

THE EURALVA NEWSLETTER

News from the European Alliance of Listeners' and Viewers' Associations

April 2010

From the Editor

Dear Reader,

This is the fourth edition of the EURALVA newsletter. Welcome to our readers!

We begin this issue with information about how the AVMS Directive has been approved by the Spanish Parliament. In future editions, we hope to inform you about how this important European legislation has been received also in other EU member countries.

Just here, before the General Election in UK, you can also read about the actual situation for television broadcasting in the UK where the BBC has announced a Strategy Review- where, for the first time ever, it has said it want to make itself smaller!

Many commercial TV stations are officially established in the UK, and sending programmes to other EU member States, so they can take advantage of the UK's advertising rules. In this edition there is an article about how Danish listeners' and viewers' organizations try to stop that traffic for two Danish commercial TV channels.

Finally, we include a book review about two new interesting publications from the European Audiovisual Observatory, of which EURALVA is member of its Advisory Committee. .

You will receive the next edition of the newsletter in August-September, and it will include the programme for the EURALVA Conference, which will be held in Barcelona in October.

If you have any comments or suggestions for the content of the newsletter, please contact me by e-mail: prebensorensen@bbsyd.dk

Preben Sørensen

President of EURALVA

The General Law on Audiovisual Communication in Spain

The Spanish Parliament approved the New General Law of Audiovisual Communications. in March 2010.

This new law had been demanded by the audiovisual sector and by the consumers associations and had been discussed in the Spanish Parliament on various occasions during the last six years before finally being approved. The Law sets out several rules on content and mode of operation for the players in the sector. In fact, these rules have already been adopted by broadcasters to a certain extent, although they were not previously included in a general law, even though they could already be found in several rules and standards).

The law also creates a new supervisory body, the *Consejo Estatal de Medios Audiovisuales* (National Council for Audiovisual Media). Regulatory bodies with similar functions already exist in some Autonomous Communities. It is not yet clear, therefore, how, in practice, the regulatory responsibilities will be divided between these various bodies.

The Law has a chapter entitled Basic Rules for Audiovisual Communications, which sets out the rights both of consumers and of audiovisual media service providers. It establishes a body of rules concerning programme sponsorship, advertising and product placement. The Law only allows the advertisements for alcoholic drinks of less than 20 degrees.

It also sets out rules concerning exclusivity over certain content for broadcasters, as well as the obligation to broadcast free-to-air the whole or part of this content when it is considered to be of public interest. A list of events which fulfil this criterion includes, among others, the Final of the Champions League, the Olympic Games, and the Formula 1 Grand Prix which all take place in Spain.

All of the amendments proposed by the Senate were introduced into the final version of the Law, except for the one set out in Article 5, paragraph 3, point 7, which was rejected. As there are a number of different official languages in Spain (Spanish, which is the official language which is spoken throughout Spain, plus Catalan, Basque and Galician which are the official languages in their respective Autonomous Regions), this amendment proposed to take account the percentage of the population speaking these secondary official languages in each of the autonomous communities when financing film productions and other audiovisual works.

The quality of the content

The final official text, which will be published in the Spanish Gazette before it can come into force, states, as one of the most important measures, that private broadcasters shall have the right to negotiate a remuneration from satellite or cable platforms in exchange for the right to use their free-to-air channels, while public broadcasters, whether national or from the autonomous regions, shall do so without remuneration.

In addition to the aforementioned, the Law will promote own productions by public service channels. It will guarantee linguistic diversity to broadcasters in the autonomous regions, and it will force broadcasters to keep the General Law on Audiovisual Communication. It addresses many problems of the audiovisual landscape, and establishes the State Council of Audiovisual Media in order to verify the effectiveness of the new regulations. However, what interests us most is *how this law will influence the quality of the content, the defence of media users, and the protection of younger viewers.*

In terms of content, the changes will affect only the less important part. For instance, the law will not allow messages whose contents encourage the consumption of slimming products, those which aim to improve physical attractiveness, and those which are contrary to the ideology of gender. In addition, the law restricts betting and gambling programmes to the very early hours of the morning.

The new Audiovisual Law incorporates four plausible measures: in order to protect minors.

First, there is an explicit prohibition of pornography and violence. Second, there is a visual and audible alert on "harmful" programs for children, between 22.00h and 06.00h. Third, there are three hourly zones for child protection: from 08.00 to 09.00 hours, and from 17.00 to 20.00 hours, from Monday to Friday, and in addition, bands of overprotection for children, from 09:00 to 12:00 hours, on weekends and holidays. The fourth possibility is technical procedures to block unsuitable programmes, but the precise details are still unknown.

This is a minimalist law. It merely includes the basics of the European Directive on the protection of children. Individual EU Member States are free to go further, but Spain has not done so. Theoretically, however, the State Council of Audiovisual Media could be more effective.

Ana Munoz de Guayo

Pinching the Elephants' Legs

There are two giants in UK TV broadcasting: The publicly-funded BBC (£3.4 billion from the licence fee and, separately, a profit of over £1 billion accruing to the BBC's sales arm, BBC Worldwide) and the commercial BSkyB (gross revenue £5.3 billion; operating profit £780 million). Recent weeks have provided specific, tangible evidence of both being under pressure and scrutiny from envious rivals..

At the start of March, the BBC announced a Strategy Review, with planned cuts of two radio services and halving the cost of its on-line operations; it was the first time the Corporation – known to many as “Auntie” and to James Murdoch as a “threat to journalistic independence” - has ever said it wanted to make itself smaller. A month which began with the BBC's plan to contract under pressure ended with a hit on Murdoch's own organization when media regulator Ofcom ordered BSkyB to make a reduction of more than 20% (23.4%, to be precise) in what it charges rivals (such as BT and Virgin) for the rights to screen premium Sky Sports Channels 1 and 2.

Let's take a look at the whys and wherefores: beginning with BSkyB. It is UK broadcasting's biggest commercial player, and is part of the global media empire built up by Rupert Murdoch [father of James]. News International, part of that empire, controls the UK's two best-selling tabloid newspapers, *The Sun* (Monday to Saturday) and its Sunday sister the *News of the World*. News International also controls *The Times* and the *Sunday Times*, two of the UK's major 'quality' papers. In the television field the key strength of BSkyB's position is being, at the same time, (i)

access provider through Sky satellite dishes (ii) bouquet aggregator and (iii) content producer (and so copyright holder) on a substantial scale.

Sky's hitherto main rival, Virgin, distributes its offers via cable whilst its relatively recent competitor BT (the UK's long-time incumbent phone operator) distributes through its established and expanding telecoms infrastructure, using broadband. Virgin possesses one channel of its own, accessible to viewers via the UK's terrestrial digital platform 'Freeview', (i.e. no further cost after purchase of a 'Freeview' box for around £60). This compares with BSkyB's 10-plus channel portfolio, consisting of Sky Arts 1 and 2 - which are shrewdly judged additions to Sky News, Sky 1, 2 and 3 and the four Sky Sports channels. Currently 'Freeview' only offers access to Sky News, Sky 3 and Sky Sports News - none of which are among Sky's best-selling channels.

So anyone who wants Sky's most popular content must subscribe either to a Sky package, or to another distributor who will have purchased the right to include one or more Sky Channels in their own bouquet. It is the price asked by Sky for this sought-after content - in particular the top Sports Channels - which is the subject of Ofcom's latest ruling.

Ofcom specified the 23.4% reduction on existing charges for the two biggest prizes only - Sky Sports 1 and Sky Sports 2; since the price of Sky Sports accounts for only a portion of the bouquet cost, Ofcom's ruling should result in an approximately 10% reduction in what distributors (other than Sky) charge their subscribers. Ofcom also said (without specifying a price) that Sky must offer its competitors the option of purchasing the 'High Definition' (HD) version of Sky Sports 1 and 2. Interestingly, as a compensating and conditional incentive, Ofcom also offered BSkyB the chance to launch 'Picnic', its plan to introduce pay-TV channels into the 'Freeview' system.

Project Canvas

In the longer term Freeview - even its digital form - has insufficient capacity to be the main broadcasting battleground for Pay TV. That coveted status belongs to the internet where - under the code-name '*Project Canvas*' - the UK's traditional broadcasters (BBC, ITV, Channel 4, and Five) along with telecoms operators BT and Talk-Talk are seeking to develop a common standard offering access to all would-be providers. *Canvas* is opposed by the UK's two principal commercial content distributors, BSkyB and Virgin (here in agreement), who have their own existing internet arrangements and claim that the market would be distorted by the proposed *Canvas* consortium. Two years ago UK regulators blocked *Kangaroo*, a comparable proposal involving similar players, deeming it anti-competitive.

Meanwhile on the current issue of pricing for Sky Sports 1 and 2 nothing is resolved; BSkyB says it intends to appeal to the Competition Appeals Tribunal (CAT) against Ofcom's ruling. On the other side, Sky's competitors, Virgin, BT and Top-Up TV, who had initially asked Ofcom to intervene, expressed serious disappointment at the narrow scope of Ofcom's decision, and in particular at Ofcom's failure to include the prices of other Sky sports and Sky movie channels within its ruling. Watch this space, and the possible involvement of the European authorities, in the copyright context. The elephant's leg has been pinched, but the risk of amputation is remote.

Meanwhile, at BBC headquarters, Director-General Mark Thompson and colleagues await the verdict, which the BBC Trust (to which they are accountable) will give to their strategic proposals for ‘a smaller BBC’. That verdict will be influenced by the outcome of the public consultation, which the Trust has launched: Contributors will, of course, include VLV (EURALVA’s member organization in the UK).

Thompson’s vision of a smaller BBC certainly involves no savage wielding of the knife: It features a halving of expenditure on the BBC website (implying an apparent cut in the region of £60 million to £80 million) as well as the closure of BBC Radio 6 and the Asian Network (also a radio operation). However, it leaves untouched the two quite recently introduced digital-only television channels BBC-3 and BBC-4. The combined costs of the two networks chosen for closure are just over £20 million – about 0.6% of the total BBC budget (compared to £107 million and £72 million respectively for BBC 3 and BBC 4).

This is trivial stuff compared to the main BBC channels (annual spend on BBC-1, for example, is £1.4 billion, more than 35% of total licence fee income) or to the BBC’s internet TV aspirations within Project Canvas (mentioned earlier) for which it has received provisional approval from the BBC Trust.

The sorts of questions which the BBC poses to itself when deciding what might be cut and what not are: what is the character and size of the audience? What value for money is being provided? How distinctive is the programming? If something is cut, can the needs of that audience be met by adjusted offers from other BBC channels? Would they be met anyway by commercial media providers? Is the BBC service competing unnecessarily or interfering with other broadcasters?

Betraying Minorities?

Conservative Party critics - and some others –have accused the BBC of targeting small vulnerable services: betraying ethnic minorities and niche audiences whilst holding on, for reasons of audience size, to costlier music networks whose output could be replicated by commercial competitors. (The BBC would counter that its popular music networks are very different from commercially-funded offerings).

British-Asian Singer Jay Sean has led calls for the reversal of the decision to close the Asian Network. Supporters of 6 Music have stepped in to protest against the closure of the station, which was launched in 2002 with a remit of “bringing together the cutting-edge music of today with the iconic and ground-breaking music of the last forty years”; by mobilizing a large Facebook community on its behalf...

The BBC’s own web pages invite people to contact the BBC Trust about threatened services; so the chances of 6 Music at least surviving the Director-General’s plan to close it are not exactly negligible, an assessment which is unlikely to take him by surprise.

In summary, BBC management awaits the BBC Trust's decision on its strategy plan; BSkyB awaits the result of its appeal against Ofcom's price ruling; and both broadcasters await the verdict of the country in the General Election on May 6th.

With UK politics are becoming increasingly 'presidentialised', as for the first time, television viewers have seen debates between party leaders/would-be Prime Ministers. There were three debates; the first on ITV, the second on Sky and the third on the BBC; so on each occasion those not interested will readily find alternative programming. A debate between Chancellors and Shadow Chancellors (Finance Ministers) on Channel 4 has already delivered an hors d'oeuvres which got mixed reviews.

Andrew Taussig

Requirements for Danish conditions for Danish TV channels based in the UK

For several years, the Danish listeners' and viewers' organizations have protested against Danish TV stations like TV3 and SBS TV, which have officially been established in- and broadcast from London, so they can take advantage of the UK advertising rules. This gives these stations the opportunity for extra advertising revenue by allowing them to include advertisements within their programmes including cinematograph films (which is not allowed in Denmark), and therefore reducing potential advertising revenues for the national Danish TV channel TV 2 and its niche outlets.

The protests are fully supported by the majority of the Danish TV viewers, who do not want such advertising breaks, but so far successive Danish governments have refused to address the matter with regard to EU legislation.

With the recent revision of the EU Audiovisual Media Services Directive, there seems now to be better options for establishing that, even though such channels are based abroad, but transmit Danish programmes designed for a Danish audience, they must also follow Denmark's advertising rules.

In 2009, the new Public Service Council organisation, which cooperates with the listeners' and viewers' organizations, asked the Danish Radio and TV Board to examine whether such a requirement can now be realized. The Board has subsequently approached the British regulator, Ofcom, which has investigated the issue and also been in dialogue with the broadcasters about their attitudes and their context.

The Danish Board is waiting to consider Ofcom's response at its next meeting in late May. It will then be able to inform the Public Service Council - and thus the public - about the case.

The Public Service Pool

The same television stations again came under the spotlight in the context of current discussions in Denmark on a new four-year political agreement on the terms of the electronic media. In previous years, the media agreement has established a Public Service Pool of 75 million DDK to support the development of particular several Danish drama broadcasts in television. Danish television stations, including commercial television stations like TV3 and SBS TV. (but not the national and license-funded public service station, DR) can apply to the fund. During this first period, the pool has given support to drama productions both from TV2 and these stations established abroad.

The President of SLS, the co-operation forum of the Danish listeners' and viewers' organizations, *Lars Peter Melchiorsen*, who also represents SLS on the Radio and TV Board, has publicly demanded that the Public Service Pool gives no more support to those channels, which decline to be established in Denmark. His claim is supported by several opposition parties and it will be an important issue during the political discussions which will be necessary to reach a new media agreement with a broad majority in the Danish Parliament.

Preben Sørensen

Book Review

The New Public Service Remit, Strasbourg: European Audiovisual Observatory, Iris Plus, June 2009, ISBN: 978-92-871-6660-9. Price: 24.50 euros.

Ready, Set ... Go? The Audiovisual Media Services Directive, Strasbourg: European Audiovisual Observatory, Iris Special, June 2009, ISBN: 978-92-871-6665-4. Price: 89 euros.

In recent months, under the directorship of Wolfgang Closs, and the editorship of Susanne Nikoltchev, the European Audiovisual Observatory has started to produce some really valuable publications. The two studies reviewed here, which track the turbulent changes which are currently being made to the European regulatory framework for broadcasting and audiovisual media services, will be extremely valuable sources of information for listeners and viewers, as well as for producers, broadcasters, and media scholars.

The New Public Service Remit explores the changing face of the regulatory framework for Europe's public service broadcasting services as they extend their remit into the new information media. A lead article by Meike Ridinger from the Institute for European Media Law in Saarbrücken explores the "shared responsibility" for public service broadcasting between the Council of Europe, the

European Union and individual Member States, and examines the likely outcome of the discussions concerning the current revision of the Broadcasting Communication of the European Commission.

The author concludes that it is likely that even the Commission's revised Broadcasting Communication will not entirely eliminate the need for decisions in individual cases at the European level. Indeed, it is already becoming clear that the discussion will mainly be about the degree to which the impact on private competition should play in the definition of the remit of new offerings from public service media, and why an ex-ante assessment should be required before new services can be included in their remits.

In addition, the publication contains reports from national correspondents in Austria, Belgium, Bulgaria, Denmark, France, Germany, the Netherlands, Portugal, Spain and the UK, on recent developments concerning public service broadcasting in their own countries. Finally, in a fascinating table, which draws on Council of Europe documents, the *New Public Service Remit* collates the respective national criteria on the programme categories in individual member countries both for the public service mission in general, and for the public service mission in the new media.

The table provides a valuable perspective as to what, countries other than one's own, deploy their powers of subsidiarity to develop what they consider to be important aspects of public service broadcasting. *The New Public Services Remit* is also available in French as *La nouvelle mission de service publique* (ISBN: 978-92-871-6659-3), and in German as *Der neue-offentlich-rechtliche Auftrag* (ISBN: 978-92-871-6661-6).

Ready, Set ... Go? The Audiovisual Media Services Directive, examines the transposition of the provisions of the Audiovisual Media Services Directive into national law – a process which is simultaneously taking place between now and December 19 in all 27 EU Member States. The publication contains a large body of information, as to how national solutions intend to balance the competing interests which are set down in the recitals to the directive, especially in regard to non-linear, or video-on-demand, services. It particularly focuses on issues such as national approaches to promoting cultural diversity; protection against hate speech, the protection of underage users of video-on-demand services; limits to advertising; product placement, and the right to use short reports. It also assesses the intelligibility, acceptance, manageability and efficiency of the various solutions which have been chosen.

The publication clearly shows how large are the differences in the transposition of the Directive between one state and another, and the degree to which the different legal traditions in individual Member States have an impact on those transpositions, especially for video-on-demand services. On the other hand, the publication also emphasises the degree to which some EU Member States will have to adapt and simplify their current regulatory structures in order to implement the Directive.

In all, *Ready, Set ... Go?* is a fascinating read, which highlights the challenges faced by European politicians and bureaucrats in trying to establish a genuinely single European market in audiovisual media services. It is also available in French as *A vos marques, prêts ...partez?* (ISBN: 978-92-871-6664-7) and in German as *Auf die Plätze, fertig ...los?* (ISBN: 978-92-871-6666-1)

Taken together, both publications provide valuable insights into the distance which Europe's policy-makers still have to travel before they complete their attempts to establish an integrated European Information Society.

Vincent Porter