



**BritishAmerican Business  
Position Paper**

**Television Without Frontiers Consultation:  
A Response Prepared for the Department for Culture, Media  
and Sport**

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BritishAmerican Business is the leading transatlantic business organisation dedicated to helping its members build their international business. We stand at the heart of the business relationship between the US and the UK and continental Europe, with a membership of more than 700 companies and 4,500 executives in New York and London. BritishAmerican Business is part of the British-American Business Council (BABC) which has more than 30 chapters throughout the US and UK and in this position paper we are representing the BABC and its 3,500 member companies. We are also part of a wider network of over 30 American Chambers of Commerce in Europe under the umbrella of the European Council of American Chambers of Europe (ECACC). Our significant presence on both sides of the Atlantic ensures that we are particularly well placed to understand the issues affecting American, British, and European companies. From this unique perspective, BritishAmerican Business believes that the transatlantic relationship is key not only to the prosperity of the countries directly involved but is equally crucial to the growth and sustainability of the global economy.

BritishAmerican Business would like to submit the following for consideration in the Department for Culture, Media and Sport consultation on the Commission's proposals to widen the scope of the TV Without Frontiers (TVWF) Directive. We understand that you have spoken to Jonathan Hargreaves, Chairman of the Information, Communication and Entertainment Forum at BritishAmerican Business, and have agreed to take our late entry into consideration when preparing your recommendations.

Given the variety of companies that make up our membership, our response will focus on questions in the first part of the consultation, "General—the effect of widening the scope of the Directive."

**To what extent would Option 2, 3, or 4 ease market entry for new providers of audio-visual media services, or prevent it or make it more difficult?**

The members of BritishAmerican Business recognises the need to update the existing TVWF Directive so that this dynamic sector is able to operate in an environment of legal and economic certainty. However, we are concerned that as presently outlined, the proposed extension of the Directive still lacks clarity and would therefore not contribute to generating a legal and economically certain environment.

Option 4, the option the Commission has chosen to put forward, proposes the application of the TVWF Directive to both linear and non-linear service, although non-linear services would only be subjected to the basic tier of rules. BritishAmerican Business regards the distinction made by the TVWF Directive between linear and non-linear services as vague. Furthermore, the distinction drawn between the two services becomes increasingly blurred if one considers the pace of technological change in this sector. We therefore regard Option 4 as unrealistic: the information and communication market is still evolving and increased regulation should not be proposed if it is not well understood. The extension of regulation to sectors where business models are still evolving could be counter-productive to the Commission's own i2010 objectives. In addition, the E-Commerce Directive already regulates a majority of the new services targeted by the proposal.

The unintended consequence of selecting Option 4 would be that innovation would be stifled. The regulatory burden (increased compliance and enforcement costs) imposed by Option 4 on small companies and new market entrants will increase barriers to entry for small firms, which are important to the competitiveness of this sector. At the same time, we are concerned that larger firms might choose to relocate outside of the EU to avoid having to comply with the Directive.

BritishAmerican Business is generally most inclined towards Option 3, which limits the Directive to all linear services and calls for clarification of the existing text to make advertising rules more flexible, because we believe it will cause the least damage to the sector. Article 1(c) describes linear services: “‘television broadcasting’ or ‘television broadcast’ mean a linear audio-visual service where a media service provider decides upon the moment in time when a specific programme is transmitted and establishes the programme schedule.” Again, this broad description fails to take into account the dynamism of this sector where the distinction between linear and non-linear is becoming increasingly blurred. Ongoing technological change contributes to the difficulty in clearly defining linear and non-linear services. BritishAmerican Business therefore remains concerned that Option 3 would still generate legal uncertainty.

### **What would be the costs and benefits, both direct and indirect, to the UK generally and across various audio-visual services?**

As mentioned above, given the rapid technological change characteristic of this sector, BritishAmerican Business does not see how the TVWF Directive can bring any significant benefit to the UK, although Option 3 would appear to be the least harmful.

BritishAmerican Business is concerned, however, that the close economic relationship between the US and the UK would be damaged, as US companies will invest in countries with less stringent regulation. The UK ranks as the top destination for US foreign direct investment. For example, in 2004 US investment flows to the UK amounted to \$23 billion, a quarter of US investment in the EU as a whole. US investment in the EU is also substantial, totalling \$93 billion in 2004. Furthermore, US firms seeking to invest in the EU often regard the UK as a gateway to other EU Member States. Consequently, the Directive could have a detrimental impact on EU-US relations in general and UK-US relations in particular.

### **What impact would the Options have in terms of compliance costs for smaller firms?**

In both Options 3 and 4, smaller firms would experience greater compliance costs than larger firms; however, compared to Option 3, Option 4 would have a significant impact on the small firms ability to thrive in the EU. The extension of the TVWF Directive generally seems to favour larger firms that could absorb the compliance costs or choose to relocate to non-EU countries.

### **Would any of the options give rise to a potential for displacement of economic activity as between different parts of the audio-visual services sector? Would it give rise to decisions in this sector to relocate to or invest in non-EU locations?**

Quantitative information is limited but BritishAmerican Business is concerned that the cost of the implementing TVWF Directive, particularly if Option 4 is applied, could be greater than the cost of moving audio-visual ventures outside the EU. In this case, innovation, investment and employment could be diverted to non-EU countries. This diversion would also affect complementary industries and industries dependent on audio-visual services for their business models, considerably damaging the competitiveness of the EU in the global economy.

**If the TVWF Directive were extended to add only mass-media video-on demand services of the kind currently available—so excluding all other forms of ‘non-linear,’ on-demand services—what would the costs and benefits be?**

As outlined above, the members of BritishAmerican Business believe in order to create and maintain an environment characterised by legal certainty, the following terms must be clearly defined: linear services, non-linear services, and video-on-demand services. However, these technologies are also rapidly changing and becoming more sophisticated to the extent that any definitions outlined at present might no longer be relevant in the coming years. BritishAmerican Business considers that the inclusion of video-on-demand services would still contribute to legal uncertainty and therefore bring no benefits to the industry and consumers.

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BritishAmerican Business is grateful for the opportunity to submit its members' views to the Department for Culture, Media and Sport for the consultation on the European Commission's proposals to review the Television Without Frontiers Directive. Should you have any questions or comments, please contact Anna Di Camillo, Forums and Policy Manager at BritishAmerican Business ([adicamillo@babinc.org](mailto:adicamillo@babinc.org)).

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