here as services that are largely advertising funded, and therefore need audience data as currency to determine the value of their media time to advertisers. Once standardised data on non-linear viewing is available we do believe that it would be appropriate to include some measure of consumption data as a performance indicator that would remedy the weaknesses of catalogue data, and the development of industry standard data here should be strongly supported. In comments received from subsequent to the workshop on the Draft Final Report, it was made clear that in the coming years, there are interests within the television industry that are likely to promote the need for industry standards for non-linear audience data, in order to maximise advertising revenue and assist the sale and licensing of programming between services. We agree with this point, hence our argument that consumption data should be strongly considered as an option for

³⁰⁴ In comments on the Draft Final Report, services such as Nielsen Netratings were referenced as being services that would be able to provide a global view of the non-linear sectors, which could possibly be used for Member State level reports.

monitoring non-linear services in the future, although not at this time when industry standard data is not available. We also believe that the Commission and national governmental and regulatory bodies could help non-linear service providers to reach the industry standards necessary for the development of industry standard data. The Commission and Member State bodies, by clearly defining how they intend to use consumption data in the future, would help providers work towards a robust and comparable audience metric.³⁰⁵ In the meantime, as we have done in this report, on-demand service providers can be asked to provide top-level data to regulators, in order to provide some level of consumption data in the Member State reports, or headline data could potentially be acquired through large web monitoring services such as those provided by Nielsen. If a level of consumption data is required in these country reports, it will allow external evaluators to discover *when* it has become possible to accurately evaluate the consumption of on-demand content in a Member State, so that it is only considered as a full performance indicator when the consumption data is reliable enough.

³⁰⁵ André Lange has noted in his speech entitled *Should the European Audiovisual Content Industry be Transparent or Translucent*, given at the High-Level Seminar on Audiovisual Content Online in Lisbon on 7-9 October 2007, that confidentiality issues relating to consumption data on DVD, and likely also to VoD services (generally where confidentiality agreements exist between the distributors and the service providers), pose a major problem standing in the way of measuring the success of works on non-linear services. He notes that these confidentiality issues mean "the problem should be considered political and not just technical"; further evidence that the Commission and other governmental bodies could play an important role here.

10.5. Application of indicators to self-declarations from non-linear services

The purpose of this section is to provide, where possible, practical applications of the procedures and indicators described above to monitor the future application on Article 3i to non-linear services. This analysis does not attempt to emulate the independent analysis of Articles 4 and 5 on linear services, detailed earlier in the report. Rather, this section is designed to provide an initial impression of what indicators may provide in terms of data on the application of Article 3i to non-linear services, and how such data could be presented to the Commission for analysis in the future.

As we have made clear in previous sections, the only procedure available for monitoring non-linear services at this time is based on self-declarations, that is for the non-linear services themselves to provide the necessary data to evaluate key indicators.

Thus in this section we present the findings we have reached when applying key performance indicators to data acquired through self-declarations from service providers. This section provides data at the service-by-service level (the previous analysis from our survey has presented aggregate data), and we have also made efforts to group data where possible as well, to indicate some possible options for analysing data acquired through self-declaration in the future.

The application of performance indicators is not possible for all indicators evaluated through the survey. For example, as has been discussed in detail above, consumption data was not forthcoming in enough detail to be evaluated successfully at this time. In this section, we have applied performance indicators to non-linear services in the following way. Quantitative indicators (proportion of titles and hours in a catalogue that are European) have been applied to data acquired from self-declarations, obtained via our survey with stakeholders; a financial indicator (contribution) has also been applied to data acquired via self-declarations, but the data acquired here was much more limited, due a combination of confidentiality concerns, and the fact that financial contributions are relatively limited from on-demand players still in their early stages of development. Qualitative indicators (prominence) have been applied to data acquired by means of independent desk research. This process should be seen more as an exploration into the prominence of European content on on-demand services, rather than a full-scale independent audit of prominence. This study's objective was more to develop and propose definitions for the concept of prominence. However, we have been able to complete some initial applications of a selection of prominence measures that we have proposed.

It is important to note before progressing further, however, that the results presented here cannot be seen as representative. Although

providers in all Member States were contacted, the low response rate means that not all countries are covered, and most covered are represented by a very small number of providers. Also, the detail in responses varied a great deal, so, for example, a respondent who provided data on the proportion of the catalogue's titles that are European may not have provided any data on financial contribution.

10.5.1. A note of confidentiality of data

During the process of collecting data from non-linear service providers, confidentiality of data provided was guaranteed. Therefore we are unable to specify the name of the service, or the country that it is from.

10.5.2. Grouping the results from application of indicators

In order to distinguish services from one other, without identifying country of origin or the name of the service we have detailed the 'type' of respondent (broadcaster or pure VoD player), and assigned a 'group' to each based on ownership. The 'groups' are as follows:

For broadcasters:

- 'Private' refers to broadcasters that are privately owned, and privately funded.
- 'Public' refers to broadcasters that are publicly owned, and funded through government funds, or licence fee monies. This also refers to broadcasters with mixed funding.

To be clear, these are the same definitions as used in the analysis of linear channels.

For Pure VoD Players:

- 'Independent' – we have used the term independent to stress the fact that these services are not linked to broadcasters. These services are also privately owned and privately funded companies.

10.5.3. Application of key indicators

Title-level data

We have explained before that title-level data (i.e. data on the proportion of all titles in a non-linear service's catalogue that are European) is an indicator that should be used to monitor Article 3i, as data is robust and more readily available from providers than other data (such as consumption level data). We have previously presented aggregate figures for hour-level data, but what we present here is the application of a title-

level indicator at the service-by-service level, based on self-declared data. This had been completed for 23 services.

The graph below clearly shows that the vast majority of services we looked at had over 80% European titles in their catalogue. However, the pure VoD players typically had a smaller amount of European content, compared with the broadcasters, although there is a great deal of variety in the responses. Also, on-demand services provided by private broadcasters have a slightly lower proportion of European titles, compared with public broadcasters.

We have also presented the acquired data in a table. In this table we have also provided some averages for the various groups of respondents, which indicate an initial level of analysis that could be done with data acquired through self-declaration. Obviously, the results for these averages would be more robust if more data were acquired (in particular if providers were required by law to make self-declarations.)

What the below graphs and tables indicate is that by using a self-declaration based procedure, it is possible to collect information on the proportion of titles in particular services' non-linear catalogues that are European.

Figure 77: Proportion of catalogue that are European titles, split by service

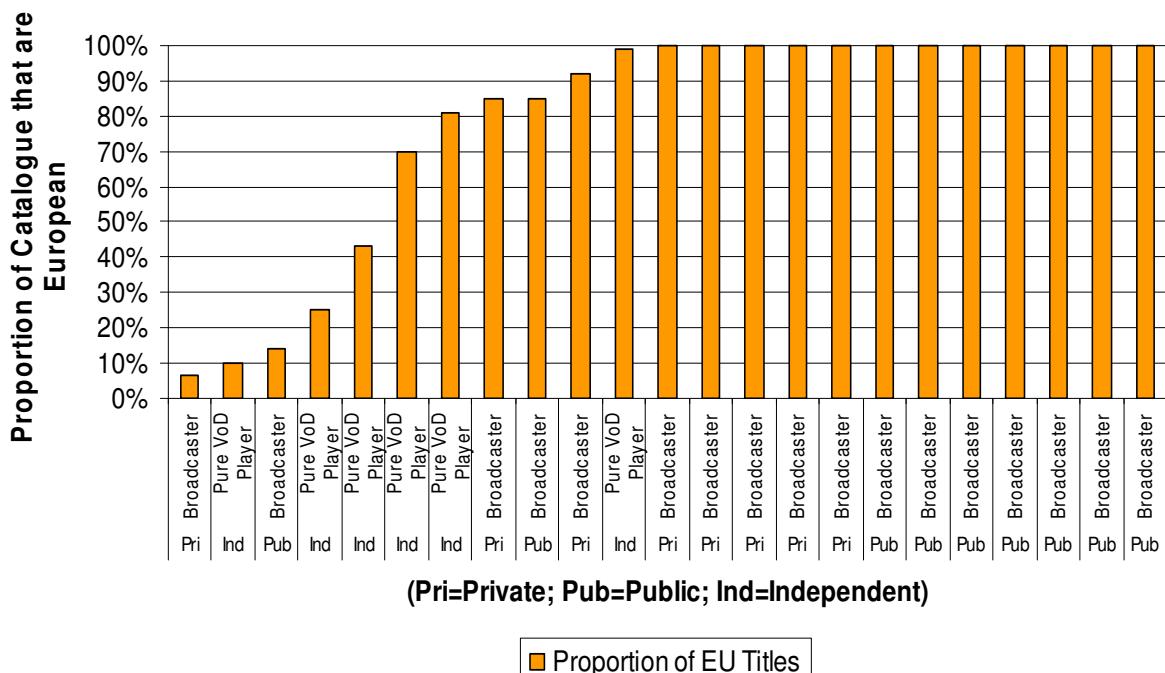


Table 134: Proportion of catalogue that are European titles, split by service, and with averages for groups of services

Type	Group	Proportion of EU Titles	Average for Group
Pure VoD Player	Independent	10%	54.7%
Pure VoD Player	Independent	70%	
Pure VoD Player	Independent	43%	
Pure VoD Player	Independent	99%	
Pure VoD Player	Independent	25%	
Pure VoD Player	Independent	81%	
Broadcaster	Private	100%	85.4%
Broadcaster	Private	100%	
Broadcaster	Private	85%	
Broadcaster	Private	7%	88.8%
Broadcaster	Private	92%	
Broadcaster	Public	85%	
Broadcaster	Public	100%	
Broadcaster	Public	100%	
Broadcaster	Public	100%	
Broadcaster	Public	14%	
Broadcaster	Public	100%	
Broadcaster	Public	100%	
Broadcaster	Public	100%	

In order to provide the Commission, regulators and service providers with an idea as to how a declaration would look, we have constructed an example of one below. We have assumed that in this case, country-of-origin is allowed (as this would be a declaration to a Member State body).

Country	Service Name	Service Type	Service Business Model	Proportion of titles that are European
Austria	Example VoD	Pure VoD Player	Independent of Broadcaster; Advertising funded	70%

Hour-level data

Hour-level data was only slightly less popular than title-level data, and we managed to acquire proportions of all hours that are European from 19 services. As with title-level data, we have provided the results of the application of the hour-level indicator based on self-declarations both as a graph and as a table.

Figure 78: Proportion of catalogue hours that are European, split by service, and with averages for groups of services

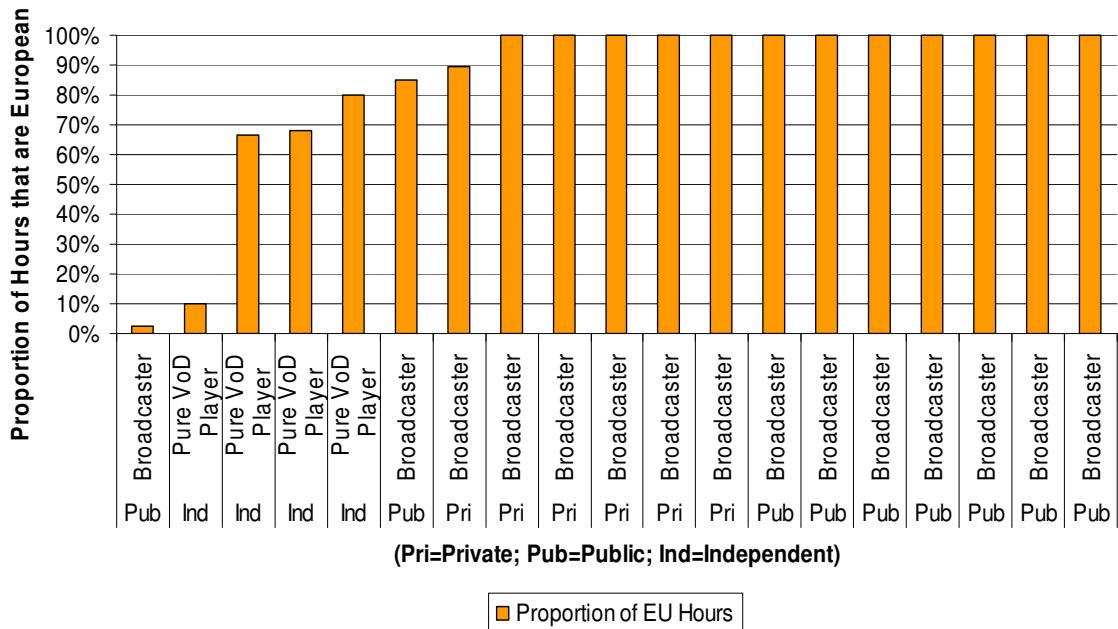


Table 135: Proportion of catalogue hours that are European, split by service, and with averages for groups of services, with averages for groups of services

Type	Group	Proportion of EU Hours	Average for Group
Pure VoD Player	Independent	10%	56.2%
Pure VoD Player	Independent	67%	
Pure VoD Player	Independent	68%	
Pure VoD Player	Independent	80%	
Broadcaster	Private	100%	98.3%
Broadcaster	Private	100%	
Broadcaster	Private	90%	
Broadcaster	Public	85%	87.5%
Broadcaster	Public	100%	
Broadcaster	Public	3%	

We can see from this that once again broadcasters typically have well over 80%, usually 100%, European content on their non-linear services. In fact, of the private broadcasters who provided data for this indicator, an average of 98.3% of the hours were European (to be specific, only one of the six private broadcasters that provided data had less than 100% EU hours). On the other hand, pure VoD players have somewhat lower proportion of European hours. Once again, we see a high variance in the figures for Pure VoD Players.

Again, we have constructed an example of what a declaration based on this indicator might look like.

<u>Country</u>	<u>Service Name</u>	<u>Service Type</u>	<u>Service Business Model</u>	<u>Proportion of hours that are European</u>
France	Example Catch-Up	Broadcaster-owned	Private funded (advertising revenue)	70%

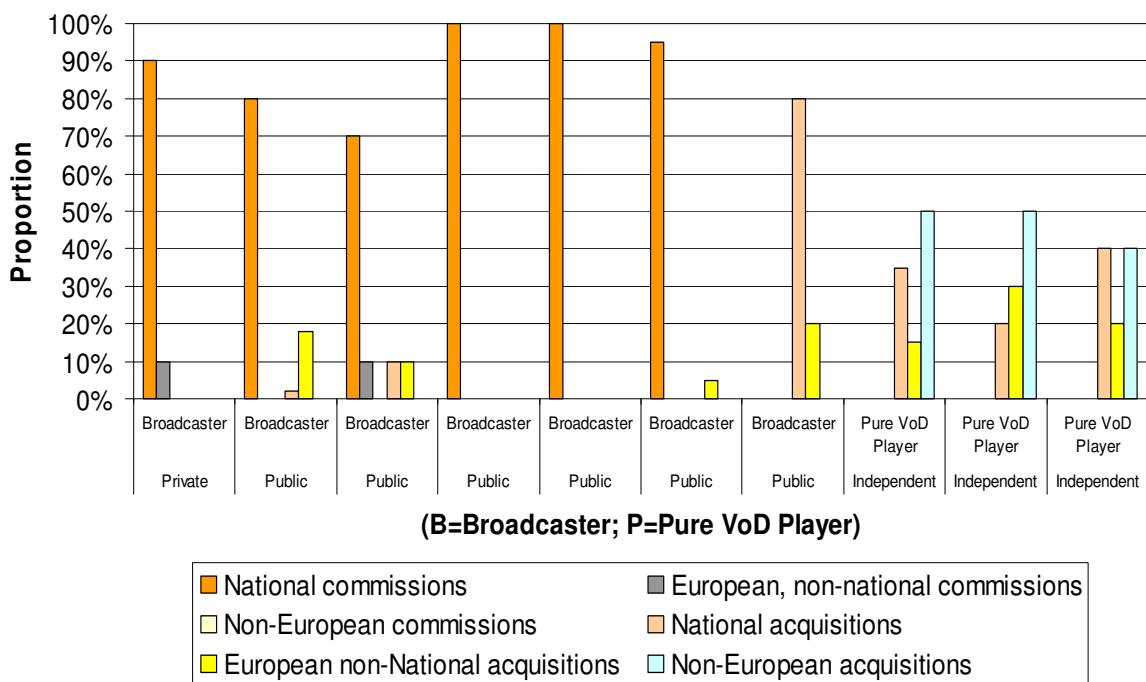
Financial data

Figure 79 presents data on the source of programming for non-linear services at the service-by-service level. In the previous discussion on potential indicators, we suggested that top level data on financial contribution could be collected by asking service providers to supply information on the total amount spent on programming for their service in a given year, and the proportion of this spent on European content. This should be a fairly straightforward indicator for providers to consider, especially as the amount of new content is likely to remain quite low (as non-linear services typically have very small budgets available to them). In the survey, however, we asked a more general question – “What proportion of your programme budget for on-demand programmes was spent on the following sources?” – and it is the responses to this question that we present below.

We have presented the data below as it is useful to show that some top-level financial contribution data can be provided through self-declarations. However, thinking about this issue in terms of a proportion of the budget may have caused some difficulties. First of all, the budgets are very small, making specific delineations between many different sources of content more difficult. Secondly, for some services, for example catch-up services, the budget for non-linear content may be tied in with the budget for linear content. This could explain why the non-linear services linked to broadcasters posted such a high proportion of national commissions: it may be that these are national commissions for the linear broadcast channel, which are subsequently available on catch-up services.

As is clear, this data was not generally forthcoming from respondents, and data was only received from 10 respondents. This does limit the extent to which we can draw any conclusions from the data. We have already noted that broadcaster's non-linear services indicate a very high proportion of national commissions, but it is difficult to ascertain how much of this is content commissioned for the main broadcast channel and then made available on the non-linear service. More interesting is the case for the pure VoD players, where the source of acquisitions can vary a lot from service-to-service. However, they also indicate that non-European acquisitions form a large proportion, regardless of whether national or non-national European acquisitions play an important role on the service.

Figure 79: Proportion of total budget for non-linear services spent on different sources of content, split by type of respondent and country



As noted above, we suggest that it may be more informative to ask service providers for an actual figure for the amount spent on programming for their on-demand service in a given year, and the proportion of this that was spent on European content. This could be included in self-declarations and could be easily presented. Below is an example of how this could look:

<u>Country</u>	<u>Service Name</u>	<u>Service Type</u>	<u>Service Business Model</u>	<u>Amount spent on programming (€)</u>	<u>Proportion of this spent on European content</u>
UK	<u>Example Pay Per View VoD</u>	<u>Pure VoD Player</u>	<u>Independent of Broadcaster; Subscription Revenue funded</u>	€10,000	60%

Prominence

As noted before, a separate desk research study was used to complete an exploratory analysis into the issue of prominence of European content on non-linear services. In this section we have applied three prominence indicators, as defined in the earlier discussion on prominence (see section 9.9.8) to specific services. The three indicators are: 1) does the service offer the possibility of searching titles by origin of production; 2) does it provide information on the origin of production together with the

description of the titles; 3 what is the proportion of European works among the titles that are pushed to the consumers when they access the service via its homepage and browse its main sections. The results for these indicators on a service-by-service level are shown in the table below:

Figure 80: Key prominence measures applied to specific services

Type	Group	Functionalities ("Can we search by country of origin?")	Averages for Group	Is the country of origin indicated somewhere?	Averages for Group	Evaluation of the proportion of EW on Homepage	Averages for Group
Pure VoD Player	Independent	Yes	12.5% YES	Yes	75% YES	40%	39%
Pure VoD Player	Independent	Yes		Yes		80%	
Pure VoD Player	Independent	No		Yes		25%	
Pure VoD Player	Independent	No		Yes		25%	
Pure VoD Player	Independent	No		Yes		50%	
Pure VoD Player	Independent	No		Yes		10%	
Pure VoD Player	Independent	No		Yes		75%	
Pure VoD Player	Independent	No		Yes		80%	
Pure VoD Player	Independent	No		Yes		0%	
Pure VoD Player	Independent	No		Yes		60%	
Pure VoD Player	Independent	No		Yes		20%	
Pure VoD Player	Independent	No		Yes		45%	
Pure VoD Player	Independent	No		No		40%	
Pure VoD Player	Independent	No		No		5%	
Pure VoD Player	Independent	No		No		45%	
Pure VoD Player	Independent	No		No		20%	
Broadcaster	Private	No	0% YES	Yes	20% YES	30%	65%
Broadcaster	Private	No		Yes		40%	
Broadcaster	Private	No		No		80%	
Broadcaster	Private	No		No		90%	
Broadcaster	Private	No		No		85%	
Broadcaster	Private	No		No		70%	
Broadcaster	Private	No		No		25%	
Broadcaster	Private	No		No		90%	
Broadcaster	Private	No		No		50%	
Broadcaster	Private	No		No		90%	
Broadcaster	Public	No	0% YES	No	0% YES	100%	100%
Broadcaster	Public	No		No		100%	
Broadcaster	Public	No		No		100%	

The above table, when compared with the results from the application of quantitative indicators (titles and hours), shows us that, based on this initial prominence analysis, for private broadcaster owned on-demand services, the prominence of European content does not necessarily match the proportion of European content that is actually available. On average, prominence scores are lower than the results from the quantitative indicators, showing that you can offer many European works on a service, but then still put non-European works (for example US programming) at the forefront of your service. This does help support the case for prominence measures being included as part of the monitoring of Article 3i.

The prominence results also tell us the following about the proposed prominence indicators:

- The indicator "can you search by origin" may not be appropriate, as almost no services offers this search criteria (and many providers explained to us that the consumer does not want this functionality).
- By contrast, "is origin indicated somewhere" is perhaps more useful, as it provides a good indication of whether country of origin data is available on the service in some format. This could also be seen as a normal 'public service' obligation by providers.
- "Proportion of homepage" indicator at this stage should be seen as a rough trial into what could be developed on a more extensive

scale. For this to be used to provide consistent data across Member States, clear guidelines for measuring this proportion will need to be developed between government bodies and stakeholders. The industry could also think of sub-criteria, in addition to proportion of homepage, such as “proportion of genre pages” and “share of screen.”

11. Key Findings

The following section outlines the key findings of the study section-by-section.

11.1. Modes of Implementation

How Articles 4 and 5 are implemented

Articles 4 and 5 of the Directive are instruments to create minimum standards for the national measures on linear services. As a result, the national implementations of Articles 4 and 5 are different from one another in several respects.

Although most Member States have transcribed the Directive's definition of total qualifying hours directly, different approaches have been applied by France, Germany, Italy and the UK, with the most significant differences found in France and Germany.

Some Member States have adopted 'where practicable' (the qualifying term used in the Directive) or similar qualifications in their national legislation, which we consider to be a more flexible approach than when this phrase is absent.

The Member States apply very different definitions for 'independent producer'. While some Member States have no definition in their legislation, most Member States utilise a combination of elements in their national definitions. Ownership requirements are applied by a clear majority of these Member States; an example of this is the French rule, where in order for a producer to qualify as 'independent', cross-ownership between broadcasters and producers cannot exceed 15% of the share capital. Programme supply requirements, and requirements concerning the actual ability of the producer to conduct his business unhindered by a broadcaster are also found in several Member States, while criteria based on secondary rights are only applied by Norway, Latvia and France.

Nearly all Member States apply the Directive's 10% requirement for independent productions to the broadcasters' transmission time, or allow the broadcasters to choose between adherence to a percentage of programming budgets or a percentage of transmission time. Only very few Member States apply stricter approaches. Hungary requires broadcasters to reserve both 10% of transmission time *and* 12% of programme budget, and Portugal requires the public service channel RTP 2 to reserve at least 10% of its programming budget. France and, since very recently, Italy,³⁰⁶ apply an approach which goes further than the Directive, since they require broadcasters to reserve a certain percentage of their entire *annual turnover* (a figure which will always be higher than the broadcasters' programming budget).

³⁰⁶ The new approach in Italy is due to 2007 legislation which only entered into force at the beginning of 2008.

Most Member States monitor adherence to Articles 4 and 5 by requiring broadcasters to submit transmission returns, giving the volume of European works and independent productions they broadcast. Some Member States take additional steps to verify the accuracy of the data provided by broadcasters, either by verifying the returns received from broadcasters or by direct monitoring of broadcasts.

Regulatory authorities in most Member States have a range of sanctions at their disposal for sanctioning failure to adhere to Articles 4 and 5 (from warnings to fines and – in some Member States, and for the most serious cases – shortening or revoking a broadcaster's licence). Only the regulators in Austria, Cyprus, Iceland, Ireland and Sweden have no power to sanction broadcasters not complying with Articles 4 and 5.

Seven Member States – Finland, France, Hungary, Italy, The Netherlands, Spain and the United Kingdom – apply higher percentage requirements for European works or independent productions than those contained in the Directive on some or all of their broadcasters. For example, France requires broadcasters to reserve at least 60% of transmissions to European works, and in the United Kingdom, higher requirements on European works may be set within the individual licenses. Finland applies a 15% independent productions requirement on all broadcasters, while the UK, Slovakia and the Netherlands apply higher proportions on public service broadcasters (25% and 20%, respectively). In the Netherlands, each public service channel must reserve at least 17.5% of qualifying hours for independent productions, with an average proportion for all public service channels of 25 % of qualifying hours, and re-runs may only be counted towards the measure when they are shown in peak time.

Almost all Member States place additional content requirements on broadcasters to reflect linguistic or cultural specificities in a Member State. In particular, it is worth noting that several Member States require that a certain proportion of broadcasting time shall be programmes originally produced in the national language (or one of the national languages).

The application of Articles 4 and 5 (whether the measures are applied flexibly or prescriptively), and the additional requirements placed on broadcasters in national legislation (low or high additional requirements), define four 'implementation modes'. Each Member State's implementation mode is given in the following table:

		Application of Directive	
		Flexible	Prescriptive
Additional Requirements	High	Spain Sweden	Bulgaria Finland France Italy Netherlands Poland Portugal Romania United Kingdom
	Low	Austria Cyprus Czech Republic Denmark Germany Iceland Ireland Lithuania Luxembourg Malta	Belgium Estonia Greece Hungary Latvia Norway Slovakia Slovenia

Only 3 Member States covered in the 2005 Study – Belgium, the Netherlands and Norway - have been assigned a different implementation mode for the one they received in 2005. The Netherlands and Norway have been moved from “Flexible” to “Prescriptive”, while Belgium and Norway have been moved from “High” to “Low”. This is due to a combination of changes in the legislation and an adjustment in the classification methodology since the 2005 Study.

On-demand audiovisual media services and European works

As of 1 January 2008, none of the Member States had implemented Article 3i, although Italy had just adopted a provision which authorises the regulator AGCOM to issue subsequent secondary legislation which could implement the provision.

Only very few Member States (the French Community of Belgium and France) had adopted legislation that, although not adopted with the intention of implementing Article 3i, nevertheless in some way could have a similar objective and effect to Article 3i.

The French Community of Belgium is the only jurisdiction that subjected non-linear television services to the same obligations as other television broadcasting services (including obligations on European works, independent productions, French language programming and spending on audiovisual production).

France applied some film fund tax measures to on-demand services.

France also once had a voluntary inter-professional agreement which established investment quotas for EU and French-originated cinematographic works on Cinema-on-Demand providers, but this one-year agreement had expired in December 2006.

Altogether, no Member States had completed the implementation of Article 3i as of 1 January 2008, and only the French Community of Belgium actively applied any form of European works requirement to non-linear services.

11.2. Market Overview

Current market structure and flow of funds along the supply chain

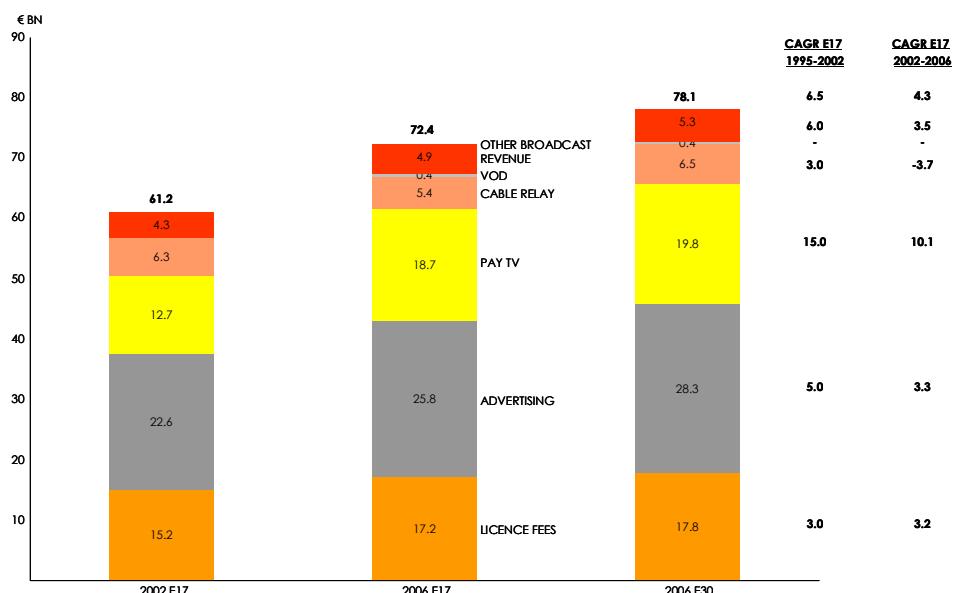
The TV market structure and flow of funds across all Member States varies considerably in terms of overall TV income and at all aspects of the value chain: the creation of new content; the management of individual TV broadcast channels; and the distribution of a channel, or group of channels, to viewing households by either terrestrial, satellite, cable or internet delivery systems.

Industry income

Considering TV revenue first, the UK and Germany are by far the two largest TV markets in Europe; France and Italy – which have similar sized economies to that of the UK – are somewhat smaller. The UK and Italy have the most developed advertising markets among the larger nations, while France and the UK have the largest proportionate pay-TV markets. Public funding through licence fees is highest in Germany and the UK. TV revenue per household is highest in Norway and the UK due to their highly developed cable and satellite pay-TV markets. Among the next nine largest markets pay TV is most developed in Ireland, Portugal and Romania, all of which enjoy pay TV penetration rates of over 50%. It is in these smaller markets that VoD revenues are proportionately highest, due to their developed pay-TV sectors. In the 10 smallest markets there are significant variations in market structure: the licence fee in Bulgaria, Slovenia and Iceland contributes over 25% to the overall TV market; in Slovakia, Lithuania and Latvia, pay and network advertising accounts for over 50% of the total market; and in Cyprus and Estonia, the pay TV market accounts for over 50% of total TV revenue.

Analysing each of the E30's individual market structures and flow of funds in detail we calculated total TV industry revenue of €78.1 billion in 2006 93% (€72.8 billion) of which came from three main sources: licence fees (€17.8 billion – 23%); advertising and associated sponsorship (€28.3 billion – 36%); and consumer payments to pay TV, cable relay and VoD services (€26.2 billion – 34%). The main source of growth in the E17 countries is in consumer payments, which have grown 10.1% year-on-year since 2002. Both advertising and licence fees grew at just over 3% year-on-year, just slightly above inflation.

TV revenue by source in Europe (2002 & 2006)

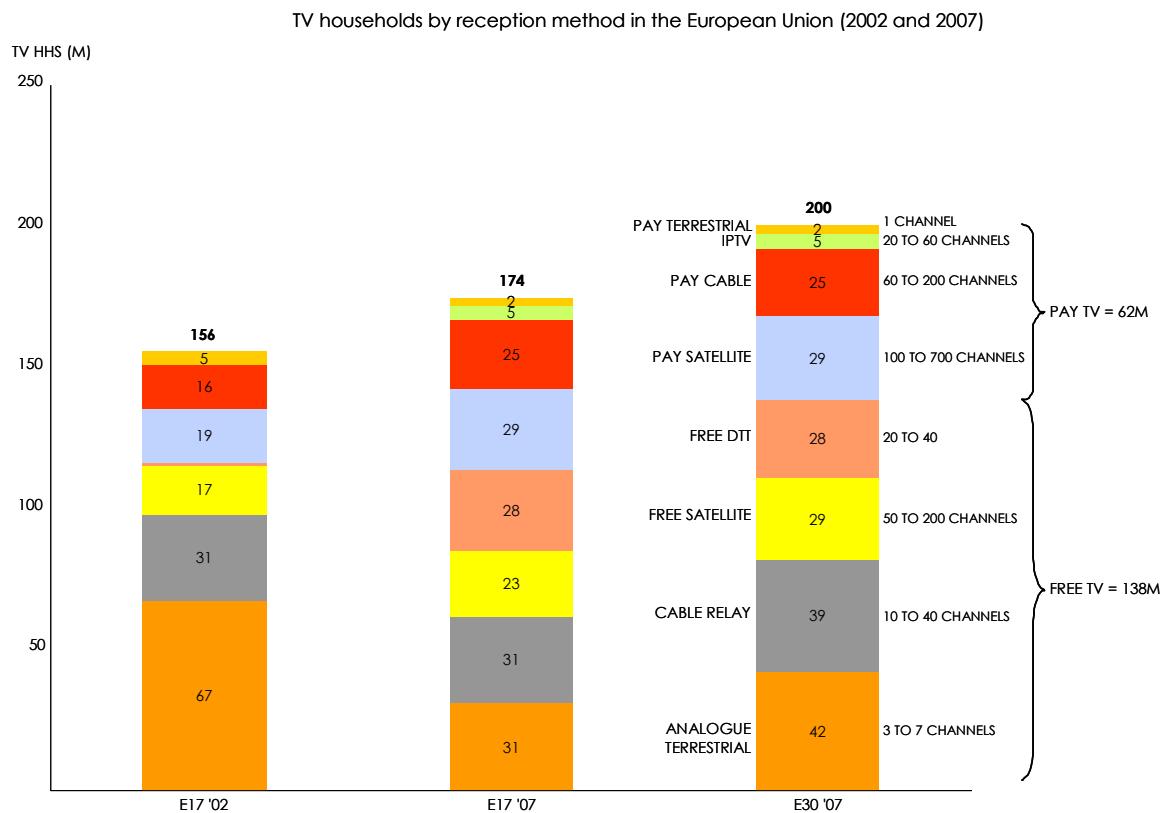


SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, PWC, KAGAN, NATIONAL REGULATORS, COMPANY REPORTS, SCREEN DIGEST, O&O MODELS, O&O ANALYSIS, BROKER REPORTS, PRESS, INTERVIEWS

TV distribution and delivery

TV across Europe is delivered to the home through a complex combination of different systems. Each system in turn varies in the degree to which it provides free delivery, or extracts a monthly charge.

Analogue terrestrial still remains the most common form of distribution with 21% of homes receiving television signals through an analogue aerial receiver, however all Member States now have firm plans to move to digital terrestrial television (DTT) with switchover dates ranging from December 2008 (Germany) to December 2014 (Poland). The key trends emerging from our analysis of pay TV was a drive to digitise cable networks in Germany, Benelux and Scandinavia, which currently can only carry 20 to 40 analogue channels. Post digitisation these networks should be able carry 100+ channels. Complementing this drive to digital has been the emergence of a new broadcast delivery platform over DSL broadband services, known as IPTV which has already proved popular in France, Sweden and Norway. Direct-to-home satellite's transfer to digital has been rapid and has increased the number of channels to well over 600 channels for the main national markets.



SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, TBI, COMPANY REPORTS, SCREEN DIGEST, O&O ANALYSIS

Across the E30, average pay-TV penetration³⁰⁷ is approximately 31% and varies widely across markets. The UK, Romania and Portugal all have pay-TV penetration of over 40%, while in Hungary, Slovakia and Germany penetration is less than 20%, due to historically widespread cable relay. Among the 10 largest countries, Germany has the lowest pay-TV penetration at just 12%, while amongst the smaller markets, Slovakia has one of the least developed markets, with just 6% pay-TV penetration.

On-demand services

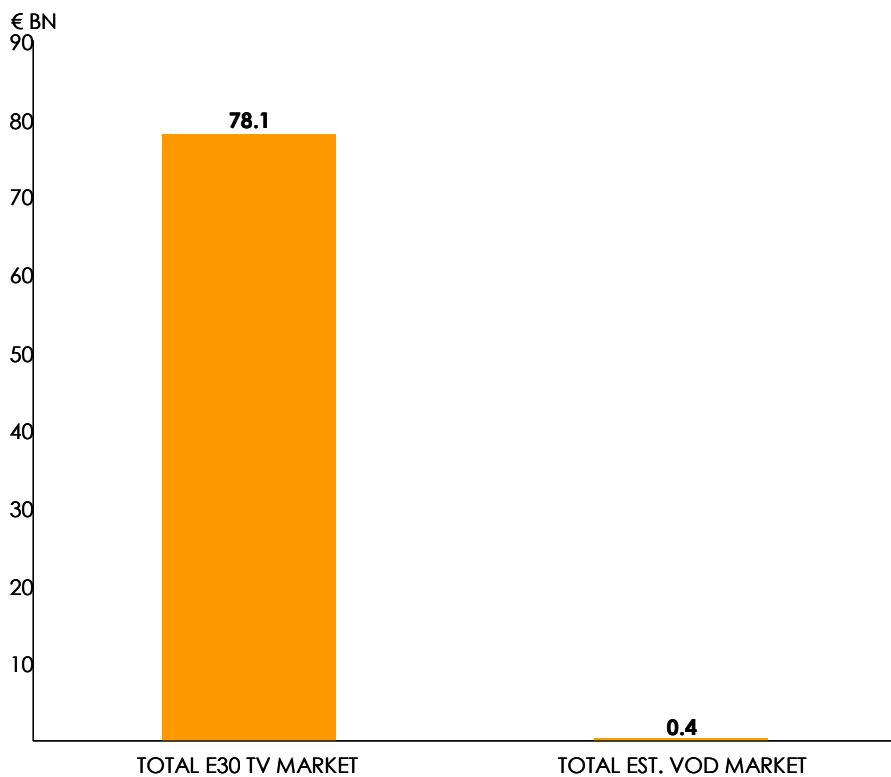
A substantial part of current on-demand offerings in the larger European markets are “catch-up” services from the main broadcasters (such as VRT’s Net Gemist service in Belgium and RTV’s internet service in Slovenia). In 2006, services had only been established in a small number of developed markets and even by the end of 2007 were generating almost no revenue – while it is feasible to insert advertising into these services, many are provided by the public broadcaster (and are thus advertising-free) and commercial services have only limited ability to measure audiences (and hence monetise them with advertisers). The

³⁰⁷ Pay-TV penetration in France and The Netherlands is skewed slightly due to very low subscription costs for households to access IPTV and digital cable services in these markets. In the Netherlands, low cost digital cable packages were promoted to encourage households to move from analogue cable during the digital switchover, while in France, fierce competition between broadband providers resulted in a number of free IPTV services being made available on the market.

number of services available varies considerably by market. France, the Netherlands and Germany have 32, 30 and 26 services available respectively while some of the smaller nations, such as Estonia, Iceland and Slovenia, have only 2 or 3 services.

We estimate that in 2006 on-demand services generated approximately €400m of revenue in the E30, representing just 0.5% of the TV industry. Within the report we profile four individual on-demand services.

Comparable size of the European VoD Market (2006)



SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, PWC, KAGAN, NATIONAL REGULATORS, COMPANY REPORTS, SCREEN DIGEST, O&O MODELS, O&O ANALYSIS, BROKER REPORTS, PRESS, INTERVIEWS

TV channel management

The market can be broken down into three main types – free TV channels (available to all the audience), basic tier pay-TV channels (which are available to subscribers as part of a pay-TV subscription) and premium pay-TV channels (for which an additional subscription fee is paid). Free TV channels can be divided into publicly funded channels and commercially, or advertiser funded channels³⁰⁸. Pay-TV channels also take advertising, but have an element of subscription fees – paid to them by the platform operators - in their revenue mix. Premium pay-TV channels often only

³⁰⁸ Some, for example France Television and ARD/ZDF, take a mixture of public funding and advertising revenue).

take a very limited amount of advertising – their main selling point is to offer uninterrupted access to sport or movies – and subscription fees form the overwhelming majority of their revenue mix.

The creation of content

Within TV content we identified three basic programme scheduling choices for TV channels: from where to source programming (commissions vs. acquisitions vs. repeats); what genre to broadcast (drama, news, comedy, factual, stock vs. flow³⁰⁹); and sub-genre choices (e.g. a drama soap opera versus a one-off film).

The European TV content creation sector was worth approximately €18.3 billion in 2006. Of this, €16.5 billion came from commissions by network channels and €1.8 billion from commissions by smaller channels³¹⁰. Of this €18.3 billion, about €2.6 billion was spending on national and local news and sports coverage (spending on sports rights is excluded). Of the remaining €15.7 billion, an estimated 43% (€6.8bn) was spent on commissions from external producers and around 57% was invested in in-house production³¹¹.

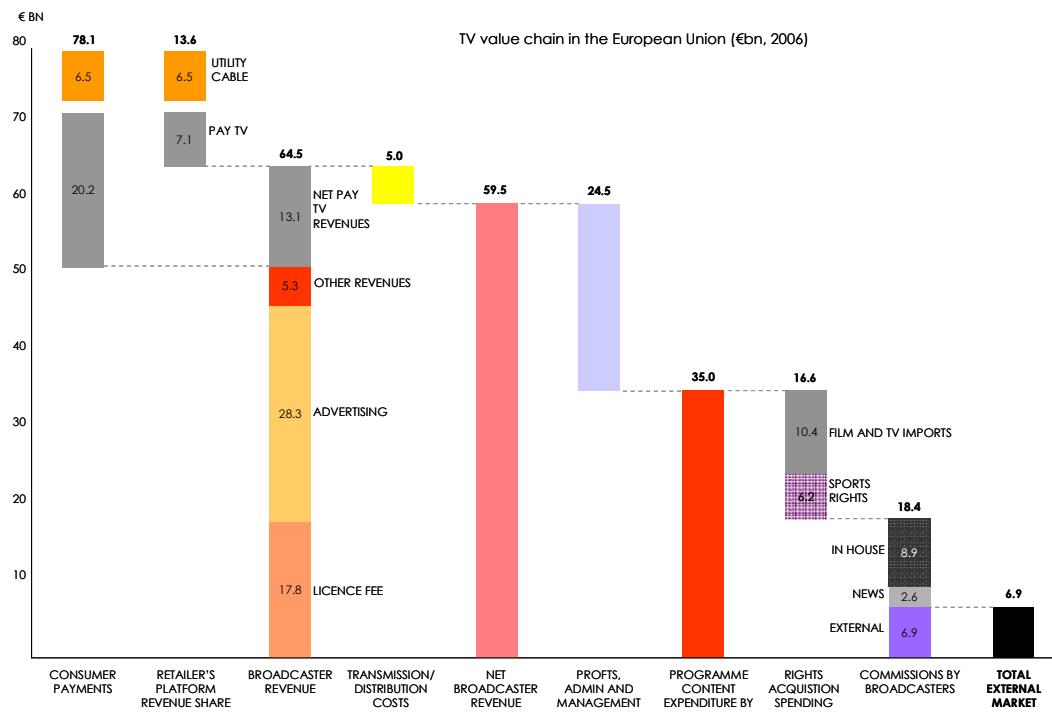
Main network channels account for about 57% of gross industry revenue but over 90% of all new commission spending. Secondary channels tend to be carried within pay-TV packages, where a large proportion of revenues either go to the platform providers or is spent on premium acquisitions, such as top feature films or sport.

³⁰⁹ A stock programme has repeat value and can be shown again at a later date, while flow programmes have little or no further value after the first showing (narrative repeats excluded). Examples of flow programming include news, sport, games, and some entertainment programming.

³¹⁰ Revenue from direct subsidies (of approximately €0.3m), and direct income to producers from the exploitation of ancillary rights such as international programme sales, DVDs, licensing and merchandising (approx €0.8m) has been accounted for in the content creation figure detailed in the main text.

³¹¹ External production includes broadcaster affiliates such as UFA and Studio Hamburg in Germany and Fremantle across RTL's group of channels.

The flow of funds



SOURCE: O&O TRENDS BASED ON DATA FROM: OBS, TVI, PWC, KAGAN, NATIONAL REGULATORS, COMPANY REPORTS, SCREEN DIGEST, O&O MODELS, O&O ANALYSIS, BROKER REPORTS, PRESS, INTERVIEWS

Of the €78.1 billion in TV revenue, delivery platforms retain €13.6 billion³¹² with the remainder of €64.5 billion³¹³ flowing to broadcasters. Approximately €5.0³¹⁴ billion of this is spent on transmitting the channels and €35.0 billion³¹⁵ is invested in programming with the remaining €24.5 billion³¹⁶ covering all profits, administration and management costs.

Of the €35.0 billion programme spend, approximately €16.6 billion³¹⁷ was spent on acquiring rights of various kinds – €6.2 billion on sports rights and €10.4 billion on film and TV acquisitions (domestic TV and film archive rights, acquisitions of films and TV programmes from the USA, acquisitions of TV programmes and films from other European countries, investment in domestic films in return for TV rights)³¹⁸. The remaining €18.4 billion³¹⁹ was invested in original programming in the form of news, in-house and external production. Of the €18.4 billion, approximately €6.9 billion flows to the external production market.

³¹² See the 2nd column – ‘Retailer’s platform revenue share.’

³¹³ See the 3rd column – ‘Broadcaster revenue.’

³¹⁴ See the 4th column – ‘Transmission/distribution costs.’

³¹⁵ See the 7th column – ‘Programme content expenditure by broadcaster.’

³¹⁶ See the 6th column – ‘Profits, admin and management.’

³¹⁷ See the 8th column – ‘Rights acquisition spending.’

³¹⁸ In practice, co-productions are probably split between the acquisitions total and the new commissions total.

³¹⁹ See the 9th column – ‘Commissions by broadcasters.’

11.3. EU-wide Analysis

Across our sample of 54 channels in 11 Member States, qualifying programmes make up 68.3% of the total transmission hours and 65% of the total viewer hours on all channels studied in 2007.

In general, European broadcasters are significantly above the 50% requirement for European works and the 10% requirement for independent works.

Across our sample, European works made up 62.4% of the total qualifying transmission hours in 2007. Most European broadcasters met the 50% requirement of Article 4. European works also make up an average of 74% of the total viewer hours across all studied channels in 2007, which indicates the strong appeal of European works to European audiences, and the broadcasters' reliance on European content to build their ratings. The figures are even higher when looking at peak-time only: 62.8% of the total qualifying transmission hours and 75.5% of the total viewer hours. Channels with the highest proportions of European works are leading, public channels from Southern, old and large European countries.

Across our sample, independent European works make up 31% of the total qualifying transmission hours in 2007, compared to 33.4% of total qualifying viewer hours. Proportions are higher when looking specifically at peak-time: 34.6% of the total qualifying transmission hours and 36.9% of the total viewer hours. Recent independent European works make up an average of 84.4% of the total independent European hours in 2007, compared to 91.7% of total independent viewer hours. Proportions are higher in peak-time: 92.4% of the total independent transmission hours and 95.5% of the total independent viewer hours

Non-domestic European works make up 8.2% of the total qualifying transmission hours in 2007, compared to 4.3% of total qualifying viewer hours. Proportions are lower when looking specifically at peak-time: 7% of the total qualifying transmission hours and 2.9% of the total viewer hours.

Across our sample, qualifying European stock makes up 45.9% of the total qualifying transmission hours in 2007, compared to 50.4% of total qualifying viewer hours. Proportions are higher when looking specifically at peak-time viewing: 49.1% of the total qualifying peak-time transmission hours and 54.9% of the total qualifying peak-time viewer hours. This shows that stock and flow programming is very evenly balanced across the broadcasters in our sample.

11.4. Views from the Industry

Determinants of programme spending decisions

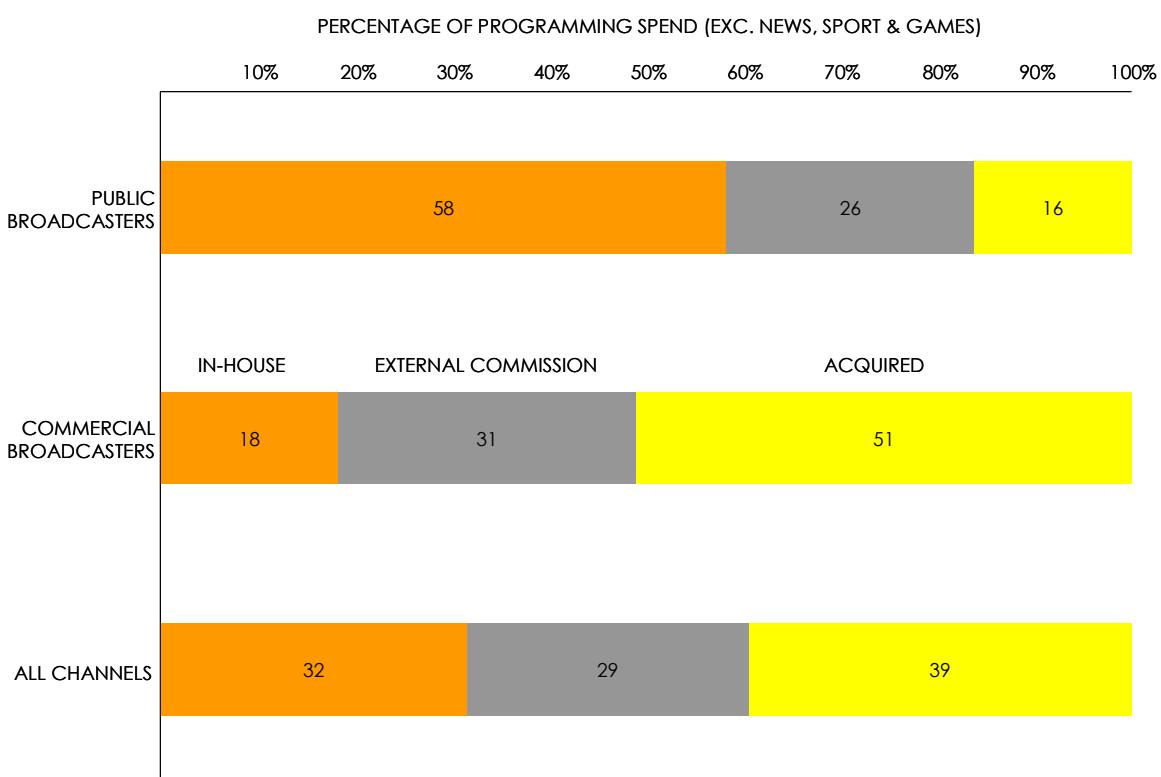
In programme scheduling, a broadcaster must decide upon the following: the balance between commissioned and acquired programming; from

whom they should commission new programmes; and the source of acquired programmes (particularly the balance between European-made programmes and programmes from the US). In this section we conclude our findings from interviews with 28 broadcasters representing 80% of the Member States researched in the study

Overall programming spend and the balance between commissions and acquisitions

The most capital-intensive genres are fiction, entertainment and news programming which account for almost two thirds of total programming spend. In addition, these genres were also identified by the majority of broadcasters (over 60%) as cheaper to produce in-house³²⁰.

Broadcasters invested the majority (61%) of their programme budget on commissioned programmes (external commissions, 32% and in-house, 29%), with the remainder (39%) spent on the acquisition of ready-made programmes.



Commercial broadcasters tend to allocate a higher proportion of their programme budget (51%) to acquired programmes, and a significantly lower proportion (18%) to in-house production. Contrastingly, publicly funded broadcasters tend to invest heavily in in-house production (58%) and far less on acquisitions (16%). It is worth noting that the low in-house production spend for commercial broadcasters may simply reflect the fact that many of them have no in-house production capability. We also identified a general shift across both publicly and commercially

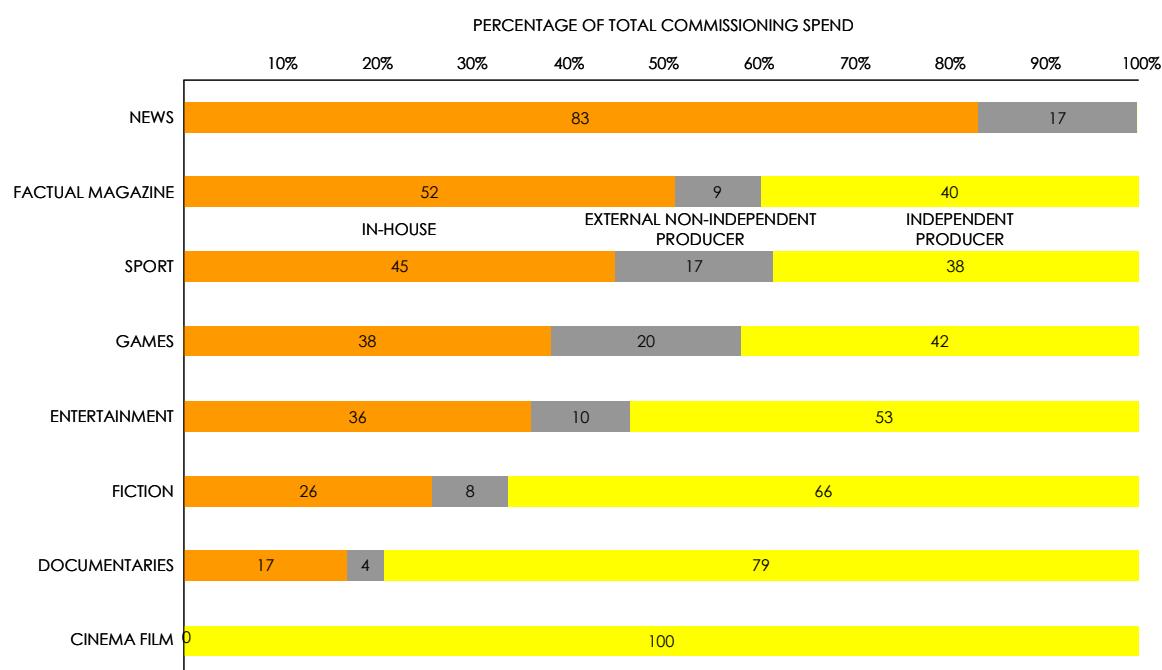
³²⁰ The only genre all respondents felt is cheaper to produce externally was cinema film.

funded broadcasters towards external commissioning, with over 70% of respondents stating that the proportion of external commissioning had increased over the last five years.

The majority of format commissioning is by commercial broadcasters with an average of 10% of their total programming budget invested in commissioning formatted programming. For the publicly funded broadcasters, only 6%³²¹ of their programming budget was spent on commissioning formats. This gap in format investment between publicly funded and advertising funded broadcasters is down to balancing risk. Advertising funded broadcasters typically opt for tried and tested formats in order to guarantee audience share (and thus satisfy advertisers) whereas publicly funded broadcasters often have a remit to adhere to that ensures they must promote innovation, education and invest in local programming.

Commissioning new programmes

The vast majority of news programming is produced in-house, while cinema film and documentaries tend to be produced externally. Fiction, entertainment and factual magazine programming have a more balanced mix in terms of sourcing, with 20% to 50% produced in-house and 40% to 70% produced by independent producers. Documentaries are rarely produced in-house and cinema film is always sourced from the external market (typically Hollywood studios or local/domestic independent producers). In news, games and sport over 15% of programming is made by other broadcasters e.g. Five in the UK sourcing their news programming from Sky.



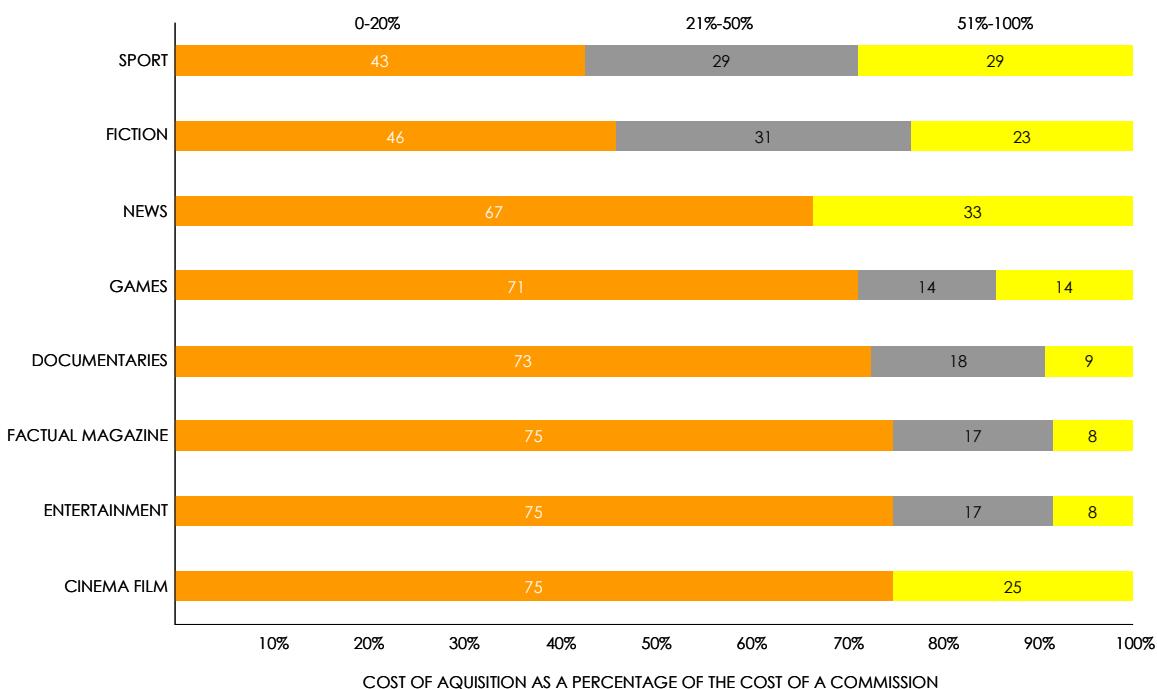
³²¹ This figure was skewed slightly by two publicly funded broadcasters who both reported high levels of investment in formatted programming. Generally, the level of investment sits between 0% and 3%.

Over 82% of respondents stated that external commissioning has grown significantly over the last five years, with 79% stating that the increase was particularly pronounced in fiction.

Over 64% of format commissioning was invested in entertainment and games formats such as *Pop Idol* or *Deal Or No Deal*, while over a third of broadcasters stated they had spent less on format commissioning over the last few years, both in-house and externally.

Decisions about programme acquisitions

The decision to acquire ready-made programming rather than commission a new programme often comes down to budgetary constraints.



Across all genres, except sport and fiction, over 65% of broadcasters stated that acquired programming cost over 80% less than commissioned programming. Within this, 75% of respondents felt that acquiring factual magazine and entertainment programming cost under 20% of the investment required to commission a similar program. The response for fiction was more mixed, with over 23% of respondents stating that acquired fiction programmes can cost over 50% of the cost of commissioning. This is probably a reflection of the high cost of American imports such as *24*, *Lost* and *CSI*, which are acquired at significant cost relative to standard commissioning budgets.

With the exception of fiction and cinema film, over 95% of acquisition spend was on programming produced in the last five years.

With regards the origin of programming, over half of broadcaster's acquisitions were from the US with just under 25% from content owners in another European country. Only 19% of acquired programming was from the broadcasters' respective domestic market and just over 3% of acquired programming was from content owners outside Europe and the US (mostly from Asia).

SOURCE OF ACQUIRED PROGRAMMING	PROPORTION OF TOTAL ACQUISITION SPEND
US BROADCASTERS OR PRODUCERS	56%
BROADCASTERS OR PRODUCERS OUTSIDE EUROPE AND THE US	23%
DOMESTIC PRODUCERS	14%
OTHER DOMESTIC BROADCASTERS	5%
BROADCASTERS OR PRODUCERS IN ANOTHER EUROPEAN COUNTRY	3%

11.5. Non-Linear Services

Of our respondents, both broadcasters and pure VoD players, the majority have content available via on-demand services distributed via the internet or IPTV. While broadcasters also use mobile (40%) and cable (32%), pure VoD players rely primarily on cable (25%) as their secondary distribution technology. While broadcasters generally offer a balanced mix of live, archive and, more recently, catch-up services on their VoD offerings, and a balanced mix of live, archive and, more recently, catch-up services, and a balanced mix of genres, reflecting the fact that a large part of their catalogue is derived from their generalist television schedules, pure VoD players show a clear preference for archive material with a focus on cinema, TV fiction and documentaries. Entertainment is by far the most popular genre on broadcasters' on-demand services (39.5%), followed by news (18.7%). For pure VoD players, cinema alone takes 62% of all viewing time spent, followed by entertainment (22.3%).

European titles are, in general, a key component of on-demand catalogues for both broadcasters and pure VoD players: among those interviewed for this survey, only 17% of pure VoD players and 12% of broadcasters said that their catalogues consisted of less than 25% of European titles. The actual number for broadcasters is often 100% as they generally replicate their linear schedules in their on-demand services, minus the titles that they do not own the on-demand rights (and which are generally not European).

Pure VoD players allocate 100% of their programme budget to acquisitions, with non-European imports representing almost half of the total, meaning that the pure VoD players from this survey have spent no money at all to commission new programmes.

Of the respondent broadcasters, 41% use advertising to fund their on-demand service (both pre/post roll and advertising midway through a programme, although the latter was less commonly used than pre/post roll advertising). Of all the respondents, 18% funded their service only via advertising, with 14% of broadcasters also having content available via subscription or pay-per-view as well as content supported by advertising, and 9% being funded in part by advertising revenue and in part by public subsidy. Public subsidy is used as the sole revenue stream by 23% of the broadcasters who responded. For 36% of the broadcaster owned on-demand services, content was funded solely via subscription and pay-per-view charges. Therefore 64% of broadcaster owned services are essentially free-to-use for the viewer to some extent (i.e. the service

is either entirely supported by public subsidy or advertising, or has some content available for free as ad-supported programming.

The vast majority of the revenue of pure VoD players who took part in our survey comes only from direct payments from consumers either as subscription fees (92% of pure VoD players who responded) or as pay-per-view. The remaining 8% were in part supported via subscription and pay-per-view fees, but also had money from public subsidy.

11.6. Procedures and Indicators for Monitoring Article 3i of the AVMS Directive

At this time, the only appropriate operational procedure for monitoring Article 3i involves self-declarations from service providers. Independent evaluation of non-linear services, similar to what is completed for linear services (and has been done so in this study) is not currently an appropriate procedure. This is firstly due to a lack of publicly available data on non-linear services, as there is on linear services via TAM-data providers. This means that to collect data on the content available on non-linear services, an independent consultant cannot simply purchase data as is done for linear services, but instead would have to go to the service directly. Automated 'web-harvesting' software could be used to copy title data from a service to a database, but raises some legal questions and would require in any event legislative efforts from Member State bodies to gain permission from service providers for such an approach. Alternatively, consultants would need to access the service themselves and copy lists of titles that are available. However, this process is complicated, in particular because there are no set schedules for non-linear services (as there are for linear services), and so it is unlikely that a list of all content available on a service will be found. Instead content has to be searched for, which opens up the possibility that content will be missed. More importantly, this process will be extremely time-consuming and therefore very expensive. For these reasons, independent monitoring has not been used for this study.

For this study, when looking at non-linear services, the consultants have used data acquired from self-declarations from service providers. At this time, for the reasons given above, we believe this is the appropriate operational procedure for monitoring Article 3i.

Following our analysis of the various indicators for Article 3i, we consider that the following are not appropriate at this time:

- Strict prominence measures – we are concerned that enforcing strict rules on on-demand services as to the way they promote European content will possibly limit the creative development of these services. A lighter touch is favorable (see below).
- Consumption measures – these are not an appropriate performance indicator at this time in our view. The data is currently

inconsistent, considered highly confidential by providers and goes beyond what is required of linear broadcasters. Consumption data, however limited, could be included, as noted in Recital 48, in the Member State reports to provide some evidence as to the success of other performance indicators being applied to non-linear services (see below for our suggestions). We do, however, think that consumption measures will become more viable with the future emergence of standard industry measures for On-Demand consumption. We believe that the development of standard industry measures should be supported at the Member State and European level. Once these services are available independent audits will be possible to conduct, by subscribing to these monitoring services.

Our analysis has therefore led us to the conclusion that the following are the appropriate procedures and indicators to be applied at this time, in order to assess the effectiveness of Article 3i:

- **Title-level data** – coding content in the catalogue for country-of-origin will not be too difficult to complete. Data could be reported confidentially in a declaration to the appropriate government body. Anonymised data could then be provided at the Member State level.
- **Hour-level data** – we believe that this will be a useful addition to the title-level data, and should already be available to the providers, thus requiring little additional resources. The procedure for this would be largely the same as for title-level data.
- **Encouraging prominence of European content** – as noted above, strict prominence measures could damage the development of on-demand services. Pushing for co- and self-regulation here, as defined in Article 3(7) and further explained in Recital 36 of the AVMS Directive, whereby providers would sign up to a set of commitments regarding prominence, would allow the Commission to ensure European content is being sufficiently promoted to audiences.
- **Financial data on spend on programming** – service providers would supply regulatory bodies with financial data on their spend on programming, and the proportion of this that is spent on European programmes. We expect that in the current stage of development for these services data will be limited, as little is spent on programmes, but this indicator will give a good basis for understanding how far on-demand providers support that production of European content.

Where possible, we have applied of key performance indicators for Article 3i to specific services. This is again based on data acquired through self-declarations. The main quantitative indicators that have been applied are proportion of titles in a catalogue that are European, proportion of hours of content in a catalogue that are European. This has shown that the vast majority of services who supplied data for our study had over 80% European titles in their catalogue (with many having 100%). However, pure VoD players typically had a smaller proportion of European titles than

that available on the non-linear services owned by broadcasters. On-demand services provided by private broadcasters have a slightly lower proportion of European titles, compared with public broadcasters.

One financial indicator was applied to specific services, asking for the proportion of the total budget for the non-linear to be split by source of programming, but data was not forthcoming from service providers. Based on a very limited response, it appeared that non-linear services run by broadcasters typically had high proportions of national content, whereas pure VoD players independent from broadcasters relied more on non-European content.

The consultants also applied three prominence indicators to specific services. This was based on additional desk research completed by the consultants. The three indicators are: 1) Can content be searched for by country of origin; 2) is country of origin for a piece of content indicated anywhere on the service; 3) an estimate of the proportion of the homepage that is dedicated to European works.

When compared with the results for quantitative indicators we could see that, based on this initial prominence analysis, for private broadcaster owned on-demand services, the prominence of European content does not necessarily match the proportion of European content that is actually available. On average, prominence scores are lower than the results from the quantitative indicators, showing that an on-demand service can contain many European works, but then still put non-European works (for example US programming) at the forefront of the service. This does help support the case for prominence measures being included as part of the monitoring of Article 3i.

12. Conclusions/ Conclusions/ Schlussfolgerungen

12.1. English

Below we present the core conclusions and recommendations from the study, based on findings from all parts of the study, and taking comments from the workshop into consideration.

- As with the 2005 Study, we found some areas where national transpositions of Articles 4 and 5 differ from Member State to Member State.
- Some Member States include the qualifying term ‘where practicable’, some have created stricter definitions for ‘total qualifying hours’ than others, while the definition of ‘independent producer’ varies greatly between Member States. These variations have allowed us to group Member States according to whether they have a ‘flexible’ or ‘prescriptive’ application of the directive, and whether they have ‘low’ or ‘high’ additional requirements placed on broadcasters.
- It appears that few Member States have altered their implementation of Articles 4 and 5 significantly since the results of the 2005 study. Among the Member States that were covered in the 2005 Study, the only changes of Implementation Modes were the Netherlands and Norway moving from ‘flexible’ to ‘prescriptive’ in the application of Articles 4 and 5, and Belgium moving from ‘high’ to ‘low’ in additional requirements.
- At the time when Directive 2007/65 was adopted, very few Member States applied rules to non-linear services with an effect similar to Article 3i. Only the French Community of Belgium applied a European Works requirement directly to non-linear services.
- The audiovisual market itself in Europe is becoming increasingly complex. New distribution models such as on-demand and increased fragmentation in traditional broadcasting have altered the structure of the market. However, only a very small proportion of the estimated €78.1bn revenue for the TV industry in 2006 was generated by video-on-demand: approximately 0.5%. This clearly indicates that non-linear services are still at an early stage in their development.
- Sources of total TV revenue vary significantly from Member State to Member State, although across the whole industry, 23% came from licence fees, 36% from advertising and sponsorship, and 34% from consumer payments.
- For linear services, free TV remains the most popular business model, and despite a significant migration to pay-TV services, pay-TV homes still represent less than one-third of European TV homes. Our survey of on-demand services showed that the large majority

of broadcaster-run non-linear services offer some or all of their content free-of-charge to the user. Interestingly, however, pure VoD players not attached to broadcasters indicated that consumer payments were almost always their main source of revenue. What we are seeing now, then, is a difference in the proposed business models for non-linear services, depending on whether or not they are attached to a broadcaster.

- For linear broadcasters, the split between spend on commissioned and acquired programming appears to vary depending on whether the service is public or private. Public broadcasters spend 58% of their budgets on in-house production (16% on acquisitions), while private broadcasters spend 18% on in-house production (51% on acquisitions). Just over half of all broadcasters' acquisitions were sourced from the USA. However, there is a different picture on broadcasters' non-linear services, with almost all surveyed services, both public and private, indicating that 75% of their on-demand budgets' were spent on commissioned content, and that in most cases their catalogues consisted of near or exactly 100% European content. This reflects the fact that broadcasters are more likely to have the on-demand rights to content they have commissioned themselves. On the other hand, the situation for pure VoD players is quite different, with 100% being spent on acquisitions – indicating the difficulty of affording expensive commissioned content. In their case, however, the proportion of this acquired content that is non-European is closer to that of the situation for linear services, with nearly half of their investment going on content made outside Europe.
- In our analysis of linear services, we found that the majority of channels surveyed met the requirements of Articles 4 and 5. Across our sample, 62.4% of qualifying transmission hours were European content and 31% were independent European works, of which 84.4% were less than five years old.
- We have also applied Articles 4 and 5 to viewing figures for the first time in this study. We have found that these are a useful complement to the study of transmission hours, providing a clearer picture of the actual proportion of content being watched that is European and independently produced. Support for the inclusion of viewing figures was voiced by stakeholders at the workshop. Our findings indicate that the proportions for viewer hours are consistently higher than the proportions for transmission hours at the EU-wide level (62.4% of qualifying transmission hours are European across our entire sample, compared with 74% of viewer hours; 31% of qualifying transmission hours are European independent productions, compared with 33.4% of viewer hours), indicating that European and independently produced content are very popular with audiences in the Member States surveyed.
- The notion of 'qualifying' programming was discussed at the workshop. The findings of our study indicate that its application to non-linear services would be unlikely to affect the results substantially. The majority of broadcaster-run non-linear services showed near or exactly 100% European content anyway. This is unsurprising: broadcasters typically expect on-demand rights for their commissioned programming, which will usually be national. It

is however more difficult for them to acquire new media rights for acquisitions, for example content from the USA. For pure VoD players we did find a greater propensity to have non-European content available on their services, but we also found that the genres found on them were typically 'qualifying' genres, such as cinema film, entertainment and factual (in fact, approximately 89% of the budgets for the pure VoD players who responded to our survey were spent on these 3 genres).

- With the deadline for implementation of the new Directive set for 19 December 2009, we found that only a few Member States had, or expected to have, implemented Article 3i into national legislation during 2008. A small number of Member States (French Community of Belgium and France) had established national rules for application to non-linear services.
- This, coupled with the fact that the video-on-demand industry is itself still very much at a nascent stage, means that identifying monitoring methods for non-linear services, as well as collecting data on them, is substantially more challenging than has been the case for linear services. At the workshop it was clear that a variety of different stakeholder opinions continue to exist as to how to apply Article 3i to non-linear services, and we expect these discussions to continue throughout 2009.
- We have presented what we consider to be possible and appropriate monitoring methods for Article 3i, based on what can be done at this time. Currently, we do not consider it possible to perform independent evaluation of non-linear services (as has been done for linear services), largely as data akin to Television Audience Measurement (TAM) data is not available for non-linear services at this time. Thus we have relied on self-declarations.
- We believe that at this early stage in the development of non-linear services the following quantitative performance indicators would be appropriate for measuring adherence to Article 3i: proportion of catalogue titles that are European, proportion of catalogue hours that are European, proportion of the total amount spent on content devoted to European works.
- The confidentiality of data such as financial data and consumption data was raised as a concern by interviewed stakeholders, meaning that there was less willingness to provide this sort of information. However, it is worth noting that there were some calls at the workshop for greater pressure to be put on providers to supply this sort of information in the future.
- At this time we do not consider consumption data to be an appropriate performance indicator. This decision is largely based on the fact that this data is highly confidential (see above) and also that there is currently no robust independent data source for consumption of on-demand content (as there is for linear programming with TAM data). This means that acquiring data that could be used to compare services within and across Member States could not be done reliably at this time. This topic was the subject of much debate at the workshop, with several stakeholders demanding a stronger push towards using consumption data to monitor Article 3i. It was clear from the discussion, however, that there is still much discussion needed to decide on the appropriate

method of monitoring on-demand audiences. This said we believe that consumption data may well become available for non-linear services in the future, and that the Commission and Member State bodies should look to assist the development of industry standard data here wherever possible.

- 'Prominence' has proved perhaps the most contentious performance indicator for Article 3i, with a great deal of discussion on this taking place at the workshop. The term is loosely defined in the legislation, and we have found that this does lead to a wide variety of possible applications of prominence as a monitoring method for Article 3i. There are strong concerns, raised from surveyed stakeholders, and also at the workshop, that applying prominence measures that are too strict could limit the creative development of new services. There were also concerns raised at the workshop that measuring prominence would prove very difficult - for example, a homepage for a non-linear service can be tailored specifically to a user, so it can be difficult for an independent consultant to accurately assess an indicator such as the proportion of a homepage dedicated to European content. We believe that, at this time, having prominence guidelines that on-demand providers can agree to would be an appropriate step, and that further discussion within Member States and with stakeholders is needed to identify the appropriate definition and application of prominence measures.

12.2. Français

Nous présentons ici les principales conclusions et recommandations émanant de l'étude. Elles s'appuient sur les conclusions de l'ensemble des chapitres couverts dans l'étude et tiennent compte des commentaires émis lors de l'atelier.

- De façon similaire à l'étude menée en 2005, nous avons identifié un certain nombre de domaines dans lesquels les transpositions nationales des Articles 4 et 5 divergent en fonction des États membres.
- Certains États membres ont intégré le terme de la directive « dans la mesure du possible », certains ont formalisé des définitions plus strictes des « heures totales prises en compte » que les autres, tandis que la définition de « producteur indépendant » varie largement d'un État membre à l'autre. Ces variations nous ont permis de regrouper les États membres selon leur application « souple » ou « stricte » de la directive et leurs exigences « faibles » ou « élevées » imposées aux diffuseurs.
- Il apparaît que peu d'États membres ont modifié leur mise en oeuvre des Articles 4 et 5 de façon significative depuis les résultats de l'étude de 2005. Parmi les États membres étudiés en 2005, les seuls pays à avoir modifié leurs modes de mise en oeuvre sont les Pays-Bas et la Norvège, passant d'une application « souple » à une application « stricte » des Articles 4 et 5, et la Belgique, passant d'exigences supplémentaires « élevées » à « faibles ».

- A l'époque où la directive 2007/65 a été adoptée, peu d'États membres appliquaient aux services non linéaires des règles visant un objectif similaire à celui de l'Article 3i. Seule la Communauté française de Belgique a appliqué une exigence relative aux œuvres européennes directement à ses services non linéaires.
- Le marché audiovisuel en Europe devient de plus en plus complexe. Les nouveaux modèles de distribution tels que les services à la demande et l'augmentation de la fragmentation de la diffusion linéaire classique ont modifié la structure des marchés. Toutefois, seule une faible proportion des revenus de l'industrie télévisuelle, estimés à 78,1 milliards d'€ en 2006, a été générée par les services à la demande : environ 0,5%. Ceci indique clairement que les services non linéaires sont encore à un stade précoce de leur développement.
- Le poids des différentes sources de revenus de l'industrie télévisuelle varie de façon significative d'un État membre à l'autre. Sur l'ensemble de l'Union Européenne, 23 % des revenus proviennent des budgets publics, 36% de la publicité et du parrainage et 34% des paiements directs par les consommateurs.
- S'agissant des services linéaires, la télévision gratuite reste le modèle économique dominant et malgré une migration significative vers des services de télévision payante, les foyers souscrivant à de tels services représentent toujours moins d'un tiers de l'ensemble des foyers équipés TV de l'Union européenne. Notre enquête sur les services à la demande a indiqué que la grande majorité des services non linéaires proposés par les diffuseurs sont gratuits pour l'utilisateur. A l'inverse, les fournisseurs de contenus exclusivement en VoD et non liés à des diffuseurs nous ont indiqué que les revenus issus directement des consommateurs constituent la plupart du temps leur source principale de revenus. Aujourd'hui, nous observons une différence claire de modèles économiques entre les services non linéaires selon leur lien ou leur indépendance vis-à-vis d'un groupe historique de télévision.
- S'agissant des diffuseurs linéaires, la répartition des budgets programmes entre la production et les acquisitions semble varier en fonction du caractère public ou privé du service. Les diffuseurs publics dépensent 58% de leurs budgets pour la production interne (16% d'acquisitions) alors que les diffuseurs privés dépensent 18 % (51 % pour les acquisitions). Un peu plus de la moitié des acquisitions des diffuseurs ont été achetés aux États-unis. Toutefois, le tableau est différent pour les services non linéaires des diffuseurs, avec la presque totalité des services étudiés, tant publics que privé, indiquant que 75% de leurs budgets consacrés aux services à la demande étaient consacrés aux contenus commandés et que, dans la plupart des cas, leurs catalogues étaient constitués à 100 % ou presque de contenus européens. Ceci traduit le fait que les diffuseurs sont plus susceptibles de disposer des droits des programmes à la demande sur les contenus qu'ils ont eux-mêmes commandés. D'autre part, la situation des fournisseurs de contenus exclusivement en VoD est très différente, avec 100 % des budgets consacrés aux acquisitions, indiquant leur difficulté à investir dans de nouvelles productions aux budgets importants. Dans leur cas toutefois, la proportion de ces acquisitions non européennes est

plus proche de celle des services linéaires, avec presque la moitié de leurs investissements consacrés à des contenus produits en dehors de l'Europe.

- Notre analyse des services linéaires montre que la majorité des chaînes étudiées respectent les exigences des Articles 4 et 5. Dans notre échantillon, 62,4 % des heures de transmission prises en compte étaient constituées de contenus européens et 31% étaient des œuvres européennes indépendantes parmi lesquelles 84,4% dataient de moins de cinq ans.
- Nous avons également appliqué les Articles 4 et 5 aux données d'audience, ceci pour la première fois à l'occasion de cette étude. Nous avons constaté qu'ils constituent un complément utile à l'étude des heures de transmission, fournissant une image précise de la proportion de contenus réellement consommés, qu'il s'agisse des productions Européennes ou indépendantes. L'ajout à l'analyse des grilles de programmes d'analyses réalisées à partir des données d'audience a reçu un soutien important des participants à l'atelier. Nos résultats indiquent que les proportions d'heures téléspectateur sont généralement supérieures aux proportions d'heures de transmission au niveau de l'ensemble de l'Union Européenne (62,4% des heures de transmission prises en compte sont européennes sur l'intégralité de notre échantillon, par rapport à 74% des heures téléspectateur et 31 % des heures de transmission prises en compte sont des productions indépendantes européennes, par rapport à 33,4 % des heures téléspectateur), indiquant que les contenus européens et produits de façon indépendante sont très populaires auprès des publics des États membres interrogés.
- La notion d'œuvre « prise en compte » a été abordée lors de l'atelier. Les résultats de notre étude indiquent que son application à des services non linéaires serait peu susceptible d'avoir une incidence sensible sur la réalité des offres. La majorité des services non linéaires proposés par les diffuseurs contiennent en effet 100% ou presque de contenus européens. Ceci n'est pas surprenant dans la mesure où les diffuseurs acquièrent généralement les droits à la demande sur les programmes qu'ils produisent, droits qui sont généralement nationaux. Il est par ailleurs plus difficile pour eux d'acquérir les droits nouveaux médias sur leurs acquisitions, notamment sur les contenus originaires des États-unis. Chez les fournisseurs de contenus exclusivement en VoD, nous avons trouvé une plus grande propension à proposer des contenus européens et nous avons également remarqué que les genres que l'on trouve sur ces derniers sont généralement des genres « pris en compte » tels que les films de cinéma, les divertissements et magazines de société (en fait, environ 89% des budgets des fournisseurs de contenus exclusivement en VoD ayant répondu à notre enquête ont été dépensés pour ces 3 genres).
- Compte tenu de l'échéance retenue pour la transposition de la nouvelle directive, fixée au 19 décembre 2009, seuls quelques États membres prévoient de transposer l'Article 3i dans leur législation nationale au cours de 2008. Un petit nombre d'États membres (Communauté française de Belgique et de France) ont établi des règles nationales d'application des services non linéaires.

- Ceci, associé au fait que l'industrie de la vidéo à la demande se trouve encore à un stade précoce, signifie que l'identification de méthodes de contrôle des services non linéaires, et la collecte de données afférantes, est sensiblement plus complexe que pour les services linéaires. Lors de l'atelier, il est apparu clairement qu'une variété d'opinions continue d'exister sur la façon d'appliquer l'Article 3i aux services non linéaires et nous estimons que ces discussions vont se poursuivre en 2009.
- Nous avons présenté les méthodes de contrôle possibles et appropriées pour l'Article 3i en fonction de ce qui est réalisable à ce stade. Actuellement, nous estimons qu'il n'est pas possible de réaliser une évaluation indépendante des services non linéaires (comme ceci a été effectué pour les services linéaires), puisque les données telles que la mesure de l'audience télévisuelle (TAM) ne sont pas disponibles pour les services non linéaires pour le moment. Par conséquent, nous nous sommes appuyés sur les auto-déclarations.
- Nous estimons qu'à ce stade précoce du développement des services non linéaires, les indicateurs de performance quantitatifs suivants seraient les plus appropriés pour mesurer le respect de l'Article 3i : proportion des titres européens du catalogue, proportion horaire des contenus européens dans le catalogue, proportion du montant total dépensé pour le contenu consacré aux œuvres européennes.
- La confidentialité des données telles que les données financières et les données de consommation ont posé un problème aux parties prenantes interrogées, signe d'une volonté limitée de fournir ce type d'informations. Toutefois, il convient de constater que lors de l'atelier, certains ont appelé à l'application d'une pression plus forte sur les fournisseurs en vue de fournir de type d'informations à l'avenir.
- Pour le moment, nous ne considérons pas les données relatives à la consommation comme un indicateur de performance approprié. Cette opinion découle largement du fait que ces données sont hautement confidentielles (voir ci-dessus) et qu'aucune source reconnue de données de consommation des contenus à la demande n'existe actuellement (similaire à celles des programmations linéaires avec les données TAM). Ceci signifie que l'acquisition de données qui pourraient être utilisées pour comparer les services dans les États membres ne peut être effectuée avec une fiabilité suffisante aujourd'hui. Cette question a fait l'objet de nombreux débats lors de l'atelier, de nombreux participants demandant une utilisation plus importante des données de consommation pour contrôler le respect de l'Article 3i. La discussion a toutefois permis de démontrer clairement que des discussions approfondies seront nécessaires à l'avenir pour choisir la méthode la plus appropriée de contrôle de la consommation des programmes à la demande. Ceci dit, nous estimons que les données de consommation pourraient devenir disponibles pour les services non linéaires à l'avenir et que la Commission et les organismes des États membres devraient chercher à contribuer à l'établissement d'une norme des données de l'industrie dans la mesure du possible.

- « La proéminence » a été considérée comme l'indicateur le plus controversé de l'Article 3i et a été largement abordé lors de l'atelier. Le terme est mal défini, ce que signifie que de multiples interprétations sont possibles et les parties prenantes sont préoccupées par la possible limitation de la liberté créative des nouveaux services par des règles strictes. Des doutes ont également été émis lors de l'atelier sur la capacité d'appliquer ce type d'indicateur dans un univers où les services sont de plus en plus personnalisés : par exemple, une page d'accueil d'un service non linéaire pouvant être personnalisée pour un utilisateur spécifique, un consultant indépendant aurait des difficultés pour évaluer un indicateur tel que la proportion d'une page d'accueil dédiée et le contenu européen. Nous estimons que les prochaines étapes nécessaires pour affiner la notion de proéminence passent par le développement de lignes directrices sur lesquelles les fournisseurs de programmes à la demande pourraient se mettre d'accord, suivi de discussions supplémentaires entre les États membres et les parties prenantes afin d'aboutir à une définition et des méthodes d'application appropriées de la notion de proéminence.

12.3. Deutsch

Im Folgenden stellen wir die wichtigsten Schlussfolgerungen und Empfehlungen aus der Studie vor, auf der Basis der Ergebnisse in allen Teilen der Studie und unter Berücksichtigung von Kommentaren aus dem Workshop.

- Wie bei der Studie von 2005 stellten wir einige Bereiche fest, bei denen die nationale Umsetzung von Artikel 4 und 5 in den einzelnen Mitgliedstaaten unterschiedlich gehandhabt wird.
- Einige Mitgliedstaaten beziehen den qualifizierenden Begriff 'soweit durchführbar' mit ein, einige haben engere Definitionen für 'anrechnungsfähige Gesamtstunden' festgelegt und bei der Definition von 'unabhängiger Produzent' gibt es große Unterschiede zwischen den einzelnen Mitgliedstaaten. Diese Abweichungen haben es uns ermöglicht, die Mitgliedstaaten danach einzustufen, ob sie die Richtlinie 'flexibel' oder 'verordnend' anwenden und ob den Rundfunksendern 'niedrige' oder 'hohe' zusätzliche Vorgaben auferlegt werden.
- Es sieht so aus, als ob nur wenige Mitgliedstaaten ihre Umsetzung von Artikel 4 und 5 seit den Ergebnissen der Studie von 2005 wesentlich geändert haben. Unter den Mitgliedstaaten, die an der Studie von 2005 beteiligt waren, waren die einzigen Änderungen der Umsetzungsmodi in den Niederlanden und in Norwegen festzustellen, die die Anwendung der Artikel 4 und 5 von 'flexibel' auf 'verordnend' änderten und in Belgien, wo die zusätzlichen Vorgaben von 'hoch' auf 'niedrig' geändert wurden.
- Zum Zeitpunkt der Annahme von Richtlinie 2007/65 gab es nur in sehr wenigen Mitgliedstaaten Vorschriften zu nicht-linearen

Diensten mit ähnlichen Auswirkungen wie Artikel 3i. Nur die Französische Gemeinschaft in Belgien hat die Vorgabe für europäische Werke direkt auf nicht-lineare Dienste angewendet.

- Der audiovisuelle Markt in Europa wird immer komplexer. Neue Distributionsmodelle wie etwa Abrufdienste und zunehmende Fragmentierung beim traditionellen Rundfunk haben die Struktur des Marktes geändert. Nur ein sehr geringer Anteil der geschätzten Einnahmen der TV-Industrie von 78,1 Mrd. € entfiel auf Video-on-Demand: ca. 0,5%. Ein klares Anzeichen, dass sich nicht-lineare Dienste noch im Anfangsstadium befinden.
- Bei den Quellen für die gesamten TV-Einnahmen gibt es große Unterschiede zwischen den einzelnen Mitgliedstaaten. Über die gesamte Branche betrachtet stammten 23% von Fernsehgebühren, 36% aus Werbung und Sponsoring und 34% von Zahlungen von Verbrauchern.
- Bei linearen Diensten bleibt kostenfreies Fernsehen das beliebteste Geschäftsmodell und trotz einer erheblichen Abwanderung zu Pay-TV-Diensten machen Haushalte mit Pay-TV immer noch weniger als ein Drittel der europäischen TV-Haushalte aus. Unsere Umfrage bei Abrufdiensten hat aufgezeigt, dass die Mehrzahl der von Rundfunksendern angebotenen nicht-linearen Dienste einen Teil des Inhalts oder den gesamten Inhalt dem Benutzer kostenlos zur Verfügung stellen. Interessant war jedoch die Angabe reiner VoD-Anbieter ohne Anbindung an einen Rundfunksender, dass Zahlungen von Verbrauchern fast ihre gesamten Einnahmen ausmachten. Hier ist ein Unterschied bei den vorgeschlagenen Geschäftsmodellen für nicht-lineare Dienste festzustellen, abhängig davon, ob sie an einen Rundfunksender angebunden sind.
- Bei linearen Rundfunksendern scheint die Aufteilung zwischen den Ausgaben für Auftragsproduktionen und zugekauften Sendungen davon abhängig zu sein, ob es sich um einen öffentlich-rechtlichen oder einen privaten Dienst handelt. Öffentlich-rechtliche Rundfunksender wenden 58% ihres Budgets auf Eigenproduktionen auf (16% auf Zukäufe), während private Rundfunksender 18% auf Eigenproduktionen aufwenden (51% auf Zukäufe). Etwas über die Hälfte aller Zukäufe von Rundfunksendern stammten aus den USA. Bei den nicht-linearen Diensten von Rundfunksendern sieht es jedoch anders aus: fast alle der an der Umfrage beteiligten Dienste, sowohl öffentlich-rechtliche als auch private, gaben an, dass 75% ihres Budgets für Abrufdienste auf Auftragsproduktionen aufgewendet werde und dass ihre Kataloge in den meisten Fällen aus europäischen Inhalten mit nahezu oder genau 100% bestanden. Das ist auf die Tatsache zurückzuführen, dass Rundfunksender über die Abrufrechte für Auftragsproduktionen verfügen, die sie selbst in Auftrag gegeben haben. Bei reinen VoD-Anbietern verhält es sich jedoch ganz anders - 100% werden auf Zukäufe aufgewendet, dies zeigt den hohen Kostenaufwand für Auftragsproduktionen auf. In ihrem Fall ist der Anteil des zugekauften außereuropäischen Inhalts dem für lineare Dienste ähnlich und fast die Hälfte der Investitionen wird auf Inhalte aufgewendet, die außerhalb Europas hergestellt wurden.
- Bei unserer Analyse von linearen Diensten haben wir festgestellt, dass die meisten der an der Umfrage beteiligten Sender die

Vorgaben von Artikel 4 und 5 erfüllen. In unserer Stichprobe hatten, 62,4% der anrechnungsfähigen Sendestunden einen europäischen Inhalt und 31% waren unabhängige europäische Werke, von denen 84,4% weniger als fünf Jahre alt waren.

- Wir haben in dieser Studie auch zum ersten Mal Artikel 4 und 5 auf die Zuschauerzahlen angewendet. Wir haben festgestellt, dass sie eine nützliche Ergänzung zur Untersuchung der Sendestunden darstellen und ein deutlicheres Bild des tatsächlichen Anteils der gesehenen Sendungen, die aus Europa stammen und unabhängig produziert wurden, ergeben. Das Miteinbeziehen der Zuschauerzahlen wurde beim Workshop von den Interessenvertretern unterstützt. Unsere Ergebnisse zeigen auf, dass die Anteile für Zuschauerstunden EU-weit höher sind als die Anteile für Sendestunden (62,4% der anrechnungsfähigen Sendestunden sind in unserer Stichprobe europäisch, im Vergleich zu 74% der Zuschauerstunden; 31% der anrechnungsfähigen Sendestunden sind unabhängige europäische Produktionen im Vergleich zu 33,4% der Zuschauerstunden), dies zeigt an, dass europäische und unabhängig produzierte Inhalte bei den Zuschauern in den an der Umfrage beteiligten Mitgliedstaaten sehr beliebt sind.
- Das Konzept der 'anrechnungsfähigen' Programme wurde beim Workshop besprochen. Die Ergebnisse unserer Studie deuten darauf hin, dass die Anwendung auf nicht-lineare Dienste keine wesentlichen Auswirkungen auf die Ergebnisse hätte. Die meisten der von Rundfunksendern angebotenen nicht-linearen Dienste wiesen ohnehin nahezu oder genau 100% europäische Inhalte auf. Das überrascht nicht: Rundfunksender erwarten im allgemeinen Abrufrechte für ihre Auftragsproduktionen, diese sind normalerweise national. Es ist jedoch schwieriger für sie, neue Medienrechte für Zukäufe, z.B. aus den USA, zu erlangen. Bei reinen VoD-Anbietern stellten wir jedoch eine größere Neigung fest, außereuropäische Inhalte auf ihren Diensten anzubieten, wir stellten aber auch fest, dass es sich bei den angebotenen Genres meist um 'anrechnungsfähige' Genres handelte, wie etwa Kinofilme, Unterhaltung und Factual Entertainment (in der Tat wurde ca. 89% des Budgets für die reinen VoD-Anbieter, die an unserer Befragung teilnahmen auf diese 3 Genres aufgewendet).
- Im Hinblick auf die Frist für die Umsetzung der neuen Richtlinie am 19. Dezember 2009 stellten wir fest, dass nur einige wenige Mitgliedstaaten die Umsetzung von Artikel 3i in die nationale Gesetzgebung in 2008 abgeschlossen oder geplant hatten. Eine kleine Anzahl von Mitgliedstaaten (die Französische Gemeinschaft in Belgien und Frankreich) hatten bereits nationale Vorschriften für die Anwendung auf nicht-lineare Dienste festgelegt.
- Diese Punkte und die Tatsache, dass sich die Video-on-Demand-Branche noch in der Aufbauphase befindet, bedeuten, dass die Bestimmung von Kontrollverfahren für nicht-lineare Dienste sowie das Sammeln von Daten über diese Dienste wesentlich schwieriger sein wird als bei linearen Diensten. Beim Workshop wurde deutlich, dass die Meinungen der Interessenvertreter zur Anwendung von Anwendung von Artikel 3i auf nicht-lineare Dienste

weit auseinandergehen und wir erwarten, dass diese Gespräche im Verlauf von 2009 weitergeführt werden.

- Wir haben vorgestellt, was wir als mögliche und angemessene Kontrollverfahren für Artikel 3i erachten, auf der Basis des derzeit Machbaren. Unserer Ansicht nach ist es derzeit nicht möglich, eine unabhängige Beurteilung nicht-linearer Dienste durchzuführen (wie sie für lineare Dienste durchgeführt wurde), vor allem deshalb, weil Daten wie die Fernsehzuschauerforschung (Television Audience Measurement - TAM) für nicht-lineare Dienste noch nicht zur Verfügung stehen. Wir haben uns daher auf Selbstauskünfte verlassen.
- Wir sind der Ansicht, dass im Frühstadium der Entwicklung von nicht-linearen Diensten die folgenden quantitativen Leistungsindikatoren zur Messung der Einhaltung von Artikel 3i angemessen wären: Anteil der Katalogtitel, die aus Europa stammen, Anteil der Katalogstunden, die aus Europa stammen und Anteil des Gesamtbetrags, der für Inhalte speziell für europäische Werke aufgewendet wird.
- Zur Vertraulichkeit von Daten wie etwa Finanzdaten und Nutzungsdaten wurden von den befragten Interessenvertretern Bedenken angemeldet, d.h., die Bereitschaft zur Bereitstellung dieser Art von Informationen war geringer. Es sollte hier aber angemerkt werden, dass beim Workshop gefordert wurde, größeren Druck auf die Anbieter auszuüben, damit sie diese Art von Informationen in Zukunft zur Verfügung stellen.
- Zu diesem Zeitpunkt betrachten wir Nutzungsdaten nicht als einen angemessenen Leistungsindikator. Diese Entscheidung basiert vor allem auf der Tatsache, dass diese Daten streng vertraulich sind (siehe oben) und auch darauf, dass es derzeit keine zuverlässige unabhängige Datenquelle für die Nutzung von Abrufdiensten gibt (wie die TAM-Daten bei linearen Diensten). Das heißt, dass die Beschaffung von Daten, die zum Vergleich von Diensten in und zwischen Mitgliedstaaten zu diesem Zeitpunkt noch nicht zuverlässig durchgeführt werden kann. Dieses Thema wurde beim Workshop ausführlich diskutiert, mehrere Interessenvertreter forderten mehr Druck zur Verwendung der Nutzungsdaten zur Kontrolle gemäß Artikel 3i. In den Diskussionen wurde jedoch deutlich, dass weitere umfassende Diskussionen zur Auswahl der richtigen Methode für die Überwachung von Zuschauerzahlen für Abrufdienste notwendig sind. Trotzdem sind wir der Ansicht, dass Nutzungsdaten für nicht-lineare Dienste in der Zukunft zur Verfügung stehen werden und dass die Kommission und die zuständigen Gremien in den Mitgliedstaaten bei der Entwicklung von Daten nach einem Industriestandard soweit wie möglich mitwirken sollten.
- 'Herausstellung' hat sich wahrscheinlich als der umstrittenste Leistungsindikator für Artikel 3i herausgestellt, dieses Thema wurde beim Workshop ausführlich diskutiert. Der Begriff ist in der Gesetzgebung nicht genau definiert und wir haben festgestellt, dass dies zu vielen verschiedenen möglichen Auslegungen von Herausstellung als Überwachungsmethode für Artikel 3i führt. Starke Bedenken wurden von den befragten Interessenvertretern und beim Workshop geäußert, dass zu strenge Maßnahmen in

Bezug auf 'Herausstellung' die kreative Entwicklung von neuen Diensten beschränken könnten. Beim Workshop wurden auch Bedenken geäußert, dass das Messen von 'Herausstellung' sich als sehr schwierig erweisen würde – zum Beispiel kann eine Homepage für einen nicht-linearen Service speziell auf einen Benutzer zugeschnitten werden, d.h., die genaue Beurteilung eines Indikators wie etwa der Anteil einer Homepage mit europäischem Inhalt durch einen unabhängigen Berater erschwert werden. Wir sind der Ansicht, dass Leitlinien zur 'Herausstellung', denen Anbieter von Abrufdiensten zustimmen können, der richtige Schritt wären und dass weitere Diskussionen in den Mitgliedstaaten und mit Interessenvertretern notwendig sind, um die richtige Definition für den Begriff zu finden und zur Anwendung von Maßnahmen zur 'Herausstellung'.

13. Appendix I: Genre Classifications

13.1. Non-Qualifying Programmes

13.1.1. News

News was defined as separate programmes containing reports of the most important recent events in summary form. A summary of sports results and recent sports news qualified as news but a programme of information confined to one particular sport would not qualify. Feature programmes, current affairs programmes or news magazines were also excluded.

13.1.2. Sport

Sport was defined as live or recorded coverage of sporting events or significant parts of such events. Magazine programmes about sports, even though such programmes may well contain excerpts of live events, were not included in this category.

13.1.3. Games

Defining the games genre offers specific challenges because it is a term that loosely defines a broad range of popular programmes. We sought to identify clearly the boundaries of the term – which is not defined in the Directive – to assist our researchers in each Member State to apply the term consistently.

We therefore defined games as television shows focusing primarily on participants competing for a prize – the game shows and quiz shows that are staples of the early evening schedule in many Member States.

We decided to classify reality shows as entertainment – and therefore as qualifying programming. Many reality shows generate high levels of human interest in the interactions between individuals, and the competition often offers a framework for entertainment-style material. Another indicator that would separate a reality show from a game show is that, where a traditional game show offers a prize every episode, reality shows only generate a winner in the final episode of the series.

13.1.4. Teleshopping

Teleshopping is defined in Article 1 of the Directive as: 'direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment'.

13.1.5. Teletext

We believe the meaning of this is self-evident. Its main relevance to this particular survey is in those instances where some channels default to teletext for periods of the broadcast day.

13.2. Qualifying Programmes

13.2.1. Documentary

The genre comprises: all factual programmes consisting mainly (i.e. more than 50 per cent) of documentary footage; 'demonstration' programmes covering subjects such as cooking, do-it-yourself and gardening; 'Docusoaps' (for example, fly-on-the-wall documentaries); and traditional observational documentaries. This category may include magazine programmes if more than half the inserts are considered to have long-term interest.

13.2.2. Factual magazine

All programmes in this genre feature multiple items within the same programme and contain less than 50 per cent documentary footage. The majority time of a factual magazine may consist of studio-based links, panel discussions, interviews, reports of topical events, etc. While magazines may get narrative repeats, the majority of the items covered will be topical and not therefore of long-term interest. Sports magazine programmes, current affairs programmes and news magazines that we excluded from the sport and news genres above also belong in this category.

13.2.3. Entertainment

The entertainment genre includes talk shows, reality shows and panel games where there is no prize on offer. It does not include situation comedies (sitcoms) that should be coded as fiction.

13.2.4. Fiction

The fiction genre includes soaps, drama series and serials, single dramas, situation comedies, TV movies and animation.

13.2.5. Cinema film

This genre comprises only those films that have had, or were intended to have, a cinematic release. Made for TV movies are included under fiction. For the purposes of the segmental analysis of fiction works that we will carry out later in the project, we shall treat cinema films as a sub-section of the fiction genre described above. This ignores the small number of films with a cinema release that are documentaries – such as *One Day in September* or *Touching the Void*.

14. Appendix II: Questionnaire for regulatory authorities



Study on the application of measures concerning the promotion of the distribution and production of European works in audiovisual media services (including television programmes and non-linear (on-demand) services)

Questionnaire for regulatory authorities

Information on respondent

Contact information
Country
Organization
Contact person
Address
Email address
Telephone

Part I: Television Broadcasting

1. National legislation to implement Articles 4 and 5

1.1: Implementation of Articles 4 and 5 in national legislation

Please indicate the current national legislation implementing Articles 4 and 5 of the TV Without Frontiers Directive (Directive 89/552/EEC)

Relevant legislation:

1.2: The legislation since 2002

Has the national legislation implementing Articles 4 and 5 been amended substantially since 2002? If so, please describe the changes:

Answer:

1.3: Legal requirements placed on smaller channels

Are the requirements of national legislation the same for smaller channels (for example, channels without a terrestrial analogue licence) as for primary channels? If they are different, please tell us how they differ and the relevant legislation (if different to your answer in 1.1).

Answer:

1.4: Definition of an independent producer

Does national legislation define what is meant by an independent producer?

0 = No
1 = Yes

If yes, please identify the elements used in the national definition:

Element of definitions	(Please tick as appropriate)
Limit on ownership by a broadcaster	
Limit on supply of programmes to a single broadcaster	
Controls of the influence of a broadcaster in the production process	
Limit on the period for which programme rights can be assigned	
Ownership of secondary rights	
Other (please describe)	

Relevant legislation:

1.5: Independent works

Article 5 allows the Member States to choose if the 10 % requirement for independent works should apply to transmission time or programming budget. How is this addressed in national legislation?

Target to be fulfilled by broadcasters	(Please tick as appropriate)
Broadcasters must reserve at least 10% of transmission time	
Broadcasters must reserve at least 10% of programming budget	
Broadcasters may choose between reserving at least 10% of transmission time or at least 10% of programming budget	
Other (please describe)	

1.6: "Where practicable"

The Directive states that the Member States shall ensure "where practicable" that broadcasters reserve the proportions set by Articles 4 and 5. How is this reflected in the national legislation?¹

Answer:

1.7: "Total qualifying hours" (relevant transmission time)

Is the definition of "total qualifying hours" different from the definition in the Directive?²

0 = No

1 = Yes

If yes, please describe the difference.

Answer:

1.8: Stricter or more detailed requirements

Please identify the areas (if any) in which national legislation places stricter or more detailed requirements on the amount of European works and works produced by independent producers of European origin than those laid down in Articles 4 and 5 of the Directive.

Answer:

¹ As examples, the national legislation could:

- State that broadcasters are required to reserve the proportions, but only "where practicable",
- Define the specific circumstances where broadcasters do not need to achieve the proportions, and
- Limit these exemptions by stating that a broadcaster may not show a lower proportion of European or independent works than in the previous year.

² The Directive defines total qualifying hours as a channel's transmission time "excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping".

2. Monitoring the application of Articles 4 and 5

2.1: Monitoring Articles 4 and 5

What system do you have in place to monitor adherence by broadcasters to the requirements of Articles 4 and 5 of the TV Without Frontiers Directive?

Monitoring system	Tick as applicable
Independent monitoring of channel broadcast schedules	
Independent verification of statistical reports submitted by broadcasters	
Reliance on statistical reports submitted by broadcasters without verification	
Other (please specify)	

2.2: Available sanctions

Does national legislation contain any sanctions if the broadcasters do not respect article 4 and 5?

0 = No
1 = Yes

If yes, please describe what types of sanctions are available:

Sanctions	Tick as applicable
Warning	
Fines	
Restrictions on broadcast licence	
Other (please specify)	

Relevant legislation:

2.3: Number of Channels

How many channels were under your jurisdiction in 2007? Count all channels (including cable and satellite). Exclude only those channels to which Articles 4 and 5 do not apply¹.

Answer:

--

2.4: Article 4 of the Directive

How many of the channels identified above reserved a majority proportion of their transmission time for European works, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping in 2007?

Answer:

--

2.5: Article 5 of the Directive

How many of the channels identified above reserved at least 10 per cent of the transmission time for works produced by independent producers in 2007?

Answer:

--

2.6: Sanctions

Of those channels not meeting the requirements of Articles 4 and 5 in 2007, how many did you apply sanctions to?

Answer:

Number of channels subject to sanctions for failure to meet the requirements of Articles 4 and 5 in 2007: (Additional information on the application of sanctions would be appreciated, e.g. case examples or statistics)	
--	--

¹ Articles 4 and 5 do not apply to news channels, sport channels, advertising or teleshopping channels, local channels, channels broadcasting in a language other than those of the Member States and channels broadcasting exclusively for reception outside the European Union.

3. Channel licensing requirements

3.1: Licence requirements placed on channels

Please identify the additional licence requirements (relating to content) that are placed on channels.

If some requirements are only relevant for some channels (e.g. primary channels), please indicate this in the table.

Requirement	Brief description of requirements and channels to which it applies
Culture and/or national identity	
Culture and identity of minorities	
Language requirements	
Origin of independent productions	
Regional provisions	
Funding of film	

4. Cinema¹

4.1: Film funding as part of the public service remit

Are broadcasters required to finance or broadcast films produced for a theatrical release?

0 = No 1= Yes

4.2: Contribution to financing

If the answer to question 4.1 is 'yes', please describe the financial contribution broadcasters are required to make to film funding:

Answer:

4.3: Amount of funding

What was the amount of this funding in 2007?

Answer:

4.4: Objectives of funding

What are the objectives of the requirements to finance film production?

Answer:

¹ Note: In this section we are concerned only with cinematographic works, i.e. films intended for theatrical release.

Part II: On-demand audiovisual media services

The Television Without Frontiers Directive was recently amended by Directive 2007/65/EC of 11 December 2007. The current name for the new Directive is the "Audiovisual Media Services Directive".

The Member States must implement the Audiovisual Media Services Directive by 19 December 2009.

Article 3i of the Audiovisual Media Services Directive is a new provision, aimed at promoting European works in on-demand services. The wording of article 3i is:

"Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by on-demand audiovisual media service."

We are interested in any national legislation regarding on-demand audiovisual media services which may serve similar purposes as the new Article 3i. All such legislation should be included in the replies to the following questions, unless otherwise specified in the questions.

5. National legislation regarding on-demand services

5.1: National legislation regarding on-demand services

Does the Member State have any legislation that requires on-demand audiovisual media services to promote the production of and access to European works?

0 = No 1= Yes

Relevant legislation:

If yes, please identify the distribution networks that are covered by the legislation:

Distribution network for on-demand service	(Please tick as appropriate)
Internet	
IPTV	
Cable	
Satellite	
Digital terrestrial TV	
Mobile	
Other (please specify)	

5.2: National legislation regarding on-demand services

Please describe the relevant requirements of the abovementioned legislation:

Requirement	Brief description of requirements and the services to which they apply
Financial contribution to production (e.g. funding of film)	
Financial resources used for acquisition of rights	
Taxes and levies	
Share / prominence in catalogue of the service	
Culture and/or national identity	
Culture and identity of minorities	
Language requirements	
Origin of independent productions	
Regional provisions	
Other (please specify)	

6. On-demand licensing requirements

6.1: Requirements for licence to operate on-demand services

Do some on-demand audiovisual media services require a licence in order to operate in your jurisdiction?

0 = No

1 = Yes

If yes, which types of on-demand services require a licence?

Answer:

On-demand service requiring a licence	(Please tick as appropriate)
Internet	
IPTV	
Cable	
Satellite	
Digital terrestrial TV	
Mobile	
Other (please specify)	

6.2: Licence requirements

Please identify any (additional) licence requirements which apply to content that is made available through on-demand services

Licence requirement	Brief description of requirements and the services to which they apply
Financial contribution to production (e.g. funding of film)	
Financial resources used for acquisition of rights	
Taxes and levies	
Share / prominence in catalogue of the service	
Culture and/or national identity	
Culture and identity of minorities	
Language requirements	
Origin of independent productions	
Regional provisions	
Other (please specify)	

7. Monitoring of on-demand services

7.1: Monitoring

Is there a system to monitor whether on-demand services fulfil the obligations described above?

0 = No
1 = Yes

If yes, please indicate which kind of monitoring system is used:

Monitoring system	Tick as applicable
Independent monitoring of on-demand catalogues	
Independent verification of statistical reports submitted by on-demand service providers	
Reliance on statistical reports submitted by on-demand service providers without verification	
Other (please specify)	

7.2: Available sanctions

Does the national legislation contain any sanctions that may be applied against on-demand services which do not comply with the rules described above?

0 = No
1 = Yes

If yes, please indicate what sanctions are available:

Sanctions	Tick as applicable
Warning	
Fines	
Restrictions on licence	
Other (please specify)	

Relevant legislation:

7.3: Sanctions

Of those on-demand services not meeting the requirements of the national legislation, how many did you apply sanctions to?

Answer:

8. Implementation of Directive 2007/65/EC

8.1: Time schedule for implementation

When do you expect Directive 2007/65 to be implemented in national legislation?

Answer:

8.2: Publications and discussions on implementation of Directive 2007/65

Have there been any publications and discussions (e.g. White Papers and public consultations) in your Member State on how to implement Directive 2007/65, or other publications and discussions on how to promote European works in on-demand services?

0 = No
1 = Yes

If yes, please describe the main content of these discussions and publications. Include references or links when possible.

Answer:

8.3: Advice on implementation of Directive 2007/65

Do you have any advice on the implementation of Directive 2007/65 (particularly in respect of Article 3i)?

Answer:

8.4: Opinions of other groups on implementation of Directive 2007/65

If you have any additional comments on the (likely) opinions of other parties in your Member State (broadcasters, producers, etc.) regarding the implementation of the new Directive, please write them here.

Thank you for your participation

15. Appendix III: Broadcaster's questionnaire



**Study on the application of measures
concerning the promotion of the distribution
and production of European works in
audiovisual media services (including
television programmes and on-demand
services)**

Questionnaire for broadcasters

Information on respondent

Contact information
Country
Organization
Contact person
Address
Email address
Telephone

FOREWORD

The European Commission recently launched a new *Study on the application of measures concerning the promotion and distribution of European works in audiovisual media services*.

This study is designed to investigate the application of Articles 4 and 5 of the Television without Frontiers Directive, and also to look at the application of rules governing the promotion of the production and access to European works on non-linear, on-demand services, as set out in the recently adopted Audiovisual Media Services Directive.

This questionnaire is intended to help the European Commission understand both the linear and non-linear programming policies of European broadcasters and media service providers.

The questionnaire consists of two parts: Part I focuses on linear audiovisual media services, and Part II on on-demand audiovisual media services.

We are aware that some of the questions may be difficult to answer due to the confidentiality or unavailability of the data needed. To tackle this difficulty, you can either indicate your best estimates, or contact us directly to discuss how to share some of your internal information with us, in a way that safeguards your concerns.

Part I: Linear audiovisual media services

This part of the questionnaire focuses on traditional linear audiovisual services that mainly fall under Articles 4 and 5 of the Television without Frontiers Directive.

It consists of 8 sections:

1. Spending on New and Acquired Programmes (Including Co-Productions)
2. Commissioning Decisions
3. Financing of New Programmes
4. Co-Productions
5. Rights Ownership
6. Programme Acquisitions
7. Trade in Programmes by Genre
8. Cinema Film

1. SPENDING ON NEW AND ACQUIRED PROGRAMMES (INCLUDING CO-PRODUCTIONS)

1.1 2007 Spend on programmes by genre³²²

What percentage of your 2007 programme budget did you spend on:

Programme Genre	Percentage of total programme budget
Entertainment	
Fiction	
Cinema film	
Documentaries	
Factual magazine programmes	
News	
Sport (including rights)	
Games	
Total programme budget	100%

³²² Entertainment

This includes talk shows and studio-based comedies, but not sitcoms (which are included under fiction) or quiz shows/game shows, which are included under "Games". These are 'stock' programmes with repeat value.

Fiction

This includes soaps, drama series/serials, single dramas, situation comedies, TV movies and animation created for TV. These are 'stock' programmes.

Cinema Film

All films that have had a cinematic release (not TV movies, which should be included under Fiction). Animation for cinematic release is also included in this genre. These are 'stock' programmes.

Documentaries

Programmes consisting mainly (i.e. more than 50%) of documentary footage. These are 'stock' programmes.

Factual magazine programmes

Factual programmes containing less than 50% documentary footage. The remaining time may be studio-based links, discussion etc. Most Current Affairs programmes fall in this category. These are 'flow' programmes with no or little repeat value.

News

Separate programmes containing reports of the most important recent events in summary form. Feature programmes, Current Affairs programmes and even News magazines, which look at stories "behind the news" should not be included. These are 'flow' programmes.

Sports Events

Live or recorded sporting events or significant parts of such events, but not magazine programmes about sports, even though such a programme may well contain excerpts of live events. These are 'Flow' programmes.

Games

TV shows focusing primarily on participants competing for a prize. These are 'Flow' programmes.

Examples: *Big Brother*, *Who Wants To Be A Millionaire?*, *The Weakest Link*, *Survivor*, *Pop Idol*

Children's

Children's programmes are to be included in the genres above according to their relevant sub genres.

1.2 2007 Programme budget allocation

What percentage of your programme budget was spent on each of the following categories of programme:

Production category	Percentage of programme budget
Commissioned programmes produced In-house	
Commissioned programmes produced externally	
Acquired programmes	
Total programme budget	100%

1.3 Changes in programme budget allocations over the last five years

Please tell us if the percentage of the budget you spend on the following categories of programme has grown, shrunk or stayed the same over the last five years:

Production category	Grown (+), shrunk (-) or stayed the same (><)
Commissioned programmes produced In-house	
Commissioned programmes produced externally	
Acquired programmes	

1.4 2007 Spend on formats³²³

What percentage of your 2007 programme budget did you spend on commissioned formats relative to other types of programming?

Programme type	Percentage of programme budget
Commissioned formats ³²⁴	
Other commissioned programmes	
Acquired programmes	
Total programme budget	100%

³²³ A **format** is defined as any programme locally adapted for broadcast in at least one other market than the market of origin and for which a licensing fee is payable, e.g. *Who Wants to Be a Millionaire*, *Betty la Fea*.

³²⁴ Excludes ready-tape, i.e. non-domestic and typically non-live versions of formats that will fall under acquisitions.

1.5 Price differentials for commissioned programmes

Do you produce programmes in-house?

1 = Yes

0 = No

Answer:

If yes, for each of the following genres, all things being equal, please indicate whether these are cheaper to produce in-house or to commission externally (please tick one box per row only for the cheapest cost per hour).

Programme Genre ³²⁵	In-house produced programmes are cheaper	Externally commissioned programmes are cheaper
Entertainment		
Fiction		
Cinema film		
Documentaries		
Factual magazine programmes		
News		
Sport (including rights)		
Games		

1.6 Price differentials for commissions and acquisitions

For each genre please tell us the cost of acquiring ready-made programmes as a percentage of the cost of commissioning a similar programme:

Programme genre	Cost of acquired programme as a percentage of cost of commissioned programme		
	0-20%	21-50%	51%-100%
Entertainment			
Fiction			
Cinema film			
Documentaries			
Factual magazine programmes			
News			
Sport (including rights)			
Games			

1.7 Your comments

Do you want to add any comments or explanation to the answers given above? Are there any important factors influencing the balance between in-house and externally commissioned programmes and commissioned and acquired programmes that we have omitted?

³²⁵ For a complete list of genre definitions, please see 1.1.

2. COMMISSIONING DECISIONS

2.1 2007 commissioning by genre³²⁶

What percentage of your commissioning budget in 2007 was spent on:

Genre	Percentage of commissioning budget
Entertainment	
Fiction	
Cinema film	
Documentaries	
Factual magazine programmes	
News	
Sport (including rights)	
Games	
Total commissioned programmes	100%

2.2 2007 commissioning by production category

Divide commissioned programmes in each genre according to the three production categories of: in-house production, programmes produced externally by non-independent producers, or programmes produced externally by independent producers. Each row should sum to 100%.

Genre	Programmes produced in-house (%)	Programmes produced externally by non-independent producer (%)	Programmes produced externally by independent producer (%)	Total commissioned programmes
Entertainment				100%
Fiction				100%
Cinema film				100%
Documentaries				100%
Factual magazines				100%
News				100%
Sport (including rights)				100%
Games				100%

³²⁶ For a complete list of genre definitions, please see 1.1.

2.3 2007 Spend on format based commissions by genre³²⁷

What percentage of your 2007 programme spend on locally produced formats did you allocate on:

Format Genre ³²⁸	Percentage of total spend on formats
Entertainment	
Fiction	
Factual magazine programmes (e.g. DIY/makeover)	
Factual entertainment/reality	
Games	
Other	
Total spend on formats	100%

2.4 Changes in commissioning budget allocations over the last five years (2002-2007)

Please tell us if the percentage of your commissioning budget that you spend on each category of production has grown, shrunk or stayed the same over the last five years:

Production category	Grown (+), shrunk (-) or stayed the same (><)
Programmes produced in-house	
Programmes produced externally by another broadcaster or broadcaster-owned or controlled producer	
Programmes produced externally by independent producers	

2.5 Changes in commissioning budgets by genre over the last five years (2002-2007)

Are the changes identified in 2.4 above particularly pronounced in one or more genres?

Genre	Tick box
Entertainment	
Fiction	
Cinema film	
Documentaries	
Factual magazines	
Formats ³²⁹	
News	
Sport (including rights)	
Games	

³²⁷ A **format** is defined as any programme locally adapted for broadcast in at least one other market than the market of origin and for which a licensing fee is payable, e.g. *Who Wants to Be a Millionaire*, *Betty la Fea*.

³²⁸ Format genre categories vary slightly from the genres used for overall commissioned programmes. This is to reflect typical sub genres within formats.

³²⁹ A **format** may cover a number of genres, the "format" box should be used to identify whether, in general terms, there has been a change in the use of "format" based programming, irrespective of their genre.

2.6 Changes in format based commissioning budget allocations over the last five years (2002-2007)

Please tell us if the percentage of your format based commissioning budget that you spend on each category of production has grown, shrunk or stayed the same over the last five years:

Production category	Grown (+), shrunk (-) or stayed the same (><)
Programmes produced in-house	
Programmes produced externally by another broadcaster or broadcaster-owned or controlled producer	
Programmes produced externally by independent producers	

2.7 Changes in format based commissioning budgets by genre over the last five years (2002-2007)

Are the changes identified in 2.6 above particularly pronounced in one or more genres?

Format Genre	Percentage of total spend on formats
Entertainment	
Fiction	
Factual magazine programmes (e.g. DIY/makeover)	
Factual entertainment/reality	
Games	
Other	
Total spend on formats	100%

2.8 Your comments

Do you want to add any comments or explanation to the answers given above? Are there any important factors influencing the commissioning of new programmes that we have omitted?

3. FINANCING OF NEW PROGRAMMES

Please answer for all commissioned programmes excluding cinema film (treated separately - see Q8).

3.1 Contribution to funding of entertainment programmes

What are the sources of funding for entertainment programmes you commission?

Sources of funding	Percentage of total production
Primary broadcaster ³³⁰ (that is, your contribution to production)	
Co-production	
Secondary broadcaster ³³¹ (e.g. for pay TV rights)	
Distributor for non-domestic rights	
Advances against merchandising	
Public funding body	
Private funding linked to tax breaks	
New media rights and advances on revenues (including on-demand)	
Total	100%

3.2 Contribution to funding of fiction programmes

What are the sources of funding for fiction programmes you commission?

Sources of funding	Percentage of total production
Primary broadcaster (that is, your contribution to production)	
Co-production	
Secondary broadcaster (e.g. for pay TV rights)	
Distributor for non-domestic rights	
Advances against merchandising	
Public funding body	
Private funding linked to tax breaks	
New media rights and advances on revenues (including on-demand)	
Total	100%

3.3 Contribution to funding of documentary programmes

What are the sources of funding for documentary programmes you commission?

Sources of funding	Percentage of total production
Primary broadcaster (that is, your contribution to production)	
Co-production	
Secondary broadcaster (e.g. for pay TV rights)	
Distributor for non-domestic rights	
Advances against merchandising	
Public funding body	
Private funding linked to tax breaks	
New media rights and advances on revenues (including on-demand)	
Total	100%

³³⁰ Main commissioning broadcaster, typically holding the first transmission rights

³³¹ Secondary commissioning broadcaster, typically holding rights for a pay TV or a delayed free to air window for a smaller amount of financing than the primary broadcaster

3.4 Contribution to funding of factual magazine programmes

What are the sources of funding for factual magazine programmes you commission?

Sources of funding	Percentage of total production
Primary broadcaster (that is, your contribution to production)	
Co-production	
Secondary broadcaster (e.g. for pay TV rights)	
Distributor for non-domestic rights	
Advances against merchandising	
Public funding body	
Private funding linked to tax breaks	
New media rights and advances on revenues (including on-demand)	
Total	100%

3.5 Contribution to funding of games programmes

What are the sources of funding for games programmes you commission?

Sources of funding	Percentage of total production
Primary broadcaster (that is, your contribution to production)	
Co-production	
Secondary broadcaster (e.g. for pay TV rights)	
Distributor for non-domestic rights	
Advances against merchandising	
Public funding body	
Private funding linked to tax breaks	
New media rights and advances on revenues (including on-demand)	
Total	100%

3.6 Contribution to funding of news programmes

What are the sources of funding for news programmes you commission?

Sources of funding	Percentage of total production
Primary broadcaster (that is, your contribution to production)	
Co-production	
Secondary broadcaster (e.g. for pay TV rights)	
Distributor for non-domestic rights	
Advances against merchandising	
Public funding body	
Private funding linked to tax breaks	
New media rights and advances on revenues (including on-demand)	
Total	100%

3.7 Contribution to funding of sport programmes

What are the sources of funding for sport programmes you commission?

Sources of funding	Percentage of total production
Primary broadcaster (that is, your contribution to production)	
Co-production	
Secondary broadcaster (e.g. for pay TV rights)	
Distributor for non-domestic rights	
Advances against merchandising	
Public funding body	
Private funding linked to tax breaks	
New media rights and advances on revenues (including on-demand)	
Total	100%

3.8 Your comments

Do you want to add any comments or explanation to the answers given above? Are there any important factors influencing the financing of new programmes that we have omitted?

4. CO-PRODUCTIONS

4.1 Do you co-produce new programmes?

Do you “co-produce” programmes (that is, make joint commissioning decisions and fund the production of a new programme) with another party?

1 = Yes

0 = No

Answer:

Answer:	
---------	--

4.2 Co-productions by genre³³²

If you answered “yes” to question 4.1, please indicate which genres you mainly co-produce:

Genre	Please tick
Entertainment	
Fiction	
Cinema film	
Documentaries	
Factual magazine programmes	
News	
Sport (including rights)	
Games	

4.3 Domestic and international co-productions

If you answered “yes” to question 4.1, please tell us the regions where the broadcasters with whom you co-produce are located. Rank the regions according to the highest number of co-productions (so if you do most co-productions with US and then with Canadian partners, US = 1, Canada = 2 etc).

Location of broadcaster co-funding production	Rank
Domestic	
Other European ³³³	
Multi-country European co-productions e.g. through EBU	
US	
Canada	
Latin America	
Other [please state]	

³³² For a complete list of genre definitions, please see 1.1.

³³³ Including other non-domestic EU, EEA and other European countries

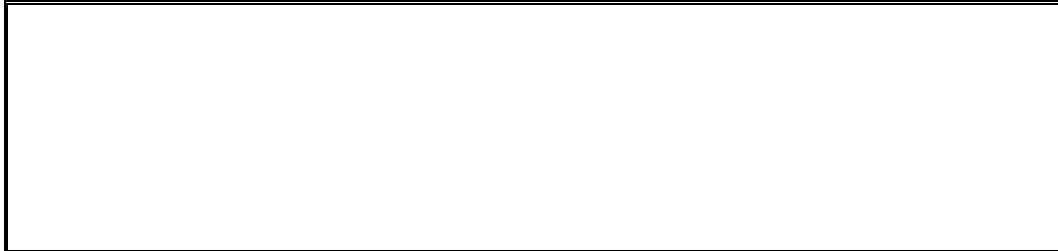
4.4 European co-productions

If you identified “Other European” as the location of a broadcaster co-funding production, please specify up to three countries where the broadcaster(s) with whom you do most co-funded production are located. Rank the top three countries according to the highest number of co-productions.

Location of party co-funding production	Rank
Austria	
Belgium	
Bulgaria	
Cyprus	
Czech Republic	
Denmark	
Estonia	
Finland	
France	
Germany	
Greece	
Hungary	
Iceland	
Ireland	
Italy	
Latvia	
Liechtenstein	
Lithuania	
Luxembourg	
Malta	
Netherlands	
Norway	
Poland	
Portugal	
Romania	
Slovakia	
Slovenia	
Spain	
Sweden	
United Kingdom	
Other European	

4.5 Your comments

Do you want to add any comments or explanation to the answers given above? Are there any important factors influencing co-production that we have omitted?

A large, empty rectangular box with a thin black border, designed for the respondent to write their comments or explanations.

5. RIGHTS OWNERSHIP

5.1 Rights ownership

What exclusive rights would you seek to obtain when you commission programmes from external producers (please tick)?

Rights	Tick
First showing on terrestrial TV in domestic market	
Repeat showing(s) on terrestrial TV in domestic market	
Repeat showings on secondary channels in domestic market	
Internet and/or other new media rights	
First showing on terrestrial TV in overseas markets	
Repeat showing(s) on terrestrial TV in overseas markets	
Repeat showings on secondary channels in overseas markets	
Ancillary rights in domestic market (licensing, merchandising etc)	
Ancillary rights in overseas markets	

5.2 Independent producers and rights

Are the terms of agreements you negotiate with independent producers more favourable to you, less favourable or about the same as agreements for other programmes commissioned externally, for example in terms of the length of agreement or the share of revenue (please tick)?

Terms of agreement	Please tick
More favourable to me	
About the same	
Less favourable to me	

5.3 Your comments

Do you want to add any comments or explanation to the answers given above? Are there any important factors regarding programme rights that we have omitted?

6. PROGRAMME ACQUISITIONS

6.1 Programme acquisitions by genre³³⁴

What percentage of your spending on programme acquisitions was spent on each genre:

Category of programme	Genre	Percentage of total acquisitions
Programme acquisitions	Entertainment	
	Fiction	
	Cinema film	
	Documentaries	
	Factual magazine programmes	
	News	
	Sport (including rights)	
	Games	
Total acquired programmes		100%

6.2 Recency of programme acquisitions

What percentage of your 2007 spend on programme acquisitions was spent on programmes that are less than 5 years old?

Genre	Spend on acquisitions <u>less than 5 years old</u> (%)	Spend on acquisitions <u>more than 5 years old</u> (%)	Total acquired programmes
Entertainment			100%
Fiction			100%
Cinema film			100%
Documentaries			100%
Factual magazine programmes			100%
News			100%
Sport (including rights)			100%
Games			100%
Total acquired programmes			100%

6.3 Sources of acquired programmes

What percentage of the ready-made programmes you acquire do you purchase from the following sources?

Programme origination	Percentage of total acquisitions
Other domestic broadcasters	
Domestic producers	
Broadcasters or producers in another European country ³³⁵	
US broadcasters or producers	
Broadcasters or producers outside Europe and the US	
Total	100%

³³⁴ For a complete list of genre definitions, please see 1.1.

³³⁵ Including other non-domestic EU, EEA and other European countries

6.4 Your comments

Do you want to add any comments or explanation to the answers given above? Are there any important factors influencing programme acquisitions that we have omitted?

A large, empty rectangular box with a thin black border, designed for the respondent to write their comments or explanations.

7. TRADE IN PROGRAMMES BY GENRE

7.1 Genres that make successful exports³³⁶

Which of the following genres make the most successful exports?

1 = Yes, they sell well abroad

2 = No, they don't sell well abroad

Genre	
Documentaries	
Factual magazines	
Entertainment	
Fiction	
Feature films	
News	
Sport (including rights)	
Games	

7.2 Genres that can be successfully imported from other European countries

Which of the following genres can be successfully imported from another European country?

1 = Yes, they work well when imported

2 = No, they don't sell well abroad

Genre	
Documentaries	
Factual magazines	
Entertainment	
Fiction	
Feature films	
News	
Sport (including rights)	
Games	

7.3 Genres that can be successfully imported from non-European countries?

Which of the following genres can be successfully imported from outside Europe?

1 = Yes, they work well when imported

2 = No, they don't sell well abroad

Genre	
Documentaries	
Factual magazines	
Entertainment	
Fiction	
Feature films	
News	
Sport (including rights)	
Games	

³³⁶ For a complete list of genre definitions, please see 1.1.

7.4 Formats that make successful exports³³⁷

Which of the following format genres make the most successful exports?

1 = Yes, they sell well abroad

2 = No, they don't sell well abroad

Genre ³³⁸	
Entertainment	
Fiction	
Factual magazine programmes (e.g. DIY/makeover)	
Factual entertainment/reality	
Games	
Other	

7.5 Formats that can be successfully imported from other European countries

Which of the following format genres can be successfully imported from another European country?

1 = Yes, they sell well abroad

2 = No, they don't sell well abroad

Genre	
Entertainment	
Fiction	
Factual magazine programmes (e.g. DIY/makeover)	
Factual entertainment/reality	
Games	
Other	

7.6 Formats that can be successfully imported from non-European countries

Which of the following format genres can be successfully imported from outside Europe?

1 = Yes, they sell well abroad

2 = No, they don't sell well abroad

Genre	
Entertainment	
Fiction	
Factual magazine programmes (e.g. DIY/makeover)	
Factual entertainment/reality	
Games	
Other	

³³⁷ A **format** is defined as any programme locally adapted for broadcast in at least one other market than the market of origin and for which a licensing fee is payable, e.g. *Who Wants to Be a Millionaire*, *Betty la Fea*.

³³⁸ Format genre categories vary slightly from the genres used for overall commissioned programmes. This is to reflect typical sub genres within formats.

7.7 Your comments

Do you want to add any comments or explanation to the answers given above? Are there any important factors influencing trade in programmes that we have omitted, e.g. is on-demand potential of programmes an important factor when evaluating a programme's potential for trade across borders?



8. CINEMA FILM

Note: In this section we are concerned only with cinematographic works, ie films intended for theatrical release that you commission. Do not include films that you acquire (for example, from the US).

8.1 A public service remit

Are you required as a part of your public service remit (a condition of your licence or through other public service requirements) to finance or broadcast films produced for a theatrical release?

1 = Yes
0 = No

Answer:	
---------	--

8.2 Contribution to financing

What are the sources of financing for the production of films for theatrical release that you fund?

Funder	Percentage of total production
Primary broadcaster (that is, your contribution)	
Co-production	
Secondary broadcaster (e.g. for pay TV rights)	
Domestic cinema distributor	
Distributor for overseas rights	
Advances against merchandising	
Public funding body	
Private funding linked to tax breaks	
Total	100%

8.3 Primary rights ownership

What is the typical duration of the holdback period between theatrical release and first showing on:

Window	Months
Pay per view	
Pay TV	
Free TV	

8.4 Ancillary rights ownership

Do you typically have access to ancillary rights (e.g. product merchandising etc) as part of the funding deal?

1 = Yes
0 = No

Answer:	
---------	--

Part II: On-demand audiovisual media services

The Television Without Frontiers Directive was recently amended by Directive 2007/65/EC of 11 December 2007. The current name for the new Directive is the “Audiovisual Media Services Directive”.

The Member States must implement the Audiovisual Media Services Directive by 19 December 2009.

Article 3i of the Audiovisual Media Services Directive is a new provision, aimed at promoting European works in on-demand services. The wording of article 3i is:

"Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by on-demand audiovisual media service."

We are interested in your activities regarding on-demand (including mobile) audiovisual media services that will fall in the future under Article 3i.

9. REGULATION

In this section, we are interested to understand your thoughts on how Article 3i of the new “AVMS” Directive should be applied in your own market.

9.1 Awareness of the Audiovisual Media Services Directive

Prior to receiving this questionnaire, were you aware that Article 3i of the Audiovisual Media Services Directive requires that *“Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by on-demand audiovisual media service”?*

1 = Yes

2 = No

Answer:	
---------	--

9.2 Methods for monitoring Article 3i of the “AVMS” Directive

Below we have detailed a selection of possible alternative methods for monitoring compliance with Article 3i. We would like to assess which method you believe would be most feasible. Please rank each method from 1 to 5 (with 1 being ‘least suitable’ and 5 being ‘most suitable’), without giving two methods the same ranking (e.g. not giving two methods a score of ‘5’). It would also be very helpful if you could give some detail about why you have given each method its rank (e.g. why you have chosen to rank a method as ‘5’ – the highest rank).

Method for monitoring Article 3i	Rank	Reason behind ranking?
Using title-level data (e.g. title name by country of origin) to monitor the proportion of an on-demand catalogue that is European.		
Using data on total hours of available content (e.g. total hours of on-demand content, by country of origin) to monitor the proportion of an on-demand catalogue that is European.		
Using consumption data for number of titles viewed (e.g. how many titles actually viewed, split by country of origin) to monitor the proportion of on-demand catalogue consumption that is European.		
Using consumption data for number of hours viewed (e.g. how many hours of on-demand content is actually viewed, split by country of origin) to monitor the proportion of on-demand catalogue consumption that is European.		
Monitoring prominence of European titles in the on-demand service (e.g. checking a service to see how clear the nationality of a piece of content is to a user, or how easy it is to search for content by country of origin).		

If there are any alternative methods for monitoring Article 3i that you believe have not been detailed above, please provide more details in the text box below.

9.3 Monitoring Article 3i – your views

We would also be interested to know your views on the following issues regarding the future monitoring of Article 3i of the AVMS Directive. Please give your answers in the text boxes below each question.

If confidentiality is ensured would you agree to share internal figures about on-demand services with a public body (for example a regulator)? If not, why, and if yes, which internal figures would you share and under what conditions?

In order to monitor Article 3i in the future, do you believe that an external, independent body is required to collect and analyse data? If not, why not, and if yes, what form do you see this independent body taking?

Do you believe that declarations from on-demand services regarding European works will be an appropriate method to monitor Article 3i? If not, do you believe there is a more appropriate alternative?

9.4 Your comments

If you wish to add any comments or explanation to the answers given above, please do so here. We are particularly interested in other ways in which European content could be promoted on your on-demand service, and how this could be monitored.

10. ON-DEMAND SERVICES

10.1 Own on-demand audiovisual media service (on-demand service)

Do you have an own on-demand service?

1 = Yes

2 = No

Answer:	
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If yes, please specify what it is:

10.2 Contribution towards other on-demand service

Do you contribute towards a 3rd party on-demand service?

1 = Yes

2 = No

Answer:	
---------	--

If yes, please specify what it is:

10.3 User generated content

Do you have any user-generated content on your on-demand service?

1=Yes

2=No

Answer	
--------	--

If yes, please specify what it is:

10.4 Type of access to on-demand service

If you own or contribute towards a 3rd party on-demand service, what type of access does it use?

1 = Yes
0 = No

Type of access	Please indicate "1" or "0"
Open access ³³⁹	
Closed access ³⁴⁰	

10.5 Transmission mode of on-demand service

How is the on-demand service distributed?

Type	Tick box
Internet	
Cable	
Satellite	
DTT	
Mobile	
Other (please specify)	

10.6 Type of on-demand service

What type of programming is offered on the on-demand service?

Type	Tick box
Live	
Catch-up	
Archive	
Other (please specify)	

10.7 Genres on on-demand service

Which of the following genres are offered on the on-demand service?

Genre ³⁴¹	Tick box
Entertainment	
Fiction	
Cinema film	
Documentaries	
Factual magazine programmes	
News	
Sport	
Games	
Other (please specify)	

10.8 Size of programme catalogue of your on-demand service

Please estimate the size of the on-demand programmes in your catalogue. (If possible, please indicate both the number of titles and the total hours)

Any Genre	Total number of	Total amount of
-----------	-----------------	-----------------

³³⁹ Open access refers to services that are available free-of-charge (sometimes involving a short registration) and using non-proprietary access technology.

³⁴⁰ Closed access refers to services that are only available in an encoded fashion, usually via proprietary access technologies, and that cost money to access, often via a subscription

³⁴¹ For a complete list of genre definitions, please see 1.1.

	available titles	available hours
Total catalogue		

10.9 Composition of programme catalogue of your on-demand service

Please estimate, by genre, the composition of the on-demand programmes in your catalogue. (If possible, please indicate the share both in terms of number of titles and total hours)

Genre	Percentage of titles	Percentage of available hours
Entertainment		
Fiction		
Cinema film		
Documentaries		
Factual magazine programmes		
News		
Sport		
Games		
Other (please specify)		
Total catalogue	100%	100%

10.10 Consumption of programme catalogue of your on-demand service

Please estimate, by genre, how the consumption of on-demand programmes is distributed. (If possible, please indicate the share both in terms of number of titles and total hours)

Genre	Percentage of titles	Percentage of consumed hours
Entertainment		
Fiction		
Cinema film		
Documentaries		
Factual magazine programmes		
News		
Sport		
Games		
Other (please specify)		
Total output	100%	100%

10.11 Size of European catalogue of on-demand service

Please estimate the size of the European catalogue of programmes of your on-demand service. (If possible, please indicate both the number of titles and total hours.)

Any Genre	Total number of European titles	Total amount of European hours
Total catalogue		

10.12 Proportion of European programmes on on-demand service

Please estimate, by genre, the proportion of your on-demand catalogue that is European programmes (works). (If possible, please indicate the share both expressed in terms of number of titles and total hours.)

Programme Genre	Percentage of all titles that are European	Percentage of all hours that are European
Entertainment		
Fiction		
Cinema film		
Documentaries		
Factual magazine programmes		
News		
Sport (including rights)		
Games		
Other (please specify)		
Total catalogue	100%	100%

10.13 Consumption of European programmes on on-demand service

Please estimate, by genre, the proportion of the total consumption of your on-demand programming that is made up by European programming (works). (If possible, please indicate the share both expressed in terms of number of titles and total hours.)

Programme Genre	Percentage of all titles that are European	Percentage of all hours consumed that are European
Entertainment		
Fiction		
Cinema film		
Documentaries		
Factual magazine programmes		
News		
Sport (including rights)		
Games		
Other (please specify)		
Total output	100%	100%

10.14 Programme spend on-demand service in 2007

What proportion of total programme spend was apportioned to on-demand services?

Business area	Percentage of spend
Traditional linear TV business	
On-demand TV services	
Total programme spend	100%

10.15 Spend on programme types on on-demand service in 2007

What percentage of your programme budget for on-demand programmes was spent on each of the following categories of programme:

Production category	Percentage of programme budget
Commissioned programmes produced in-house	
Commissioned programmes produced externally	
Acquired programmes	
Total programme spend	100%

10.16 Sources of commissioned and acquired programmes in 2007

What proportion of your programme budget for on-demand programmes was spent on the following sources?

Programme origination	Percentage of programme budget
National commissions	
European, non-national commissions	
Non-European commissions	
National acquisitions	
European, non-national acquisitions	
Non-European acquisitions	
Total	100%

10.17 Programme spend by genre on on-demand service in 2007

How is the programme spend (including costs based on pre-defined fees and revenue sharing) on on-demand programmes distributed by genre?

Genre	Percentage of spend
Entertainment	
Fiction	
Cinema film	
Documentaries	
Factual magazine programmes	
News	
Sport	
Games	
Other (please specify)	
Total programme spend	100%

10.18 Publicity (prominence) for European works

Please explain below how you publicise any European works on your on-demand service. (For example, do you enable users to search by country of origin? Is European content prominent on your on-demand service in any way?) Do you use any other method of ensuring attractive presentation?

10.19 Specific promotions for European works on your on-demand service

If you have had specific promotions for European works on your on-demand service, please detail below how these worked, and why you decided to promote European works in this fashion.

10.20 Marketing spend

If possible, could you please indicate below whether your marketing spend varies by country-of-origin (for example, is relatively more marketing money spent promoting European works?)

10.21 Funding of on-demand service

How is the on-demand service funded?

Funding	Tick box
Adverts within programmes	
Adverts at beginning/end of programmes	
Subscription fee	
Public subsidy	
Other (please specify)	

10.22 Impact of on-demand services

What impact do you anticipate on-demand services will have on broadcaster business models in the medium term (i.e. five years hence)?

Thank you for your participation

16. Appendix IV: Producers' questionnaire



**Study on the application of measures
concerning the promotion of the distribution
and production of European works in
audiovisual media services (including
television programmes and on-demand
services)**

Questionnaire for producers

Information on respondent

Contact information
Country
Organization
Contact person
Address
Email address
Telephone

FOREWORD

The European Commission recently launched a new *Study on the application of measures concerning the promotion and distribution of European works in audiovisual media services*.

This study is designed to investigate the application of Articles 4 and 5 of the Television without Frontiers Directive, and also to look at the application of rules governing the promotion of the production and access to European works on non-linear, on-demand services, as set out in the recently adopted Audiovisual Media Services Directive.

This questionnaire is intended to help the European Commission understand the linear and non-linear programming policies of European broadcasters and media service providers and the contribution of European producers to promotion of European works.

The questionnaire consists of two parts: Part I focuses on linear audiovisual media services, and Part II on on-demand audiovisual services.

We are aware that some of the questions may be difficult to answer due to the confidentiality or unavailability of the data needed. To tackle this difficulty, you can either indicate your best estimates, or contact us directly to discuss how to share some of your internal information with us, in a way that safeguards your concerns.

Part I: Linear audiovisual media services

This part of the questionnaire focuses on your business and the environment it operates in, and traditional linear audiovisual services that mainly fall under Articles 4 and 5 of the Television without Frontiers Directive.

It consists of 7 sections:

1. About your Company
2. Broadcasters' Programming Budgets
3. Programme Funding
4. Co-Productions
5. Rights Ownership
6. Trade in Programmes by Genre
7. Cinema Film

Part I: Television Broadcasting

1. ABOUT YOUR COMPANY

1.1 Turnover and profit

What was your turnover, earnings before interest, tax, depreciation and amortisation (EBITDA) and return on capital employed in 2002, 2004, 2006 and 2007?

	2002	2004	2006	2007
State currency:				
Turnover				
EBITDA				
RoC (%)				

1.2 Trade

What percentage of your 2007 turnover is from:

Destination of sales	% of turnover
Sales in home market	100%
Sales to other European markets	
Sales outside Europe	
Total sales	

1.3 Employees

How many people did you employ in 2002, 2004, 2006 and 2007?

	2002	2004	2006	2007
Employees				

1.4 Competitors

In your estimation, has the number of independent production companies in your domestic market grown, shrunk or stayed the same between 2002 and 2007?

Number of independent production companies	Tick one box
Grown	
Shrunk	
Stayed the same	

If the number of competitors has grown or shrunk, please tell us why. If your company is active outside of your own domestic market please also comment on the situation beyond your domestic market:

1.5 2007 Revenue by genre³⁴²

What percentage of your 2007 revenue from programme making came from the following genres:

Programme Genre	Percentage of total revenue from programme making
Entertainment	
Fiction	
Cinema film	
Documentaries	
Factual magazine programmes	
News	
Sport (including rights)	
Games	
Total revenue from programme making	100%
Whereof proportion of total revenue from formats³⁴³	/100%

³⁴² Entertainment

This includes talk shows and studio-based comedies, but not sitcoms (which are included under fiction) or quiz shows/game shows, which are included under "Games". These are 'stock' programmes with repeat value.

Fiction

This includes soaps, drama series/serials, single dramas, situation comedies, TV movies and animation created for TV. These are 'stock' programmes.

Cinema Film

All films that have had a cinematic release (not TV movies, which should be included under Fiction). Animation for cinematic release is also included in this genre. These are 'stock' programmes.

Documentaries

Programmes consisting mainly (i.e. more than 50%) of documentary footage. These are 'stock' programmes.

Factual magazine programmes

Factual programmes containing less than 50% documentary footage. The remaining time may be studio-based links, discussion etc. Most Current Affairs programmes fall in this category. These are 'flow' programmes with no or little repeat value.

News

Separate programmes containing reports of the most important recent events in summary form. Feature programmes, Current Affairs programmes and even News magazines, which look at stories "behind the news" should not be included. These are 'flow' programmes.

Sports Events

Live or recorded sporting events or significant parts of such events, but not magazine programmes about sports, even though such a programme may well contain excerpts of live events. These are 'Flow' programmes.

Games

TV shows focusing primarily on participants competing for a prize. These are 'Flow' programmes.

Examples: *Big Brother*, *Who Wants To Be A Millionaire?*, *The Weakest Link*, *Survivor*, *Pop Idol*

Children's

Children's programmes are to be included in the genres above according to their relevant sub genres.

³⁴³ A **format** is defined as any programme locally adapted for broadcast in at least one other market than the market of origin and for which a licensing fee is payable, e.g. *Who Wants to Be a Millionaire*, *Betty la Fea*.

2. BROADCASTERS' PROGRAMMING BUDGETS

2.1 Prices of commissioned and acquired programmes

Please list for each genre below which is the most, average and least expensive comparative price per hour that a broadcaster pays for (a) commissioned programmes produced in-house; (b) commissioned programmes produced externally (e.g. programmes produced by another broadcaster or an independent producer); and (c) acquired programmes. (Please insert a, b and c in each row)

Genre ³⁴⁴	Most expensive	Median	Least expensive
Entertainment			
Fiction			
Cinema film			
Documentaries			
Factual magazine programmes			
News			
Sport (including rights)			
Games			

2.2 Changes in broadcaster programme budget allocations over the last five years (2002-2007)

In your experience, has the percentage of their total programming budget that broadcasters spend on the following categories of programme grown, shrunk or stayed over the last five years:

Programme category	Grown (+), shrunk (-) or stayed the same (><)
Commissioned programmes produced In-house	
Commissioned programmes produced by another broadcaster or broadcaster-owned or controlled producer	
Commissioned programmes produced by an independent producer	
Acquired programmes	
News	
Sport (including rights)	
Games	
Locally produced formats ³⁴⁵	

³⁴⁴ For a complete list of genre definitions, please see 1.5.

³⁴⁵ A **format** is defined as any programme locally adapted for broadcast in at least one other market than the market of origin and for which a licensing fee is payable, e.g. *Who Wants to Be a Millionaire*, *Betty la Fea*.

3. PROGRAMME FUNDING

Please answer for all commissioned programmes excluding cinema film (treated separately - see Q7).

3.1 Funding of entertainment programmes³⁴⁶

What are the sources of funding for entertainment programmes you produce?

Sources of funding	Percentage of total production
Primary broadcaster ³⁴⁷	
Secondary broadcaster ³⁴⁸ (e.g. for pay TV rights)	
Distributor for non-domestic rights	
Advances against merchandising	
Public subsidy	
Private funding linked to tax breaks	
Self-funded (e.g. bank loan etc)	
New media rights and advances on revenues (including on-demand)	
Total	100%

3.2 Funding of fiction programmes

What are the sources of funding for fiction programmes you produce?

Sources of funding	Percentage of total production
Primary broadcaster	
Secondary broadcaster (e.g. for pay TV rights)	
Distributor for non-domestic rights	
Advances against merchandising	
Public subsidy	
Private funding linked to tax breaks	
Self-funded (e.g. bank loan etc)	
New media rights and advances on revenues (including on-demand)	
Total	100%

³⁴⁶ For a complete list of genre definitions, please see 1.5.

³⁴⁷ Main commissioning broadcaster, typically holding the first transmission rights

³⁴⁸ Secondary commissioning broadcaster, typically holding rights for a pay TV or a delayed free to air window for a smaller amount of financing than the primary broadcaster

3.3 Funding of documentary programmes

What are the sources of funding for documentary programmes you produce?

Sources of funding	Percentage of total production
Primary broadcaster	
Secondary broadcaster (e.g. for pay TV rights)	
Distributor for non-domestic rights	
Advances against merchandising	
Public subsidy	
Private funding linked to tax breaks	
Self-funded (e.g. bank loan etc)	
New media rights and advances on revenues (including on-demand)	
Total	100%

3.4 Funding of factual magazine programmes

What are the sources of funding for factual magazine programmes you produce?

Sources of funding	Percentage of total production
Primary broadcaster	
Secondary broadcaster (e.g. for pay TV rights)	
Distributor for non-domestic rights	
Advances against merchandising	
Public subsidy	
Private funding linked to tax breaks	
Self-funded (e.g. bank loan etc)	
New media rights and advances on revenues (including on-demand)	
Total	100%

3.5 Funding of games programmes

What are the sources of funding for games programmes you produce?

Sources of funding	Percentage of total production
Primary broadcaster	
Secondary broadcaster (e.g. for pay TV rights)	
Distributor for non-domestic rights	
Advances against merchandising	
Public subsidy	
Private funding linked to tax breaks	
Self-funded (e.g. bank loan etc)	
New media rights and advances on revenues (including on-demand)	
Total	100%

3.6 Funding of news programmes

What are the sources of funding for news programmes you produce?

Sources of funding	Percentage of total production
Primary broadcaster	
Secondary broadcaster (e.g. for pay TV rights)	
Distributor for non-domestic rights	
Advances against merchandising	
Public subsidy	
Private funding linked to tax breaks	
Self-funded (e.g. bank loan etc)	
New media rights and advances on revenues (including on-demand)	
Total	100%

3.7 Funding of sport programmes

What are the sources of funding for sport programmes you produce?

Sources of funding	Percentage of total production
Primary broadcaster	
Secondary broadcaster (e.g. for pay TV rights)	
Distributor for non-domestic rights	
Advances against merchandising	
Public subsidy	
Private funding linked to tax breaks	
Self-funded (e.g. bank loan etc)	
New media rights and advances on revenues (including on-demand)	
Total	100%

3.8 Your comments

Do you want to add any comments or explanation to the answers given above? Are there any important factors influencing the funding of new programmes that we have omitted?

4. CO-PRODUCTIONS

4.1 Do you co-produce new programmes?

Do you co-produce programmes with other production companies?

1 = Yes

0 = No

Answer	
--------	--

4.2 Domestic and international co-productions

If you answered "yes" to question 4.1, please tell us the regions where the production company with whom you co-produce is located. Rank the regions according to the highest number of co-productions (so if you do most co-productions with US and then with Canadian partners, US = 1, Canada = 2 etc).

Location of co-producer	
Domestic	
Other European ³⁴⁹	
US	
Canada	
Latin America	
Other [please state]	

³⁴⁹ Including other non-domestic EU, EEA and other European countries

4.3 European co-productions

If you identified “Other European” as the location of a co-production company, please specify up to three countries where the producer(s) with whom you do most co-funded production are located. Rank the top three countries according to the highest number of co-productions.

Location of party co-funding production	
Austria	
Belgium	
Bulgaria	
Cyprus	
Czech Republic	
Denmark	
Estonia	
Finland	
France	
Germany	
Greece	
Hungary	
Iceland	
Ireland	
Italy	
Latvia	
Liechtenstein	
Lithuania	
Luxembourg	
Malta	
Netherlands	
Norway	
Poland	
Portugal	
Romania	
Slovakia	
Slovenia	
Spain	
Sweden	
United Kingdom	
Other European	

4.4 Co-productions by genre³⁵⁰

What percentage of your co-productions with domestic or other European co-producers are in each of the following genres:

Genre	Percentage of co-productions
Entertainment	
Fiction	
Cinema film	
Documentaries	
Factual magazine programmes	
News	
Sport (including rights)	
Games	
Total co-productions with domestic or other European co-producers	100%

³⁵⁰ For a complete list of genre definitions, please see 1.5.

5. RIGHTS OWNERSHIP

5.1 Broadcaster rights

For what period do you assign to a broadcaster the rights to a programme it has funded?

Rights	Period (Specify years or number of showings)
Primary rights	
Secondary rights in the domestic market	
Secondary rights in overseas markets	
Ancillary rights (licensing, merchandising etc)	
New media rights (internet, etc)	

5.2 Full value for rights

Does the payment you receive for the rights exceed the value that you could create from them yourself over the same period?

1 = Yes
0 = No

Answer

5.3 Retention of Rights

Do you retain more rights to programmes you have produced than you did five years ago?

2 = Yes, we retain more rights than five years ago
1 = About the same
0 = No, we retain fewer rights than five years ago

Answer

If you answer "Yes" or "No", please explain the changes.

5.4 Margins earned on programme rights

Has the price you obtain in exchange for programme rights (i.e. the margin you earn on the rights) grown, shrunk, or stayed about the same over the last five years?

2 = Grown

1 = About the same

0 = Shrunk

Answer	
--------	--

5.5 Retention of rights

Would you like to see a statutory limit on the period that a broadcaster can have exclusive use of primary rights to a programme it has funded?

1 = Yes

0 = No

Answer	
--------	--

If you answer “yes”, please explain your answer, including under which conditions a broadcaster could have exclusive use of primary rights (e.g. lower funding from broadcasters in return for more rights retained by yourself) and how you think various alternatives would impact your profitability?

--

6. TRADE IN PROGRAMMES BY GENRE

6.1 Genres that make successful exports in Europe³⁵¹

Which of the following genres make the most successful exports to another European country?

1 = Yes, they sell well abroad

2 = No, they don't sell well abroad

Genre	
Documentaries	
Factual magazines	
Entertainment	
Fiction	
Feature films	
News	
Sport (including rights)	
Games	

6.2 Formats that make successful exports in Europe³⁵²

Which of the following format genres make the most successful exports?

1 = Yes, they sell well abroad

2 = No, they don't sell well abroad

Genre	
Entertainment	
Fiction	
Factual magazine programmes (e.g. DIY/makeover)	
Factual entertainment/reality	
Games	
Other	

³⁵¹ For a complete list of genre definitions, please see 1.5.

³⁵² A **format** is defined as any programme locally adapted for broadcast in at least one other market than the market of origin and for which a licensing fee is payable, e.g. *Who Wants to Be a Millionaire*, *Betty la Fea*.

6.2 Destination of exported programmes in Europe

Please rank the countries in Europe to which you export (1, 2, 3 etc).

Destination of exported programmes in Europe	
Austria	
Belgium	
Bulgaria	
Cyprus	
Czech Republic	
Denmark	
Estonia	
Finland	
France	
Germany	
Greece	
Hungary	
Iceland	
Ireland	
Italy	
Latvia	
Liechtenstein	
Lithuania	
Luxembourg	
Malta	
Netherlands	
Norway	
Poland	
Portugal	
Romania	
Slovakia	
Slovenia	
Spain	
Sweden	
United Kingdom	
Other European	

6.3 Genres that make successful exports outside Europe

Which of the following genres make the most successful exports to countries outside Europe?

1 = Yes, they sell well abroad

2 = No, they don't sell well abroad

Genre	
Documentaries	
Factual magazines	
Entertainment	
Fiction	
Feature films	
News	
Sport (including rights)	
Games	

6.4 Formats that make successful exports outside of Europe

Which of the following format genres make the most successful exports to countries outside Europe?

1 = Yes, they sell well abroad

2 = No, they don't sell well abroad

Genre ³⁵³	
Entertainment	
Fiction	
Factual magazine programmes (e.g. DIY/makeover)	
Factual entertainment/reality	
Games	
Other	

6.5 Destination of exported programmes outside Europe

Please rank the countries outside Europe to which you export (1, 2, 3 etc).

Destination for programme exports outside Europe	
US	
Canada	
Latin America	
Other [please state]	

³⁵³ Format genre categories vary slightly from the genres used for overall commissioned programmes. This is to reflect typical sub genres within formats.

6.6. Influences of on-demand

Is on-demand potential of programmes an important factor when evaluating a programme's potential for trade across borders?

1 = Yes

0 = No

Answer	
--------	--

If you answer “yes”, please explain your answer.

7. CINEMA FILM

7.1 Do you make cinema film?

1 = Yes
0 = No

Answer	
--------	--

7.2 Contribution to funding

If yes, what are the sources of funding for the production of films for theatrical release you produce?

Funder	Percentage of total production
Primary broadcaster	
Co-production	
Secondary broadcaster (e.g. for pay TV rights)	
Domestic cinema distributor	
Distributor for overseas rights	
Advances against merchandising	
Public subsidy	
Private funding linked to tax breaks	
Self-funded (e.g. bank loan)	
Total	100%

7.3 Broadcaster rights

For what period do you assign to a broadcaster the rights to a cinema film it has funded?

Rights	Period (Specify years or number of showings)
Primary rights	
Secondary rights in the domestic market	
Secondary rights in overseas markets	
Ancillary rights (licensing, merchandising etc)	
New media (internet, computer games etc)	

7.4 Full value for rights

Does the payment you receive for the rights exceed the value that you could create from them yourself over the same period?

1 = Yes
0 = No

Answer	
--------	--

7.5 Retention of rights

Would you like to see a statutory limit on the period that a broadcaster can have exclusive use of primary rights to a cinema film it has funded?

1 = Yes

0 = No

Answer	
--------	--

If you answer “yes”, please explain your answer.

Part II: On-demand audiovisual media services

The Television Without Frontiers Directive was recently amended by Directive 2007/65/EC of 11 December 2007. The current name for the new Directive is the “Audiovisual Media Services Directive”.

The Member States must implement the Audiovisual Media Services Directive by 19 December 2009.

Article 3i of the Audiovisual Media Services Directive is a new provision, aimed at promoting European works in on-demand services. The wording of Article 3i is:

"Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by on-demand audiovisual media service."

We are interested in your activities regarding on-demand (including mobile) audiovisual media services that may fall in the future under Article 3i.

8. REGULATION

In this section, we are interested to understand your thoughts on how Article 3i of the new “AVMS” Directive should be applied in your own market.

8.1 Awareness of the Audiovisual Media Services Directive

Prior to receiving this questionnaire, were you aware that Article 3i of the Audiovisual Media Services Directive requires that *“Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by on-demand audiovisual media service”?*

1 = Yes

2 = No

Answer:	
---------	--

8.2 Methods for monitoring Article 3i of the “AVMS” Directive

Below we have detailed a selection of possible alternative methods for monitoring compliance with Article 3i. We would like to assess which method you believe would be most feasible. Please rank each method from 1 to 5 (with 1 being ‘least suitable’ and 5 being ‘most suitable’), without giving two methods the same ranking (e.g. not giving two methods a score of ‘5’). It would also be very helpful if you could give some detail about why you have given each method its rank (e.g. why you have chosen to rank a method as ‘5’ – the highest rank).

Method for monitoring Article 3i	Rank	Reason behind ranking?
Using title-level data (e.g. title name by country of origin) to monitor the proportion of an on-demand catalogue that is European.		
Using data on total hours of available content (e.g. total hours of on-demand content, by country of origin) to monitor the proportion of an on-demand catalogue that is European.		
Using consumption data for number of titles viewed (e.g. how many titles actually viewed, split by country of origin) to monitor the proportion of on-demand catalogue consumption that is European.		
Using consumption data for number of hours viewed (e.g. how many hours of on-demand content is actually viewed, split by country of origin) to monitor the proportion of on-demand catalogue consumption that is European.		
Monitoring prominence of European titles in the on-demand service (e.g. checking a service to see how clear the nationality of a piece of content is to a user, or how easy it is to search for content by country of origin).		

If there are any alternative methods for monitoring Article 3i that you believe have not been detailed above, please provide more details in the text box below.

8.3 Monitoring Article 3i – your views

We would also be interested to know your views on the following issues regarding the future monitoring of Article 3i of the AVMS Directive. Please give your answers in the text boxes below each question.

If confidentiality is ensured would you agree to share internal figures about on-demand services with a public body (for example a regulator)? If not, why, and if yes, which internal figures would you share and under what conditions?

In order to monitor Article 3i in the future, do you believe that an external, independent body is required to collect and analyse data? If not, why not, and if yes, what form do you see this independent body taking?

Do you believe that declarations from on-demand services regarding European works will be an appropriate method to monitor Article 3i? If not, do you believe there is a more appropriate alternative?

8.4 Your comments

If you wish to add any comments or explanation to the answers given above, please do so here. We are particularly interested in other ways in which European content could be promoted on your on-demand service, and how this could be monitored.

9. ON-DEMAND SERVICES

9.1 On-demand services

Do you supply content for on-demand services?

1 = Yes

2 = No

Answer:

If yes, please specify what it is:

9.2 Genres on on-demand service

Which of the following genres do you supply to the on-demand service?

Genre ³⁵⁴	Tick box
Entertainment	
Fiction	
Cinema film	
Documentaries	
Factual magazine programmes	
News	
Sport	
Games	
Other (please specify)	

9.3 Format of content for on-demand service

Is the content you supply specifically produced for on-demand?

1 = Yes

2 = No

Answer:

If yes, please specify what it is:

³⁵⁴ For a complete list of genre definitions, please see 1.5.

9.4 Revenue generated from on-demand programmes in 2007

What proportion of total revenue was generated from on-demand programmes?

Business area	Percentage of revenue
Programmes for traditional linear TV	
Programmes for on-demand TV services	
Other	
Total revenue	100%

9.5 Revenue generated from on-demand services by genre in 2007

How is the revenue generated from on-demand programmes distributed by genre?

Genre	Percentage of revenue
Entertainment	
Fiction	
Cinema film	
Documentaries	
Factual magazine programmes	
News	
Sport	
Games	
Other (please specify)	
Total revenue from on-demand	100%

9.6 Impact of on-demand services

What effect do you anticipate on-demand services will have on content distribution in the medium term (i.e. five years hence)?

Thank you for your participation

17. Appendix V: On-demand services' questionnaire



attentional
an instinct for entertainment

headway
international

RAMBOLL
management

**Study on the application of measures
concerning the promotion of the distribution
and production of European works in
audiovisual media services (including
television programmes and on-demand
services)**

**Questionnaire for on-demand service
providers**

Information on respondent

Contact information
Country
Organization
Contact person
Address
Email address
Telephone

FOREWORD

This questionnaire is intended to help the European Commission understand the programming policies of European on-demand services, which will be subject to the new "Audiovisual Media Services Directive".³⁵⁵

The "Audiovisual Media Services Directive" 2007/65/EC was adopted on 11 December 2007, and the Member States must implement it by 19 December 2009.

Article 3i of the Audiovisual Media Services Directive is a new provision aimed at promoting European works in on-demand services. The wording of Article 3i is:

"Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by on-demand audiovisual media service."

We are interested in your current activities regarding on-demand (including mobile) audiovisual media services that may fall in the future under the new Article 3i.

The questionnaire contains 5 sections: 1. Details of your on-demand content services; 2. Your programming policy; 3. The importance of European programming to you; 4. Current and future programming strategies; 5. European regulation.

We are aware that some of the questions may be difficult to answer due to the confidentiality or unavailability of the data needed. This is particularly the case with sections 2 and 3. To tackle this difficulty, you can either indicate your best estimates, or contact us directly to discuss how to share some of your internal information with us, in a way that safeguards your concerns.

³⁵⁵ This questionnaire will be sent to the leading on-demand services in a representative sample of Member States. Data will be considered alongside data from broadcasters (providers of linear audiovisual media services), audiovisual media content producers and regulatory authorities as well.

1. ON-DEMAND SERVICES

In this section, we are interested in your on-demand audiovisual media services in terms of the technology used and the business models applied. We are only interested in the on-demand services that you “own and operate”, meaning those for which you decide the contents and conditions of service (i.e. for which you have editorial responsibility).

1.1 Type of on-demand service

What type(s) of on-demand video service(s) do you own?

Please tick box.

Answer	Tick box
Open access ³⁵⁶	
Closed access ³⁵⁷	

1.2 Transmission mode of on-demand service

How is the on-demand service distributed?

Type	Tick box
Internet	
Cable	
Satellite	
DTT	
Mobile	
Other (please specify)	

1.3 Content of on-demand service

What type(s) of programming is offered on your on-demand service(s)?

Type	Tick box
Live	
Catch-up	
Archive	
Other (please specify)	

1.4 Funding of on-demand service

How do you fund your on-demand service(s)?

Funding	Tick box
Adverts within programmes	
Adverts at beginning/end of programmes	
Subscription fee	
Public subsidy	
Other (please specify)	

³⁵⁶ Open access refers to services that are available free-of-charge (sometimes involving a short registration) and using non-proprietary access technology.

³⁵⁷ Closed access refers to services that are only available in an encoded fashion, usually via proprietary access technologies, and that cost money to access, often via a subscription.

1.5 User-generated content

Do you have any user-generated content on your on-demand service?

- 1=Yes
2=No

Answer	
---------------	--

1.6 Further details on your own on-demand services

If you own several on-demand services which you could not describe in enough detail in the above questions, please provide with further comments here:

IF YOU OWN AND OPERATE SEVERAL ON-DEMAND SERVICES, WE WOULD LIKE YOU FROM NOW ON TO FOCUS ONLY ON YOUR MAIN SERVICE. PLEASE INDICATE WHAT THIS WILL BE BELOW:

From now on, I will focus on the following on-demand service (please specify):
--

2. PROGRAMMING POLICIES

In this section, we are interested in the types of content offered and consumed on your **MAIN** on-demand video services.

2.1 Genres offered on your main on-demand service³⁵⁸

Which genres were offered on your main on-demand service as of the end of 2007?

Programme Genre	Tick box
Entertainment	
Fiction	
Cinema film	
Documentaries	
Factual magazine programmes	
News	
Sport (including rights)	
Games	
Other (please specify)	

2.2 Size of programme catalogue of your main on-demand service

Please estimate the size of the on-demand programmes in your catalogue. (If possible, please indicate both the number of titles and the total hours)

Any Genre	Total number of available titles	Total amount of available hours
Total catalogue		

³⁵⁸ Entertainment

This includes talk shows and studio-based comedies, but not sitcoms (which are included under fiction) or quiz shows/game shows, which are included under "Games". These are 'stock' programmes with repeat value.

Fiction

This includes soaps, drama series/serials, single dramas, situation comedies, TV movies and animation created for TV. These are 'stock' programmes.

Cinema Film

All films that have had a cinematic release (not TV movies, which should be included under Fiction). Animation for cinematic release is also included in this genre. These are 'stock' programmes.

Documentaries

Programmes consisting mainly (i.e. more than 50%) of documentary footage. These are 'stock' programmes.

Factual magazine programmes

Factual programmes containing less than 50% documentary footage. The remaining time may be studio-based links, discussion etc. Most Current Affairs programmes fall in this category. These are 'flow' programmes with no or little repeat value.

News

Separate programmes containing reports of the most important recent events in summary form. Feature programmes, Current Affairs programmes and even News magazines, which look at stories "behind the news" should not be included. These are 'flow' programmes.

Sports Events

Live or recorded sporting events or significant parts of such events, but not magazine programmes about sports, even though such a programme may well contain excerpts of live events. These are 'Flow' programmes.

Games

TV shows focusing primarily on participants competing for a prize. These are 'Flow' programmes.

Examples: *Big Brother*, *Who Wants To Be A Millionaire?*, *The Weakest Link*, *Survivor*, *Pop Idol*

Children's

Children's programmes are to be included in the genres above according to their relevant sub genres.

2.3 Composition of programme catalogue of your main on-demand service

Please estimate, by genre, the composition of the on-demand programmes in your catalogue. (If possible, please indicate the share both in terms of number of titles and total hours)

Programme Genre	Percentage of titles	Percentage of available hours
Entertainment		
Fiction		
Cinema film		
Documentaries		
Factual magazine programmes		
News		
Sport		
Games		
Other (please specify)		
Total catalogue	100%	100%

2.4 Consumption of programme catalogue of your main on-demand service

Please estimate, by genre, how the consumption of on-demand programmes is distributed. (If possible, please indicate the share both in terms of number of titles and total hours)

Programme Genre	Percentage of titles	Percentage of consumed hours
Entertainment		
Fiction		
Cinema film		
Documentaries		
Factual magazine programmes		
News		
Sport (including rights)		
Games		
Other (please specify)		
Total catalogue	100%	100%

2.5 Compensation mechanism of programme owners

How do you usually compensate the owners of the programmes on your main on-demand service?

Please tick

Compensation mechanism	Revenue sharing	Pre-defined, fixed fees	Mix of both
Answer:			

2.6 Programme spend by genre on your main on-demand service in 2007

How is the programme spend (including costs based on pre-defined fees and revenue sharing) on on-demand programmes distributed by genre?

Programme Genre	Percentage of total spending
Entertainment	
Fiction	
Cinema film	
Documentaries	
Factual magazine programmes	
News	
Sport (including rights)	
Games	
Other (please specify)	
Total catalogue	100%

2.7 Specific production or commissioning of programmes for your main on-demand service

Have you ever commissioned³⁵⁹, produced or co-produced³⁶⁰ programmes for your on-demand catalogue?

1 = Yes

2 = No

Answer:

If you answered 'Yes' to the above question, can you please give further information to describe your production activities (for example, details on specific programmes produced, strategic objectives behind the projects, perspectives of development of your production policy)?

2.8 Type of rights acquired for your main on-demand service

Can you please give some general information on the type of rights you are seeking to acquire for your on-demand service (exclusive or non-exclusive rights, variations depending on windows, genres, origin of productions).

2.9 Your comments

³⁵⁹ Commissioned refers to a situation where the on-demand service has paid a third-party producer to create audiovisual content for their on-demand service.

³⁶⁰ By producing or co-producing, we mean upfront participation in a programme project, editorially and/or financially, as opposed to programme acquisitions from the shelf.

If you wish to add any comments or explanation to the answers given above, please do so here:



3. EUROPEAN PROGRAMMING

In this section, we are interested to understand how important European programmes are to your on-demand programming policy.

3.1 Size of European catalogue in your main on-demand service

Please estimate the size of the European catalogue of programmes in your on-demand service. (If possible, please indicate the number of titles and total hours.)

Any Genre	Total number of European titles	Total amount of European hours
Total catalogue		

3.2 Proportion of European programmes in your main on-demand service

Please estimate, by genre, the proportion of your on-demand catalogue that are European programmes. (If possible, please indicate the share both in terms of number of titles and total hours.)

Programme Genre	Percentage of all titles that are European	Percentage of all hours that are European
Entertainment		
Fiction		
Cinema film		
Documentaries		
Factual magazine programmes		
News		
Sport (including rights)		
Games		
Other (please specify)		
Total catalogue	100%	100%

3.3 Consumption of European programmes in your main on-demand service

Please estimate, by genre, the proportion of the total consumption of your on-demand programming that is made up by European programming. (If possible, please indicate the share both in terms of number of titles and total hours.)

Programme Genre	Percentage of all titles consumed that are European	Percentage of all hours consumed that are European
Entertainment		
Fiction		
Cinema film		
Documentaries		
Factual magazine programmes		
News		
Sport (including rights)		
Games		
Other (please specify)		
Total catalogue	100%	100%

3.4 Financial contribution to the production and acquisition of European works

Please estimate the proportion of your programme production and acquisition budget for your main on-demand service that has been spent on European works (excluding news, sports and games).

Programme origination	Percentage of programme budget
National commissions	
European, non-national commissions	
Non-European commissions	
National acquisitions	
European, non-national acquisitions	
Non-European acquisitions	
Total	100%

4. PROGRAMMING STRATEGIES

In this section, we are interested to understand the factors that drive your programming decisions today and in the future, in particular with regards to European programming.

4.1 Influences on programme decisions today

Please state whether the factors below influence which type of programmes you prefer to acquire today to feed your on-demand catalogue.

Please tick

Programming decisions today	Fully agree	Rather agree	Rather disagree	Strongly disagree	Don't know
Programmes must be well-known to consumers due to success and promotion on other windows.					
Programmes must be recent so there is a higher probability that consumers have not seen them already.					
Programmes must be exclusive so consumers can only see them on my platform but not on competitors.					
Programmes must be affordable because my revenue, and thus programming budget, is still very limited.					
Programmes must be sold on a revenue sharing basis because this is my main acquisitions policy.					
Programmes must help me achieve my regulatory obligations.					
Other					

4.2 Influences on programme decisions in the medium term

Please state how the factors influencing the type of programmes you prefer to acquire to feed your on-demand catalogue will evolve over the next few years.

Please tick

Programming decisions in the medium term	Will grow (+), shrink (-) or stay the same (<>)
Programmes must be well-known to consumers due to success and promotion on other windows.	
Programmes must be recent so there is a better probability that consumers have not seen them already.	
Programmes must be exclusive so consumers can only see them on my platform but not on competitors.	
Programmes must be affordable because my revenue, and thus programming budget, is still very limited.	
Programmes must be sold on revenue sharing basis because this is my main acquisitions policy.	
Programmes must help me achieve my regulatory obligations.	
Other	

4.3 Your view on the importance of European programming today

Please indicate the reasons why European programming, relative to non-European programming, is important or not to the success of your main on-demand service today.

Please tick

European programming today	Fully agree	Rather agree	Rather disagree	Strongly disagree	Don't know
European programming is the best way to attract European audiences.					
European programming is more affordable and thus enables a higher profit.					
European programming is easier to acquire because we are European.					
European programming is all-in-all a very good option for my service.					
European programming ensures compliance with national obligations (and thus will help me to comply with the AVMS in the future).					

- 4.4 Your view on the importance of European programming in the medium term**
Please indicate how the reasons why European programming, relative to non-European programming, is important or not to the success of your main on-demand service will evolve over the next few years.

Please tick

European programming in the medium term	Will grow (+), shrink (-) or stay the same (><)
European programming is the best way to attract European audiences.	
European programming is more affordable and thus enables a higher profit.	
European programming is easier to acquire because we are European.	
European programming is all-in-all a very good option for my service.	
European programming ensures compliance with the AVMS Directive	

- 4.5 Publicity (prominence) for European works**
Please explain below how you publicise any European works on your on-demand service. (For example, do you enable users to search by country of origin? Is European content prominent on your on-demand service in any way?) Do you use any other methods to ensure attractive presentation of European works?

- 4.6 Specific promotions for European works on your on-demand service**

If you have had specific promotions for European works on your on-demand service, please detail below how these worked, and why you decided to promote European works in this fashion.

4.7 Marketing spend

If possible, could you please indicate below whether your marketing spend varies by country-of-origin (for example, is relatively more marketing money spent promoting European works?).

4.8 Further comments

If you wish to add any comments or explanation to the answers given above, please do so here:

5. REGULATION

In this section, we are interested to understand your thoughts on how Article 3i of the new AVMS Directive should be applied in your own market.

5.1 Awareness of the Audiovisual Media Services Directive

Prior to receiving this questionnaire, were you aware that Article 3i of the Audiovisual Media Services Directive requires that “*Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by on-demand audiovisual media service*”?

1 = Yes

2 = No

Answer:	
---------	--

5.2 Methods for monitoring Article 3i of the “AVMS” Directive

Below we have detailed a selection of possible alternative methods for monitoring compliance with Article 3i. We would like to assess which method you believe would be most feasible. Please rank each method from 1 to 5 (with 1 being ‘least suitable’ and 5 being ‘most suitable’), without giving two methods the same ranking (e.g. not giving two methods a score of ‘5’). It would also be very helpful if you could give some detail about why you have given each method its rank (e.g. why you have chosen to rank a method as ‘5’ – the highest rank).

Method for monitoring Article 3i	Rank	Reason behind ranking?
Using title-level data (e.g. title name by country of origin) to monitor the proportion of an on-demand catalogue that is European.		
Using data on total hours of available content (e.g. total hours of on-demand content, by country of origin) to monitor the proportion of an on-demand catalogue that is European.		
Using consumption data for number of titles viewed (e.g. how many titles actually viewed, split by country of origin) to monitor the proportion of on-demand catalogue consumption that is European.		
Using consumption data for number of hours viewed (e.g. how many hours of on-demand content is actually viewed, split by country of origin) to monitor the proportion of on-demand catalogue consumption that is European.		
Monitoring prominence of European titles in the on-demand service (e.g. checking a service to see how clear the nationality of a piece of content is to a user, or how easy it is to search for content by country of origin).		
<i>Providing evidence of to the financial contribution to the production and/or rights acquisition of European works</i>		

If there are any alternative methods for monitoring Article 3i that you believe have not been detailed above, please provide more details in the text box below.

5.3 Monitoring Article 3i – your views

We would also be interested to know your views on the following issues regarding the future monitoring of Article 3i of the AVMS Directive. Please give your answers in the text boxes below each question.

If confidentiality is ensured would you agree to share internal figures about on-demand services with a public body (for example a regulator)? If not, why, and if yes, which internal figures would you share and under what conditions?

In order to monitor Article 3i in the future, do you believe that an external, independent body is required to collect and analyse data? If not, why not, and if yes, what form do you see this independent body taking?

Do you believe that declarations from on-demand services regarding European works will be an appropriate method to monitor Article 3i? If not, do you believe there is a more appropriate alternative?

5.4 Your comments

If you wish to add any comments or explanation to the answers given above, please do so here. We are particularly interested in other ways in which European content could be promoted on your on-demand service, and how this could be monitored.

18. Appendix VI: National Implementation of Articles 4 and 5; and Other National Language and Production Requirements

The following tables have been constructed with reference to national legislation. Information about the laws and regulations in place in each Member State to implement Articles 4 and 5 was collected from national regulatory authorities, using the attached questionnaire (Appendix II). Where no changes were reported, the findings of the 2005 study are reported. It should be noted that the 2005 study made use of the European Media Institute Study (EIM) of Member State legal provisions, conducted on behalf of the European Commission and published in 2001³⁶¹.

The left column of the tables indicate the general rules that apply to all channels, using free-to-air channels as the baseline. If some channels (typically public service broadcasters (PSBs)) are subject to higher requirements, the differences are stated in the middle column. If some channels are subject to lower requirements (exceptionally as regards the Directive's provisions), the differences are stated in the right column.

³⁶¹ Pertziniidou, Eleftheria; Study on the provisions existing within the Member States and the EEA States to implement Chapter III of the 'Television without Frontiers Directive' (Directive 97/36/EC of the European Parliament and the Council of 30 June 1997 amending the Council Directive of 3 October 1989); The European Institute for the Media; May 2001.

Table 136: National Measures to implement Articles 4 and 5 and other national language and production requirements in Austria

National Measures	Austria		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Wording of Directive incorporated directly into national law		
Language requirements			
Independent Production	10% of qualifying transmission time		
Contribution to production		Public service broadcaster ORF is obliged to provide financing to the Austrian film industry through the Film-Television Treaty with the Austrian Film Institute	
Legislation	Private Television Act (PrTV-G) No. 84/2001, as amended ORF Act No. 379/1984, as amended		

Table 137: National Measures to implement Articles 4 and 5 and other national language and production requirements in Flemish Belgium

National Measures	Belgium (Flemish Community)		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Broadcasters must aim for a majority proportion of transmission time		
Language requirements	A considerable proportion of European works should be works originally produced in the Dutch language. Within the quota for independent productions, sufficient space must be made for recent productions in the Dutch language.		
Independent Production	10% of qualifying transmission time		
Contribution to production			
Legislation	Decreten Betreffende De Radio-Omroep En De Televisie, Gecoördineerd Op 25 Januari 1995		

Table 138: National Measures to implement Articles 4 and 5 and other national language and production requirements in French Belgium

National Measures	Belgium (French Community)		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Majority proportion of qualifying transmission time		
Language requirements	10% of qualifying transmission time must be reserved to audiovisual works originally produced in French		
Independent Production	10% of qualifying transmission time		
Contribution to production	Broadcasters must use 1.4% to 2.2% of turnover (on a progressive scale) for audiovisual production (cinema & television). The amount can be used through co-productions, pre-purchases or payments to Centre du Cinema et de l'audiovisuel.		
Legislation	Décret sur la radiodiffusion du 27 février 2003 (Broadcasting Decree of 27 February 2003, as amended)		

Table 139: National Measures to implement Articles 4 and 5 and other national language and production requirements in Bulgaria

National Measures	Bulgaria		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	At least 50% of qualifying transmission time, where practicable		
Language requirements			
Independent Production	10% of qualifying transmission time		
Contribution to production		Bulgarian National Television must allocate at least 5% of the annual budget subsidy to the financing from the Radio and Television Fund for Bulgarian films made for television.	
Legislation	Law for the Radio and the Television, SG. 138 of 24 November 1998 (as amended)		

Table 140: National Measures to implement Articles 4 and 5 and other national language and production requirements in Cyprus

National Measures	Cyprus		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Majority proportion of qualifying transmission time		
Language requirements			
Independent Production	10% of qualifying transmission time or 10% of annual programme budget		
Contribution to production			
Legislation	Radio and Televisions Stations Law of 30 January 1998		

Table 141: National Measures to implement Articles 4 and 5 and other national language and production requirements in Czech Republic

National Measures	Czech Republic		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Majority proportion of qualifying transmission time, where practicable		
Language requirements			
Independent Production	10% of qualifying transmission time or 10% of annual programme budget		
Contribution to production		Public service broadcaster is required to transfer 12.5 million CKZ of monthly advertising revenue to the Czech Cinematographic Fund.	
Legislation	Act No. 231/2001 of 4 July 2001 on Radio and Television Broadcasting Operation and on Amendments to Other Acts (as amended) Act no. 483/1991 of 7 May 1991 on Czech Television (as amended)		

Table 142: National Measures to implement Articles 4 and 5 and other national language and production requirements in Denmark

National Measures	Denmark		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Majority proportion of qualifying transmission time, where practicable		
Language requirements		DR and TV2 are required to pay special attention to Danish and other Nordic languages	
Independent Production	10% of qualifying transmission time or 10% of annual programme budget		
Contribution to production			
Legislation	Lov om radio- og fjernsynsvirksomhed (the Radio And Televisions Broadcasting Act), Consolidated act no. 338 of 11 April 2007 and executive orders ("bekendtgørelse") issued in accordance with the act. The Directive is implemented in the following executive orders: No 338 of 19 April 2006 ("Bekendtgørelse om programvirksomhed ved hjælp af satellit og kable og kortbølgesendemuligheder"), No. 1629 of 13 December 2006 ("Vedtægter for DR"), No. 1628 of 13 december 2006 ("Vedtægt for de Regionale TV2-virksomheder"), No. 1031 of 11 december 2003 ("Bekendtgørelse for TV2").		

Table 143: National Measures to implement Articles 4 and 5 and other national language and production requirements in Estonia

National Measures	Estonia		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	51% of qualifying transmission time		
Language requirements		Kanal 2 - One hour Russian language broadcasts per week.	
Independent Production	10% of qualifying transmission time		
Contribution to production	(At least one hour per month must contain audiovisual works financed from the state budget, Estonian Film Foundation or Cultural endowment)	(For new DTT channels, At least 1.5 hours per month must contain audiovisual works financed from the state budget, Estonian Film Foundation or Cultural endowment)	
Legislation	Broadcasting Act of 19 May 1994 (as amended)		

Table 144: National Measures to implement Articles 4 and 5 and other national language and production requirements in Finland

National Measures	Finland		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Wording of Directive incorporated directly into national law		
Language requirements		Legal requirement on the public service broadcaster YLE to reflect minority languages in the programme schedule.	
Independent Production	15% of qualifying transmission time or programme budget		
Contribution to production			
Legislation	Act 744/1998 on Television and Radio Operations (as amended) YLE Act: Act 1380/1993 (as amended)		

Table 145: National Measures to implement Articles 4 and 5 and other national language and production requirements in France – audiovisual works

National Measures	France (audiovisual works)		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	60% of audiovisual broadcast time The same proportion applies to peak hours – 18:00-23:00 plus 14:00-18:00 on Wednesdays – as well		For cable & satellite channels, requirements may be set below 60% BUT: European works must represent at least 50% of broadcast time of audiovisual works AND the broadcasters must invest in a minimum number of original independent French Language audiovisual works. Peak hours are 20:30-22:30 for film channels. DTT, cable & satellite: peak hours are set individually.
Language requirements	40% of audiovisual broadcast time must be original French language productions.		For cable & satellite channels, requirements may be set below 40% BUT the broadcasters must then invest in a minimum number of original independent French Language audiovisual works.
Independent Production	2/3 of the percentage of turnover dedicated to original French Language production [i.e. 10.67% of turnover] must be used for independent productions.	2/3 of the higher percentage of turnover which some channels (see below) must be dedicated to European productions (including original French Language productions) must be used for independent productions.	2/3 of the percentage of turnover dedicated to (European or) original French Language production for each channel (see below) must be used for independent productions. Pay-Per-View: set individually.
Contribution to production	16% of turnover must be dedicated to original French language audiovisual productions 120 hours of European or French Language works never previously broadcast. Must start between 8 and 9 p.m. and cannot account for more than 180 min per night.	France 2: 19% of turnover must be dedicated to European audiovisual productions (the 16% must be original French language productions). France 3: 18.5% of turnover must be dedicated to European audiovisual productions (the 16% must be original French language productions). M6: 18% of turnover must be dedicated to European audiovisual productions (the 13.5% must be original French language productions).	CANAL+: 4.5% of turnover to European audiovisual productions (including original French language productions). DTT, cable & satellite: The investment regime only applies to broadcasters spending more than 20% of annual transmission time on audiovisual works. For cable & satellite, the proportions cover European productions (including original French language productions). Music video broadcasters: 8% of turnover. First exhibition film channels: 6% of turnover. Lower requirements set individually for DTT channels with annual turnover below 150 million euros. Pay-Per-View: investment requirement set individually. For other channels, lower proportions than 16% (but at least 13%) can be set individually, BUT the broadcaster must compensate by investing in a number of productions other than studio recorded fiction. For cable & satellite broadcasters of primarily audiovisual works, investments in preserving classical original French language films may count for up to a third of the obligation (set individually). New cable & satellite channels have 5 years to comply with the investment requirements. New DTT & Pay-Per-View channels have 7 years. 120 hours rule: Does not apply to France 5, CANAL+, cable & satellite. M6: obligation is only 100 hours. France 2 & France 3: 24 of the 120 hours may be re-runs. Lower requirements set individually for DTT channels with annual turnover below 150 million euros.
Legislation	Law no. 86-1067 of 30 September 1986 (as amended) Decree no. 90-66 of 17 January 1990 (as amended) Decree no. 2001-609 of 9 July 2001 (as amended) [terrestrial analogue] Decree no. 2001-1332 of 28 December 2001 [CANAL+ (encrypted terrestrial analogue)] Decree no. 2001-1333 of 28 December 2001 (as amended) [DTT] Decree no. 2002-140 of 4 February 2002 (as amended) [cable & satellite]		

Table 146: National Measures to implement Articles 4 and 5 and other national language and production requirements in France – cinematographic works

National Measures	France (cinematographic works)		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	60% of the annual total number of runs and re-runs of long duration films (of at least 60 minutes). Applies to peak hours as well – 20:30-22:30.		CANAL+, Pay-Per-View and film channels: Peak hours are 18:00-02:00. For other film channels than CANAL+ (other than old movies), the requirements can be met on the number of DIFFERENT long duration films broadcast during the year – but European films must represent at least 50% of total runs and re-runs.
Language requirements	40% of the annual total number of runs and re-runs of long duration films (of at least 60 minutes) must be original French language productions. Applies to peak hours as well – 20:30-22:30.		For other film channels than CANAL+ (other than old movies), the requirements can be met on the number of DIFFERENT long duration films broadcast during the year – but French language films must represent at least 35% of total runs and re-runs, during peak time as well.
Independent Production	75% of the percentage of turnover dedicated to European films [i.e. 2.4% of turnover] must be used for independent productions.	75% of the percentage of turnover dedicated to European films for each channel (see below) must be used for independent productions.	
Contribution to production	3.2% of turnover on European films 2.5% of turnover on French Language films Only applies to broadcasters who are annually broadcasting at least 52 long-duration cinematographic works. 5.5% tax on the part of each broadcaster's annual advertising revenues which exceed 11 million euros.	CANAL+: 12% of turnover on acquisition of rights to European Films 9% of turnover on acquisition of rights to French Language films Other film channels (cable, satellite & DTT): 21% of turnover on acquisition of rights to European Films (26% for first exhibition channels) 17% of turnover on acquisition of rights to French Language films (22% for first exhibition channels)	New cable & satellite channels have 5 years to comply with the investment requirements. New DTT & Pay-Per-View channels have 7 years to comply with the investment requirements.
Legislation	Law no. 86-1067 of 30 September 1986 (as amended) Decree no. 90-66 of 17 January 1990 (as amended) Decree no. 2001-609 of 9 July 2001 (as amended) [terrestrial analogue] Decree no. 2001-1332 of 28 December 2001 [CANAL+ (encrypted terrestrial analogue)] Decree no. 2001-1333 of 28 December 2001 (as amended) [DTT] Decree no. 2002-140 of 4 February 2002 (as amended) [cable & satellite] Code général des impôts (the general tax code)		

Table 147: National Measures to implement Articles 4 and 5 and other national language and production requirements in Germany

National Measures	Germany		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	RStV Art. 6(2): "In order to present the plurality of the German-speaking regions and of Europe as a whole and to promote European film and television productions television broadcasters should reserve the greater part of their total scheduled broadcast time devoted to feature films, films made for television, series, documentaries and comparable productions for European works in accordance with European law" ("greater part" should be construed as "majority proportion")		
Language requirements	"Presentation of the diversity of the German speaking regions" is indicated as a specific purpose to be achieved through the broadcasting of European works (see above).		
Independent Production	RStV Art. 6(3): "A significant proportion of full service channels should be own productions as well as commissioned and joint productions from the German-speaking regions and Europe as a whole. The same applies to theme television channels insofar as this is feasible with regard to their focus in terms of content." ("Significant proportion" should be construed as at least 10% of qualifying transmission time)		Theme television channels are only subject to the requirement insofar as this is feasible with regard to their focus in terms of content.
Contribution to production			
Legislation	Interstate Treaty on Broadcasting of 31 August 1991 (as amended) (Staatsvertrag für Rundfunk und Telemedien (Rundfunkstaatsvertrag - RStV))		

Table 148: National Measures to implement Articles 4 and 5 and other national language and production requirements in Greece

National Measures	Greece		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Wording of Directive incorporated directly into national law		Pay-TV: 25% in first year of operation, then to be increased by 5% every year until 45% is reached.
Language requirements	25% of qualifying time should be for works produced in Greek. Also requirement to show correct use of Greek.		
Independent Production	10% of qualifying transmission time		
Contribution to production	Requirement to allocate 1.5% of gross annual income for production of cinematographic works (but the requirement has not been applied in practice)		
Legislation	Presidential Decree 100/2000 Law 2328/1995 Law 2644/1998 for the provision of pay TV and radio services		

Table 149: National Measures to implement Articles 4 and 5 and other national language and production requirements in Hungary

National Measures	Hungary		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	"Over half" of annual transmission time		
Language requirements	Over one third of transmission time must be works originally made in the Hungarian language. At least 7 % of transmission time must be independent productions originally made in the Hungarian language. The 12% of programming budget reserved for independent productions must be originally made in the Hungarian language, except for cinematographic works.		
Independent Production	10% of qualifying transmission time AND 12% of programming budget.		
Contribution to production			
Legislation	Act I of (15 January) 1996 on Radio and Television Broadcasting (as amended)		

Table 150: National Measures to implement Articles 4 and 5 and other national language and production requirements in Iceland

National Measures	Iceland		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Act refers to "make every effort to ensure that ... greater part of transmission time is reserved for Icelandic and other European material"		
Language requirements	General formulation to encourage Icelandic culture and language.		
Independent Production	"Where practicable", 10% of qualifying transmission time or 10% of annual programme budget		
Contribution to production			
Legislation	Broadcasting Act 53/2000 (as amended) Regulation on Broadcasting Activities, No 50/January 16, 2002.		

Table 151: National Measures to implement Articles 4 and 5 and other national language and production requirements in Ireland

National Measures	Ireland		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Wording of Directive incorporated directly into national law		
Language requirements	General requirement to reflect Irish culture and language		
Independent Production	10% of qualifying transmission time or programme budget.		
Contribution to production		Public service broadcaster RTE has financial targets for spending on independent productions.	
Legislation	Radio and Television Act 1988 Broadcasting Act 2001 Broadcasting Authority Act 1960, as amended European Communities (Television Broadcasting) Regulations 1999		

Table 152: National Measures to implement Articles 4 and 5 and other national language and production requirements in Italy

National Measures	Italy		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	<p>Wording of Directive incorporated directly into national law. Applicable to monthly transmission time and in peak time (18:30-22:30). Talk shows are excluded.</p> <p>[Peak time may be adjusted during 2008, probably to 19:30-23:30]</p>	<p>PSB must use at least 15% of the overall annual revenue for European works (including independent productions).</p> <p>[As of 1 January 2008, replaced by: PSB must use at least 15% of the overall annual revenue for European works by independent producers.]</p>	<p>Thematic channels (70% of output devoted to a particular theme) can apply for an exemption.</p> <p>[Further to Law 31/2008 which entered into force in February 2008, a new exemptions regime will be established by a new regulation which is due to be issued by AGCOM]</p>
Language requirements			
Independent Production	<p>10% of qualifying transmission time. Talk shows are excluded.</p> <p>[As of 1 January 2008, replaced by: Broadcasters must use at least 10% of the overall annual revenue for European works by independent producers.]</p>	<p>20% of qualifying transmission time for PSB</p> <p>[As of 1 January 2008, replaced by: PSB must use at least 15% of the overall annual revenue for European works by independent producers.]</p>	
Contribution to production	<p>10% of profit from advertising must be devoted to European productions of which 40% should go to film.</p> <p>[As of 1 January 2008, replaced by: Generalist channels: 30% of the 10% of the overall annual revenue reserved for independent productions must be devoted to cinema film expressing Italian origins.</p> <p>Thematic (non-movie) channels: 35% of the 10% of the overall annual revenue reserved for independent productions must be devoted to works expressing Italian origins, belonging to the theme adopted by the channel.]</p>	<p>[As of 1 January 2008: Pay-TV broadcasters: 35% of the 10% of the overall annual revenue reserved for independent productions must be devoted to cinema film expressing Italian origins.]</p> <p>[As of 1 January 2008: PSB must reserve 10% of programming time to cinema film expressing Italian origins]</p>	
Legislation	<p>The Broadcasting Code (Legislative decree no. 177 of 31 July 2005, [as amended by Law 244/2007 (entered into force on 1 January 2008) and Law 31/2008 (entered into force in February 2008)].</p> <p>AGCOM decision 9/99 of 16 March 1999</p>		

Table 153: National Measures to implement Articles 4 and 5 and other national language and production requirements in Latvia

National Measures	Latvia		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	51% of weekly qualifying transmission time.		
Language requirements	40% of qualifying weekly transmission time shall be European works produced in the Latvian language.		
Independent Production	10% of qualifying weekly transmission time		
Contribution to production			
Legislation	The Radio and Television Law of 8 September 1995 (as amended)		

Table 154: National Measures to implement Articles 4 and 5 and other national language and production requirements in Lithuania

National Measures	Lithuania		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	At least 50% of qualifying transmission time, where practicable		
Language requirements			
Independent Production	Wording of Directive incorporated directly into national law		
Contribution to production			
Legislation	Law on provision of information to the public of 2 July 1996 no. I-1418 (as amended)		

Table 155: National Measures to implement Articles 4 and 5 and other national language and production requirements in Luxembourg

National Measures	Luxembourg		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Wording of Directive incorporated directly into national law		
Language requirements			
Independent Production	Wording of Directive incorporated directly into national law		
Contribution to production			
Legislation	Loi du 2 Avril 2001 portant modification de la loi du 27 Juillet 1991 sur les médias électroniques et transposition de la directive 97/36/CE du Parlement Européen et du Conseil du 30 Juin 1997, publié au Mémorial A No 42 du 17 Avril 2001. Règlement grand-ducal du 5 Avril 2001 fixant les règles applicables en matière de contenu en œuvres Européennes et en œuvres de producteurs indépendants des programmes de télévision réputés relever de la compétence du Luxembourg conformément à la directive Européen "Télévision sans frontières".		

Table 156: National Measures to implement Articles 4 and 5 and other national language and production requirements in Malta

National Measures	Malta		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Wording of Directive incorporated directly into national law		
Language requirements		Public service broadcasters PBS Ltd. (channels: TVM and Education 22) are subject to language requirements	
Independent Production	Wording of Directive incorporated directly into national law		
Contribution to production			
Legislation	Broadcasting (Jurisdiction and European Co-operation) Regulations, S.L. 350.04, 15 December 2000 (as amended)		

Table 157: National Measures to implement Articles 4 and 5 and other national language and production requirements in the Netherlands

National Measures	Netherlands		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	At least 50% of qualifying transmission time.	The 50% requirement is applied separately to each public service channel.	Exemptions may be granted, subject to a 10% minimum.
Language requirements	Commercial channels must dedicate 40% of qualifying transmission time to programmes originally produced in Dutch or Friesian	Public service channels must dedicate 50% of qualifying transmission time to programmes originally produced in Dutch or Friesian	Temporary exemptions from language requirements for certain secondary and pay TV channels.
Independent Production	10% of qualifying transmission time	25% of qualifying transmission time for PSBs (with each channel broadcasting a minimum of 17.5%). In order to count as independent productions, programmes must be produced at the request of the PSB, and programmes must be broadcast between 16:00 and 24:00. Programmes produced by former employees of a broadcaster will only count two years after the producer left the employment.	
Contribution to production			
Legislation	Media Act of 21 April 1987 as amended (Staatsblad 249 of 1987). Covenant of 16 November 1999 between the Commissariaat voor de Media and the National Broadcasting Foundation (NOS) Regulation of the Commissariaat voor de Media of 18 December 2001 ("Policy Guidelines Programme Quota")		

Table 158: National Measures to implement Articles 4 and 5 and other national language and production requirements in Norway

National Measures	Norway		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	50% of qualifying transmission time.		
Language requirements	Nationwide broadcasters must transmit some programmes in the Sami language.	Licence conditions on TV2 to contribute to "the preservation and promotion of Norwegian language, culture and identity". At least 50% of programmes must be in Norwegian.	
Independent Production	10% of qualifying transmission time		
Contribution to production		TV2 must contribute 25 million NOK to film and TV through funding for Norwegian Film Fund.	
Legislation	Act No 127 of 4 December 1992 relating to broadcasting (as amended) Broadcasting Regulation 153 of 28 February 1997 (Forskrift om Kringkasting) pursuant to the Act No 127 of 4 December 1992.		

Table 159: National Measures to implement Articles 4 and 5 and other national language and production requirements in Poland

National Measures	Poland		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	More than 50% of quarterly qualifying transmission time (more than 40% in first year of transmission).		More than 45% in ensuing years after the first year of transmission, for: - thematic program services where the number of available European works is insufficient, - pay satellite and cable TV.
Language requirements	At least 33% of quarterly qualifying transmission time must be programmes originally produced in the Polish language (at least 26,4% in first year of transmission).		More than 29% in ensuing years after the first year of transmission for: - thematic program services where the number of available European works is insufficient, - pay satellite and cable TV.
Independent Production	10% of qualifying transmission time		
Contribution to production	Broadcasters must pay 1.5% of the higher of the revenue earned on broadcasting advertising, telesales and sponsored programmes, and the revenue from payments collected directly from subscribers for access to the broadcast programmes in a given settlement period, to the Polish Film Institute.	Public television broadcasters must earmark at least 1.5% of their annual subscribers' fees for film production purposes. Any unused amount shall be transferred to the Polish Film Institute.	Cable TV and digital TV operators must pay 1.5% of the revenue earned on fees for access to television programmes broadcast or re-aired on the digital platform to the Polish Film Institute.
Legislation	Broadcasting Act of 29 December 1992 (as amended) Regulation of 4 November 2004 Act on Cinematography of 30 June 2005		

Table 160: National Measures to implement Articles 4 and 5 and other national language and production requirements in Portugal

National Measures	Portugal		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Majority proportion of qualifying transmission time.		
Language requirements	<p>Channels must broadcast programming originally produced in Portuguese for 50% of transmission time excluding ads, teleshopping and teletext.</p> <p>20% of all transmission time must be creative works originally produced in Portuguese.</p> <p>25% of these quotas may be fulfilled with programmes from other Portuguese-speaking countries.</p>	RTP 1: From 2008, programming originally produced in Portuguese must account for 60% of transmission time excluding ads, teleshopping and teletext.	
Independent Production	10% of qualifying transmission time	RTP 2: 10% of programme budget	
Contribution to production	All channels pay a 4% tax on advertising income to fund Portuguese cinema.		
Legislation	<p>Television Act: Law no. 27 of 30 July 2007</p> <p>Decree-Law no. 227 of 15 November 2006 (issued pursuant to Law of Cinematographic and Audiovisual Arts: Law no. 42 of 18 August 2004)</p>		

Table 161: National Measures to implement Articles 4 and 5 and other national language and production requirements in Romania

National Measures	Romania		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Majority proportion of qualifying transmission time.		
Language requirements		For the PSB, at least 30% of the European works should be Romanian works, and at least 35% of the Romanian works should be cultural works.	
Independent Production	Wording of Directive incorporated directly into national law		
Contribution to production	4% contribution on advertising income to cinematographic fund		Cable TV: 3% contribution on advertising income to cinematographic fund
Legislation	The Audio-visual law: Law no. 504 of 11 July 2002 (as amended) National Audiovisual Council Decision no. 187 of 3 April 2006 Government Ordinance no. 39/2005		

Table 162: National Measures to implement Articles 4 and 5 and other national language and production requirements in Slovakia

National Measures	Slovakia		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	<p>Majority proportion of qualifying transmission time.</p> <p>Smaller shares can be set in licenses for first-time licensees, to be increased during the license period.</p>		<p>Smaller shares can be set in licenses for broadcasters of monothematic programme service, to be increased during the license period.</p>
Language requirements	Requirement to "ensure the use of the state language and the languages of national minorities"		
Independent Production	10% of qualifying transmission time.	20% of qualifying transmission time for public-service broadcasters.	
Contribution to production			
Legislation	Act No. 308 of 14 September 2000 Coll. On Broadcasting and Retransmission (as amended)		

Table 163: National Measures to implement Articles 4 and 5 and other national language and production requirements in Slovenia

National Measures	Slovenia		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Majority of the annual qualifying transmission time		
Language requirements	Slovenian works must account for at least 2% of the annual transmission time (excluding advertising). The proportion must be increased annually until it reaches 5%.	For PSB services 1 and 2, Slovenian works must account for at least 25% of annual transmission time; a quarter of which must be independent productions.	
Independent Production	10% of qualifying transmission time		
Contribution to production			
Legislation	Mass Media Act of (11 May) 2001 (as amended)		

Table 164: National Measures to implement Articles 4 and 5 and other national language and production requirements in Spain

National Measures	Spain		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	51% of annual transmission time.		
Language requirements	A majority of the transmission time reserved for European works (see above) should be originally produced in one of the official Spanish languages		
Independent Production	10% of qualifying transmission time		
Contribution to production	5% of annual income to be allocated to European film (60% of this sum earmarked for films originally produced in one of the official Spanish languages)		
Legislation	Act 25/1994, 12th July incorporating into Spanish law Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in member states concerning the pursuit of television broadcasting activities (as amended)		

Table 165: National Measures to implement Articles 4 and 5 and other national language and production requirements in Sweden

National Measures	Sweden		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Majority proportion of qualifying transmission time, where practicable.		
Language requirements	General requirement to broadcast a significant proportion of programmes in Swedish.	Public service broadcaster SVT is required to reflect linguistic and ethnic minorities.	
Independent Production	10% of qualifying transmission time or 10% of programme budget.		
Contribution to production		SVT and certain other broadcasting companies are required to contribute to Swedish film production through funding of the Swedish Film Institute.	
Legislation	Radio and Television Act (SFS 1996:844), as amended The 2006 Film Agreement		

Table 166: National Measures to implement Articles 4 and 5 and other national language and production requirements in the United Kingdom

National Measures	United Kingdom		
	GENERAL REQUIREMENTS (FREE-TO-AIR CHANNELS)	HIGHER REQUIREMENTS FOR CERTAIN CHANNELS	LOWER REQUIREMENTS FOR CERTAIN CHANNELS
European Works	Programme licences must require that a "proper proportion" of programmes are of European origin ("Proper proportion" must be construed as a proportion which is at least equal to the requirement of the Directive)	BBC 3: 90% BBC 4: around 70% CBeebies: around 90% CBBC: around 75%	"Where practicable" for DTT, satellite and cable
Language requirements		STV and BBC Scotland have requirements for programming in Gaelic. S4C and BBC have requirements for programming in Welsh.	
Independent Production	10% of qualifying transmission time or 10% of programme budget	25% of qualifying transmission time for all BBC channels and terrestrial analogue channels	
Contribution to production			
Legislation	BBC Charter and Agreement Communications Act 2003 Broadcasting Act 1990 Broadcasting Act 1996 Broadcasting (Independent productions) order 1991, as amended Broadcasting (Original Productions) Order 2004		

19. Appendix VII: Application of Articles 4 and 5 – Scoring by Member State

The following table shows the breakdown on how the individual Member States have been scored on their application of Articles 4 and 5 of the Directive. The aggregate scores can also be found in section 5.4.

Member State	Qualifying hours	Majority proportion	Independent production	Minimum proportion	Monitoring/ verification	Sanctions	Total Index	Implementation Mode
Austria	1	2	0	1	1	0	5	Flexible
Belgium (Flemish)	1	1	0	1	2	6	11	Prescriptive
Belgium (French)	1	3	3	1	2	6	16	Prescriptive
Bulgaria	1	1	3	1	2	5	13	Prescriptive
Cyprus	1	3	0	0	3	0	7	Flexible
Czech Republic	1	1	2	0	2	3	9	Flexible
Denmark	1	1	0	0	1	4	7	Flexible
Estonia	1	3	2	1	3	6	16	Prescriptive
Finland	1	3	3	0	1	6	14	Prescriptive
France	3	3	3	2	3	3	17	Prescriptive
Germany	3	3	0	1	1	1	9	Flexible
Greece	1	2	2	1	1	6	13	Prescriptive
Hungary	1	2	2	2	1	6	14	Prescriptive
Iceland	1	1	3	0	1	0	6	Flexible
Ireland	1	2	3	0	2	0	8	Flexible
Italy	2	2	3	2	3	2	14	Prescriptive
Latvia	1	3	3	1	1	6	15	Prescriptive
Lithuania	1	1	3	0	1	2	8	Flexible
Luxembourg	1	2	2	0	1	4	10	Flexible
Malta	1	2	0	0	1	6	10	Flexible
Netherlands	1	3	3	1	2	3	13	Prescriptive
Norway	1	3	3	1	1	4	13	Prescriptive
Poland	1	3	3	1	2	3	13	Prescriptive
Portugal	1	3	3	2	3	2	14	Prescriptive
Romania	1	2	3	0	1	6	13	Prescriptive
Slovakia	1	3	3	1	1	3	12	Prescriptive
Slovenia	1	2	3	1	1	6	14	Prescriptive
Spain	1	2	2	1	2	2	10	Flexible
Sweden	1	1	0	0	1	0	3	Flexible
United Kingdom	2	3	3	0	1	6	15	Prescriptive

The scoring has been carried out by assigning the Member States points in the following categories:

Definition of Total Qualifying Hours for European works

Definition equal to the Directive	1 point
Slightly more restrictive	2 points
Significantly more restrictive	3 points

Flexibility in reaching assigned majority proportion of European Works³⁶²

Fully flexible ("Where practicable", no non-slip-back clause)	1 point
Semi-flexible ("Where practicable" with non-slip-back clause, or specific rules regarding to which extent a lower proportion will be accepted)	2 points
No flexibility	3 points

Definition of independent producer in national legislation

No definition	0 points
Definition using one criterion	2 points
Definition using several criteria	3 points

Minimum proportion of independent productions, applicable target

Broadcasters may choose between transmission time or programme budget targets ³⁶³	0 points
Broadcasters must fulfil transmission time target	1 point
Broadcasters must fulfil programme budget target ³⁶⁴	2 points

Monitoring/verification methods³⁶⁵

Reliance on statistical reports from broadcasters	1 point
Independent verification of reports from broadcasters	2 points
Independent monitoring of channel broadcast schedules	3 points

Available sanctions for non-compliance

Warning	1 point
Fine	2 points
License restriction	3 points

³⁶² Compared to the 2005 study, the definition of the different options have been refined, and Member States have been re-scored according to the new definition.

³⁶³ This option has been added to the scoring since the 2005 study, and the Member States applying this option have had their scores reduced by one point. This is considered the most flexible alternative, since broadcasters may individually choose the target which is easiest to fulfil for them. In most cases, this is expected to be transmission time, but occasionally programming budget could be easier to fulfil (e.g. if a broadcaster concentrated his investments on a few, expensive productions).

³⁶⁴ It should be noted that a few Member States have adopted a criterion that refers exclusively to *turnover*, which is a stricter method than the two alternatives envisioned in the Directive. Regarding the Application of Article 5 (Appendix VII), these Member States have been scored as having a programme budget target. Regarding additional requirements (Appendix VIII), they have been scored as having a stricter proportion of independent productions.

³⁶⁵ Compared to the 2005 study, the definition of the different options have been adjusted, and Member States have been re-scored according to the new definition.

The scoring in the first 5 categories is alternative, i.e. each Member State can only receive one score (the highest relevant score in the category). The scoring in the sanctions category is cumulative, i.e. a Member State will receive points for every single sanction form which is available to the national authorities – giving this category a maximum score of 6 points.

In the column “Implementation Mode”, Member States with an aggregate score of 10 or less have been categorised as “Flexible”, and Member States with scores above 10 have been categorised as “Prescriptive”.

The scoring in the first 5 categories is alternative, i.e. each Member State can only receive one score (the highest relevant score in the category). The scoring in the sanctions category is cumulative, i.e. a Member State will receive points for every single sanction form which is available to the national authorities – giving this category a maximum score of 6 points.

In the column “Implementation Mode”, Member States with an aggregate score of 10 or less have been categorised as “Flexible”, and Member States with scores above 10 have been categorised as “Prescriptive”.

20. Appendix VIII: Additional Requirements on Broadcasters – Scoring by Member State

The following table shows the breakdown on how the individual Member States have been scored on the additional measures applied to broadcasters. Brief descriptions of the main measures in each Member State can be found in the tables in Appendix VI. EU-wide highlights from the findings can be found in section 5.3.

The scoring has been carried out by assigning each Member State one point for each of the following categories where the Member State has rules that are stricter than The Directive:

Proportion of European works:

Requirements on broadcasters to achieve a higher percentage of European works than the majority proportion required by Article 4 of the Directive. The category also includes requirements that a majority proportion must be achieved separately in peak viewing hours.

Requirements to achieve proportions of ‘more than 50%’, ‘at least 51%’ or similar are not included, as these are viewed as slightly differing interpretations of the Article 4’s term “majority proportion”, rather than intentionally stricter proportions.

Proportion of independent productions:

Requirements on broadcasters to achieve a higher percentage of independent productions than the 10% proportion required by Article 5 of the Directive. The category also includes Member States that apply a criterion for independent productions that refers exclusively to turnover.

Type of content:

Requirements to broadcast a certain proportion of specific programme types, e.g. cultural or creative works.³⁶⁶

General Language:

General requirements to reflect national (or minority) culture and language, correct use of the national language, etc.³⁶⁷

Original production language:

Requirements that a certain percentage of broadcasts should be dedicated to works originally produced in a certain (national or minority) language.

The category does not include requirements that programmes are broadcast (dubbed) or subtitled in a specific language.³⁶⁸

Regional provisions:

Regional requirements on broadcasters. This includes extra requirements for linguistic or cultural programming applied at a regional level, requirements on national broadcasters to reflect regional differences, and regional production quotas.

Contribution to film funding:

Requirements on broadcasters to contribute to the funding of indigenous film production, including requirements for direct investments as well as direct or indirect financial contributions to centrally administered film funds.

In the column “Implementation Mode”, Member States with an aggregate score between zero and two have been categorised as “Low”, while Member States with a score of three or more have been categorised as “High”.

The aggregate scores can also be found in section 5.4.

³⁶⁶ The category definition has been adjusted since the 2005 study, and Member States re-scored accordingly.

³⁶⁷ The category definition has been adjusted since the 2005 study, and Member States re-scored accordingly.

³⁶⁸ The category definition has been adjusted since the 2005 study, and Member States re-scored accordingly.

Member State	European works	Independent productions	Type of content	General Language	Original Production Language	Regional provisions	Film funding	Total index	Implementation mode
Austria	✗	✗	✗	✗	✗	✗	✓	1	Low
Belgium (Flemish)	✗	✗	✗	✗	✗	✗	✗	1	Low
Belgium (French)	✗	✗	✗	✗	✗	✗	✗	3	High
Bulgaria	✗	✗	✗	✗	✗	✗	✗	3	High
Cyprus	✗	✗	✗	✗	✗	✗	✗	2	Low
Czech Republic	✗	✗	✗	✗	✗	✗	✗	1	Low
Denmark	✗	✗	✗	✗	✗	✗	✗	1	Low
Estonia	✗	✗	✗	✗	✗	✗	✗	2	Low
Finland	✗	✗	✗	✗	✗	✗	✗	3	High
France	✗	✗	✗	✗	✗	✗	✗	6	High
Germany	✗	✗	✗	✗	✗	✗	✗	2	Low
Greece	✗	✗	✗	✗	✗	✗	✗	2	Low
Hungary	✗	✗	✗	✗	✗	✗	✗	2	Low
Iceland	✗	✗	✗	✗	✗	✗	✗	1	Low
Ireland	✗	✗	✗	✗	✗	✗	✗	1	Low
Italy	✗	✗	✗	✗	✗	✗	✗	4	High
Latvia	✗	✗	✗	✗	✗	✗	✗	1	Low
Lithuania	✗	✗	✗	✗	✗	✗	✗	1	Low
Luxembourg	✗	✗	✗	✗	✗	✗	✗	0	Low
Malta	✗	✗	✗	✗	✗	✗	✗	1	Low
Netherlands	✗	✗	✗	✗	✗	✗	✗	4	High
Norway	✗	✗	✗	✗	✗	✗	✗	2	Low
Poland	✗	✗	✗	✗	✗	✗	✗	4	High
Portugal	✗	✗	✗	✗	✗	✗	✗	3	High
Romania	✗	✗	✗	✗	✗	✗	✗	4	High
Slovakia	✗	✗	✗	✗	✗	✗	✗	2	Low
Slovenia	✗	✗	✗	✗	✗	✗	✗	1	Low
Spain	✗	✗	✗	✗	✗	✗	✗	3	High
Sweden	✗	✗	✗	✗	✗	✗	✗	4	High
United Kingdom	✗	✗	✗	✗	✗	✗	✗	5	High

21. Appendix IX: Comparing Estimates with Declarations

At the meeting on the Second Interim Report the Commission asked the consultants to provide a review of the linear data, once coding for all markets was complete. This was to show the Commission first of all the robustness of our methodology, and secondly to identify any channels or markets in the sample that appeared to have data that needed to be reviewed.

Below we present this review, first of all at a country-by-country level, and then in some more detail at a channel-by-channel level.

21.1.1. Overview by country

We have compared the national averages of the data from our sample to that based on channels declarations. We have done this for the year 2007 (sample estimate) compared to 2006 (channels declarations)³⁶⁹. Averages based on declarations have been calculated using the numbers declared by the same channels as in our sample estimate.

As we compare 2 weeks from the Spring and Autumn of 2007 (sample estimate) to 2006 reported data from mostly a full year, sampling will explain part of the differences. For example, the fact that the reported and sample data come from two different years may provide some explanation for differences, as could the fact that our sample looks at two representative weeks of data, rather than an annual sample. However, comparisons with the national average will be useful to identify Member States where differences between declarations and our estimates are the largest, helping us to identify where possible further analysis may be required in light of the legal and economic findings.

As national averages are based on the selection of 2 to 6 of the largest broadcasters in each country³⁷⁰, the analysis channel-by-channel later in this report will provide more precise explanations for the differences. Similar averages for reported and sample data at the national level could result from opposite differences (positive and negative) at the individual channel level. Also, important differences at national level could result from a larger difference on a specific channel.

³⁶⁹ Channel declarations taken from the Eighth Communication from the Commission on the application of Articles 4 and 5 of the Directive.

³⁷⁰ Belgium is treated as two separate markets, with 2 channels sampled for each market.

Proportion of European works

The index “**Reported divided by Sample estimate**” for the proportion of European works, when averaged across the 12 markets of our sample, is 105 (please note that an index of 100 would mean that they match exactly). This indicates that the consistent methodology used and the sample is not systematically biased towards one single side but represents a balanced compromise between national situations.³⁷¹.

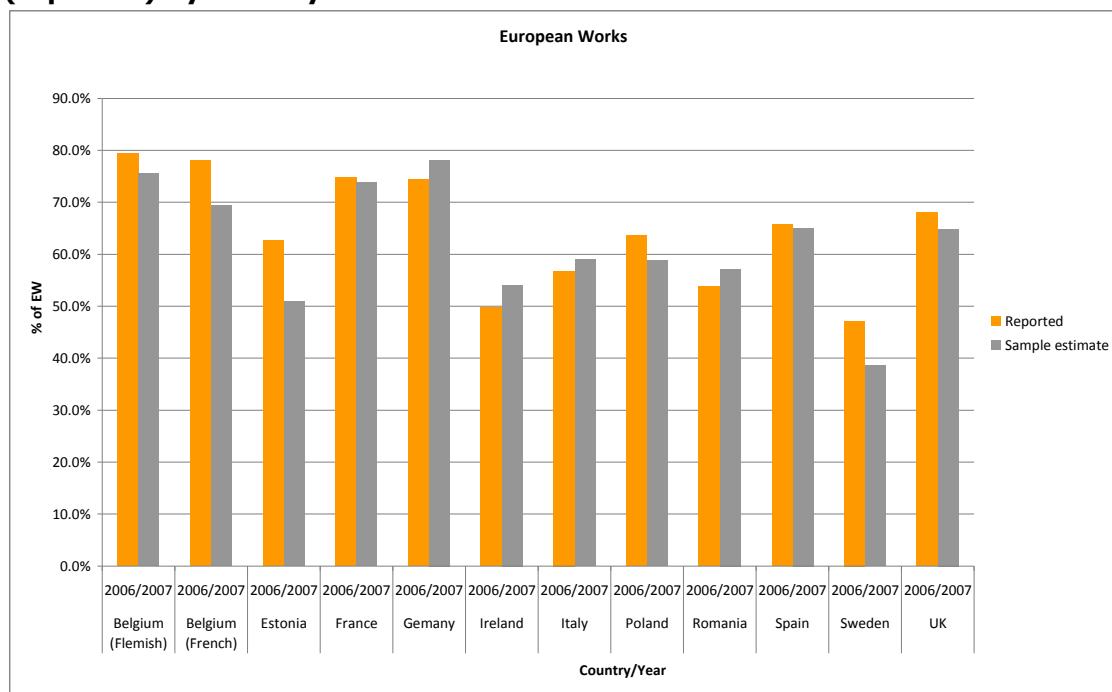
This index varies between 90 and 110 for the Flemish Community of (please apply also below) Belgium, Germany, Spain, France, Ireland, Italy, Poland and the UK, and between 75 and 125 for Flemish Community of Belgium (112), Estonia (123) and Sweden (122).

The delta “**Reported minus Sample estimate**” for the proportion of European works across the 12 countries of our sample adds up to +29. This indicates that our methodology estimated slightly lower proportions of European works than the channels’ declarations. One explanation for this could be that our week sample does not cover vacation periods, where national productions are often more prevalent.

The 3 countries showing the largest differences are Estonia (62.7%-50.9% reported-sample), Sweden (47.2%-38.6%) and the French Community of Belgium (78.1%-69.4%). Differences are thus below 12 points, a noticeable difference although not affecting the broad picture. Table 167 provides a graphic view on how our estimates are largely consistent with reported data.

³⁷¹ It should be reminded that the sample is made of the 6 largest Member States along with Estonia, Ireland, Romania, Sweden and the Flemish and French Communities of Belgium.

Table 167: Proportion of European works 2007 (sample estimate) vs. 2006 (reported) by country



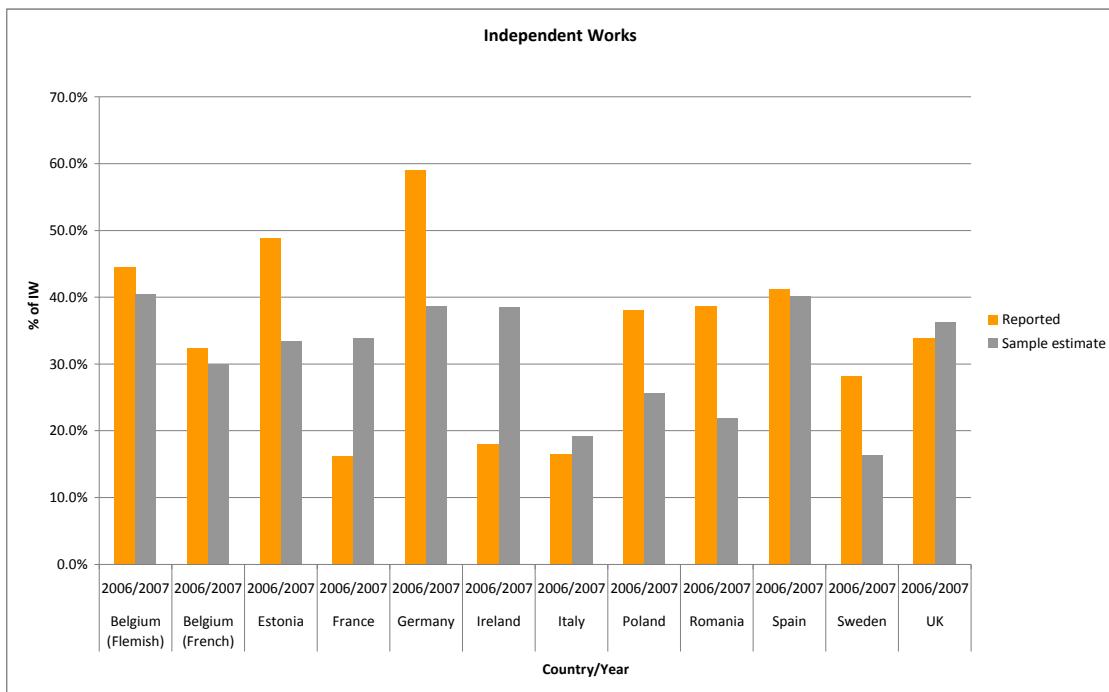
Proportion of independent works

The index "Reported divided by Sample estimate" for the proportion of Independent works is 115, showing that estimates are generally lower than reported data by 15%. Table 2 shows that sample data figures are lower than reported for all but 4 markets (France, Ireland, UK and Italy).

Countries where reported figures are significantly higher than the estimates include Romania (38.6%-21.9% reported-sample), Sweden (28.2%-16.4%), Germany (59%-38.6%), Poland (38.1%-25.6%) and Estonia (48.9%-33.4%). Differences in these countries can be explained by their broader national definitions of 'Independent works' compared to the definition we apply to our pan-European study. Romania, Poland and Estonia have indeed been clearly identified in the legal section as countries with broader definitions than ours. Sweden and Germany, on the other hand, have no legal definition of "independent works" but we can consider, as our estimates are systematically lower than the reported figures, that the definitions used in practice in these two countries are broader than our definition.

Countries where reported are significantly lower than the estimates are France (16.2%-33.9% reported-sample) and Ireland (18%-38.5%). These countries have been indicated in the legal section as countries with a stricter definition than the one we designed to use in our study.

Table 168: Proportion of independent works 2007 (sample estimate) vs. 2006 (reported) by country



Proportion of recent independent works

Table 169 shows clearly that reported data and estimates are very consistent for Recent Independent works for all countries except Estonia and Ireland.

Differences are significant for these countries: 30.8%-85.7% (reported-sample) for Estonia and 18.7%-85.9% for Ireland. We will come back to these issues in the following section, which looks at the data channel-by-channel.

Table 169: Proportion of recent independent works 2007 (sample estimate) vs. 2006 (reported) by country



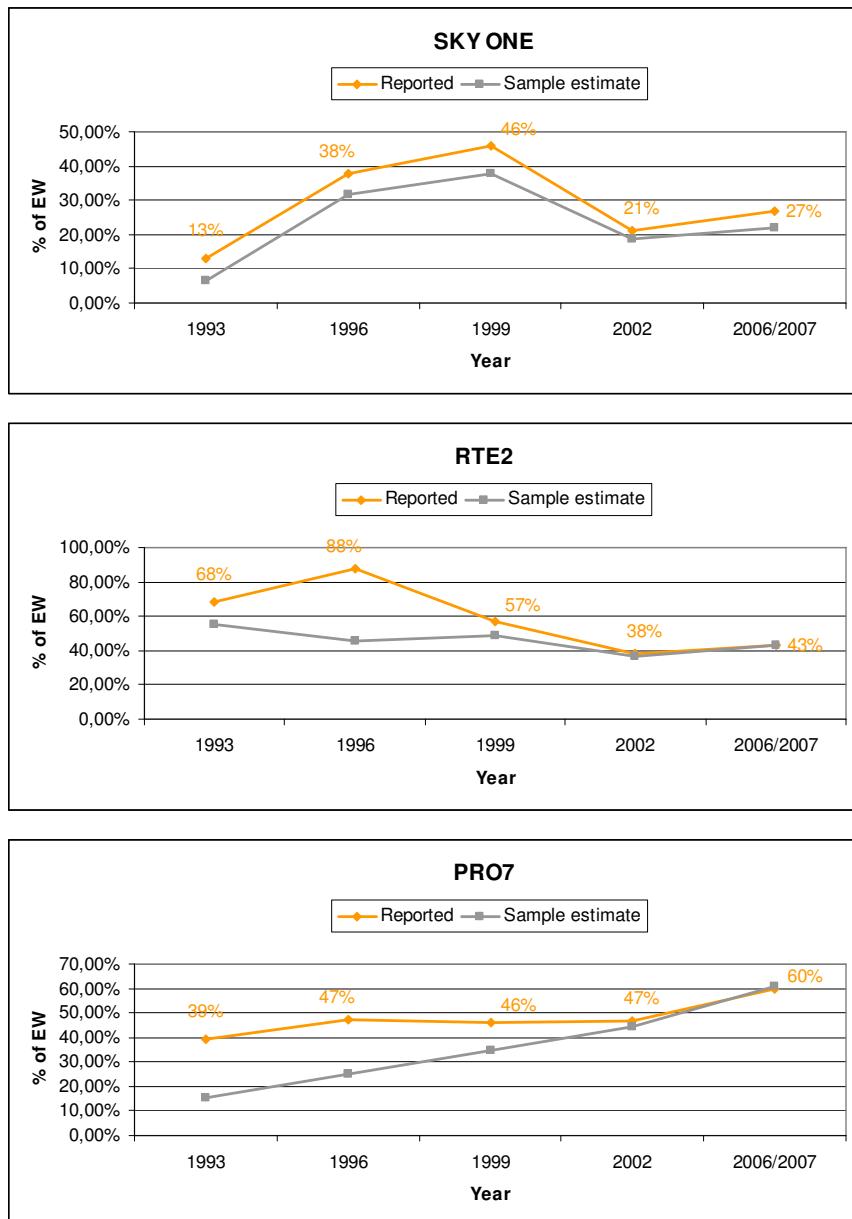
21.1.2. Overview by channel and over time

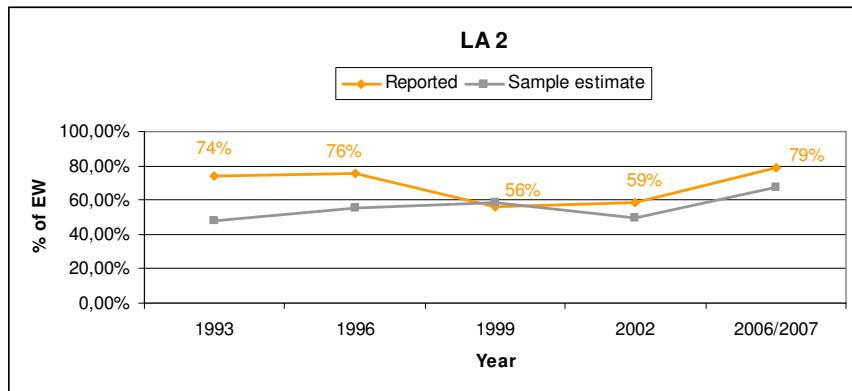
Following the above overview by country, we have conducted a similar analysis at the channel-by-channel level. Indeed, data at channel level are the fundamental data on which sample estimates and reported data are based on. Also, we have compared the 2006/2007 data with that of the 2005 Study on the Implications of Articles 4 and 5 of the TVWF Directive to see whether a trend was visible. This was possible for 34 channels among our sample of 54, but impossible for the channels operating in the 3 new Member States from our sample (Estonia, Poland, and Romania) and for some channels that have been covered for the first time, in particular some pay TV channels, or recent channels.

Below we look at the channel-level data for each indicator, using graphs to indicate the situation in particular channels that either indicate a divergence we have had to review, or are indicative of the situation in general at the channel level for a particular Member State. Thus we have not presented a separate graph for each individual channel, which we consider unnecessary given the purpose of this report to highlight the robustness of our methodology, and to indicate any areas where we have had to investigate a situation further.

Proportion of European works

The following graphs show a representative selection of channels with their estimates and reported data for European works compared between 1993 and 2007. These graphs show that despite some differences in specific sample years, generally both sources are extremely consistent.

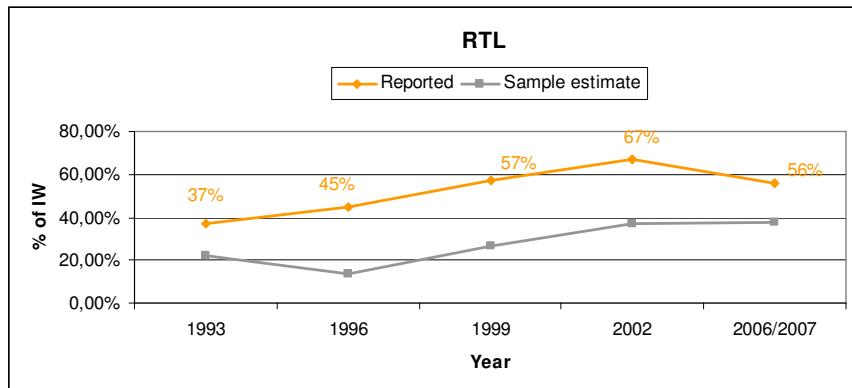




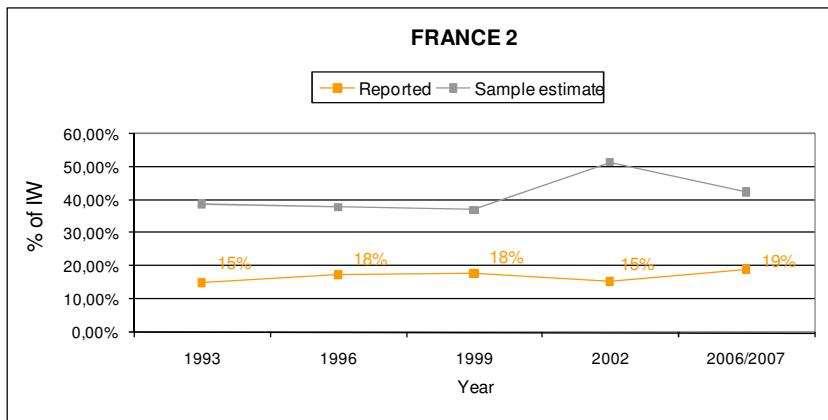
Proportion of independent works

In the previous country-by-country section we have noted that five countries report significantly higher figures than the estimates (Romania, Sweden, Germany, Poland and Estonia) while two report significantly lower figures than the estimates (Ireland and France).

If we look at Germany, we see that all 6 channels in the sample show consistent differences over years and that the 2006/2007 difference is in line with the past data. So we are confident that the differences are likely due to consistent differences between the German definition and our own, the German definition (as noted above there is no legal definition in Germany, so here we talk about what we expect the definition to be *in practice*) having been identified as broader than the definition we apply in our study.

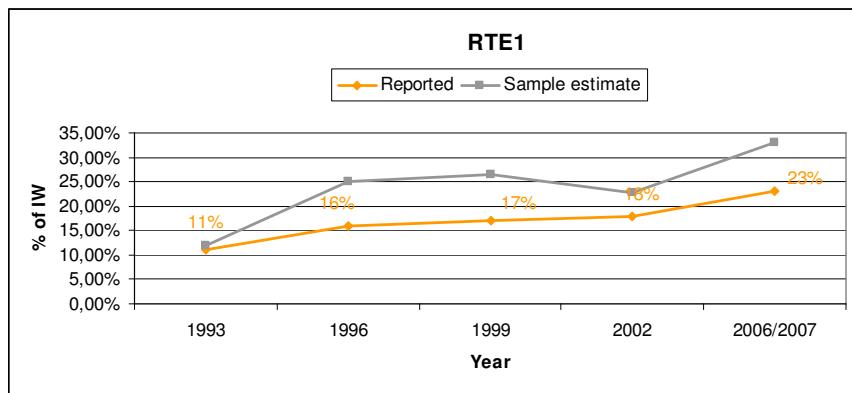


Differences between definitions can also explain discrepancies in Romania, Sweden, Poland (which have a broader definition of independent works than the one we use in this study) and France (which has a much stricter definition than the one we use in this study), where all sample data for channels have been carefully checked, and we are confident that coding has been accurate.

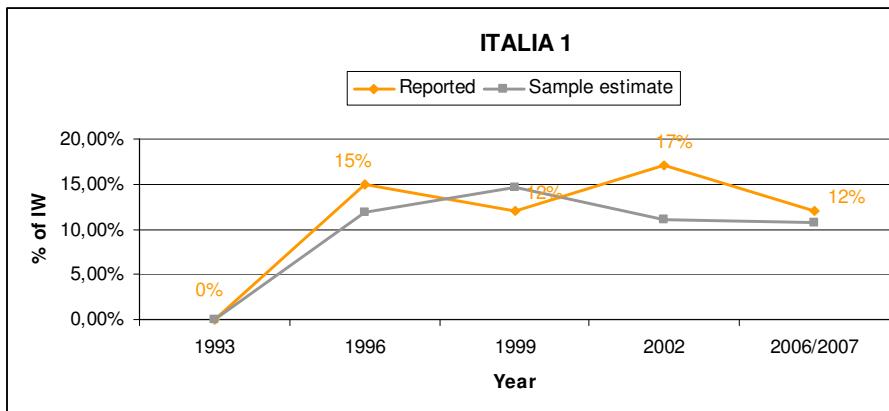
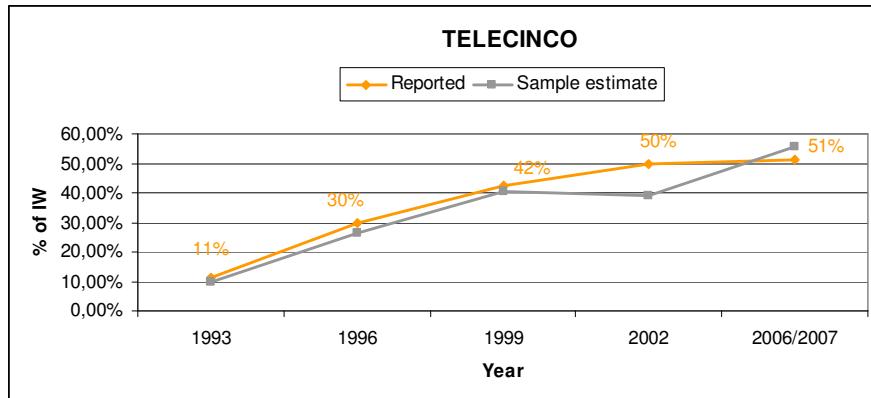


In Estonia, on the other hand, we found out that ETV was the only channel to have an unexplained difference, explaining why Estonia was listed among the countries to research further. The proportion of Independent works on ETV is 75% according to reported data, but 28.8% according to the estimate. The Consortium was able to check the 2007 estimate in two ways: firstly, they asked ETV to check their sample data; secondly, as ETV also agreed to be interviewed as part of the study, they provided to us statistics which are consistent with the estimate, but not the reported data. We have therefore identified a difference between our sample figures and the reported figures for independent European works for ETV (we have also found some discrepancies for recent independent European works for the channels in our Estonian sample – which is discussed in more detail below). These discrepancies may possibly be explained by the fact that the reported data and sample estimates come from different years, and that the methodology for the sample estimate and the reported data may be different.

In Ireland, we can see significant differences for the three channels of our sample: RTE1, RTE2 and TV3. This can be explained by the stricter definition of independent works applied by Ireland. Indeed, Irish channels broadcast a high number of British shows (many from the BBC), especially TV3 which has some strong links with the British production company Granada and airs lots of Granada shows. With our methodology, all British works were considered as independent if the production company was not owned by an Irish broadcaster; but the Irish definition of 'independent producers' is: "producers who are independent of broadcasters under the jurisdiction of the State or any other state", which would classify all Granada or BBC productions as 'not independent' in Ireland. This explains our higher figures as far as independent productions are concerned in Ireland.



The majority of the other channels show a strong consistency with past data and with declarations. See the following two graphs for examples of this.



Proportion of recent works

We have identified two countries in the country-by-country analysis that presented consistently different reported figures than our estimates: Ireland and Estonia.

Regarding Ireland, we identified a difference between the sample and reported data for 2006/7, with the reported data being significantly lower than the sample data. We considered the possibility that the methodology for the sample estimate and the reported data on recent works may be different. Following discussion with the the Irish authorities we have been able to confirm that the figures in the reported data for recent works were based on proportion of all qualifying works, whereas the sample estimate is based on proportion of all qualifying independent European works.

As far as Estonia is concerned, figures are also extremely low for all the channels. We have identified a difference between our sample figures and the reported figures for for recent independent European works for the channels in our Estonian sample. These discrepancies may possibly be explained by the fact that the reported data and sample estimates come from different years, and that the methodology for the sample estimate and the reported data may be different.

21.1.3. Conclusions on differences

This review has indicated the following key points:

- In large part, our sample figures have returned results consistent with the reported data. At the country-level this is particularly the case for European Works and Recent Works. There is, however, a somewhat higher level of inconsistency for Independent Works, with our sample figures, in general, coming in lower than the reported data.
- An important reason for the differences on Independent Works is that we have applied a consistent definition of Independent Works across all territories. In general, the majority of Member States apply a broader definition than our own, with a minority applying a stricter definition.
- There are further general reasons for differences between the sample results and the reported data: 1) the reported data is for 2006, and the sample data is for 2007; 2) we have looked at two sample weeks, rather than annual figures, meaning that week-on-week fluctuations in the schedule (in terms of quantity of European, Independent and Recent Works) may result in our sample coming in higher or lower than the average.
- We have identified particular channels where differences are particularly significant. We have detailed how we have checked these carefully, and are happy that our coding is correct.

22. Appendix X: Bibliography

In Part 7 of the report, a wide variety of source materials were used to analyse the audiovisual market in Europe. These are listed below:

- CNC** – ‘L’économie de la VoD en France’ - 2008
Eurodata, General statistics available online – 2005-2008
Eurodata TV Worldwide and relevant partners (CIM/GFK Audimetre ; TNS EMOR ; Médiamétrie ; AGF/GKF ; AGB NMR Ireland ; Auditel/AGB NMR ; AGB NMR POLSKA ; TNS AGB INTERNATIONAL, copyright ARMADATA SRL ; TNS AUDIENCIA DE MEDIOS ; MMS MEDIAMÄTNING) and BARB.
European Audiovisual Observatory, ‘Television in 36 European States’ - 2007
Informa Telecoms & Media, ‘TVI Sourcebook’ -2007 & 2008
Informa Telecoms & Media, ‘TBI Yearbook’ – 2007
Informa Telecoms & Media, ‘TV International’ – 2004-2008
NPA Conseil, ‘Video On Demand in Europe’ - 2006
NPA Conseil, ‘Video On Demand in Europe’ – 2008
Open Society Institute, ‘Television Across Europe’ – 2005
OECD, General statistics available online – 2005-2008
Point Topic, Broadband Statistics - - 2005-2008
PWC, ‘Global Entertainment Outlook’ - 2007 -2011
Screen Digest, ‘Television Intelligence Service’ – 2007
Screen Digest, ‘Fortnightly Newsletter’s – 2004-2008
SNL Kagan, ‘Datasets from online service’ – 2007-2014
TV Sports Markets, ‘European TV and Sports Rights’ – 2008
TV Sports Markets, ‘Fortnightly Newsletters’ – 2004-2008
Various, ‘Company Annual Reports – platform operators, broadcasters and producers’ – 2005 -2007
Various, ‘Regulator Reports’ – 2005-2007 e.g. Ofcom Communications Report, CMT Industry Statistics, CSA Bilans de la chaine
Various, ‘Broker Reports’ – 2004-2008
Zenith Optimedia, ‘Advertising Expenditure Forecasts’- June 2007
The consultants also used a number of online sources specific to individual member states.

For the legal study (Parts 4 and 5), the following sources were particularly relevant, alongside the results from the questionnaire to regulators:

- NPA Conseil**, ‘Video On Demand in Europe’ - 2006
Pertzinidou, Eleftheria; Study on the provisions existing within the Member States and the EEA States to implement Chapter III of the ‘Television without Frontiers Directive (Directive 97/36/EC of the European Parliament and the Council of 30 June 1997 amending the Council Directive of 3 October 1989)

23. Appendix XI: Comments from Stakeholders

After the workshop in November 2008, stakeholders were encouraged to send the consortium comments for consideration in the Final Study Report. Where possible we have printed these comments below, and have also made reference, in bold text in square brackets, to where these comments have been referenced in the main body of the report.

23.1. Madigan Cluff

Comments on AMVS Study for the European Commission, DG Information Society and Media

Measurement of the volume of European Television production in the future

Having both attended the recent seminar in Brussels and subsequently reviewed the materials provided, Madigan Cluff has the following thoughts on future measurement of programme content in and across Europe

- Current processes for all measurement of programmes would be significantly more accurate if there was a single common database utilised to be clear on the country of origin of programmes. There clearly already exist sources such as Essential Television Services which hold multi-national data, and it would seem that it is important that this type of data is more readily available and utilised to ensure accurate statistics. In addition there should be clear metrics to define how a programme is classified to a country of origin **[Reference to this comment found in: 10.4.5]**
- These processes will only become more important as non-linear services (catch-up/video-on-demand) become an increasing proportion of total television viewing – where the number of programmes available will increase without necessarily easy access to the information on their origin **[Reference to this comment found in: 10.4.1]**
- The proposals set out on the 18th November for non-linear feel to us to mislead the opportunity to measure digital download. Although we understand the desire for this to be a light touch regime with compliance not requiring the transfer of large volumes of commercially sensitive information from broadcasters - we have significant reservations on the priorities placed. Specifically:-
 - As presented a straight count of the material held in a download library will give very little reliable information on the real volume of viewing of titles. From

current data it is clear that a small proportion of titles will have the majority of viewings [Reference to this comment found in: 10.4.1]

- The reliance within the report on reviewing the websites of providers to obtain a view of the prominence they give to titles is we believe potentially deeply misleading. The nature of good website design for interactive users should be to vary front pages (and subsequent pages) so that the individual consumer sees material which they are more likely to buy or use. Where a company has access to consumer data (in this case the programs the user is actually viewing) they can use this data to individualise the user's front and navigation pages to his/her actual behaviour. This makes inaccurate any one-off external viewing of the site. Additionally the web front page is only one aspect of the promotion of programmes to the consumer, with most companies using e-mail, on-air promotion and other forms of direct marketing to their consumers. We think it is very difficult to imagine that any accurate information can be gleaned on the prominence of promotion [Reference to this comment found in: 10.2]
- The study appeared not to accept the use of spider technology to understand what is happening on sites. This technology is in widespread use across the web monitoring business and although there may be untested copyright issues, most companies in the web metrics business use it extensively [Reference to this comment found in: 10.2. It is important to note that the consultant's view is that spider technology is potentially viable, but the legal concerns must be addressed first.]
- The underplaying of potential audience data was very surprising. There are clearly challenges within web measurement as to the most accurate source and standard of information. However there do exist very clear potential points of measurement. At an overall global level suppliers like Nielsen Netratings and ComShare provide overall data with panel sizes massively bigger than comparable TV peoplemeter systems. It is acknowledged that there are limitations in the ability of this data to differentiate web applications which are run by very low proportions of the population, but they will give an accurate view of the total non-linear market and the constituent companies within it. Equally all providers will hold server based data which very accurately shows what was provided out to consumers. This data does not absolutely say that the consumer was exposed as it may have been hidden by another window as it played. However, this issue is really only an issue the media measurement business has always had that with peoplemeters you don't know if the person was in the room when the TV was switched on.

There will exist numerous ways in which this data can be explored without creating either complexity or commercial confidentiality issues for stations/ VOD services. Given that a small proportion of the programs will be the bulk of the audience if the broadcaster declares the names of the top programs which

constitute 50% of viewing, the central authority can code these programs for country of origin and then request the broadcaster to provide share of viewing by country of origin to these programs in total.

Over the next two/ three years there are other interests within the television industry which are likely to promote the need for audience standards. It will be in the interests of all broadcasters who carry advertising on downloads to have an audience performance standard in order to maximise advertising revenue, and equally the sale and licensing of programs between production houses and broadcasters will need consistent reference points. It strikes us that AVMS should be aiding the development of these processes which are in the interests of a vibrant European production industry – not suggesting that these are difficult to do.

Overall we believe that there is an opportunity to help lead the need for accurate information and data, which is as yet unfulfilled in the proposals .

[Reference to these comments have been made throughout chapter 10. The consultant's argument is that robust industry standard audience data for non-linear services is not currently available, and therefore consumption-data based indicators are not suitable at this current time. However, we agree that the development of data of this kind should be supported, so that it can be considered as an indicator in future years, and we have endeavoured to make this clearer in the Final Study Report.]

23.2. EBU

**EBU Comments on the draft final Report of 21 October 2008
regarding
the Study on the application of measures concerning the promotion
of the distribution
and production of European works in audiovisual media services
(i.e. including television programmes and non-linear services)**

Further to the workshop held in Brussels on 18 November 2008, the European Broadcasting Union (EBU) welcomes the opportunity to make a few brief comments, especially on the **independent production** aspect.

Public service broadcasters extensively support the production of cinematographic works and television programmes, and contribute directly and indirectly to independent productions. Furthermore, they acquire and broadcast a substantial proportion of independent productions, very often greatly exceeding the quota laid down by law.

With respect especially to **the terms of trade between broadcasters and producers**, it is important to take into account the media convergence between broadcasting and non-linear services. The media landscape, technology, and consumer behaviour have changed. Public service broadcasters have to reach the audience via all platforms, including new media such as the Internet, mobile phones and other digital devices. Consumers increasingly make no distinction between linear and non-linear consumption, and young viewers in particular increasingly use only their personal computer, focusing on the Internet and non-linear services.

For this reason, public service broadcasters need linear as well as non-linear rights if they are to fulfil their public service remit and reach all viewers. Digital rights are no longer separable: broadcasting as such will shortly be digital only. Today, in most European countries, broadcasters are finding it increasingly difficult to obtain the rights for exploiting audiovisual productions. New models for terms of trade are needed, not simply distinguishing secondary rights but also finding the right balance between broadcasters' needs in the digital age and independent producers' interests in a broader commercial exploitation of their audiovisual works, taking account of the proportion of funding provided by broadcasters and producers in a given production.

It is vital for broadcasters to acquire these exploitation rights (such as catch-up services) if they are to maintain their degree of funding of the independent production sector. Otherwise broadcasters could either not help fund independent productions at all or would be obliged to cut the percentage of their funding substantially.

Consequently, support for independent audiovisual production in this new media environment must be provided on fair terms as a means of ensuring cultural diversity. These terms need to be clarified, and rights must be acquired in relation to the risks taken.

[[Reference to the EBU comments have been made in the section on Terms of Trade in part 7.2.7.]

23.3. European Audiovisual Observatory

**Some remarks on the draft final report of the
“Study on the application of measures concerning the promotion of the
distribution and production of European works in audiovisual media services (i.e.
including television programmes and non-linear services)”**

André Lange,

**Head of the Department for
Information on Markets and Financing,
European Audiovisual Observatory.**

The European Audiovisual Observatory

Set up in December 1992, the European Audiovisual Observatory's mission is to gather and diffuse information on the audiovisual industry in Europe. The Observatory is a European public service body comprised of 36 member states and the European Community, represented by the European Commission. It operates within the legal framework of the Council of Europe and works alongside a number of partner and professional organisations from within the industry and with a network of correspondents. In addition to contributions to conferences, other major activities are the publication of a Yearbook, newsletters and reports, the compilation and management of databases and the provision of information through the Observatory's Internet site (<http://www.obs.coe.int>).

Article 1.2 of the Observatory excludes from its mission any standard-setting or regulatory activities. The present paper does not, therefore, represent an official contribution from the Observatory but the personal opinion of an expert with 25 years of experience in collecting data on audiovisual media services in Europe. For further details on this paper, I can be contacted at andre.lange@coe.int

1. General remarks

This report by a consortium led by Attentional represents a very interesting and in-depth contribution on the methodological issues related to the monitoring of the articles 4 and 5 of the TVWF Directive and on the future monitoring of article 3i of the new AVMS Directive.

Some general remarks could be made that would help the consultants to further improve the report.

1.1. Sources

In the report, various tables and graphs cite one or more public bodies and consultancy companies together as sources (including the Observatory, quoted as OBS). This style of quoting sources is confusing and could lead to error, as different sources may be using different methodologies. Either the author sources a table or graph with the name of a single organisation

or, if the figures have been produced by the author drawing on multiple sources, which is perfectly legitimate, then the author should source the table with the authors name, followed by the mention “on the basis of data provided by...”.

[Where appropriate, the description of the source material has been amended in the figures found in Chapter 7.]

A bibliography with more details on the sources used would be helpful.

[A bibliography has been added in Chapter 22.]

1.2 Transparency issues

On several occasions the report addresses issues of transparency. These are described as arising mainly from the confidentiality requirements of service providers. The perspective, as would be expected in the context of the parameters of this report, is that of the monitoring of implementation of the relevant articles of the Directive. However the need for greater transparency should be addressed not only from this point of view but also from that of a more general requirement for a balanced economy of the audiovisual sector. The necessity of more accurate economic analysis and for a level playing field between stakeholders, together with the rights of rights owners and of public bodies financing the industry with public money to obtain information to make a correct assessment of their policy represent other arguments in favour of transparency.

In its general economic analysis of the value chain, the report insufficiently underlines the lack of transparency in the segmentation of the chain. For example, from the data available as published by companies or public authorities it is often difficult to obtain precise information on:

- breakdown of revenues by activity for the leading integrated companies involved in various activities (broadcasting, channel distribution, production, works distribution, VOD);
- financial flows between distributors (satellite, cable, IPTV or DTT packagers) and broadcasters;
- financial flows between broadcasters and producers.

Therefore Figure 18: TV value chain in the European Union should be considered as a rough estimate, committing only the authors of the report and not the sources quoted (including the Observatory). **[It has been made clearer in the Final Study Report that this figure is an estimate.]**

As I have already argued at various events organised by the Finnish, Portuguese and French Presidencies of the European Union, the improvement of transparency in the audiovisual sector should be the object of greater public concern, and probably of ad hoc regulation. Statements from leading professionals or by representatives of professional organisations clearly indicate the evident limits of self-regulation in this field.

2. Remarks on the monitoring of television services (linear services) and current monitoring of articles 4 and 5 of the Directive

2.1. Identification of the channels to be monitored

The report does not address the question of the identification of the channels that ought be monitored by the Member States. From experience, in particular the channel census undertaken when the MAVISE database (<http://mavise.obs.coe.int>) was set up by the Observatory, I can confirm that discrepancies exist in a number of countries between the list of channels monitored by the national authorities and the list of channels observed as being available, including discrepancies in the theoretically relatively straightforward identification of the country of establishment of channels. Of course this raises the question of the determination of jurisdiction for certain channels. Generally speaking, the number of channels to be monitored was probably underestimated on the basis of Member States declarations in earlier implementation reports for the Commission. In future, the information in the MAVISE database could probably be drawn upon in drawing up the list of channels to be monitored in each country, even though the database cannot claim complete accuracy in identifying the country of establishment of channels and the broadcasting companies providing the channels.

[The consultant's have now made it clearer in Part 8.3.1 what the exact reasoning was behind the choice of channels in the sample. For this study, channels were selected based largely on viewing share, and were not intended to cover every channel monitored by a Member State.]

Number of channels identified in MAVISE by presumed country of establishment at 21.11.2008 (provisory data)

Country	Nationwide channels (with terrestrial licences)		Other nationwide channels (Cable, satellite, IPTV, mobile)		Regional or territorial		Local stations and open channels	Windows	Channels targeting foreign countries	Total channels established in a country (windows not included)
	Public	Private	Public	Private	Public	Private				
AT	2	2	5	48	0	2	48	10	5	112
BE	0	0	0	0	0	0	0	0	22	22
BE	5	0	0	61	14	10	0	0	1	91
BG	1	2	1	42	0	0	0	0	0	46
CY	2	6	1	13	0	0	9	0	6	37
CZ	2	6	3	16	0	36	3	0	4	70
DE	6	15	11	209	10	24	85	48	23	383
DK	6	0	4	12	0	0	84	65	0	106
EE	1	2	0	11	0	0	5	0	0	19
ES	5	19	15	110	25	3	148	17	22	347
FI	5	17	1	5	0	5	28	0	0	61
FR	5	24	3	132	2	42	128	22	48	384
GB	20	61	9	447	0	0	23	38	350	910
GR	7	7	2	21	0	2	138	0	9	186
HU	1	2	4	29	0	1	31	6	28	96
IE	3	1	0	2	0	3	3	0	1	13
IT	8	21	11	185	1	26	82	0	38	372
LT	2	3	1	1	0	5	45	0	2	59
LU	0	2	1	2	0	0	2	0	28	35
LV	2	2	0	6	0	3	21	0	0	34
MT	1	3	1	16	0	0	0	0	0	21
NL	3	18	19	74	15	0	8	8	15	152
PL	3	4	4	45	0	0	0	16	2	58
PT	2	2	8	27	0	0	0	0	3	42
RO	2	2	3	70	5	13	0	0	3	98
SE	4	22	3	28	0	13	89	27	65	224
SI	1	5	0	9	2	9	14	0	0	40
SK	3	2	0	11	0	14	6	0	1	37
EUR 27	102	250	110	1632	74	211	1000	257	654	4033

Source : OBS / MAVISE database (shadowed boxes indicated important gaps in data collection)

2.2. Biased channel samples and their consequences for the general assessment of the implementation of article 4.

The country samples constituted for the report can be considered as significantly biased by the fact that they are generally include the leading generalist channels and exclude thematic channels, in particular the film, documentary and children's channels characterised by a predominance of non-European works. Audience market share for this type of channel is rising in most countries. The presence of pay-TV channels on many markets has, in addition, a direct impact on programming by free-to-air channels and on the cost of acquisition of non-European programmes by all broadcasters. Though non-disclosure of data on revenues of third country companies operating on the European market makes assessing the audiovisual trade balance between Europe and third countries (in particular the USA) impossible, there are good reasons to believe that the European deficit has increased significantly since 1989. This increase would appear, in particular, to be linked to the growth in the number of thematic channels using US programmes.

[For this study, channels were selected based largely on viewing share, and therefore the sample had a bias towards leading generalist channels. The consultant's have added a caveat to section 8.3.1 to explain this more clearly in the Final Study Report.]

2.3. Absence of reference to the data published by the Observatory on the origin of fiction programmes as broadcast by a sample of television channels in Europe

As a corollary to the previous remark, I deeply regret that the report does not make any reference to the data published annually in the Observatory Yearbook on the origin of fiction (feature films, short films, animation, TV series, TV films) as broadcast by a sample of channels in Europe. Up to 2005 the data were provided chiefly by the UK company ETS and covered imported fiction programmes only. In the 2006, 2007 and forthcoming 2008 editions of the Yearbook, the Observatory publishes data prepared by the Luxembourg company Infimedia on the origin of 5 categories of fiction programmes as broadcast by 127 channels in 13 European countries, including national programmes. It is therefore possible to analyse, channel-by-channel, format-by-format and country-by-country the relative importance of European and non-European programming in channel broadcasts.

The 127 channels have been selected according to their relative importance on the respective national markets.

To summarise: aggregate figures are elaborated by the Observatory on the basis of the data provided by Infomedia. The following overview shows that European fiction represents only 32% of the 527 770 hours of fiction broadcast on the channels included.

Origin of fiction programmes broadcast by a sample of 127 TV channels in 13 European countries (2006)

Type of channel	Number of channels in the sample (EUR 13)	Total volume of fiction (in hours)	National	Non-national European (including co-productions)	Total European (national + non-national)	Non-European
Commercial	38	145 582	7,3%	15,6%	22,9%	77,1%
Pay-TV film	22	146 514	9,8%	30,2%	40,0%	60,0%
Thematic	23	131 714	17,3%	16,4%	33,7%	66,3%
Public service	44	103 960	24,2%	35,6%	59,8%	40,2%
Total	127	527 770	15,1%	16,9%	32,0%	68,0%

Source: European Audiovisual Observatory

Evidently this data is not prepared on the basis of the criteria defined by Article 4 of the Directive. Fiction programmes constitute only one of the categories of programmes which need to be taken into account in the monitoring of the Article. However if it is admitted that fiction (including feature films) constitutes the main genre in terms of volume and programming costs, the discrepancy between the 32% share observed in this category and the general, larger objective of a 50% share of European origin as fixed by the 1989 Directive, is certainly worth underlining and ought be a matter of concern for both national and European regulators.

[The consultants note that the approach here appears significantly different to the methodology for this study. The EAO study has looked at total hours of fiction content over a year (2006) across a larger sample of channels than this study. This study has instead looked at entire qualifying schedules (thus containing the full variety of genres) for a smaller sample of channels for two non-consecutive weeks in 2007. This does make comparison between the datasets difficult. The consultants consider another of the EAO's comments relevant here, that of the issue of the current study's focus on generalist channels commanding larger audiences, rather than thematic ones. We have now made explicit reference to this issue in the report. This does mean that the channels covered in this study are possibly more varied in terms of genre than some covered in the EAO study (which may have included more thematic channels). These thematic channels may rely more on imports than leading generalist channels, which could explain the figures presented by the EAO.]

3. Monitoring of on-demand services

Chapter 5 of the report, "On-Demand Audiovisual Services and European Works", is the most stimulating section, dealing with a field in very rapid evolution where monitoring will have to be established as part of the implementation of the new AVMS Directive. The problems related to transparency are even more critical in this field than for the 'classic' television activities.

Identification of the number of services to be monitored

The first challenge for monitoring is identifying the services to be monitored. There has been a certain amount of confusion in the data published on the number of services (including in the statistics published so far by the Observatory and quoted in the report) between an on-demand service as provided by the provider (as defined in the article 1(a) of the AVMS Directive) and the distributor of the service (in particular services distributed by cable, IPTV or DTT operators). If the main criteria for the identification of the provider is editorial responsibility for a catalogue, than the logical consequence in counting services is that the data should be drawn up by operating (where feasible) a distinction between the various catalogues distributed by a single cable, IPTV or DTT operator. IPTV and cable operators distribute different catalogues, which should then be counted as different services, even if the distributor brands them under a single name in its marketing offer. As for DTT, there is currently a single operator providing a VOD service (the UK company Top Up TV Limited, providing the Top Up TV Anytime offer). Though OFCOM consider Top Up TV Anytime as a single service, the service actually consists of an "à la carte" programme extracted from the programme schedule of numerous TV channels provided by various broadcasters. Should the offer be counted as a single service or as a number of services equivalent to the number of channels from which the "à la carte" service is extracted?

While preparing a report to be published by the Observatory and the French DDM in collaboration with the French consultant NPA Conseil, I have tried to draw up a much more detailed census of existing services as at early December 2008. I reach a provisional total of 418 operational services in the European Union (not including services with news only, trailers, highlights, programmes for adults...). Services with territorial restrictions may be counted several times in this census as they appear in various countries. Some of these services are established outside of the EU (USA or Switzerland) but targeting specific European Union countries..

[The consultant's have now more clearly explained how their figure for total Video-on-Demand services was reached in the text of the report. This was based on a methodology set out in a report by the NPA Conseil and European Audiovisual Observatory dated December 2007. In this report, the same service on various media is counted in the total as many times as it is available e.g. the BBC iPlayer service in the UK is counted twice as it is available both on the web and through a cable operator's on demand service. However, the consultant's would like to note that an alternative definition of a service could also be considered, based on the editorial responsibility for an on-demand service, rather than the total number of access points. This would mean that a service that is distributed on multiple platforms but containing the same content would only count as one]

service (so in the example above the BBC iPlayer service would only be counted once). As the results we presented were based on currently available statistics from the NPA Conseil and European Audiovisual Observatory, our findings are not based on this 'editorial responsibility' methodology, but we do think that this approach should be considered in future research in this area. With regards the Top Up TV example referred to by Mr Lange above, the consultant's view is that this service effectively downloads a selection of content to the consumer's Personal Video Recorder (PVR) every month, which can then be watched. Therefore the provider is essentially choosing what is recorded to the consumer's PVR, but then the consumer can choose what to watch or not watch from this selection.]

Number of on-demand services operational in European Union, by country of reception and network of distribution. (December 2008) – Provisory data.

Services counted on the basis of presumed editorial responsibility (not by company of distribution)

Not included : VoD with adult content, news only catch-up TV services, highlights, promotional or trailers only services, company channels in You Tube.

Internet services without territorialisation are counted only in the country of origin.

	Total	Internet	IPTV	Câble	Satellite	TNT
AT	9	4	2	1	2	
BE	32	13	4	15		
BG	1	1				
CY	3	1	2			
CZ	6	3	3			
DE	36	29	3	1	3	
DK	18	13	3	2		
EE	5	2	1	2		
ES	25	20	3	2		
FI	14	10	4			
FR	87	53	23	11		
GB	41	21	11	6	1	2
GR	3		3			
HU	12	5	7			
IE	9	7	1		1	
IT	22	14	8			
LT	1	1				
LU	4	4				
LV	1		1			
NL	41	31	4	6		
PL	15	7	2	1	5	
PT	3	1	2			
SE	21	14	7			
SI	3	2	1			
SK	6	4	2			
Total	418	260	97	47	12	2

Source : European Audiovisual Observatory.

Terminology and bias in the sample of services analysed

The concept of a “pure VOD player” as opposed to broadcasters as used by the consultant is probably misleading. Various services are provided by single purpose companies established as VOD service providers. But most of the services are provided by telecommunications companies, cable companies and, less often, by existing film companies. Those companies should not be

considered as “pure VOD players”. It is a bit confusing to group in the same category a small independent company and a large telecommunications group.

[The consultant's have now included a definition of pure VoD player within the report to help clarification of the term.]

The sample of 29 services on which the analysis is based is far from representative of the real market. It include only 4 telecom operators, while they are clearly the leading category in providing on demand service. There is no service provided by a cable operator (which may act indeed as provider and not only as a distributor) in the sample.

[The sample of 29 services for the prominence analysis were largely available on the public internet in order to not limit the consultants to investigating services in the markets where the consultants were located. It is important to note also that the prominence analysis was designed to be exploratory, to identify possible prominence indicators and assess them, rather than present a representative analysis of all European on-demand services.]

Analysis of catalogues

Most of the problems well analysed by the report on the monitoring of the implementation of article 3i of the AVMS Directive result from the observation that it is difficult to obtain information on their complete catalogue from the operators. It is interesting to note (page 307) that 70% of the respondents were ready to provide listings of their catalogues to the authorities if they could remain confidential. The desire for confidentiality on this point should have been analysed further.

Why are the providers of services not keen to divulge the contents of their catalogues when they are supposed to promote them and when, anyway, this is public as long as some one takes the time to go through it. The requirement for catalogues to be made public (and for their mandatory communication in a specific format) could be easily justified for other reasons, in particular the rights of right owners to be informed on the use of their works.

[The consultants have checked this statistic and have found that it did not specifically relate to declarations on titles in a catalogue, but declarations concerning any kind of internal data. It has therefore been moved to the section looking at self-declarations as an operational procedure: Part 10.2]

The question of the identification of the country of origin of a single programme may be partly solved by using as an European reference the LUMIERE database (<http://www.lumiere.obs.coe.int>) for the identification of the country of origin of feature films. LUMIERE is not comprehensive but it does includes data on more than 17 000 films. The identification of country of origin of films is done by the Observatory in collaboration with a

network of statisticians of the national film agencies (EFARN), providing a fairly high level of reliability. The inclusion of the ISAN number in LUMIERE is underway and should, in the future, allow relatively easy matching that could be used for the analysis of film catalogues, if provided in an electronic format.

[A reference to the LUMIERE database has been included in Part 10.4.1.]

Analysis of the success of the individual works

The analysis of the success of individual works is probably not a major requirement for the monitoring of article 3i of the AVMS directive (in the same way as the monitoring of article 3 and 4 of the TWF Directive does not take into consideration audience measurement). However, as I have already indicated on several occasions, the publication of data on the success (i.e. data on the number of downloads or orders of a film in the framework of a VOD or a pay-per-view service) should be considered (at least on the basis of aggregate data drawn up on the basis of providers declarations). This kind of data, in most of the EU countries, have to be provided by the cinema operators and the principle of equality of treatment between competitors ought to be applied, in order to create a level playing field.

Analysis of revenues

As indicated by the report, which quotes rightly a remark from my contribution to the Lisbon conference, the analysis of revenues resulting from VOD services is very difficult, and even impossible through the analysis of the accounts of large, multi-activity companies. In contrast, the accounts of small independent companies with a single VOD activity may be obtained through their declarations to the national companies register. There is clearly an unbalanced treatment between stakeholders.

This topic is certainly outside of the remit of the debate on the implementation of the monitoring of the objectives of the promotion of European works and deals with more general issues of regulation of the transparency of economic activities.

[The reference to Andre Lange's previous remarks has been edited to include these new comments.]

23.4. Swedish Broadcasting Commission

In accordance with Article 4.3 of the TV-directive, the Member states shall provide the Commission every two years with a report on the application of Articles 4 and 5. That report shall include a statistical statement on the achievement of the proportion referred to in Articles 4 and 5 for each of the television programmes *falling within the jurisdiction of the Member State concerned*. Sweden joined the EU in 1996 has been reporting on the achievement of Articles 4 and 5 since 1998. The first reports included Kanal 5, but this channel has not been included in the Swedish reports since 2002. Sweden has never reported on TV3.

Kanal 5 and TV3 are both established in United Kingdom. They have been granted a license by Ofcom and are obliged to follow British rules. Swedish authorities have no means to influence these channels to increase their number of European productions.

We request that Kanal 5 and TV3 are removed from your report on Sweden and instead included in the British report. This would be in line with Article 4.4 of the TV-directive, which states that the Commission's report to the Council shall be based *on the information given by the Member States in accordance with Article 4.3*. It would, naturally, also be more in line with the wording in Article 3i p. 1 of the AV-directive, which clearly states "Member states shall ensure that on-demand audiovisual media services provided by media service providers *under their jurisdiction* promotes..."

In any event, Kanal5 and TV3 cannot be included in the Swedish report without further comments on why you have chosen to regard these channels as "Swedish channels" despite the fact that they are established in the United Kingdom and in accordance with both the TV-directive and the AV-directive obey under British law.

[The channels selected by the consultants for each Member State were in large part chosen from the perspective of the viewer, that is that a channel was assigned to the Member State in which it found its audience. Channels were selected to cover the largest possible share of audience for the Member State's selected. This does however mean that in some cases (for example with Kanal 5 and TV3 in Sweden), channels have been included in the Member State report for the country in which their audience is found, but not the country in which they are regulated. As we have grouped our channels from the perspective outlined above, we do not feel it is appropriate to move Kanal 5 and TV3 to the UK report (these channels do not find their audiences in the UK). However, we agree that it should be made more clear in the Swedish report that these channels are not governed under Swedish law. We have therefore added an statement regarding this in the methodology for the EU-wide analysis, and again within the Swedish report itself.]

23.5. Mediaset

As part of their response to the Draft Final Report, Mediaset asked Prof. Stefania Bariatti to provide advice on how Endemol should be classified in terms of its independence from national broadcasters. This was taken into account by the consultants, and Endemol's programming was re-coded accordingly (see country profiles for Spain and Italy in particular for reference to this). Below we have inserted the text of the statement from Prof. Bariatti, which Mediaset requested be included in this study.

Position Paper on the qualification of Endemol as independent producer

I have been asked to assess whether Endemol BV (“**Endemol**”) may qualify as “independent producer” within the meaning of the definition provided by the *Study on the application of measures concerning the promotion of the distribution and production of European works in audiovisual media services (i.e. including television programmes and non-linear services, Draft Final Report* (the “**Draft Final Report**”), taking also in consideration the content the Note of Headway International dated 27 November 2008 (the “**Note**”).

I. The notion of independent producer in the EC Law

1. EC Law does not provide for an autonomous definition of “independent producer”. Indeed, Directive 89/552/EEC (“**TVWF Directive**”), as amended by Directive 2007/65/EC, establishes that in defining the concept of “independent producer” Member States “should” take into account criteria such as: (i) ownership of the production company, (ii) amount of programmes supplied to the same broadcaster and (iii) ownership of secondary rights (*recital 49*).
2. Actually, these criteria do not impose any binding and uniform notion of “independent producer” in the domestic legal orders of Member States. In other words, it is left to each Member State to define what an “independent producer” is for the purposes of the TVWF Directive in its territory.

II. The Draft Final Report

3. The Draft Final Report contains a “single definition of independent producer” based on the following criteria:
 - (i) The production company must be free from a controlling interest by a broadcaster (a broadcaster owns less than 50% of the shares of the production company);
 - (ii) The programme must have been made by a production company that produces a majority of its programmes outside the broadcaster’s own management structure.
 - (iii) The production company must provide programmes for different broadcasters (not just one).
4. If a producer “*clearly met all of the criteria*”, it will be qualified as independent (paragraph 7.2.5 at page 122).
5. We note that the criteria indicated in the Draft Final Report in order to define the concept of “independent producer” partially differ from those provided by the EC Directive. However, such a difference probably depends upon the fact that the objective of the Draft Final Report, as clarified by the Note, was not “*to provide with the right definitions of European work or independent producer*” since “*the right definitions and statistics are just those used*

in each Member State”, but rather “*to compare statistics across Member States and channels*” (at page 2).

6. In checking if and why this definition applies to European producers of TV content, the Draft Final Report concludes that “*there are some cases where a production company is independent in one national market but not in another. An example of this is [...] Endemol (recently purchased by broadcast group Mediaset mid-2007, which owns channels in Italy and Spain)*”.
7. As Headway International declares in the Note, “*we did the job of classifying Endemol in terms of being an ‘independent’ producer or not around April 2008. At that time, the information we had at our disposal was that Endemol and Goldman Sachs were creating a 50-50 joint venture to acquire 75% of Endemol while the remaining 25% of Endemol remained in the hands of John de Mol*”. In light of that “*we made the decision that Goldman Sachs being a financial partner in the deal, Mediaset, being a media player, would have a greater operational influence on the policy of Endemol*”.
8. Actually, I am of the opinion that the qualification of Endemol as a non-independent producer is not correct under both the definition provided by the Draft Final Report and those set forth in the domestic legislation of the relevant EU Member States, i.e. Spain and Italy, as explained below.

III. Endemol is an independent producer based on the definition of the Draft Final Report

9. In this respect, it must be observed from the outset that Endemol qualifies as independent producer within the meaning of the definition provided by the Draft Final Report since:
 - (a) Endemol is not controlled by any broadcaster
 10. In May 2007 Endemol was acquired by a joint venture made up of Mediacion Cartera S.L. (“**M5**”), Cyrite Investments (“**Cyrite**”), a company owned by the Endemol founder John de Mol, and GS Capital Partners V Fund L.P. (“**GSCP**”), and together with M5 and Cyrite, the “**Investors**”) (the “**Transaction**”). M5 is a joint venture between Mediaset S.p.A. (“**Mediaset**”) and Gestevisión Telecinco S.A. (“**Telecinco**”), a Spanish listed company of the Mediaset Group. Each of M5, Cyrite and GSCP has indirectly acquired approximately 33.3% of Endemol. Therefore, Mediaset indirectly holds 33.3% of Endemol.
 11. The Transaction did not result in the acquisition of control over Endemol, within the meaning of the EC Regulation No. 139/2004 (“**Merger Regulation**”), by any of its shareholders, as confirmed by the European Commission. Since the notion of control provided by the Merger Regulation is wider than those set forth in other areas of law, both with reference to the instruments of control and the concept of influence, the fact that the competent services of the European Commission excluded the existence of control pursuant to the Merger Regulation may reasonably be interpreted as a confirmation that none of the Investors controls Endemol also for the purposes of other areas of legislation, including the provisions concerning television broadcasting activities.
 - (b) Endemol produces the majority of its programmes outside any broadcaster management structure

12. Endemol is based in Holland and has affiliated operations and joint ventures in 25 countries around the world including France, Italy, Germany, Spain, the United Kingdom, Holland, Denmark, Norway, Belgium, the United States, South Africa, Australia, Argentina and Brazil.
 13. Endemol produces, within its own structure, premium entertainment for the world's major broadcasters, creating content that plays across a range of media platforms including television, mobile phones and the Internet. Endemol subsidiaries around the world have creative teams that are continuously developing new formats and entertainment brands, which are shared across the Endemol network.
- (c) *Endemol provides its programmes to different broadcasters (not just one)*
14. Endemol provides its production to a number of broadcasters around the world. As specifically regards Italy, in 2007 Endemol provided about 40% of its production to RAI Radiotelevisione Italiana S.p.A - the Italian public service broadcaster - and the remaining 60% to other national broadcasters, including satellite broadcasters.
 15. *Consequently, it is my opinion that Endemol certainly qualifies as an independent producer based on the definition offered by paragraph 7.2.5 of the Draft Final Report.*
 16. The Draft Final Report, on the contrary, qualifies Endemol as a dependent producer as far as Italy and Spain are concerned. This conclusion is allegedly based on the fact that the authors of the Draft Final Report did not know about the structure of the Transaction, the allocation of Endemol shares between the Investors and their respective powers in its governing bodies, as described at paragraph 10 above.
 17. Indeed, the Note states that "***had we known of the capital structure of Edam Acquisition as it is today, we would probably have reached a different decision, as (at least it is our Headway point of view) that Mediaset indeed does not control Endemol with only a third of the shares while another third is owned by Goldman Sachs and the last one by John de Mol, one the historic founder of Endemol and a producer since decades***".
 18. It is worth underlining that the information on which the authors of the Draft Final Report made the decision to qualify Endemol as non-independent producer is totally incorrect, as showed above. The incorrectness of that information could be verified at the time the decision concerning Endemol was made.
 19. Indeed, on 16 May 2007 Mediaset published on its website a press release (*Endemol: green light from the European Commission*) announcing that it had received a "letter from the European Commission that establishes that the acquisition of Endemol can not be considered concentration. The document was sent by the EU to the three partners of the international consortium that won the bid for the stake in the Dutch company put up for sale by Telefonica. In particular, the letter states that, given the structure of the governance agreement, "the operation does not require preventive notification, as per Art. 4 of the 'Mergers regulation'"'. This press release on "the green light of the European Commission" due to absence of control over Endemol was available on the internet 11 months before the

adoption of the decision of classifying Endemol as a non-independent producer in respect to Italy and Spain.

III. Endemol as independent producer based on the relevant provisions of Italy and Spain

20. As clarified above, the TVWF Directive leaves it each Member State to adopt a definition of independent producer based upon certain general criteria. Therefore, for the purposes of the present analysis, in order to assess whether Endemol qualifies as independent producer reference will be made exclusively to the definitions provided under Italian and Spanish law.

(a) *Italy*

21. Pursuant to Article 2(1)(g) of Legislative Decree 31 July 2005 No. 177 (“Decree”), independent producers are defined as “*European communication operators who carry out audiovisual production activities and that are not controlled by or affiliated with holders of concessions, licenses, or authorizations for television broadcasting or who, for a period of three years do not allocate at least 90 per cent of their own production to the same broadcaster*”¹.
22. Endemol certainly qualifies as “independent producer” within the meaning of Article 2 of the Decree for the following reasons:

- (i) as confirmed by the competent services of the Commission, it must be excluded that Mediaset controls Endemol;
- (ii) Mediaset and Endemol are not affiliated within the meaning of the Decree, given that the so-called *pure indirect affiliation* (i.e. a form of affiliation that occurs either in case of influence over the affiliate via another affiliate or over a downstream subsidiary of the intermediate affiliate) is considered irrelevant under Italian Law;
- (iii) Endemol IT has not allocated at least 90% of its production in the last three years to the same broadcaster, as clarified above.

(b) *Spain*

23. As regards Spain, Article 3(g) of Law 12 July 1994 No 25 defines independent producers as natural or legal persons who are not under the dominant influence of a broadcaster by virtue of ownership, financial participation or the rules which govern it. The ability to exercise a dominant influence shall be presumed when a broadcaster directly or indirectly:

- (i) holds a majority of the producer’s subscribed capital;
- (ii) controls a majority of the votes attached to the producer’s issued share capital; or
- (iii) can appoint more than half of the members of the producer’s administrative, management or supervisory body².

¹ “[...] gli operatori di comunicazione europei che svolgono attività di produzioni audiovisive e che non sono controllati da o collegati a soggetti destinatari di concessione, di licenza o di autorizzazione per la radiodiffusione televisiva o che per un periodo di tre anni non destinino almeno il 90 per cento della propria produzione ad una sola emittente”.

² “[...] aquella persona física o jurídica que no sea objeto de influencia dominante por parte de las entidades de radiodifusión televisiva por razones de propiedad, participación financiera o de las normas que le rigen. Se entenderá

24. The ability of Mediaset to exercise a dominant influence over Endemol may be excluded as it:
- (i) does not hold, directly or indirectly, the majority of Endemol's subscribed capital;
 - (ii) does not control, directly or indirectly, the majority of the votes attached to the Endemol's issued share capital;
 - (iii) cannot appoint, directly or indirectly, more than half of the members of Endemol's administrative, management or supervisory body.

IV. Conclusion

25. In light of the above, Endemol has to be considered an independent producer within the meaning of the definition offered in the Draft Final Report as well as under the relevant provisions of the Italian and Spanish law.

que existe una influencia dominante, directa o indirecta, por razones de propiedad o participación financiera, cuando las entidades de televisión posean más del 50 % del capital suscrito en la empresa productora, dispongan de la mayoría de los votos correspondientes a las participaciones emitidas por la misma, o puedan designar a más de la mitad de los órganos de administración o dirección”.

24. Appendix XII: Note on Definition of Independent Producer

24.1. Definition of independent producer

At the workshop held in Brussels on November 18 2008, there was some debate with the delegates on the best possible definition of an 'independent producer'. The consultants' definition of "independent" or "not independent" has already been described in section 8.2.5 of this report. In this section, we provide some further information on why this definition was chosen, and investigate the possible implications of choosing one definition over another, by assessing the impact of choosing another definition on the linear findings for a representative selection of 27 channels from our sample.

24.1.1. Economic vs. cultural objective

In this section we investigate the impact of the choice of our definition of independent producer used for this study, that is, when it is free of any control by a broadcaster in its own national market (the 'country-by-country' approach), rather than an alternative definition whereby a producer is considered independent if it is not linked to a broadcaster in any European Member State (the 'company-by-company' approach).³⁷²

First, in the absence of a clear definition there cannot be one single answer to the question of which is the most appropriate definition. Indeed the right methodology depends on the political objective behind the legislation. If the objective is economic, that is, to ensure that the production business is not controlled by the broadcast business, but that both are kept separate, then the more appropriate definition would be the company-by-company approach: that producers must be free from a broadcaster's control in any Member State. For example, BBC Productions and BBC Worldwide will remain controlled by the BBC even when they sell or operate outside the UK, and so will be considered under a company-by-company definition as being non-independent regardless of the country in which the programme is being broadcast. But if the objective is 'cultural', that is, to ensure a diversity of

³⁷² As has been noted in Section 8.2.5, the country-by-country approach is a different definition from that used in the 2005 Study (where a company-by-company approach was taken).

content on-screen for the consumers, then the best definition should be by country-by-country (i.e. whether a producer is independent of the domestic broadcaster). Indeed, watching a BBC show provides French or German viewers with improved cultural diversity compared to another programme by French or German producers.

During the course of the study, the decision was made that it was most appropriate to use a country-by-country approach, as it better reflected the objective of Article 5 of the Directive. Further to the Workshop, we decided to assess the impact of that choice on the linear data which have been reported.

24.1.2. Impact of methodological choice

Table 170 shows the impact of the methodological choice on the ratio of independent productions in transmission and viewer hours for a representative selection of 27 channels from our total sample of 54. The channels have been selected to cover a variety of Members States, whether large or small, north or south: Germany, Ireland, Italy, Flemish Community of Belgium, Spain and Sweden. In the table we have identified the result of the country-by-country approach (which is the approach we have taken for this study, and is the result included in the report), and also included the result if the company-by-company definition is used. We have done this for transmission hours and viewer hours. We have also detailed in the table the key production companies that the change in definition affects.

Table 170: Ratio of Independent Productions using a definition “country-by-country” (used throughout this study) vs. a “company-by-company” definition, in a selection of 27 channels

Country	Channel	Ratio of Qualifying Independent European to Total Qualifying Hours (%)				Ratio of Qualifying Independent European to Total Qualifying Viewer Hours (%)				Production companies
		AVMS results (country-by- country approach)	New Results (company-by- company approach)	Delta ¹	Variation ²	AVMS results (country-by- country approach)	New Results (company-by- company approach)	Delta ¹	Variation ²	
Germany	ARD	35.3%	35.0%	0.3%	-0.9%	45.8%	45.1%	0.7%	-1.5%	BBC
	PRO 7	28.6%	28.6%	0.0%	0.0%	24.0%	24.0%	0.0%	0.0%	
	RTL	38.0%	38.0%	0.0%	0.0%	42.3%	42.3%	0.0%	0.0%	
	SAT.1	59.1%	58.4%	0.6%	-1.1%	61.0%	60.3%	0.7%	-1.1%	Granada
	VOX	48.9%	37.9%	11.0%	-22.5%	61.7%	34.8%	26.9%	-43.7%	Granada
	ZDF	23.0%	23.0%	0.0%	0.0%	23.2%	23.2%	0.0%	0.0%	
Ireland	RTE 1	33.1%	21.8%	11.4%	-34.3%	35.8%	24.9%	10.9%	-30.4%	BBC, Granada, Thames,
	RTE 2	29.3%	28.4%	0.9%	-3.1%	25.1%	23.8%	1.4%	-5.4%	BBC, Granada
	TV3	53.3%	24.1%	29.2%	-54.8%	67.6%	13.6%	54.0%	-79.9%	BBC, Granada, Fremantle, ITV, Thames, Yorkshire Television
Italy	Can5	23.8%	22.3%	1.5%	-6.2%	24.5%	23.2%	1.3%	-5.4%	Bavaria Film GmbH
	Fox Life	10.9%	10.9%	0.0%	0.0%	8.4%	8.4%	0.0%	0.0%	
	Ita1	10.8%	10.8%	0.0%	0.0%	8.2%	8.2%	0.0%	0.0%	
	La7	22.4%	22.0%	0.4%	-1.9%	23.3%	22.8%	0.4%	-1.9%	BBC
	Rai1	14.6%	14.6%	0.0%	0.0%	15.8%	15.8%	0.0%	0.0%	
	Rai2	20.6%	20.0%	0.6%	-2.9%	26.1%	26.0%	0.2%	-0.6%	Novel Entertainment Productions, TVE
Belgium (Flemish)	EEN	36.2%	30.3%	5.9%	-16.3%	43.6%	40.7%	2.8%	-6.5%	BBC
	VTM	45.0%	34.3%	10.8%	-23.9%	60.0%	47.1%	12.9%	-21.5%	Fremantle, BBC
Spain	Antena 3	40.2%	39.7%	0.5%	-1.3%	48.4%	48.2%	0.2%	-0.4%	BBC
	CUATRO	27.6%	27.4%	0.1%	-0.4%	22.2%	22.2%	0.1%	-0.2%	BBC
	La 2	29.1%	28.9%	0.2%	-0.5%	31.0%	30.8%	0.1%	-0.4%	Granada
	LA SEXTA	49.3%	48.1%	1.2%	-2.5%	41.3%	40.5%	0.8%	-2.0%	RTE
	Tele 5	55.4%	51.4%	4.0%	-7.1%	60.0%	52.7%	7.4%	-12.3%	Fremantle
	TVE 1	22.7%	22.7%	0.0%	0.0%	25.2%	25.2%	0.0%	0.0%	
Sweden	Kanal 5	13.7%	12.5%	1.2%	-8.7%	20.7%	20.1%	0.5%	-2.6%	BBC, Channel 4
	SVT 1	23.3%	22.8%	0.5%	-2.2%	33.0%	31.9%	1.0%	-3.1%	DR
	TV 3	4.7%	4.7%	0.0%	0.0%	10.0%	10.0%	0.0%	0.0%	
	TV 4	28.3%	24.1%	4.2%	-14.8%	53.1%	46.5%	6.5%	-12.3%	Fremantle, Granada, Yorkshire

¹ Delta represents the difference between the company-by-company value minus the country-by-country value (for ARD : 35.3%-35%=-0.3%).

² Variation represents the ratio of company-by-company value divided by country-by-country value (for ARD: -100%+(35.0 / 35.3)=-0.9%).

The main findings from this analysis are as follows:

- For 20 out of 27 channels evaluated (74%), the impact on the transmission hour and viewer hour ratios is below 1.5 percentage points.
- The impact is mainly due to British production companies either based in the UK or via their local subsidiaries and production partners. These include BBC, Granada, Fremantle, Thames, etc.
- The impact is the most important in Ireland: using a “company-by-company” definition, the ratio of independent productions for RTE1 would decline from 33.1% (as was found using the country-by-country definition), to 21.8% in transmission hours (from 35.8% to 24.9% in viewer hours) while that of TV3 would decline from 53.3% to 24.1% in transmission hours (from 67.6% to 13.6% in viewer hours). This can be largely explained by the language proximity between Ireland and the UK.
- The Flemish Community of Belgium is also impacted to a relatively large proportion (see below), tending towards showing that markets of a smaller size are generally more strongly impacted by this choice in definition than larger markets.

Reviewing the specific productions in Member States where a relatively large impact was acknowledged is also of interest. We looked at the specific productions impacting the ratios of non-Irish broadcasters beyond 1.5 percentage points: VOX in Germany (from 48.9% to 37.9% in transmission hours and from 61.7% to 34.8% in viewer hours), EEN in Flemish Community of Belgium (from 36.2% to 30.3% in transmission hours and from 43.6% to 40.7% in viewer hours), VTM in Flemish Community of Belgium (from 45% to 34.3% in transmission hours and from 60% to 47.1% in viewer hours), TELE5 in Spain (from 55.4% to 51.4% in transmission hours and from 60% to 52.7% in viewer hours), TV4 in Sweden (from 28.3% to 24.1% in transmission hours and from 53.1% to 46.5% in viewer hours).

On VOX, the change in proportion of independent works is mainly due to two Granada formats (*Das Perfeket Dinner* and *Unter Voll dampf*) which are re-shot locally in German language. On VTM, it is mainly due to the BBC children show *Teletubbies* (acquired from the shelf) and two formats from Fremantle (*Idol* + *Ugly Betty/Sara*) which are re-shot locally in the Flemish language. On TELE5, it is mainly because of the Fremantle formats *Ugly Betty/Yo Soy Bea* (re-shot locally in Spanish language in a co-production with TELE5). On TV4, it is mainly due to the Fremantle format *Idol* (re-shot locally), Granada documentaries (acquired from the shelf) and Yorkshire fiction series *Emmerdale* (acquired from the shelf).

So we see that in the majority of cases, the productions influenced by the choice of definition are formats, either scripted or unscripted, which are licensed to a local production structure and produced in a local language. For TELE5, the format is even being co-produced by the broadcaster, although Fremantle is controlled by Bertelsmann, themselves controlling TELE5' main

competitor in Spain, ANTENA3. The only pure acquisitions from the shelf which we could find are the children show *Teletubbies*, fiction series *Emmerdale* and several Granada documentaries.