

Access to platforms and findability of content

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Why should we be concerned?

The important social, cultural and educational benefits associated with public service media (PSM) content are well understood, and it is reasonably widely accepted that media markets, left to themselves, will not supply enough of the types of content which most think would be beneficial to society as whole. Hence the long tradition of intervention to secure broadcast diversity and plurality in most EU members states, typically involving one or more public broadcasters.

But it is not enough just to ensure that public service content is made. If it is to fulfil its purpose and justify public funding, we must also as far as possible ensure that it is:

- Universally available (access via all key platforms)
- Easy to find (findability)
- And actually consumed!

This presentation focuses on the first two of these objectives – access and findability - although the third is perhaps the biggest challenge for PSM – and calls for the use of all the tools, levers, approaches, methods of promotion and persuasion needed to ensure PSM stays relevant to its consumers and in demand. In the end, regulation of access and findability might help, but it won't on its own guarantee the long term success of PSM.

Approach to date

In practice, the approach taken so far to securing access and findability for PSM has been conditioned by the (relatively) simple multi-channel environment in which PSM has operated. It has incorporated:

- PSM providers across the EU seeking distribution via all the main distribution platforms as they have emerged (for example satellite, cable)
- EU and member state “Must carry” rules to enable PSM carriage on relevant electronic networks and services
- EU and member state prominence rules – which have been used in some member states to secure a reasonable profile for PSM on the electronic programme guides (EPGs) offered by the main platforms and content gateways.

The result has been positive:

- PSM appears on all the main platforms and PSM channels are given appropriate prominence in EPGs

- As a result, PSM has been given a reasonable start in the task of persuading audiences to sample and consume the types of content which we as a society think are important to be watched
- Regulations have helped in the process of “nudging” audiences to make the choices we think will be beneficial to them as individuals and to everyone else
- Less tangibly, regulatory intervention to support access and findability has sent a key signal about the importance we as a society assign to PS content - a statement that “PS content matters”.

Challenges ahead

But the world is changing:

- From a limited number of broadcast platforms (where often the network provider also controls the content gateway) to a wide range of content distributors and gateways
- The rapid take-up of Smart TVs and mobile devices, often with their own consumer interfaces or content gateways, sometimes integrated into content providers
- New ways of consuming content – on-demand rather than live broadcast
- New ways of selecting content – away from grid like EPGs to more interactive and app-like menus and catalogues.

Practitioners have described this as a shift from “direct” delivery of content to “distributed” delivery. Media content providers, including PSMs, are no longer able to guarantee that their content will be seen as part of a channel or even an “own-branded” on-demand catalogue. Even if they continue to offer content as part of their own packaged service, there is no guarantee that consumers will be able to easily find the PSM brand among many competing propositions.

The new content gateways

A key development is the emergence of potentially important new content gateways alongside the longer-established network-based intermediaries.

These gateways are “packagers” of content and services, and do not necessarily own the physical means of distribution.

In an earlier paper for the BBC¹, I defined them as organisations which:

- Make available a selected range of TV-like audiovisual content to the public
- Actively select and aggregate content from those third party content providers they wish to host on their gateway, alongside any content of their own
- Design and organise the user interface/on screen environment through which viewers can search for and access such content.

¹ PSB Prominence in a Converged World, Foster and Broughton, Communications Chambers, December 2012

While gateways of this type do not exercise editorial responsibility for the individual pieces of content they aggregate on their gateways, they do carry out a quasi-editorial function in choosing the suppliers of content they will host and – sometimes – in selecting individual items of content to promote and give prominence to.

Content gateways now take several different forms, as shown the chart. But they all increasingly use the internet to access and deliver content, focus on on-demand consumption rather than broadcast channels, and all focus on building two-sided relationship with content suppliers and consumers which they can monetise – either by charging content providers for access, selling advertising, or charging viewers for the gateway service they provide. Being an “intermediary” is becoming an important commercial business in its own right.

Range of content gateways

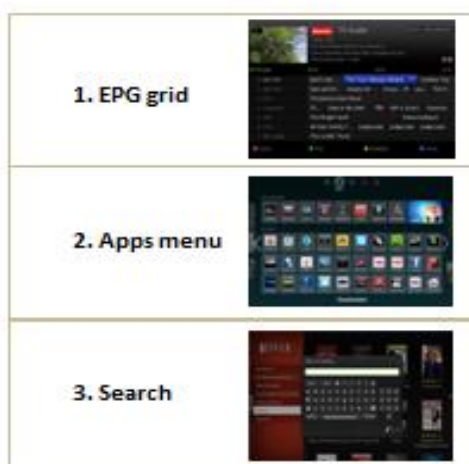
Type of gateway	Characteristics	Example services
1. Broadcast-led platforms	<ul style="list-style-type: none"> • Live broadcast focus (plus catch-up and on-demand) • Integrated PVR functionality 	
2. Next generation television	<ul style="list-style-type: none"> • Live broadcast focus • Apps for new providers /services • Own 'smart' navigation 	
3. Device-related gateways	<ul style="list-style-type: none"> • On-demand focus (little or no linear TV) • Mix of walled-garden vs open access 	
4. Content platforms and gateways	<ul style="list-style-type: none"> • On-demand focus • Programmes/clips focus • Available though both browsers and apps 	
5. Digital intermediaries	<ul style="list-style-type: none"> • New ways to find and interact with third party content • Tend to be free (and often ad funded) 	

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New ways of finding content

Content gateways are introducing ever more sophisticated on-screen interfaces.

New ways of finding content



The grid style EPGs used by established cable and satellite networks, still exist, but often with much higher functionality, such as:

- Backwards EPGs (access to catch-up content from the grid)
- Genre specific EPGs
- Seamless live and on-demand EPGs.

They are now supplemented by app-style menus, especially for on-demand content:

- Each app is a window into different content
- Apps include TV, films, games, and online content such as YouTube.

Search functionality is providing another dimension to the task of finding content:

- Both within the platform and more widely across the internet
- Programme rather than channel focused
- Using voice recognition.

And gateways play an active role in “pushing” content to consumers, for example through various approaches to recommended content:

- Passive and active filtering
- Curated/sponsored
- Most popular or most shared.

In the words of one social media executive, the aim is to always present users with content they will like.

Risks to PSM

These changes will have an impact on both access and findability of PSM.

It is not all bad news:

- Much PSM retains leverage – popularity, relevance, profile – and offers content which content gateways may find it difficult to be without – many now even use PSM brands and content in their sales pitches to new consumers
- The new ways of bringing content to the attention of audiences provide new opportunities for PSM to present and profile content across different platforms and devices
- Social media can help spread awareness of PSM, creating a buzz around high quality content.

More widely – consumers are at the centre of all these initiatives – with a race between gateways to provide them with much easier access to a much wider range of content.

But there are clear risks to PS content, too. Unlike with their broadcast channels, PSM is not guaranteed access to the new gateways and neither is there any protection given to ensure prominence of PSM content which the gateways chose to carry. As a result, PSM must negotiate access and prominence, which may prove to be extremely problematic:

- Increased distribution costs – as a result of the need to be on more platforms/gateways
- The possibility that PSM may have to pay for profile, as prominence becomes a valuable commodity that can be traded
- Gateways may prefer to highlight paid-for content rather than free-to air, as income sharing will help them make money, and PSM may not be able to agree to commercial deals or offer exclusivity of access
- Gateways might discriminate in favour of content they have produced themselves.

The biggest challenge will arise from the potential clash between “consumer” interests and “citizen” or societal interests.

The new gateways might persuasively argue that they are working in the interests of consumers (although even here there is room for debate). Why, they might argue, does it make sense to focus regulatory attention on access and findability, when there is such a wide range of types of access and audiences increasingly seem adept at finding their own way through the various platforms and guides? Won't competition between gateways ensure that much-valued PSM is guaranteed access? Isn't it a good thing that individual users will have much more choice over how they find and select content?

My own view is that there is still a clear public interest case to be made for intervention. Society as whole in some cases is right to seek a different outcome to that which would result from commercial priorities alone. Prominence can help ensure greater exposure for content which would not be an obvious first choice for consumers, but which might deliver wider benefits if they can be interested in sampling it. Prominence can give a helping hand to content which would not be placed at the top of the screen by a profit maximising gateway, but which many viewers would like to see, given the choice. Even commercial gateways are recognising the value they can offer to their users in helping them to “discover” new and interesting content – prominence helps supplement this approach in the public interest. Much has also been written about the risks of the “filter bubble” effect, which describes a world in which consumers only choose content which they know they will like and which confirms their own worldview. Again, the public interest would lie in securing a greater diversity and plurality of choices.

But any regulation needs to be proportionate, and may need to be time limited as the market changes and evolves further.

What can be done?

Identifying risk is not the same as identifying a clear regulatory solution. Any proposed intervention, in my view, will need to pass the following tests:

- Effectiveness – will it work (in delivering the desired outcomes)?
- Will benefits exceed costs, including any costs associated with:
 - Adverse consequences (for example impact on innovation)
 - Costs to emerging gateways
 - Possible consumer disbenefit (reduce consumer choice)?

If these tests can be met, then intervention should be based around some broad principles rather than detailed prescription, exactly because we cannot predict what the world of platforms, gateways and guides will look like in 5, let alone 10 years’ time.

Such principles might include:

- Significance
 - Applied only to content gateways judged to play a significant role in access and consumption – using a market share or audience expectation test?
 - And to those whose main focus is on AV content aggregation and distribution (not for example search engines or social media)
- Proportionality
 - Applied to “default” settings only –allowing users to override these settings if they wish
 - And to core EPG/app menus, not to sub-menus, curated content or recommendations
- Flexibility

- Allow each member state to exercise its interpretation of these broad objectives, taking into account cultural priorities and market variations (with the flexibility to alter or exit regulation if no longer effective/appropriate).

In practice this might mean a relatively limited set of rules:

Where an EPG grid is still offered by a gateway:

- Similar to today – PSM should be granted appropriate prominence – for example, PSM channels expected to be near the top of first page or relevant genre pages.

Where other approaches (e.g. apps, menus and links to on-demand content) are used:

- PSM providers should be offered a prominent position on the home/start page for their equivalent app (but, reflecting the twin aims of proportionality and practicality) only one per PSM provider).

Intervention would probably not extend to PSM prominence on search results, recommendations or on curated content:

- Hard to design effective rules
- Would discourage innovation
- These supplement rather than replace grids or apps (at present).

For search and social media the best approach for the time being might be for regulators to maintain a watching brief, while encouraging self-regulation, greater transparency and systems to allow effective complaint and redress. Here there are issues which extend more widely than the interests of PSM, as noted in a paper I wrote for the Reuters Institute².

How best to implement?

For this presentation, I have looked at the choice between updating existing rules or using a revised AVMS Directive to introduce rules for new types of content gateway.

In either case, it would be advisable to leave as much discretion to member states as possible, as these are primarily cultural matters which differ from member state to member state, and the importance, design and take-up of new content gateways will vary too.

Updating existing rules:

The existing framework relies on the Universal Services Directive and the Access Directive.

Article 31 of the Universal Services Directive enables member states to introduce “must carry rules”:

² News Plurality in the Digital World, Reuters Institute, July 2012

- Provides for reasonable must carry obligations for the transmission of specified radio and TV broadcast channels to be imposed on providers of electronic communications networks
- Such obligations need to be proportionate, transparent etc. (but don't apply to EPGs).

Access Directive (articles 5 and 6):

- Enables member states to specify broadcast services to which access must be ensured by undertakings that control access to end users for such services
- Specifically covers EPGs
- Access to be provided on fair, reasonable, and non-discriminatory terms
- Also recognises that competition alone may not be sufficient to ensure cultural diversity and media plurality.

It is possible to see how these rules could be updated to cover all “specified” PSM, (on demand not just broadcast), and to redefine relevant networks and services to include new gateways. Must carry and access obligations would thus be extended to the new types of content aggregator or gateway we have been discussing alongside more conventional platforms. Perhaps this would also be an opportunity to make clearer that FRND should apply across the board to all content providers, but there is provision additionally for special treatment for designated PSM, subject to a proportionality test.

The advantage of this (incremental) approach is that it would keep access and carriage issues separate from the editorial issues covered by AVMS, and build on the conventions and practice established in recent years. As with the alternative discussed next, it requires careful consideration of how best to define a “content gateway”.

New approach via AVMS revision

As the EBU has suggested in its submission to the AVMS consultation, an alternative approach would be to use a revised AVMS to identify a new category of media service provider – a content gateway - distinct from media service providers who have full editorial control over the content they offer.

Content gateways of this type would then be expected to meet a certain limited group of obligations – which would cover access and prominence, but might also include measures on child protection etc.

They would include:

- Familiar broadcast and IPTV platforms
- Connected or smart TVs
- Device driven services like Apple TV
- Ultimately OTT services which aggregate third party content.

Excluded would be ISPs, search engines, social media, and media publishers (the latter would be covered by the main part of AVMS).

This has the advantage of addressing a wider range of issues, but risks introducing a complex and potentially difficult distinction between “full editorial responsibility” (which applies to those who commission their own content), and a different and less active form of editorial responsibility (which would apply to gateways). There are also some important non-editorial issues associated with the operation of platforms and gateways (competition, data privacy, copyright etc.) which it might be difficult to incorporate in such an approach. While there is a case for re-thinking our wider approach to platform/gateway regulation – it is not necessarily clear that AVMS is the best place to bring it all together.

Concluding remarks

In conclusion, although “access” and “findability” sound like simple concepts, regulatory intervention to achieve sensible goals for PSM is not necessarily straightforward.

My suggested questions for further discussion are:

- Are we right to be concerned about future threats to PSM prominence?

[I think we are]

- Can the case for prominence regulations still be made?

[I would argue for a proportionate and flexible approach]

- If so, which is the best route?

[The twin aims of “keeping it simple” and allowing flexibility of interpretation and action for each member state should govern our thinking].

Robin Foster

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