

THE EURALVA NEWSLETTER

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

November 2011

From the Editor

Dear Reader,

Here is a new edition of the EURALVA newsletter. We begin with an article by Jose Maria Guerra Mercadal, the new President of EURALVA, about the present and the future of the Audiovisual Media Users Associations.

We follow this with a contribution by Professor Vincent Porter, the European Media Adviser of EURALVA, which provides an interesting update about the development of the electronic media in Europe, including public service broadcasting during the last year.

We also include the general outline of EURALVA's response to the EU Commission's Green Paper concerning the Online Distribution of Audiovisual Works.

Finally, we conclude with some general information from the latest meeting of the EURALVA in Edinburgh about new leadership and new members of the organisation.

As I have now retired as President of EURALVA, this will be my last edition as editor of the Newsletter. May I say, 'thank you', to my loyal readers; and 'thank you', to all my contributors for the articles which they have contributed during my time as editor?

Preben Sørensen

The Present and the Future of the Audiovisual Media Users Associations

EURALVA and the Audiovisual Media Users Associations of the different European countries, including our associated members from Canada and Australia, have developed a tremendous work for the defence of the Audiovisual Media Users Rights, especially on the protection of children against the uncontrolled power of the Audiovisual Media.

The Associations belonging to EURALVA have three different goals to achieve: (i) to influence the national and European Institutions which are responsible for creating the laws which allow them to develop; (ii) to work together with audiovisual media professionals and broadcasters to provide appropriate answers to the requirements of the users; (iii) to work together with the audiovisual users in different forums (schools, universities, conferences, prices, media books, research projects etc) to learn to use the audiovisual media in the best way for a healthy development of users minds and bodies.

These three objectives have already been partly achieved in some interesting ways. We have to thank and to recognise the strength given by the associates all over Europe, and the amazing work done by the professional volunteers, who have been involved in these goals since the very beginning. Their work has been a demonstration that not all the new developments are a force for good, but only if they are used properly. This cautionary approach has been communicated by the conscientious members from the different parts of EURALVA against the various “fashionable trends”, such as market freedom, the freedom of speech, the unlimited rights of creators, the self-development capacity of children, the genetic critical-sense of children and their elders, and so on. These “fashionable trends” have led to several bad moves, bad experiences, and bad reasoning. By “bad”, we mean everything that separates the human being from its capacity for happiness and joy.

This is why we are very grateful, and we should give our most sincere congratulations to, everyone who has already made a contribution, no matter how small that effort has been.

So the future of EURALVA, the future of the Audiovisual Media Users Associations, could not be in better shape. The goals to be achieved remain the same. Nevertheless, we have to go one step further. There are some key objectives to which we have to look for toward, in order to achieve our goals. They are to:

1. Increase the number of associates and supporters of our organisations;
2. Add new national members to EURALVA;
3. Prioritise the rights of the children and youth;
4. Exchange experiences and resources between the associations;
5. Obtain official and formal recognition of EURALVA by the European Institutions;
6. Obtain official and formal recognition for each national association by its national governmental institution;
7. Update our resources, in order to take advantage, at each stage, of state of the art technology; and.
8. Improve relations with professional audiovisual media producers and broadcasters in order to persuade them to participate of our goals, and help them to realize that quality programs, both in content and on the technical side, could be - in fact they usually are- very profitable.

This will not be easy. We need all of you; members, associates, and friends. But although we are growing and getting more and more influence, the producers and broadcasters are also getting

more power. So there is only one reasonable way forward: that is to work together for the benefit of both sides of the screen.

José Maria Guerra Mercadal, President of EURALVA

EUROPEAN MEDIA REPORT 2010-2011

Introduction

This has been a busy year in Europe. Households are becoming increasingly reliant on electronic information services including TV. The television business continues to expand, and the European Parliament has sought to update the dual public/private broadcasting system, especially in the new member states including Hungary. As yet, the new, so-called, hybrid television services have failed to establish a common technical standard, and their associated catch-up services have sometimes been given reduced transmission priority by telecommunication networks and internet service providers. This, in turn, highlights an important dimension on Europe's cautious and tentative debate on network neutrality. Finally, the choice and classification of programmes suitable for children in the new video-on-demand services (VODs) pose a number of as yet unsolved problems, while the drive for media literacy, which was meant to accompany the increased liberalisation of AVMS services, has largely been delegated to individual member states.

The Spread of Electronic Information Services in Europe

Households within the European Union are becoming increasingly reliant on electronic information. In July 2011, Eurobarometer reported that 98% of consumers had a

telephone (mobile 89%; fixed line 71%), and that 68% had a personal computer. In addition, 62% had access to the Internet, and 55% had broadband access at home, an increase of 7% during the last eighteen months.¹

Almost every EU home (98%) had a TV set, with Finland having the lowest proportion (94%). The mode of reception varied of course. 33% of households were linked to cable (the highest proportions were in Denmark and Luxembourg), 29% of households received their TV via DTT (Spain was the highest), 23% by aerial (down from 34% eighteen months ago), and 21% by satellite dish (down from 24% eighteen months ago).²

Only 42% of households subscribed to a package of services (up from 38% eighteen months ago), and only 48% of these (i.e. 20% of all EU households) included TV in their package. There was a lot of consumer dissatisfaction, however. One in four households considered that the download speed of their broadband service and the capacity of the Internet did not match their contract conditions, with the most dissatisfied consumers being those in the UK (37%) and in Spain (31%). Moreover, one in three of all EU households reported Internet breakdowns.³ Furthermore, consumer inertia, and restrictions on consumer choice, did little to improve matters. 73% of consumers seemed resigned to these shortfalls in their broadband services (in Luxembourg, the percentage was 87%); while a further 15% (26% in Slovakia) were either locked into a long-term contract, or hampered by the lack of a viable alternative provider. Only 13% of EU households (24% in Finland) considered themselves to be active switchers.

The picture which emerges, therefore, is that although television continues to provide a universal service to all EU households, the arrival of cable and DTT is giving viewers increased channel choice. More EU households have access to broadband, and a fifth of them now pay a

¹ E-communication Household Survey, *Eurobarometer Special 362*, July 2011

² Ibid.

³ Ibid.

telecommunications company for a media package through which to receive their TV programmes. Even so, a quarter of those that do, are dissatisfied with the quality of their broadband delivery service. This may either be because they are locked into long-term contracts, or because there is no suitable alternative provider. It is clear, therefore, that the decision in 2000 of the EU to separate the regulation of the carriage of electronic communications services, from that of their content, has not been universally beneficial for TV viewers. Although viewers can now access more audiovisual channels via broadband, augmented by the opportunity to catch up with recent TV programmes, the delivery of those services is frequently poor.

The Television Business

TV is big business. In 2010, TV revenues increased by 5.6% to reach 91.7 billion euros, and in the UK, investment in content production amounted to £4 billion a year. In May 2011, the Association of Commercial TV Operators in Europe called on the European Commission to consider the content industry as a key stakeholder in the digital agenda, and a driver of European competitiveness.

TV is also popular. In 2010, the average viewer spent 228 minutes (3hours 48mins) per day watching a TV set, an increase of six minutes per day over 2009. Sport and fiction remain the two most popular programme genres, and in July 2010, 78% of Spanish viewers (a total of 13.4 million) watched the final of the FIFA World Cup on *Telecinco*.⁴

Fourteen EEA countries (Austria, Belgium, Denmark, Estonia, Finland, Germany, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Slovenia, Spain, and Sweden) have already switched off analogue TV, and it will be switched off in a further five by the end of 2011 (Cyprus, the Czech Republic, France, Malta, and Iceland). 820 channels are now available to DTT households, an increase of 320 over the number available at this time last year. At the end of 2010,

⁴ Association of Commercial Television in Europe, June 2011

there were more than 400 High Definition channels in the EU. Most of them were sports channels (86), generalist channels (79), film channels (60), or documentary channels (37). Video-on-Demand services are also on the increase in Europe, and there are already nearly 700 on-demand and catch-up TV services. Pay-TV was another growth area, and by 2010 it accounted for 41.7% of the worldwide TV market.⁵

Public Service Broadcasting

Public Service Broadcasting remains an exception to the EU's general policy of regarding broadcasting as essentially a commercial activity, which is only regulated by the provisions of the Audiovisual Media Services Directive (AVMSD). However, the EU does allow public service broadcasting to receive state aid for a number of reasons. Firstly, it can convey and influence individual and public opinion because it has access to such a wide sector of the population at the same time, and can provide it with so much information and content. Moreover, public service broadcasting in the member states should be directly related to the democratic, social and cultural needs of each society.

In October 2009, the European Commission reviewed how member states should regulate the relations between public service broadcasters and their commercial rivals;⁶ but in practice the outcomes were mixed. On 25 November 2010 therefore, the European Parliament adopted a non-legislative resolution on the need to ensure the future of the dual system in which both public and private media continued to play their respective roles. The dual system, the Parliament observed, 'has never been a static end product, but always a work in progress' In particular, the Resolution

⁵ Ibid.

⁶ Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting, *Official Journal*, 27 October 2009, C 257/1

- urged member states to define the remits of public service broadcasters so that they can retain their distinctiveness through a commitment to original audiovisual production and high-quality programming and journalism regardless of commercial considerations;
- recalled the body of Council of Europe recommendations and declarations, which have been agreed upon by all the EU Member States and which lay down European standards with regard to freedom of expression and media pluralism and the independence, organisation, remit and funding of public service media, particularly in the information society;
- called on Member States adequately to address the issue of under-funding of public service broadcasters; and
- called on the Commission to give higher priority to the dual system as a part of the *EU acquis* during membership negotiations and insists that the progress achieved by candidate countries in this respect be monitored.⁷

Public Service Broadcasting in Hungary

A particular problem relating to the dual broadcasting system arose from the proposals by the Hungarian Government for the Prime Minister to appoint directly the Chairman of the five-member Media Council, which would regulate all media including the Internet and the Press, while the other four members would be chosen by a committee of Members of Parliament dominated, because of weighted voting, by the Government. Moreover, public service, publicly-funded broadcasters would be especially tightly controlled by the Government, thus undermining the trust of Hungary's listeners and viewers. In addition, the new law totally ignored the Recommendations,

⁷ Public service broadcasting in the digital era: the future of the dual system (The resolution was adopted by 522 votes to 22 with 62 abstentions)

laid down in 1996 by the Council of Europe's Committee of Ministers and since then implicitly and repeatedly endorsed within the European Union, to guarantee the independence of public service broadcasting.

The eight-member Public Service Foundation, which would supervise all publicly-funded media and report to the Media Council, also had a built-in majority of Government supporters. Two members are to be directly appointed by the government-dominated Media Council, and a further three by members of parliament from the Government party. Only the three member minority would be chosen by opposition MPs.

EURALVA, in association with our Hungarian member, the *Association of Viewers and Listeners to Public Service Broadcasters in Hungary*, and along with many other organisations, called on the Council of Europe and the European Union to insist that Hungary introduced laws establishing a pluralistic public service broadcaster. The Hungarian Government did make some changes under international pressure, but the outcome has not so far been entirely satisfactory.

Hybrid Television Services

All broadcasters see the benefits of developing what they term 'hybrid television services': that is to say the introduction of new platforms and devices which bring both TV and the Internet together. They can expand the programme choice for viewers, simplify access to Internet content, and enable broadcasters to provide new forms of enhanced content, such as catch-up TV. But as yet there are no common technical arrangements by which viewers may access both types of service. In April 2011, the European Broadcasting Union (EBU) called for the development of technical systems which would provide for an integrated digital linkage for signalling broadcast and broadband applications. For example, this would allow viewers to directly access Internet content associated with the broadcast content while watching a television programme. On the other hand, some commercial broadcasters want to restrict the delivery of their VOD services to subscribers to their

own broadband or telecommunication services, which they see as a more profitable option. As yet, there is no clear solution to this problem.

Network Neutrality

A further issue, which is linked to the development of hybrid broadcasting, is that of network neutrality. This is arising because of the growing shortage of network capacity in Europe, which is – or is likely – to be caused by the increased delivery of audiovisual media services over the Internet. At the end of 2009, the EU amended the regulatory framework for the carriage of telecommunications signals. New provisions regulating net neutrality were included in the revised Framework Directive, and the revised Universal Service Directive;⁸ and in June 2010 the European Commission launched a Consultation on net neutrality.

At that time, the Commission considered that there were no apparent problems with the openness of the Internet and net neutrality in the EU, but despite this claim, it was also clear that traffic management already existed. In its response to the Commission's Consultation, the EBU noted that in a number of cases services provided by the EBU members and other media organizations have been degraded because of network congestions and traffic management practices applied by the network operators. This is particularly significant in case of live programmes, such as coverage of popular sport events. It has also resulted in consumer confusion and frustration, further complicated by insufficient transparency about these practices. The problem is more relevant for TV than radio services since the former require significantly higher bit-rates than the latter.

There is a growing conflict between the ambition of the EBU – and other broadcasters – to provide hybrid TV services, and the continued availability of sufficient network capacity for all viewers to access these services.

⁸ Directives 2009/136/EC, and 2009/140/EC of 25 November 2009

Video-on-Demand Services

The AVMS Directive extended the provisions of its predecessor, the Television without Frontiers Directive, to Video-on-Demand services (VODs). It also allowed the introduction into television programmes of product placement, a new type of audiovisual commercial communication. In April 2011, the European Audiovisual Observatory asked me to deliver a paper to its seminar on the emerging regulation of VODs from the viewer's perspective. The Observatory will publish the proceedings of the seminar in book format in November this year, as an *IRIS Special*. It will be called *The Regulation of On-demand Audiovisual Services: Chaos or Coherence?* It will be available in English, French and German versions. Meanwhile, I will briefly highlight the main issues for viewers, as I see them. They are:

- The regulatory ambiguity of the term 'video-on-demand'
- Viewer access to VOD services
- Access to programmes which might be unsuitable for children
- The classification of on-demand programmes
- The provision of European works in VOD services
- Notification, and regulation, of programmes containing product placement; and
- The provision of children's programmes in VOD services

Media Literacy

The underlying philosophy of the AVMSD was to balance the increased freedom for TV broadcasters and VOD services to include audiovisual commercial communications in their services against an increased emphasis on media literacy, which would allow viewers to 'exercise informed choices, understand the nature of content and services, and take advantage of the full range of opportunities offered by new communications technologies. They would therefore be

better able to protect themselves and their families from harmful or offensive material.’⁹ But this was an unequal balance.

While most broadcasters have taken advantage of their freedom to carry more advertisements, and programmes containing product placement, media literacy remains both poorly defined and poorly monitored. Although the European Commission is due to report in December 2011 on the levels of media literacy in all member states, most states consider that media literacy is an aspect of their education policy, over which the Commission has no regulatory authority. Individual member states have often adopted quite different approaches. The role, which national associations of listeners and viewers are expected to play in developing media literacy among the children of their members, remains unclear.

Conclusion

In conclusion, therefore, many changes are taking place in Europe, both in the technological developments, and in the regulation, of television and its associated services, and the listeners - and viewers organisations will have to run hard to keep abreast of them.

Vincent Porter

**RESPONSE BY EURALVA TO
THE EUROPEAN COMMISSION’S GREEN PAPER ON
THE ONLINE DISTRIBUTION OF AUDIOVISUAL WORKS**

EURALVA is an alliance of independent associations representing the interests of listeners and viewers in ten EU Member States. Participants in EURALVA’s 2011 Annual Conference, in

⁹ AVMSD, recital 47

Edinburgh, included representatives from the European Commission, the European Broadcasting Union, Ofcom the UK Broadcasting Regulator, the European Association for Viewer Interests, the Federation of European Broadcasters, together with a number of leading academics and EURALVA member groupings.

In responding to the European Commission's Green Paper [COM 2011/427], EURALVA recognizes the complexity of the issues, the existence of entrenched principles and interests which militate against generalisations and simple solutions, and the technological disparities across Europe which stand in the way of universal citizen access to online content. Despite these challenges, EURALVA strongly supports the broader goal of deploying new media platforms for the cultural, informational and social benefit of Europe's citizens. Alongside its response to the Commission's list of 26 detailed questions, therefore, EURALVA puts forward eight specific proposals which it believes could promote that objective.

1. The EU should explicitly recognize the role that state-aided public service broadcasters can and do play in supporting the distribution of foreign language audiovisual works to their domestic audiences.
2. Public service broadcasters should be able to distribute online in third countries those audiovisual works originating from outside their own countries, which they have already dubbed or sub-titled into the languages of their domestic services.
3. EURALVA believes the best way to encourage release of older films, which are no longer covered by exclusivity agreements, for distribution across the EU would be, as with the Satellite Broadcasting Directive, to separate the right of the copyright owner to authorize distribution, within the single European market, from the copyright owner's other right to equitable remuneration from the markets in individual Member States.

4. EURALVA supports the EU Commission's draft Directive on Orphan Works which, we believe, would encourage and empower Member States to make orphan audiovisual works available online to their citizens, via their public service broadcasters and their film heritage institutions. Furthermore EURALVA considers that, in order to help fulfil their public service missions and implement cultural diversity, public service broadcasters should also enjoy similar provisions for any pseudo-orphan – or perhaps more precisely, 'single parent' - works, where it has only been possible to identify one or more of the right holders..
5. More broadly, EURALVA believes it would be possible and desirable in the interests of Europe's citizen-audiences, to extend to online audiovisual services the 'country of authorisation' principle, which was adopted in the satellite broadcasting directive. Linked to this objective, EURALVA proposes that arrangements for copyright licensing should be as transparent as possible, thus enabling regulatory authorities across Europe to distinguish clearly between the existence of rights in a particular work, and the manner in which the producer/creator chooses to exercise the licence(s) for others to exploit those rights. The Alliance considers that, without denying authors their reasonable rights, this approach would guarantee the consumer fair, reasonable and non-discriminatory access from all digital platforms and distribution channels, as well as a choice among competing network supplier-distributors.
6. In parallel, EURALVA would oppose any arrangements – made possible by technological developments like 'cloud computing' – which could create a privileged class of users from which non-subscribers would be excluded. Additionally it may be appropriate, in EURALVA's view, to impose 'must-carry' conditions on distributors for certain categories of programmes produced by public service broadcasters, which are designed to meet the

democratic, social and cultural needs of European citizens living outside their countries of birth and upbringing.

7. In the context of any proposal for a non-territorial copyright system - and bearing in mind the absence of an EU-wide analysis of other Member States' national systems for programme classification within national media literacy programmes – it would be necessary, in order to protect children and empower parents, to establish and guarantee a system of EU-wide classification arrangements. This would probably need to include three or more separate age categories, and maybe four or more separate content categories. This will require more work, and common endeavour, to devise a system which parents throughout the EU can both accept, and exercise in practice.
8. On the issue of access for people with disabilities, EURALVA considers that a due sense of proportion be applied in seeking to provide adequate access, with producers required essentially to comply with legal requirements applying in the country where the programme or relevant content originated.

New Leadership and

New Members of the European Alliance of Listeners and Viewers

At a Board Meeting held in Edinburgh in October, the European Alliance of Listeners' and Viewers' Associations, EURALVA, with members in ten European countries, and associated members in Canada and Australia, elected *José Maria Guerra Mercadal*, the Vice President of the

Spanish organisation IC Media, from Barcelona, as the new President of EURALVA, to succeed *Preben Sørensen*, from Denmark. The Board also elected *Lars Peter Melchiorsen*, the Chairman of the Danish Association of Listeners' and Viewers' Organisations, to be EURALVA's new Vice President.

The EURALVA Board also accepted applications for membership from two new organisations. They are The Public Service Council of Sweden - a new organisation which supports public service broadcasting, both in Sweden and on an international level. The Council will also support the development of public access to broadcasting at national, regional and local levels.

The second successful applicant was the MOIGE organisation from Italy. MOIGE (in Italian: *Movimento Italiano Genetori*), is a non-profit, lobbying and advocacy organisation. Its main purpose is to safeguard the rights of children and parents in social life, to promote parents as a fundamental element of society, and to encourage the exercise of the responsible use of parental authority. The association aims to operate in different areas including television and cinema, school and education and the Internet and new media.
