



The legal framework for broadcasting in Europe

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Conference on “An international market for television services?”

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OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
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Outline

1. The Audiovisual media services directive:

- Which services are regulated?
- Which jurisdiction is competent?

2. Some issues at stake

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To qualify as a service, there must be:

1. a service
2. under the editorial responsibility
3. of a media service provider
4. which principal purpose
5. is the provision of programmes
6. to inform, entertain or educate
7. the general public
8. on electronic communications networks.

Easy, isn't it?

But today we are in 2016

- Are these AVMS services?

You  **Tube**

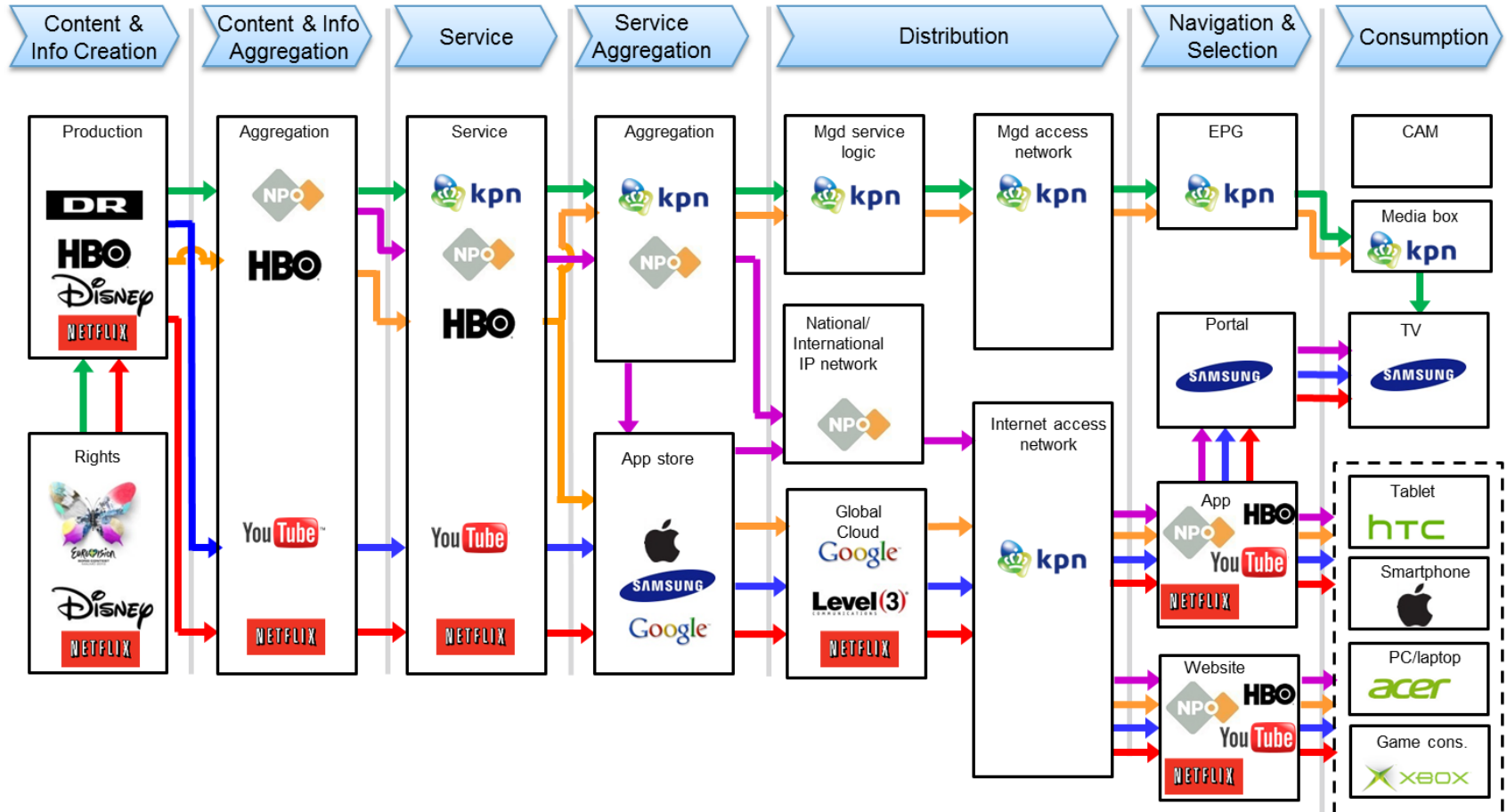
facebook

CANAL
 **PLAY**

NETFLIX

And what about these ones?

- Linear TV, catch-up TV and VoD services are distributed both via traditional managed routes and via Over-the-Top routes



Source: TNO White Paper “Regulation in the converged media-Internet-Telecom value web”, October 2014, <http://publications.tno.nl/publication/34611843/NhocfJ/TNO-2014-R11482.pdf>.

Since 2007, many further developments...

- Globalisation of players
- Technological convergence

Lead to:

- New means of distribution of audiovisual content
- New actors/entrants in the market: Telecoms, Internet Service Providers, UGC Platforms, IT technology firms
- New Business models: subscriptions, transactions, new advertising techniques, targeted advertising, “big data”
- Connected world and multiscreen use

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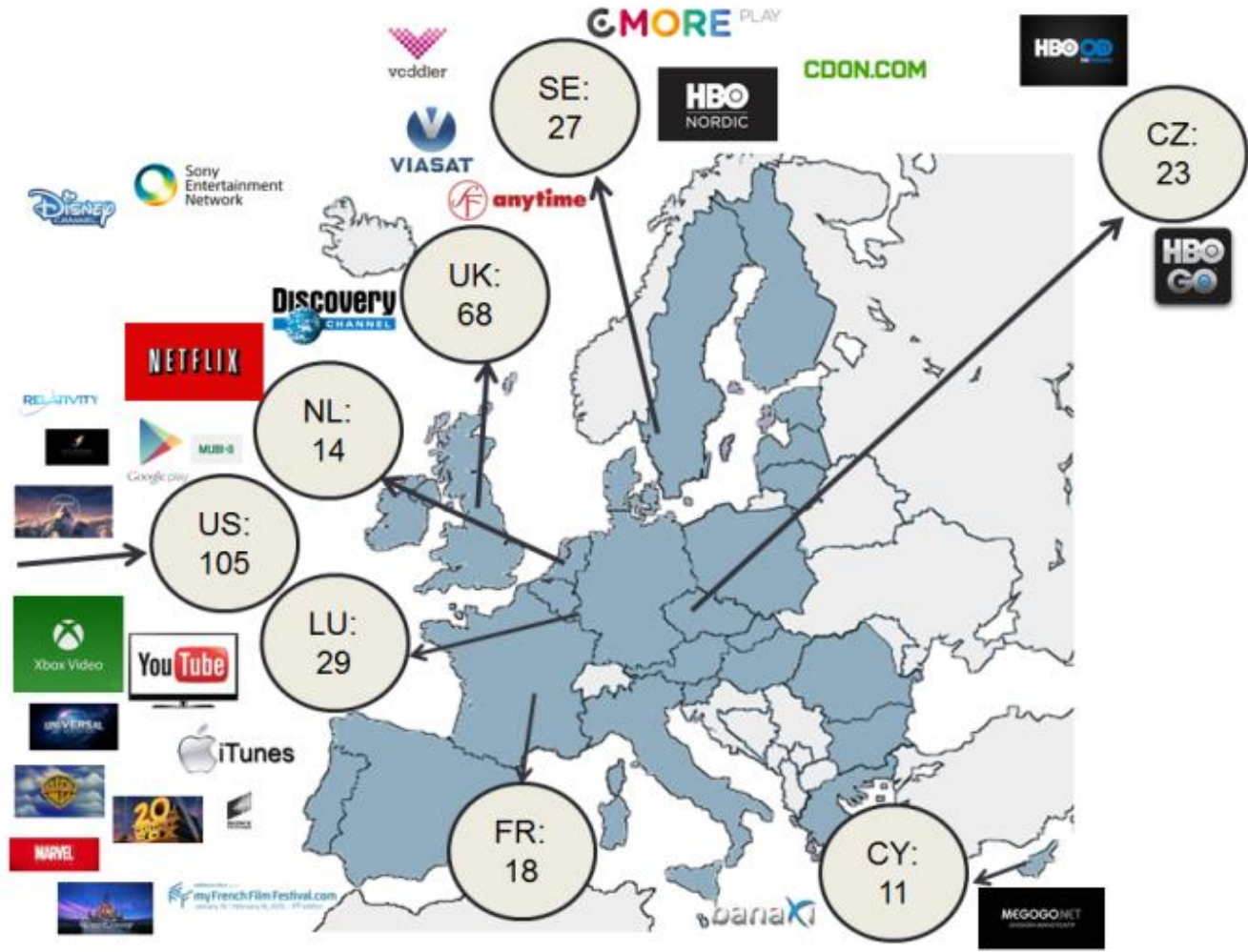
Jurisdiction and country of origin

- **The purposes:**
 - Ensure that services are under just one regulatory regime.
 - Encourage circulation of audiovisual services and deal with the issues already arising from this circulation.
 - Ensure that minimum standards are applied across Europe in relation to:
 - promotion and distribution of European works,
 - protection of minors,
 - commercial communications,
 - incitement to violence or hatred.

Jurisdiction and country of origin

- **The effects:**
 - One jurisdiction ensures legal certainty for the operators.
 - Member States are free to have more stringent rules than in the Directive.
 - A similar situation applies to the Convention on Transfrontier Television.

Targeting channels are more than we think...



Source: European Audiovisual Observatory elaboration on MAVISE database, June 2015

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When it comes to services

- **Many blurring boundaries:**
 - Newspaper websites providing video
 - UGC platforms/Professional channels on UGC
 - Download-to-own/Download-to-rent services

- **Criteria for assessment:**
 - Services must be “Television-like” (i.e. they compete for the same audience as television broadcasts)
 - Users reasonably expect regulatory protection

Problem:

What is TV-like is still not clear.

When it comes to jurisdiction

- In the context of a multi-country approach, the country of origin principle is being questioned:
 - What happens when a country has stricter rules than the country of origin of the channels it receives?
 - What happens when channels received are perceived as threatening: inciting to violence or hatred, promoting terrorism or revisionist approaches to difficult historical issues?
 - What about channels that include pornographic content?
- The country of destination is used in other contexts, such as the e-commerce directive in certain cases.

Problem:

Differences in applicable rules contribute to uncertainty.

Ongoing discussions at EU level

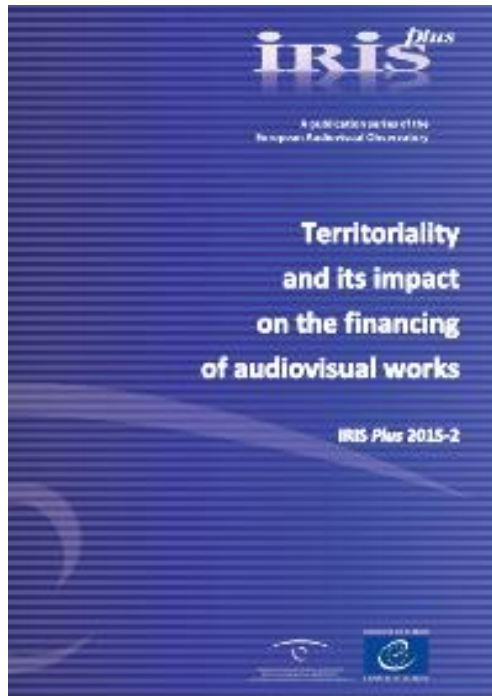
- **The “You Tube” question**
 - Is there a need to adapt the definition of AVMS providers and / or the scope of the AVMSD?

- **The “Netflix” question**
 - What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle?

But there are many other questions:

- What are the most effective means for promotion and preservation of European culture and promotion of the European audiovisual industry?
- How to create level playing fields for national operators who must pay contributions to the sector, while competing with major foreign actors who do not?
- How will regulators regulate and take funding from operators established in other countries?
- How will small authorities deal with large numbers of channels if the country of origin principle is reversed?

Legal studies of the Observatory



Iris Plus 2015-2

Territoriality and its impact on the financing of audiovisual works?

Previous issues of IRIS Plus:

2013-3

Converged Media: Same Content, Different Laws?

2013-4

What is an On-Demand Service?



For further information:

www.obs.coe.int

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