

# Broadcasting and Telecommunications Legislative Review

## Financing and Promoting National Audiovisual Media Services: *Review of the Regulatory and Legal Requirements for Commercial Undertakings in Selected Jurisdictions*

by  
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## EXECUTIVE SUMMARY

This report provides an overview of the regulatory funding mechanisms for audiovisual production in place in Australia, Belgium's French Community, France, Germany, Italy, Spain and the United Kingdom, as well as a targeted review of the European Union's legal framework on this issue.

Our analysis highlighted 5 types of funding schemes, split in 2 different categories.

Obligations for support of audiovisual production funding can either be direct or indirect. Under the direct category, we find the mechanisms imposed on the audiovisual services providers themselves, such as mandated minimal levels of production expenses and exhibition quota requirements.

Indirect obligations, such as funds' contributions or taxes, catalogue quotas and discoverability schemes, can not only be imposed on the audiovisual services providers but also on entities present along the value chain from the inception of the production to its effective viewing or acquisition by its audience.

Direct Obligations		Indirect Obligations		
Production Expenses	Exhibition Quotas	Funds & Tax Contribution	Catalogue Quotas	Visibility/Promo

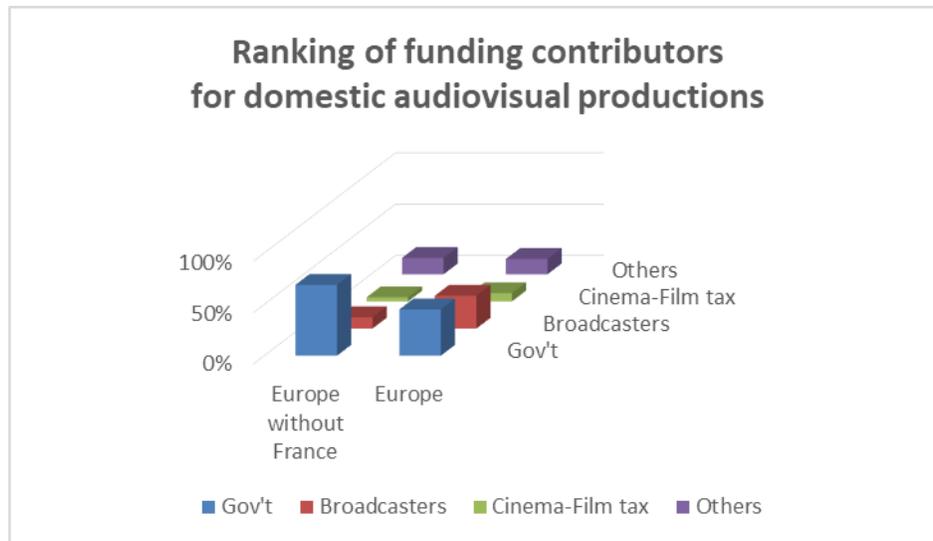
Support mechanisms vary by jurisdiction. Notably, common law jurisdictions tend to be less interventionist than civil law jurisdictions. Indeed, while France, the most interventionist jurisdiction, mandates direct and indirect funding obligations on all types of audiovisual services providers, the United Kingdom imposes only minimal exhibition requirements on non-commercial as well as digital programmes television services. France and the United Kingdom are at the two opposing ends of the funding spectrum in that regard, with all other jurisdictions in the study falling somewhere in between.

Within the European Union (EU), governments are the most important contributors to audiovisual production funding, with levels of contributions averaging 45%, followed by broadcasters<sup>1</sup> (32%), dedicated taxes (8%), and other measures (15%).

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<sup>1</sup> In this context, the expression "broadcaster" means all linear broadcasting entities, including distributors, where they fall under the domestic broadcasting regulations of the EU member states.

That being said, these numbers are somewhat skewed due to France's quite onerous financial obligations on private-sector stakeholders. When France is removed from the overall picture, the relative importance of government funding increases significantly to 69%, while funding by broadcasters diminishes in importance, from 32% to 11%.



Do note that the taxes referred to in the “tax” category are levied on cinema and/or film revenues. No jurisdiction we surveyed taxes Internet service providers to support the production and discoverability of domestic content.<sup>2</sup>

With respect to the applicability of audiovisual funding schemes to on-demand video service providers, the European Commission revised its 2010 Audio Visual Media Service (“AVMS”) Directive in late 2018 to include new provisions relating to on-demand video service providers as potential contributors for funding of national or local audiovisual works. Some EU member countries, such as Germany and France, have already imposed levies on providers of on-demand video services to fund domestic audiovisual works.

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<sup>2</sup> While France started levying a tax on telecommunications carriers in 2009 to fund the activities of its public broadcaster, it recently decided to treat the tax proceeds as general revenue and no longer dedicates it to the public broadcaster. Spain, not a jurisdiction surveyed in this report, has also put in place a “telecom tax” dedicated to its public broadcaster. Hungary has adopted such a tax but treats its proceeds as general revenue.

## CONTEXT

TELUS has asked that we provide an overview of financing and visibility measures in support of national audiovisual production, as they currently exist in other jurisdictions.

This report provides an overview of the legislative frameworks and regulatory measures in place within selected jurisdictions and provides a selected bibliography of books and reports that we believe would be particularly useful for further reflection on this topic. While looking at international best practices may be useful in identifying potential avenues for broadcasting policy reform in Canada, this report does not provide any opinion or policy recommendations.

This report focuses mainly on financing methods, and the regulatory and legal requirements put upon commercial undertakings to provide part of such financing of audiovisual productions. This includes an overview of each jurisdiction's legislative framework, and notably their licensing requirements. It does not, however, include a review of financing mechanisms for national public broadcasters, nor does it address tax credit schemes.

### Selected Jurisdictions and Topics

The selected jurisdictions are: European Union Member States Belgium's (its French Community only), France, Germany, Italy, Spain and the United Kingdom; as well as Australia.

The selected EU Member States bear political and cultural similarities to Canada. France and the United Kingdom have obvious historical and cultural links to Canada. Germany offers an interesting profile as a federal state, as does the French-language minority of Belgium, another federated state that, like Canada, has more than one official language. Italy is a discretionary selection.

Australia, another common law jurisdiction, was added to this list because of political and cultural similarities shared with Canada. Both countries' audiovisual industries face strong competition from the dominant American media and entertainment industry, which is due to the quality and quantity of American productions, the important gap between the cost of rights for these foreign productions and national ones, as well as the absence of a language barrier.

We will start by describing the EU's overall situation, specifically the directives that set out the goals that all EU countries must achieve with respect to the financing and promotion (also identified as visibility or cataloguing) of national and local audiovisual media service ("AVMS") productions.<sup>3</sup>

Secondly, we will describe how, and to what extent, the selected EU Member States have chosen to attain these goals.

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<sup>3</sup> If an EU "directive" is a legislative act that sets out a goal that all EU countries must achieve [while] it is up to the individual countries to devise their own laws on how to reach these goals, a "decision" is binding on those to whom it is addressed (e.g. an EU country or an individual company) and is directly applicable; [https://europa.eu/european-union/eu-law/legal-acts\\_en](https://europa.eu/european-union/eu-law/legal-acts_en) last accessed on January 5, 2019 [our emphasis].

We will provide, at last, a description of the measures that Australia has put in place to support its national and local audiovisual productions.

### General comments

One of the main justifications for Canada's ongoing broadcasting and telecommunications legislative review is a need to adapt the existing regulatory environment to the new distribution environment that has been disrupted by an expansion of video on demand and the digitization of media productions.<sup>4</sup> As noted in a recent UNESCO report, “[s]pecific measures and policies are [throughout the world] being adopted to impact the distribution of digital content as well as online trade in cultural goods and services”.<sup>5</sup> Canada is not the only state facing the challenges arising from the digitization of society.

According to the UNESCO report, “[i]ntegrated policies and measures ideally combine to successfully support independent local [audiovisual] production while also ensuring the availability of diverse [audiovisual] content from several regions or continent”.<sup>6</sup> To achieve this objective, over 90 countries around the world have a variety of quota regulations, some of which are being adapted to the digital environment.<sup>7</sup> [our emphasis]

At the same time, financing obligations of local (i.e. domestic) independent productions are under threat as the notion of “broadcaster” is evolving while obligations are still linked to an outdated notion of this concept. In jurisdictions where such obligations were already imposed on over-the-air broadcasters or cable operators, measures are being considered and taken so as to expand the sources of production funding. The need to categorize the myriad of AVMS providers properly then becomes unavoidable.

The EU has been working on updating the notions of “media”, VOD, broadcasting or “TV-Like” programming for over eight (8) years. From the BEREC's *Report on OTT services* of 2016,<sup>8</sup> to the recitals and provisions of the EU's 2010 AVMS Directive that came into force in November 2018<sup>9</sup>, all stakeholders do not necessarily agree on how to perfectly adapt legacy concepts to the new digital environment. Nevertheless, several criteria emerge from the decade-long consultations and legislative reviews:

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<sup>4</sup> See UNESCO, Global Report “Re|Shaping Cultural Policies”, 2017, chapter 3, in particular, 73, 76.; see also Broadcasting and Telecommunications Legislative Review, *Terms of Reference*, June 5, 2018, 10, <http://www.ic.gc.ca/eic/site/110.nsf/eng/home> last accessed on January 4, 2019.

<sup>5</sup> UNESCO, Global Report “Re|Shaping Cultural Policies.” 2017, chapter 3, 73.

<sup>6</sup> UNESCO, Global Report “Re|Shaping Cultural Policies,” 2017, chapter 3, 57.

<sup>7</sup> UNESCO, Global Report “Re|Shaping Cultural Policies,” 2017, chapter 3, 57.

<sup>8</sup> Body of European Regulators for Electronic Communications (BEREC), Report on OTT services, BoR (16) 35, January 2016.

<sup>9</sup> EC, *European Parliament legislative resolution of 2 October 2018 on the proposal for a directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, taking into account changing market realities (COM(2016)0287 - C8-0193/2016 - 2016/0151(COD))*, [2018].

- AVMS carried by electronic communication services may be considered TV-Like or broadcast programming;<sup>10</sup>
- AVMS are under the editorial responsibility of a media service provider, the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, the general public by electronic communications networks.<sup>11</sup>

In layman's terms, Europe's new notion of media services in the digital environment includes the following list of cumulative criteria:<sup>12</sup>

- That it be a service;
- That a media service provider has editorial responsibility;
- That its principal purpose is the provision of programmes;
- That the provided programmes are "TV-like";
- That the purpose of the programmes is to inform, entertain or educate;
- That the target audience of the programmes is the general public;
- That the programmes are delivered over electronic communications networks.

While report authors do recognize that an Internet service provider or a common carrier may offer applications or content, they will not consider that the transport service itself then becomes a media service by the mere fact that some of the content being transported are media services.<sup>13</sup>

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<sup>10</sup> Nikoltchev, Susanne (ed.), VOD, platforms and OTT: which promotion obligation for European works ?, IRIS Plus 2016-3, Council of Europe, European Audiovisual Observatory, 2016, 25 footnote 113.

<sup>11</sup> Nikoltchev, Susanne (ed.), VOD, platforms and OTT: which promotion obligation for European works ?, IRIS Plus 2016-3, Council of Europe, European Audiovisual Observatory, 2016, 26; Revised Directive 2010/13/EU on Audiovisual Media Services (AVMSD), art 56-57.

<sup>12</sup> Nikoltchev, Susanne (ed.), VOD, platforms and OTT: which promotion obligation for European works ?, IRIS Plus 2016-3, Council of Europe, European Audiovisual Observatory, 2016, 26.

<sup>13</sup> See for example Nikoltchev, Susanne (ed.), VOD, platforms and OTT: which promotion obligation for European works ?, IRIS Plus 2016-3, Council of Europe, European Audiovisual Observatory, 2016, 25.

## 1- EUROPEAN UNION

The Audiovisual Media Services Directive<sup>14</sup> adopted by the European Council in 2010 allows Member States to impose regulatory measures on AVMS providers to protect and finance national audiovisual content. Such measures must be applied on a non-discriminatory basis, regardless of the service provider's nationality. This initiative derives from the objective to create a common European digital market, which would harmonize online trade between Member States and establish rules for access to the EU market by non-Member States.

The Directive applies mainly to broadcasting service providers, both linear and on demand. The 2018 revision<sup>15</sup> of this Directive extended its scope to video-on-demand services that have no connection with programming or broadcasting distribution undertakings.<sup>16</sup> An important objective of this revision was to impose rules on American undertakings, such as Netflix, Google and Youtube, so that financing national productions and discoverability (or visibility) obligations would be distributed fairly among the undertakings providing audiovisual content for a cost, regardless of their country of establishment.

While considering the adaptation or harmonization of its rules to a single digital market, the European Commission has "*focus[e]d on the [following] main characteristics of online platforms*":<sup>17</sup>

- they have the ability to create and shape new markets, to challenge traditional ones and to organize new forms of participation or conducting business based on collecting, processing, and editing large amounts of data;
- they operate in multisided markets but with varying degrees of control over direct interactions between groups of users;
- they benefit from network effects, where, broadly speaking, the value of the service increases with the number of users;
- they often rely on information and communications technologies to reach their users [...];

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<sup>14</sup> Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive or "AVMS Directive").

<sup>15</sup> European Parliament legislative resolution of 2 October 2018 on the proposal for a directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, taking into account changing market realities (COM(2016)0287 - C8-0193/2016 - 2016/0151(COD)).

<sup>16</sup> See Fact Sheet: Digital Single Market: Commission Updates EU Audiovisual Rules and Presents Targeted Approach to Online Platforms, European Commission, May 25, 2016, online: [http://europa.eu/rapid/press-release\\_MEMO-16-1895\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-1895_en.htm), last accessed on November 25, 2018.

<sup>17</sup> Nikoltchev, Susanne (ed.), VOD, platforms and OTT: which promotion obligation for European works?, IRIS Plus 2016-3, Council of Europe, European Audiovisual Observatory, 2016, 29.

- they play a key role in digital value creation, notably by capturing significant value (including through data accumulation), facilitating new business ventures, and creating new strategic dependencies.

The protection of national content is at the heart of this dynamic. It is worth noting that all 28 members of the EU are parties to the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*.<sup>18</sup> Numerous studies, analyses and consultations have resulted in the development of new European legislative texts and their incorporation within national legal frameworks. Member States have maintained their autonomy for financing independent national or European productions and gained the power to factor in new digital platforms so to mitigate their disrupting effect on the availability of funding.

The mandatory production support schemes currently present in the EU can be divided into the following categories:

#### **Mandatory production support schemes in Europe<sup>19</sup>**

1. obligations only apply to public broadcasters;
2. obligations only apply to private broadcasters;
3. different obligations apply to public and private broadcasters;
4. the same obligations apply to both public and private broadcasters;
5. obligations are based on the size of the broadcaster (i.e. with a revenue threshold above which contribution is mandatory);
6. obligations are based on the broadcaster's programme (i.e. when films represent a representative part of its programming).

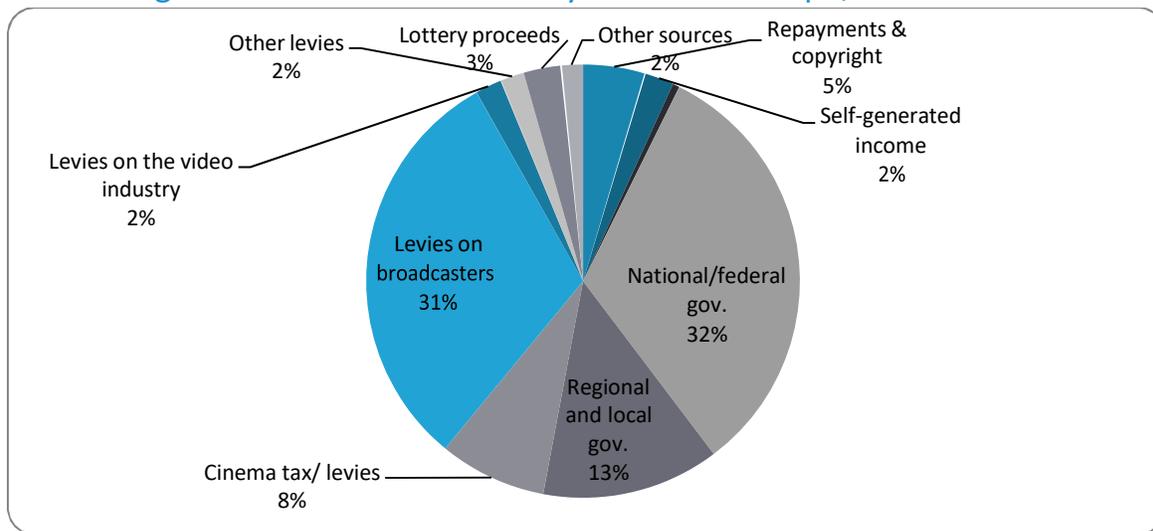
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<sup>18</sup> UNESCO, *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, Paris, 20 October 2005.

<sup>19</sup> See Talavera Milla, Julio, Gilles Fontaine, and Martin Kanzler, *Public financing for film and television content – The state of soft money in Europe*, Council of Europe, European Audiovisual Observatory, 2016, 84-85.

The list of these measures is very similar to those currently in effect in Canada, although their relative importance, if not their presence, varies from state to state. The contributions for the financing of local production are apportioned, in Europe, between a limited number of stakeholders, as shown in Figure 1.

**Figure 1 Share of income by source in Europe, 2010-2014<sup>20</sup>**



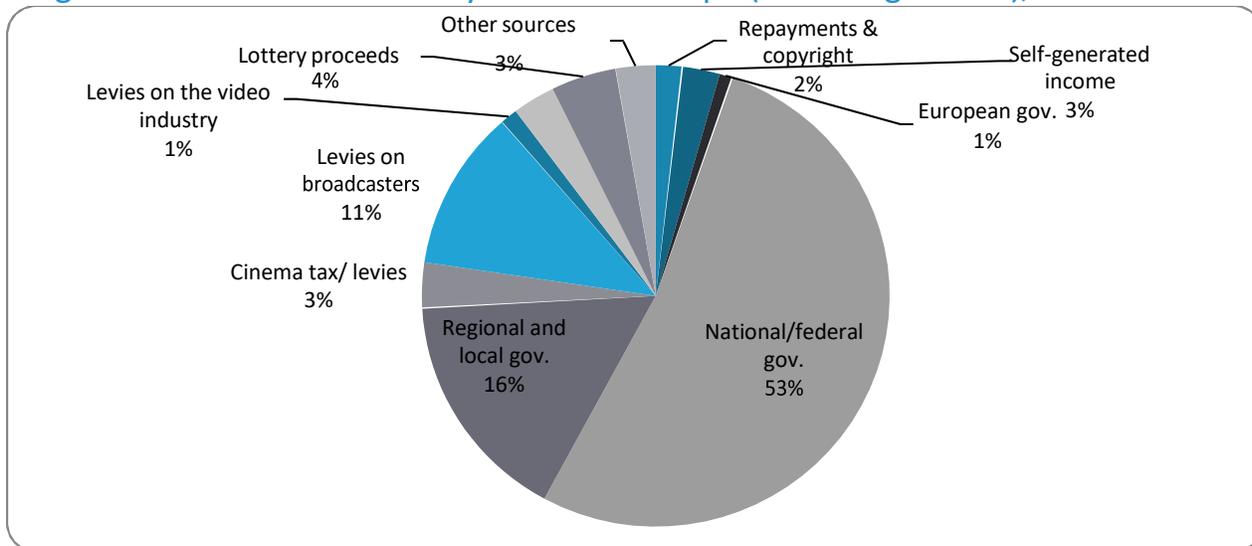
Source: OBS

Figure 1 shows that broadcasters are a major contributor at 31% and that their level of funding is almost as important as national governments'. However, this single European snapshot is somewhat misleading. Indeed, France imposes levies on broadcasters that far exceed those in other European States. If we remove France from the overall European picture, the funding breakdown differs significantly, as shown in Figure 2.

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<sup>20</sup> Talavera Milla, Julio, Gilles Fontaine, and Martin Kanzler, *Public financing for film and television content – The state of soft money in Europe*, Council of Europe, European Audiovisual Observatory, 2016, Figure 29.

Figure 2 Share of income by source in Europe (excluding France), 2010-2014<sup>21</sup>



Source: OBS

While many countries, rely on contributions from broadcasters to finance the production of domestic audiovisual content, France is an outlier in having broadcasting provide more financing than the national government does. In the rest of Europe, broadcasters only provide 11% of the financing contributions while national governments cover close to five times as much (53%).

Both foreign and domestic undertakings that generate revenues are subject to audiovisual content funding requirements in the EU. They are directly targeted to broaden the contribution base and to compensate contribution losses that are linked to the decrease of legacy broadcasting services' revenues. The same approach is utilized for the same reasons vis-à-vis digital platform providers.

The key provisions of the original and revised AVMS Directive are Articles 7b and 13, which respectively deal with the discoverability (or visibility) of national or local content and its financing.

**Article 7b of Directive 2010/13/EU as revised (visibility requirements):**

Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest.

<sup>21</sup> Talavera Milla, Julio, Gilles Fontaine, and Martin Kanzler, *Public financing for film and television content – The state of soft money in Europe*, Council of Europe, European Audiovisual Observatory, 2016, Figure 30.

**Article 13 of Directive 2010/13/EU as revised (contributions to financing):**

1. Member States shall ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30 % share of European works in their catalogues and ensure prominence of those works.
2. Where Member States require media service providers under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contribution to national funds, they may also require media service providers targeting audiences in their territories, but established in other Member States to make such financial contributions, which shall be proportionate and non-discriminatory.
3. In the case referred to in paragraph 2, the financial contribution shall be based only on the revenues earned in the targeted Member States. If the Member State where the provider is established imposes such a financial contribution, it shall take into account any financial contributions imposed by targeted Member States. Any financial contribution shall comply with Union law, in particular with State aid rules.
4. Member States shall report to the Commission by ... [ three years after the entry into force of this amending Directive] and every two years thereafter on the implementation of paragraphs 1 and 2.
5. The Commission shall, on the basis of the information provided by Member States and of an independent study, report to the European Parliament and to the Council on the application of paragraphs 1 and 2, taking into account the market and technological developments and the objective of cultural diversity.
6. The obligation imposed pursuant to paragraph 1 and the requirement on media service providers targeting audiences in other Member States set out in paragraph 2 shall not apply to media service providers with a low turnover or a low audience. Member States may also waive such obligations or requirements where they would be impracticable or unjustified by reason of the nature or theme of the audiovisual media services.

While article 13 lays the groundwork for financial contributions from AVMS providers, article 7 legitimizes both discoverability and quota requirements. Both articles are applicable to linear as well as nonlinear services, whether they are distributed over-the-air, through a broadcasting transmitting undertaking (“**BDU**”) or online. In other words, this directive is technology neutral and targets media service providers as contributors for the financing of audiovisual productions.

A large portion of the EU Member States have incorporated the AVMS Directive’s powers into their domestic legal or regulatory framework, in effect levelling somewhat the playing field between foreign and domestic AVMS providers to a certain extent.

## Taxation on Internet Service Providers' Revenues

Identifying new contributors to compensate for the reduction of funding from existing sources is one possible strategy. Notably, some have proposed that ISPs be taxed to finance the production of domestic content. The European Commission has historically opposed such levies as well, “[n]ot only [because] this new tax on operators seem incompatible with the European rules, [but] also [out of] concerns [for] a sector that is now one of the major drivers of economic”.<sup>22</sup>

The idea of taxing ISPs to fund domestic audiovisual production has gathered little traction among the jurisdictions whose funding regimes we have reviewed<sup>23</sup>. Only France and Spain have imposed “telecom taxes” to fund audiovisual content, back in 2009. Both taxes were challenged by the European Commission, but France’s tax was upheld by the European Court of Justice in 2013, which led to the case against Spain being dropped.<sup>24</sup> However, Spain appears to be the only remaining jurisdiction with such a dedicated tax, as France appears to have recently decided to stop dedicating the proceeds of the tax to its public broadcaster, starting in 2019.<sup>25</sup>

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<sup>22</sup> See European Commission, Press Release, “Telecommunications: Commission takes action against France over 'telecoms tax' ” (28 January 2010), online: [http://europa.eu/rapid/press-release\\_IP-10-67\\_en.htm](http://europa.eu/rapid/press-release_IP-10-67_en.htm), last accessed on January 10, 2019; see also Directive 97/13/EC of the European Parliament and of the Council, *on a common framework for general authorizations and individual licences in the field of telecommunications services*, 10 April 1997, whereas (12) and art 11.

<sup>23</sup> For a review of the judicial developments on this issue in the EU from 2003 to 2013, see *Albacom SpA v Ministero del Tesoro, del Bilancio e della Programmazione Economica & Ministero delle Comunicazioni*, C-292/01, [2003] ECR I-09449 (joint cases); *Infostrada SPA v Ministero del Tesoro, del Bilancio e della Programmazione Economica & Ministero delle Comunicazioni*, C-293/01, [2003] ECR I-09449 (joint cases); *Mobistar SA v Commune de Fléron*, C-544/03, [2005] ECR I-07723 (joint cases); *Belgacom Mobile SA v Commune de Shaerbeek*, C-545/03, [2005] ECR I-07723 (joint cases); *Nuova società di telecomunicazioni SpA v Ministero delle Comunicazioni and ENI SpA*, C-339/04, [2006] ECR I-06917; see also EC, *Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)*, [2002] OJ, L 108/21, art 12; European Commission, Press Release, “Digital Agenda: Commission refers France and Spain to Court over 'telecoms taxes'” (14 March 2011), online : European Commission Press Release database [http://europa.eu/rapid/press-release\\_IP-11-309\\_en.htm](http://europa.eu/rapid/press-release_IP-11-309_en.htm) , last accessed on January 3, 2019; European Commission, Press Release, “Digital Agenda: Commission requests Hungary to end special tax on telecom operators” (29 september 2011), online : European Commission Press Release database < [http://europa.eu/rapid/press-release\\_IP-11-1108\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-11-1108_en.htm?locale=en) >, last accessed on January 3, 2019. Hungary also levied a telecom tax, but it was not meant to fund audiovisual works.

<sup>24</sup> ECJ *European Commission v. French Republic*, C-485/11, [2013], I-427; ECJ *European Commission v. Kingdom of Spain*, C-468/11, [2013], I-527; ECJ *European Commission v. Hungary*, C-462/12, [2013], I-818; see also EC, *Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)*, [2002] OJ, L 108/21, art 12 EC, *Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)*, [2002] OJ, L 108/21, art 12.

<sup>25</sup> Cyril, Lacarrière, “L’État prive France Télévisions de la « taxe Copé »...mais la garde pour lui!, l’Opinion, 24 September 2018, online: <https://www.lopinion.fr/edition/economie/l-etat-prive-france-televisions-taxe-cope-garde-lui-163158> , last accessed on January 3, 2019.

## EU Developments

The original AVMS directive<sup>26</sup> was adopted in 2010. In 2016 a revision process was undertaken and led to several modifications that were adopted in 2018.<sup>27</sup> The most significant modification was that on-demand video service providers were explicitly identified as potential contributors for funding of national or local audiovisual works. This Directive does not identify ISPs as contributors and a review of written submissions filed by interested parties during the consultations period leading to this 2018 revision reveals no pressure from stakeholders in doing so.<sup>28</sup>

### SELECTED CASE STUDIES

The following sections provide an overview of the current regulatory frameworks and requirements for AVMS providers in a selected group of European States as well as in Australia. Specifically, it presents the licensing structure of AVMS providers (as it unavoidably relates to regulatory obligations) and the financing or contribution requirements for national/local (i.e. domestic) audiovisual content and the promotion of the visibility of such content.

### 2- UNITED KINGDOM<sup>29</sup>

The United Kingdom has a unique regime, compared to most EU Member States, for regulatory requirements imposed on AVMS services providers, both for funding contributions of the domestic content and the discoverability measures for it.

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<sup>26</sup> Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive or “AVMS Directive”).

<sup>27</sup> European Parliament legislative resolution of 2 October 2018 on the proposal for a directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, taking into account changing market realities (COM(2016)0287 - C8-0193/2016 - 2016/0151(COD)).

<sup>28</sup> Revised Directive 2010/13/EU on Audiovisual Media Services (AVMSD), online: <https://ec.europa.eu/digital-single-market/en/revision-audiovisual-media-services-directive-avmsd>, last accessed on November 25, 2018.

<sup>29</sup> See e.g.: Nikoltchev, Susanne (dir.), VOD, platforms and OTT: which promotion obligation for European works ?, IRIS Plus 2016-3, Council of Europe, European Audiovisual Observatory, 2016, 56-57; Furmémont, Jean-François (dir.), Mapping of licensing systems for audiovisual media services in EU-28, Council of Europe, European Audiovisual Observatory, 2018, 188-202; *The International Comparative Legal Guide to: Telecoms, Media & Internet – Laws and Regulations 2019*, 12<sup>th</sup> ed., ICLG, online <https://iclg.com/practice-areas/telecoms-media-and-internet-laws-and-regulations/united-kingdom>, last accessed on December 30, 2018.

## Licensing structure

The Office of Communications (“**Ofcom**”) is responsible for monitoring AVMS service providers, including the BBC, the UK’s public broadcaster, in accordance with the *Communications Act 2003*.<sup>30</sup> It has no regulatory powers regarding the content offered by those providers and may only act in accordance within the powers given by Parliament.<sup>31</sup>

Licensing is applicable to digital television programme services provided through a digital terrestrial television multiplex, as defined by the *Broadcasting Act 1996*,<sup>32</sup> and television licensable content services are made available using satellites, a radio multiplex or an electronic communications network (like cable).<sup>33</sup>

Nonlinear AVMS are subject to a notification process to Ofcom if they meet the statutory definition established in section 368A of the *Communications Act 2003*:

“368A Meaning of “on-demand programme service”

(1) For the purposes of this Act, a service is an “on-demand programme service” if—

- (a) its principal purpose is the provision of programmes the form and content of which are comparable to the form and content of programmes normally included in television programme services;
- (b) access to it is on-demand;
- (c) there is a person who has editorial responsibility for it;
- (d) it is made available by that person for use by members of the public; and
- (e) that person is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive. [emphasis added]

(2) Access to a service is on-demand if—

- (a) the service enables the user to view, at a time chosen by the user, programmes selected by the user from among the programmes included in the service; and
- (b) the programmes viewed by the user are received by the user by means of an electronic communications network (whether before or after the user has selected which programmes to view).

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<sup>30</sup> *Communications Act 2003* (UK), c 21.

<sup>31</sup> *Communications Act 2003* (UK), c 21, s 1.

<sup>32</sup> *Broadcasting Act 1996*, c. 55, s 1.

<sup>33</sup> *Communications Act 2003* (UK), c 21, s 232.

- (3) For the purposes of subsection (2)(a), the fact that a programme may be viewed only within a period specified by the provider of the service does not prevent the time at which it is viewed being one chosen by the user.
- (4) A person has editorial responsibility for a service if that person has general control—
- (a) over what programmes are included in the range of programmes offered to users; and
  - (b) over the manner in which the programmes are organised in that range; and the person need not have control of the content of individual programmes or of the broadcasting or distribution of the service (and see section 368R(6)).
- (5) If an on-demand programme service (“the main service”) offers users access to a relevant ancillary service, the relevant ancillary service is to be treated for the purposes of this Part as a part of the main service.
- (6) In subsection (5), “relevant ancillary service” means a service or facility that consists of or gives access to assistance for disabled people in relation to some or all of the programmes included in the main service.”<sup>34</sup>
- (7) In this section “assistance for disabled people” has the same meaning as in Part 3.

## Financing Requirements of National/Local Content

No contribution obligations are currently imposed on AVMS providers. Production of local content is encouraged through creative industry tax reliefs.<sup>35</sup>

## Visibility Requirements

Provisions of the *Communications Act 2003* are generally meant to encourage the broadcasting of independent productions. Where there are requirements, they are imposed on linear service providers only.

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<sup>34</sup> *Communications Act 2003* (UK), c 21, s 368A.

<sup>35</sup> *Films Act 1985* (UK), c. 11. Corporation Tax: Creative industry tax reliefs: <https://www.gov.uk/guidance/corporation-tax-creative-industry-tax-reliefs>, last accessed on December 30, 2018; *The Cultural Test (Television Programmes) Regulations 2013, SI 2013/1831* (specifically, to be eligible the television programme, animation or film must pass a cultural test that is based on a point system. In this system, points are allocated based, among else, on the percent of the production that is set and developed in the UK and the number of characters that are from the UK.).

For example, public service television editors must ensure that a minimum of 25% of the total amount of time allocated to broadcasting is allocated to a range and diversity of independent productions.<sup>36</sup> In the case of digital television programme services, the minimum quota is set at 10%.<sup>37</sup>

Regarding local content, Ofcom must encourage on-demand service providers, to promote production and access to European works.<sup>38</sup> No further obligations or quotas are currently imposed on either linear or nonlinear commercial AVMS providers.

### 3- FRANCE<sup>39</sup>

#### Licensing structure

In France, licensing of commercial AVMS is regulated by the *Conseil supérieur de l'audiovisuel* (“**CSA**”) in application of the Law on Freedom of Communication.<sup>40</sup>

The obligations imposed by the CSA on AVMS vary depending on the transmission technology used (over-the-air (“**OTA**”) BDU or online) and its annual revenues.<sup>41</sup> Digital OTA Television services, and their associated UHF-band frequencies, are respectively licensed and assigned by the CSA, usually after a call for applications followed by a legal agreement between the successful applicant and the CSA. This legal agreement sets forth specific obligations, including mandatory expenses from the AVMS to ensure they contribute to the national audiovisual production industry and broadcast such content.<sup>42</sup> AVMS not transmitted by OTA frequencies must simply notify the CSA of the services that intend to provide. They shall then conclude a legal agreement with the CSA only if their annual revenue is over EUR 150,000.<sup>43</sup> Licensing is clearly not technology neutral, even within the linear services sphere.

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<sup>36</sup> *Communications Act 2003* (UK), c 21, s 277.

<sup>37</sup> *Communications Act 2003* (UK), c 21, s 309.

<sup>38</sup> *Communications Act 2003* (UK), c 21, s 368C.

<sup>39</sup> See e.g.: Nikoltchev, Susanne (dir.), VOD, platforms and OTT: which promotion obligation for European works ?, IRIS Plus 2016-3, Council of Europe, European Audiovisual Observatory, 2016, 54-56; Furmémont, Jean-François (dir.), Mapping of licensing systems for audiovisual media services in EU-28, Council of Europe, European Audiovisual Observatory, 2018, 176-187; *The International Comparative Legal Guide to: Telecoms, Media & Internet – Laws and Regulations 2019*, 12<sup>th</sup> ed., ICLG, online <https://iclg.com/practice-areas/telecoms-media-and-internet-laws-and-regulations/france>, last accessed on December 30, 2018.

<sup>40</sup> *Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard)*, JO, October 1st 1986, 11749, art 22.

<sup>41</sup> *Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard)*, JO, October 1st 1986, 11749, art 25, 28, 29, 29-1, 30-1, 30-5, 30-6.

<sup>42</sup> *Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard)*, JO, October 1st 1986, 11749, art 27 2°.

<sup>43</sup> *Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard)*, JO, October 1st 1986, 11749, art 33, 34.

## Financing Requirements of National/Local Content.

France prioritizes financial contributions for European and French language works and imposes them on linear and nonlinear service providers that are within French jurisdiction. These requirements are mostly determined by three decrees that are applicable respectively to OTA broadcasters,<sup>44</sup> other linear subscription-based broadcaster<sup>45</sup> and on-demand audiovisual media service providers (VOD services).<sup>46</sup> These decrees describe how these contributions must be made, which production companies are eligible under the expenses requirements and what proportion of the total contributions must be invested specifically in movie productions and/or other genres of productions that are in French. Contributions can be invested, at the discretion of the AVMS, either in production copyrights, the promotion of European and French productions or in the purchase of broadcasting rights.<sup>47</sup> The minimum requirement for these contributions is established on a percentage relating to the revenues of the content editor. Depending on the decree, the percentage of this contribution is shared between European works, works that are originally in French and works made in France. In the case of on-demand-services, the percentage varies depending on the number of movie productions made available within 36 or 22 months following their release.<sup>48</sup>

Minimum requirements for contributions dedicated to national audiovisual productions vary depending on the type of content that is generally broadcast by the AVMS. Notwithstanding specific provisions, the percentages specified below are the most common ones generally applicable:

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<sup>44</sup> *Décret n° 2010-747 du 2 juillet 2010 relatif à la contribution à la production d'œuvres cinématographiques et audiovisuelles des services de télévision diffusés par voie hertzienne terrestre*, JO, 3 July 2010, 12098.

<sup>45</sup> *Décret n° 2010-416 du 27 avril 2010 relatif à la contribution cinématographique et audiovisuelle des éditeurs de services de télévision et aux éditeurs de services de radio distribués par les réseaux n'utilisant pas des fréquences assignées par le Conseil supérieur de l'audiovisuel*, JO, 29 April 2010, 7774.

<sup>46</sup> *Décret n° 2010-1379 du 12 novembre 2010 relatif aux services de médias audiovisuels à la demande*, JO, 14 November 2010, 20215.

<sup>47</sup> *Décret n° 2010-1379 du 12 novembre 2010 relatif aux services de médias audiovisuels à la demande*, JO, 14 November 2010, 20215, art 7; *Décret n° 2010-416 du 27 avril 2010 relatif à la contribution cinématographique et audiovisuelle des éditeurs de services de télévision et aux éditeurs de services de radio distribués par les réseaux n'utilisant pas des fréquences assignées par le Conseil supérieur de l'audiovisuel*, art 7, 12; *Décret n° 2010-747 du 2 juillet 2010 relatif à la contribution à la production d'œuvres cinématographiques et audiovisuelles des services de télévision diffusés par voie hertzienne terrestre*, JO, 3 July 2010, 12098, art 4.

<sup>48</sup> *Décret n° 2010-1379 du 12 novembre 2010 relatif aux services de médias audiovisuels à la demande*, JO, 14 November 2010, 20215, art 4.

Type of broadcaster	Contribution
Linear AVMS	<ul style="list-style-type: none"> <li>- 3.2% of net sales revenue of content providers for European movies. Out of this amount, at least 2,5% of net sales revenues must go to French movies.<sup>49</sup></li> <li>- 15% or 14% of net sales revenue of content providers for European audiovisual works, a percentage of which is to be dedicated to French content and production of original works, the percentage varying according to revenue.<sup>50</sup></li> </ul>
On-demand services	<ul style="list-style-type: none"> <li>- Between 15% and 26% of net sales revenues for either European movies or European audiovisual works and between 12% and 22% of these revenues must be dedicated to French content and production of original works. Each percentage varies according to the number of movies that are made available by the service during a specific time period.<sup>51</sup></li> </ul>
Pay-per-view	<ul style="list-style-type: none"> <li>- 15% of annual net revenues generated by movie sales must contribute to European movies, 12 of which must go to French movies.</li> <li>- 15% of annual revenues generated by audiovisual works must contribute to European audiovisual works, including French audiovisual works.<sup>52</sup></li> </ul>

The contribution requirements imposed by legal agreements between the CSA and AVMSs cover only legal entities based in France. In order to mandate contributions from entities under the

<sup>49</sup> *Décret n° 2010-747 du 2 juillet 2010 relatif à la contribution à la production d'œuvres cinématographiques et audiovisuelles des services de télévision diffusés par voie hertzienne terrestre*, JO, 3 July 2010, 12098, art 3; *Décret n° 2010-416 du 27 avril 2010 relatif à la contribution cinématographique et audiovisuelle des éditeurs de services de télévision et aux éditeurs de services de radio distribués par les réseaux n'utilisant pas des fréquences assignées par le Conseil supérieur de l'audiovisuel*, JO, 29 April 2010, 7774, art 6.

<sup>50</sup> *Décret n° 2010-747 du 2 juillet 2010 relatif à la contribution à la production d'œuvres cinématographiques et audiovisuelles des services de télévision diffusés par voie hertzienne terrestre*, art 9 to 11; *Décret n° 2010-416 du 27 avril 2010 relatif à la contribution cinématographique et audiovisuelle des éditeurs de services de télévision et aux éditeurs de services de radio distribués par les réseaux n'utilisant pas des fréquences assignées par le Conseil supérieur de l'audiovisuel*, JO, 29 April 2010, 7774, art 11.

<sup>51</sup> *Décret n° 2010-1379 du 12 novembre 2010 relatif aux services de médias audiovisuels à la demande*, JO, 14 November 2010, 20215, art 4.

<sup>52</sup> *Décret n° 2010-1379 du 12 novembre 2010 relatif aux services de médias audiovisuels à la demande*, JO, 14 November 2010, 20215, art 5.

jurisdiction of other EU Member States,<sup>53</sup> France relies on its tax laws, and does so in compliance with the EU's AVMS Directive. These laws not only impose contribution obligations on other EU Member States; they also applied to non-European AVMS providers.

Hence, in addition to the above-mentioned financial contributions, France levies a 2% tax on revenues made in France of on-demand audiovisual services, the proceeds of which are allocated to the *Centre national du cinéma et de l'image animée*.<sup>54</sup> A similar tax is applicable to television content providers and broadcasters.<sup>55</sup> This tax is technologically neutral and makes no distinction between foreign and domestic on-demand audiovisual services.

### Visibility Requirements for National/Local Content

By law, the CSA must regulate OTA AVMS to ensure that 60% of broadcasting time, is allocated to European works and 40% to original French-Language productions specifically during prime time.<sup>56</sup> Furthermore, regulations provide that the main webpage of an on-demand AVMS provider must prominently feature European or French productions.<sup>57</sup>

## 4- GERMANY<sup>58</sup>

### Licensing structure

In Germany, licensing of linear commercial AVMS is regulated by 14 different state media authorities ("Landesmedienanstalten") that are responsible for the licensing and surveillance of radio and television broadcasters. Cooperation and uniformity between regulations of the federated states to achieve national harmonization were deemed essential by the federal government. This cooperation is achieved through four central commissions (each with a specific

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<sup>53</sup> Jurisdiction being established according to the *European Convention of Transfrontier Television*.

<sup>54</sup> *Code général des impôts* art 1609 sexdecies B.

<sup>55</sup> *Code du cinéma et de l'image animée* art L115-6.

<sup>56</sup> *Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard)*, JO, October 1st 1986, 11749, art 28 2°; *Décret n°90-66 du 17 janvier 1990 pris pour l'application de la loi n° 86-1067 du 30 septembre 1986 et fixant les principes généraux concernant la diffusion des oeuvres cinématographiques et audiovisuelles par les éditeurs de services de télévision*, JO, 18 January 1990, 757, art 7-9.; *Décret n° 2010-1379 du 12 novembre 2010 relatif aux services de médias audiovisuels à la demande*, JO, 14 November 2010, 20215, art 12.

<sup>57</sup> *Décret n° 2010-1379 du 12 novembre 2010 relatif aux services de médias audiovisuels à la demande*, JO, 14 November 2010, 20215, art 13.

<sup>58</sup> See e.g.: Nikoltchev, Susanne (dir.), VOD, platforms and OTT: which promotion obligation for European works ?, IRIS Plus 2016-3, Council of Europe, European Audiovisual Observatory, 2016, 51-52; Furmémont, Jean-François (dir.), Mapping of licensing systems for audiovisual media services in EU-28, Council of Europe, European Audiovisual Observatory, 2018, 125-135; *The International Comparative Legal Guide to: Telecoms, Media & Internet – Laws and Regulations 2019*, 12<sup>th</sup> ed., ICLG, online <https://iclg.com/practice-areas/telecoms-media-and-internet-laws-and-regulations/germany>, last accessed on December 30, 2018.

mission) which are in turn regulated by the Interstate Broadcasting agreement (“Rundfunkstaatsvertrag”).

Most notably, the Commission on Licensing and Supervision (Kommission für Zulassung und Aufsicht, ZAK) monitors nationwide commercial broadcasters and their licensing. Nationwide AVMS providers are subject to ZAK licensing specifically while regional and local AVMS can be licensed on a state level only.<sup>59</sup> Licensing is technologically neutral.

Commercial nonlinear AVMS are not subject to a licensing process and therefore benefit from a no entry-barrier market, with no obligation to notify their existence.<sup>60</sup>

### **Financing Requirements of National/Local Content**

The *Film Promotion Act* (“Filmförderungsgesetz”) regulates the funding and support for film on a national level. It is financed by a special tax imposed on undertakings in the movie and audiovisual industry, including the broadcasting sector. This tax is used for the support of domestic film production and distribution<sup>61</sup> and is imposed on distributors and providers of on-demand audiovisual services with net annual revenues of over EUR 500,000 in Germany,<sup>62</sup> and also on state-level public broadcasters. State-level public broadcasters pay a film tax of 3% of their costs of acquisition.<sup>63</sup>

Providers of video on-demand services must pay a film tax that ranges between 1.8% and 2.3% of annual gross revenues.<sup>64</sup> This film tax is applicable whether the distributor or provider is established in Germany or elsewhere, but only to the extent that the revenue is not subject to a comparable tax in its country of origin. The legality of this aid scheme was challenged by Netflix, which contended that the German film tax impinged on the EU’s “country of origin” principle and violated state aid rules. However, Netflix was rebuffed twice, by the European Commission and the European Court of Justice, which found that the film tax was compatible with the European Union’s internal market policies and did not discriminate between local and foreign service providers.<sup>65</sup>

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<sup>59</sup> *Interstate Treaty on Broadcasting and Telemedia*, art 20, 20A, 36, online : [https://www.die-medienanstalten.de/fileadmin/user\\_upload/Rechtsgrundlagen/Gesetze\\_Staatsvertraege/Rundfunkstaatsvertrag\\_RStV\\_20\\_english\\_version.pdf](https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/Rundfunkstaatsvertrag_RStV_20_english_version.pdf), last accessed on January 2, 2019; see also The Media Authorities, online: <https://www.die-medienanstalten.de/en/about-the-media-authorities/>, last accessed on December 31, 2018.

<sup>60</sup> *Mapping of licensing systems for audiovisual media services in EU-28*, Council of Europe, European Audiovisual Observatory, 2018, 129.

<sup>61</sup> *Gesetz über Maßnahmen zur Förderung des deutschen Films*, art 159.

<sup>62</sup> *Gesetz über Maßnahmen zur Förderung des deutschen Films*, art 153.

<sup>63</sup> *Gesetz über Maßnahmen zur Förderung des deutschen Films*, art 154.

<sup>64</sup> *Gesetz über Maßnahmen zur Förderung des deutschen Films*, art 153.

<sup>65</sup> See EC, *Commission Decision No. 2016/2042 of 1 September 2016 on the aid scheme SA.38418 — 2014/C (ex 2014/N) which Germany is planning to implement for the funding of film production and distribution*, [2016] OJ, L. 314/63; *Netflix v. European Commission*, Case T-818/16, [2018], ECLI:EU:T:2018:274.

## Visibility Requirements for National/Local Content

Visibility requirements for German and European content are on par with what is permitted by applicable EU AVMS directives. The *Interstate Broadcasting Agreement* specifies that television broadcasters and German channels should reserve a majority of proportion of time to the transmission of feature films, films made for televisions, series, documentaries and comparable production overall for European productions.<sup>66</sup> No specific percentage level is imposed specifically for German content.

### 5- BELGIUM (FR) <sup>67</sup>

Since the federalization of the Belgian State in 1971, the federated entities, respectively the French, Flemish and German-speaking Communities, have been awarded the ability, within their jurisdiction, to regulate the content of the audiovisual media distribution sector.

Telecommunications are within the jurisdiction of the Federal State. The Belgian Institute for Postal services and Telecommunications (“**BIPT**”) is the national telecommunications regulator and manages the electronic spectrum of radio frequencies that are delegated to these three Communities.

Since telecommunication policies and regulations regarding AVMS regularly overlap both levels of government, a cooperation agreement was entered into between the communities, the Federal State, and their respective agencies on November 17, 2006, so as to better coordinate their shared regulatory responsibilities.<sup>68</sup> Based on this agreement, the Conference of the Electronic Communications Sector was instated as a permanent administrative body to monitor decisions taken by each community’s regulatory agency.<sup>69</sup>

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<sup>66</sup> *Interstate Treaty on Broadcasting and Telemedia*, art 6, 7.

<sup>67</sup> See e.g. Nikoltchev, Susanne (dir.), VOD, platforms and OTT: which promotion obligation for European works ?, IRIS Plus 2016-3, Council of Europe, European Audiovisual Observatory, 2016, 49-50; Furmémont, Jean-François (dir.), Mapping of licensing systems for audiovisual media services in EU-28, Council of Europe, European Audiovisual Observatory, 2018, 70-78; *The International Comparative Legal Guide to: Telecoms, Media & Internet – Laws and Regulations 2019*, 12<sup>th</sup> ed., ICLG, online <https://iclg.com/practice-areas/telecoms-media-and-internet-laws-and-regulations/belgium>, last accessed on December 30, 2018.

<sup>68</sup> *Accord de coopération du 17 novembre 2006 entre l'Etat fédéral, la Communauté flamande, la Communauté française et la Communauté germanophone relatif à la consultation mutuelle lors de l'élaboration d'une législation en matière de réseaux de communications électroniques, lors de l'échange d'informations et lors de l'exercice des compétences en matière de réseaux de communications électroniques par les autorités de régulation en charge des télécommunications ou de la radiodiffusion et la télévision*, art 1, online : [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=2006111740&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2006111740&table_name=loi), last accessed on January 2, 2019.

<sup>69</sup> *Accord de coopération du 17 novembre 2006 entre l'Etat fédéral, la Communauté flamande, la Communauté française et la Communauté germanophone relatif à la consultation mutuelle lors de*

The findings presented in this section relate only to the French Community of Belgium.

In the French Community, the *Conseil Supérieur de l'Audiovisuel* (“**CSA**”) is the designated regulator and ensures compliance of all AVMS providers.<sup>70</sup> Pursuant to the terms of a government decree, the CSA has competence over any content provider that is established in the French region or in the Brussels-Capital region when its activities are exclusively attached to the French community.<sup>71</sup>

### **Licensing Structure**

Unless they intend to use an over-the-air analogue or digital frequency, AVMS content providers do not require any authorization or licence from BIPT nor CSA; they must only send a declaration to the CSA before commencing activities.<sup>72</sup>

### **Financing Requirements of National/Local Content**

Both television content editors and broadcasters, be it through linear or nonlinear means, must contribute to the production of local audiovisual works. This contribution can be made through coproduction or the pre-purchase of audiovisual productions, or by transferring all of the mandatory financial contribution to the *Centre du Cinéma et de l'Audiovisuel*, a governmental body that supports and promotes local audiovisual works.<sup>73</sup> If the provider chooses to contribute to local production of an audiovisual work or to pre-purchase a locally produced work, an ad hoc committee is formed by the Community Government to ensure that the undertaking is accomplished.<sup>74</sup> The Government must also ensure that such a contribution, if authorized, generates economic benefits for the community that are comparable to the sum invested.

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*l'élaboration d'une législation en matière de réseaux de communications électroniques, lors de l'échange d'informations et lors de l'exercice des compétences en matière de réseaux de communications électroniques par les autorités de régulation en charge des télécommunications ou de la radiodiffusion et la télévision*, art 3, online :

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=2006111740&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2006111740&table_name=loi), last accessed on January 2, 2019.

<sup>70</sup> *Mapping of licensing systems for audiovisual media services in EU-28*, Council of Europe, European Audiovisual Observatory, 2018, p. 70.

<sup>71</sup> *Décret coordonné sur les services de médias audiovisuels (Consolidated)*, art 2, online : <http://www.csa.be/documents/2882>, last accessed on December 30, 2018.

<sup>72</sup> *Décret coordonné sur les services de médias audiovisuels (Consolidated)*, art 38, 100, online : <http://www.csa.be/documents/2882>, last accessed on December 30, 2018.

<sup>73</sup> See Centre du cinéma, online : [http://www.audiovisuel.cfwb.be/index.php?id=avm\\_cinema](http://www.audiovisuel.cfwb.be/index.php?id=avm_cinema), last accessed on December 31, 2018.

<sup>74</sup> *Décret coordonné sur les services de médias audiovisuels (Consolidated)*, art 41, 80, online : <http://www.csa.be/documents/2882>, last accessed on December 30, 2018.

For content editors,<sup>75</sup> the amount that must be invested or paid depends on annual net revenues:

- between EUR 300,000 and EUR 5 million: 1.4% of the content editor's annual revenues;
- between EUR 5 and EUR 10 million: 1.6% of the content editor's annual revenues;
- between EUR 10 and EUR 15 million: 1.8% of the content editor's annual revenues;
- between EUR 15 and EUR 20 million: 2% of the content editor's annual revenues;
- above EUR 20 million: 2.2% of the content editor's annual revenues.<sup>76</sup>

For broadcasting distributors, this amount is either:

- EUR 2 for each of the previous year's subscribers;
- 2.5% of the broadcaster's annual revenues.<sup>77</sup>

Broadcasting distributors not only must provide a contribution to the *Centre du Cinéma et de l'Audiovisuel*, they also must compensate directly each local TV stations included in its product offering.<sup>78</sup> The amount of compensation is either:

- EUR 2 for each of the previous year's subscribers located within the coverage area of said TV local station;
- 2.5% of the distributor's previous year's annual revenues generated by subscribers located within the coverage area of said TV local station;

To develop and encourage even further audiovisual productions within its territory, the French Community has also founded a government-funded investment company, Wallimage, in 2001.<sup>79</sup>

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<sup>75</sup> *Décret coordonné sur les services de médias audiovisuels (Consolidated)*, art 1(16), online : <http://www.csa.be/documents/2882>, last accessed on December 30, 2018 (The content editor being « the person that assumes the editorial responsibility for the content of the media service and established how it will be organized», hence it includes BDUs as well as broadcasters).

<sup>76</sup> *Décret coordonné sur les services de médias audiovisuels (Consolidated)*, art 41, online : <http://www.csa.be/documents/2882>, last accessed on December 30, 2018.

<sup>77</sup> *Décret coordonné sur les services de médias audiovisuels (Consolidated)*, art 80, online : <http://www.csa.be/documents/2882>, last accessed on December 30, 2018.

<sup>78</sup> *Décret coordonné sur les services de médias audiovisuels (Consolidated)*, art 81, online : <http://www.csa.be/documents/2882>, last accessed on December 30, 2018.

<sup>79</sup> See *Tout savoir sur Wallimage*, online : <https://www.wallimage.be/fr/news/1353>, last accessed on December 30, 2018; *Règlement Wallimage*, online :

## Visibility Requirements for National/Local Content

The *Décret coordonné sur les services de médias audiovisuels*<sup>80</sup> provides that linear audiovisual content editors must ensure that:

- 20% of broadcasting time, excluding the airtime for sports events, games, publicity, self-promotions or teleshopping is dedicated to content that was produced in French;
- Most programmes are shown in French.<sup>81</sup>
- A majority of programmes are produced in Europe or within the French Community.
- 10% of broadcasting time is reserved for productions from independent producers of the French Community.<sup>82</sup>

At the time of this review, article 46 of the French-speaking Media Decree specifies that nonlinear television content providers must prominently feature European productions in their catalogue, especially productions created by authors from the French-speaking community. However, there is no minimum quota regarding the availability of this content on nonlinear services.<sup>83</sup>

## 6- ITALY<sup>84</sup>

### Licensing structure

The Italian audiovisual market is regulated by both the Ministry of Economic Development, “*Ministero dello Sviluppo Economico*” and the regulatory authority “*Autorità per le garanzie nelle comunicazioni*” (“**AGCOM**”), compliance of AVMS providers being supervised by the latter.<sup>85</sup>

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[https://cms.wallimage.net/sites/default/files/downloads/reglement2019\\_fr.pdf](https://cms.wallimage.net/sites/default/files/downloads/reglement2019_fr.pdf), last accessed on December 31, 2018.

<sup>80</sup> *Décret coordonné sur les services de médias audiovisuels (Consolidated)*, online :

<http://www.csa.be/documents/2882>, last accessed on December 30, 2018.

<sup>81</sup> *Décret coordonné sur les services de médias audiovisuels (Consolidated)*, art 43, online :

<http://www.csa.be/documents/2882>, last accessed on December 30, 2018.

<sup>82</sup> *Décret coordonné sur les services de médias audiovisuels (Consolidated)*, art 44, online :

<http://www.csa.be/documents/2882>, last accessed on December 30, 2018.

<sup>83</sup> *Décret coordonné sur les services de médias audiovisuels (Consolidated)*, art 46, online :

<http://www.csa.be/documents/2882>, last accessed on December 30, 2018.

<sup>84</sup> See e.g. Nikoltchev, Susanne (dir.), VOD, platforms and OTT: which promotion obligation for European works ?, IRIS Plus 2016-3, Council of Europe, European Audiovisual Observatory, 2016, 58-60; Furmémont, Jean-François (dir.), Mapping of licensing systems for audiovisual media services in EU-28, Council of Europe, European Audiovisual Observatory, 2018, 248-259; *The International Comparative Legal Guide to: Telecoms, Media & Internet – Laws and Regulations 2019*, 12<sup>th</sup> ed., ICLG, online <https://iclg.com/practice-areas/telecoms-media-and-internet-laws-and-regulations/italy>, last accessed on December 30, 2018.

<sup>85</sup> See Resolution N°353/11/CONS on digital terrestrial television, online :

[https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_Is3TZI](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_Is3TZI)

Licensing is imposed on commercial service linear AVMS, while nonlinear AVMS must only notify AGCOM when services are made available in accordance with AGCOM Resolution N°607/10/CONS.<sup>86</sup> AGCOM has thirty days to stop the service if notification does not meet legal requirements.

Obligations regarding European and Italian content visibility and financing have been recently implemented in Italian legislation via Legislative Decree N°204 of 7 December 2017.<sup>87</sup>

### Financing Requirements of National/Local Content

In accordance with article 44(3) of Legislative Decree N° 177,<sup>88</sup> as recently amended by the Legislative Decree N°204 of 7 December 2017:

*broadcasters, including pay-per-view providers, must, whether or not scrambling their transmissions, also reserve 10 percent of their net revenues deriving from the*

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Resolution N°127/00/CONS on cable and satellite licensing, online :

[https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_Is3TZlzsK0hm&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=1&\\_101\\_INSTANCE\\_Is3TZlzsK0hm\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_Is3TZlzsK0hm\\_assetEntryId=707528&\\_101\\_INSTANCE\\_Is3TZlzsK0hm\\_type=document](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_Is3TZlzsK0hm&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_Is3TZlzsK0hm_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_Is3TZlzsK0hm_assetEntryId=707528&_101_INSTANCE_Is3TZlzsK0hm_type=document), last accessed on January 2, 2019;

Resolution N°606/10/CONS regarding licensing of other platforms (Internet Protocol television (“IPTV”) and OTT), online :

[https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_Is3TZlzsK0hm&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=1&\\_101\\_INSTANCE\\_Is3TZlzsK0hm\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_Is3TZlzsK0hm\\_assetEntryId=686964&\\_101\\_INSTANCE\\_Is3TZlzsK0hm\\_type=document](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_Is3TZlzsK0hm&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_Is3TZlzsK0hm_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_Is3TZlzsK0hm_assetEntryId=686964&_101_INSTANCE_Is3TZlzsK0hm_type=document), last accessed on January 2, 2019.

<sup>86</sup> See Resolution N°607/10/CONS regarding on-demand audiovisual services, online :

[https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_Is3TZlzsK0hm&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=1&\\_101\\_INSTANCE\\_Is3TZlzsK0hm\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_Is3TZlzsK0hm\\_assetEntryId=854396&\\_101\\_INSTANCE\\_Is3TZlzsK0hm\\_type=document](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_Is3TZlzsK0hm&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_Is3TZlzsK0hm_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_Is3TZlzsK0hm_assetEntryId=854396&_101_INSTANCE_Is3TZlzsK0hm_type=document), last accessed on January 2, 2019.

<sup>87</sup> *Riforma delle disposizioni legislative in materia di promozione delle opere europee e italiane da parte dei fornitori di servizi di media audiovisivi, a norma dell'articolo 34 della legge 14 novembre 2016, n. 220. (17G00219) (GU Serie Generale n.301 del 28-12-2017)*, online :

<http://www.gazzettaufficiale.it/eli/id/2017/12/28/17G00219/sg>, last accessed on January 2, 2019; see also Apa, Ernesto and Marco Bassini, *New legislation on promotion of European and Italian works by audiovisual media service providers released by the Italian Government*, OE, IRIS Newsletter 2018-2, 19, online: <https://merlin.obs.coe.int/iris/2018/2/article23.en.html>, last accessed on December 28, 2018.

<sup>88</sup> Legislative Decree N°177 of 31 July 2005, online: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177:vig> , last accessed on January 10, 2019.

*advertising, teleshopping, sponsorship, private and public contributions' and pay-TV offerings for non-sporting events for which it is the editor for the production, financing, pre-purchase and purchase of audiovisual programmes of European independent producers.*<sup>89</sup>

This percentage will reach 15% in 2020. A sub-quota for Italian works is currently set at 3.2% and will be set at 4% in 2020.

Regarding on-demand service providers, 20% of their annual net revenues will have to be invested in EU works, half of it being allocated for Italian works.<sup>90</sup> Nonetheless:

*"VOD providers will be free to decide whether to adopt technical and/or editorial measures aimed at giving prominence to European works. VOD providers who implement such measures will benefit from a reduction up to 20% of the relevant quotas (either content or investment quotas, depending on the choice of the provider). AGCOM Decision No. 149/15/CONS, adopted by means of co-regulation procedures, sets forth such measures and the relevant reduction percentage linked to each measure".*<sup>91</sup>

Starting January 2019, this quota will be binding to service providers even if they are based outside of the EU.<sup>92</sup>

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<sup>89</sup> See Nachman, Ariel and Paolo Guarneri, *Telecom and Media: Italy*, July 2018, online: <https://gettingthedealthrough.com/area/39/jurisdiction/15/telecoms-media-italy/>, last accessed on December 28, 2018; see also Apa, Ernesto and Marco Bassini, *New legislation on promotion of European and Italian works by audiovisual media service providers released by the Italian Government*, OE, IRIS Newsletter 2018-2 and Apa, Ernesto and Portolano Cavallo, *Three new pieces of legislation on cinema and audiovisual media services*, OE, IRIS Newsletter 2017-10.

<sup>90</sup> See Resolution no. 353/11 / CONS of June 22, 2011 concerning terrestrial television broadcasting in digital technology, online: [https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_Is3TZIzsK0hm&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=1&\\_101\\_INSTANCE\\_Is3TZIzsK0hm\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_Is3TZIzsK0hm\\_assetEntryId=831440&\\_101\\_INSTANCE\\_Is3TZIzsK0hm\\_type=document](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_Is3TZIzsK0hm&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_Is3TZIzsK0hm_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_Is3TZIzsK0hm_assetEntryId=831440&_101_INSTANCE_Is3TZIzsK0hm_type=document), last accessed on December 28, 2018.

<sup>91</sup> Nikoltchev, Susanne (dir.), *VOD, platforms and OTT: which promotion obligation for European works ?*, IRIS Plus 2016-3, Council of Europe, European Audiovisual Observatory, 2016, 59; see also: AGCOM Decision No. 149/15/CONS

<sup>92</sup> *Riforma delle disposizioni legislative in materia di promozione delle opere europee e italiane da parte dei fornitori di servizi di media audiovisivi, a norma dell'articolo 34 della legge 14 novembre 2016*, n. 220. (17G00219) (GU Serie Generale n.301 del 28-12-2017), online :

<http://www.gazzettaufficiale.it/eli/id/2017/12/28/17G00219/sq>, last accessed on January 2, 2019; see also: Apa, Ernesto and Marco Bassini, *New legislation on promotion of European and Italian works by audiovisual media service providers released by the Italian Government*, OE, IRIS Newsletter 2018-2, 19; <https://merlin.obs.coe.int/iris/2018/2/article23.en.html>, last accessed on December 28, 2018.

AVMS providers may nonetheless apply with AGCOM to be exempt from these quotas if the thematic genre of the programming schedule or catalogue does not match what is provided by European producers or if they have not made any profits in each of their last two years of operation.<sup>93</sup>

### Visibility Requirements for National/Local Content

Article 44(4) of Legislative Decree N° 177<sup>94</sup> specifies that on-demand services must promote the production of European works and access to such works. Article 44(7) of the same decree enables AGCOM to regulate said promotion, as well as the financial contribution of on-demand services to the production and rights acquisition of European works.

Since the adoption of Legislative Decree N°204 on 7 December 2017, national broadcasters and on-demand service providers are subject to quotas. In the case of national broadcasters, quotas for European works must represent 50.01% of the broadcast content. This quota will increase to 60% starting in 2021, a third of which must be Italian works for private broadcasters.<sup>95</sup> When it comes to on-demand service providers, 30% of the catalogue will have to include European works of the last five years, half of which must be Italian.<sup>96</sup>

## 7- AUSTRALIA<sup>97</sup>

### Licensing structure

In Australia, commercial AVMS are regulated by 2 distinct authorities: the Australian Communication and Media Authority (“ACMA”) and the Australian Competition & Consumer Commission (“ACCC”).

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<sup>93</sup> Apa, Ernesto and Donato Cordone, *Three new pieces of legislation implementing Franceschini Act on cinema and audiovisual media services*, Media Laws, 2018-1, 479; <http://www.medialaws.eu/three-new-pieces-of-legislation-implementing-franceschini-act-on-cinema-and-audiovisual-media-services/>, last accessed on December 28, 2018.

<sup>94</sup> Legislative Decree N°177 of 31 July 2005, online: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177!vig>, last accessed on January 10, 2019.

<sup>95</sup> Apa, Ernesto and Portolano Cavallo, *Three new pieces of legislation on cinema and audiovisual media services*, OE, IRIS Newsletter 2017-10, 24.

<sup>96</sup> [https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_Is3TZlzsK0hm&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=1&\\_101\\_INSTANCE\\_Is3TZlzsK0hm\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_Is3TZlzsK0hm\\_assetEntryId=831440&\\_101\\_INSTANCE\\_Is3TZlzsK0hm\\_type=document](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_Is3TZlzsK0hm&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_Is3TZlzsK0hm_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_Is3TZlzsK0hm_assetEntryId=831440&_101_INSTANCE_Is3TZlzsK0hm_type=document), last accessed on December 28, 2018.

<sup>97</sup> See e.g. *Digital Platforms Inquiry – Preliminary Report*, ACCC, December 2018; <https://www.accc.gov.au/focus-areas/inquiries/digital-platforms-inquiry>; *The International Comparative Legal Guide to: Telecoms, Media & Internet – Laws and Regulations 2019*, 12<sup>th</sup> ed., ICLG, online <https://iclg.com/practice-areas/telecoms-media-and-internet-laws-and-regulations/australia>, last accessed on December 30, 2018.

ACMA licenses over-the-air television services and regulates the requirements for local content, specifically news and information, and also national production content. It also regulates subscription television, linear and nonlinear services. The applicable legislation is the *Broadcasting Act*.<sup>98</sup>

The ACCC “*is responsible for the economic regulation of the communications sector, including telecommunications and the National Broadband Network (NBN), broadcasting and content sectors*”.<sup>99</sup> There are numerous statutes which empowers the ACCC, the most relevant one for the communication sector being the *Competition and Consumer Act 2010*.<sup>100</sup>

Both ACMA’s and ACCC’s actions involve a number of protective measures, such as regulating advertising, preventing copyright infringements, consumer protection and development of programmes.<sup>101</sup>

Licence conditions are designed to prohibit unwanted behaviour, while a system of industry-developed codes of practice provides for the programming standards. ACMA ensures that these standards, which are under the responsibility of TV stations, reflect those of the community they serve.<sup>102</sup>

### **Financing Requirements of National/Local Content**

While “*Australian content (including Australian content in advertising) on commercial television is regulated by compulsory standards determined by the ACMA [...] and subscription television (ie Pay TV) drama channels are also regulated by a compulsory standard requiring expenditure on minimum amounts of Australian drama programs*”,<sup>103</sup> minimum quotas for local content and news are imposed on OTA broadcasters through licence conditions.<sup>104</sup>

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<sup>98</sup> *Broadcasting Services Act 1992*, (Cth) No. 110, 1992.

<sup>99</sup> Online: <https://www.accc.gov.au/regulated-infrastructure/communications/accc-role-in-communications> , last accessed on December 31, 2018.

<sup>100</sup> See <https://www.accc.gov.au/regulated-infrastructure/communications/broadcasting-content> , last accessed on December 31, 2018; see also *Competition and Consumer Act 2010*, (Cth) No. 51, 1974.

<sup>101</sup> See e.g. <https://www.acma.gov.au/Industry/Broadcast/Television/TV-content-regulation/tv-content-regulation> , last accessed on December 31, 2018.

<sup>102</sup> See *Broadcasting Services Act 1992*, (Cth) No. 110, 1992; see also online: <https://www.acma.gov.au/Industry/Broadcast/Television/TV-content-regulation/tv-content-regulation> , last accessed on December 31, 2018.

<sup>103</sup> Online: <https://www.acma.gov.au/Industry/Broadcast/Television/TV-content-regulation/tv-content-regulation> , last accessed on December 31, 2018; see also Park, S., Davis, C.H., Papandrea, F., & Picard, R.G. (2015). *Domestic Content Policies in the Broadband Age: A Four-Country Analysis*. Canberra: News & Media Research Centre, University of Canberra, 13-18.

<sup>104</sup> The requirement is not amount specific, it rather lists a series of principles to be respected; see *Broadcasting Services Act 1992*, (Cth) No. 110, 1992, schedule 3; ACMA, Fact Sheet 116 (FS-116) *New licence conditions imposed on regional commercial television broadcasters*, January 2010; see also online: <https://www.acma.gov.au/Home/theACMA/local-content-conditions-on-regional-commercial-television-broadcasters> , last accessed on December 31, 2018.

Hence, the Australian and local content and programming are mainly funded by the linear AVMS providers.<sup>105</sup>

In 2008, the Commonwealth of Australia created a corporate body, Screen Australia, with a mission to support and promote the development of Australian screen production.<sup>106</sup> To accomplish its mission, Screen Australia receives a Parliament appropriation.<sup>107</sup> It may also, in the performance of its functions, accept gifts, devise, bequests and assignments.

Australia's broadcasting and telecommunications legislative and regulatory frameworks do not tax ISPs to fund the production of domestic audiovisual content.

### Visibility Requirements for National/Local Content

Visibility requirements are imposed on linear AVMS providers, local over-the-air commercial broadcasters as well as a subscription-based services (Pay TV). Some of those requirements are agreed upon between the industry and ACMA and result in the establishment of mandatory industry codes.

More specifically, *“the [Broadcasting Service Act] requires all commercial free-to-air television licensees to broadcast an annual minimum transmission quota of 55 percent Australian programming between 6am and midnight on their primary channel. They are also required to provide during the same time at least 1460 hours of Australian programming on their non-primary channels.”*<sup>108</sup>

*“The current Australian Content Standard 2016 [which] came into effect on 31 March 2016, [...] sets out specific minimum annual sub-quotas for Australian drama, documentary and children's programs that all commercial free-to-air television licensees must broadcast.”*<sup>109</sup>

Nonlinear AVMS providers, either Australian or foreign, have no such nor similar obligations.<sup>110</sup> The ACCC is currently examining the impact of digital platforms on *“the supply of news and journalistic content and the implications of this for media content creators, advertisers and consumers”*,<sup>111</sup> and will issue its final recommendations in June 2019.

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<sup>105</sup> See Submission by Free TV Australia, Digital Platforms Inquiry Australian Competition & Consumer Commission, April 2018, online: <https://www.accc.gov.au/focus-areas/inquiries/digital-platforms-inquiry/submissions>.

<sup>106</sup> *Screen Australia Act 2008*, (Cth) No. 12, 2008, s 6.

<sup>107</sup> *Screen Australia Act 2008*, (Cth) No. 12, 2008, s 39.

<sup>108</sup> Online: <https://www.acma.gov.au/Industry/Broadcast/Television/Australian-content/australian-content-television>, last accessed on December 31, 2018; see also *Broadcasting Services Act 1992*, (Cth) No. 110, 1992, s 121G.

<sup>109</sup> Online: <https://www.acma.gov.au/Industry/Broadcast/Television/Australian-content/australian-content-television>, last accessed on December 31, 2018; see also *Broadcasting Services (Australian Content) Standard 2016*, made under subsection 122(1) of the *Broadcasting Services Act 1992*.

<sup>110</sup> *Digital Platforms Inquiry – Preliminary Report*, ACCC, December 2018, 134; online: <https://www.accc.gov.au/focus-areas/inquiries/digital-platforms-inquiry>, last accessed on December 31, 2018.

<sup>111</sup> *Digital Platforms Inquiry*, online: <https://www.accc.gov.au/focus-areas/inquiries/digital-platforms-inquiry>, last accessed on December 31, 2018.

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## **APPENDIX**

### **Biography of Suzanne Lamarre**

Suzanne Lamarre joined Therrien Couture following 25 years of dedicated work in broadcasting and telecommunications in the public sector. Her work focuses on the areas of telecommunications, radiocommunications and broadcasting law where she acts as a strategic advisor on regulatory and governmental matters at both the national and international level. Her work in this capacity includes preparing submissions and appearing before the CRTC, the Ministry of Innovation, Science and Economic Development of Canada and the International Telecommunications Union.

Her practice includes the areas of public international law as well as professional conduct and ethics. Since December 2007, she serves as a member of the Disciplinary Council of the Ordre des ingénieurs du Québec and, since 2015, she is a member of the Board of Governors of the Bureau du cinéma et de la télévision du Québec. In 2017, she was appointed as a member of Télé-Québec's Board of Directors since August 2018 she has been Chair of its Governance and Ethics Committee. She served as Commissioner (Quebec Region) on the Canadian Radio-television and Telecommunications Commission (CRTC) from 2008 to 2013.

In the academic realm, Suzanne gives seminars about telecommunications policy, including international rules and best practices recommended by the World Trade Organization (WTO), to representatives of telecommunication carriers and regulatory organizations outside of Canada.

Quebec Bar Admission 2005  
Ordre des Ingénieurs du Québec member – since 1989  
Professional Engineers of Ontario member – since 2014

Law Degree (LL.B.), Université de Montréal (2004)  
Electrical Engineering Degree, Université de Sherbrooke (1986)