



DCMS CONSULTATION ON REVISIONS TO THE “TELEVISION WITHOUT FRONTIERS” DIRECTIVE

Flextech Television provides entertainment channels to the UK multi-channel television market. Flextech owns seven entertainment channels – LIVINGtv, LIVINGtv2, Bravo, Challenge, Player, Trouble and Ftn (plus their time-shifted variants).

Flextech also has a 50% interest in UKTV, a joint venture with BBC Worldwide, which consists of ten channels: UKTV Gold, UKTV G2, UKTV Drama, UKTV Style, UKTV Style Gardens, UKTV Food, UKTV History, UKTV Documentary, UKTV People and UKTV Bright Ideas. Together Flextech and UKTV are the largest supplier of basic channels to the UK pay-TV market. Flextech Television also owns the media sales house **ids**, and the content distributor Minotaur International.

Flextech is part of the content division of ntl:Telewest, which offers a wide range of communications and entertainment services to more than five million residential customers. ntl's networks can service more than twelve million homes – 50% of UK households – and 85% of UK businesses.

SEPTEMBER 2006

EXECUTIVE SUMMARY

- While there is much to commend in the Commission's draft Audio Visual Media Services Directive, we believe that the proposed extension of scope to new forms of media service threatens new and emerging business models;
- We support Option 3 – as outlined by the Commission in its impact assessment). Such an approach would reform restrictions around commercial communications, and would create absolute clarity about the focus of the Directive on traditional linear broadcast television, however it is delivered;
- If this process of revising the Directive does indeed result in an extension of scope, we believe that it is imperative to reach absolute clarity over exactly which services are captured by the new rules – and clarity about the revised Directive's relationship with the e-Commerce Directive;
- Given the increasing pressure on traditional spot advertising, we welcome the proposal to lift the prohibition on Product Placement, except for news and current affairs programming. We disagree, however, with the Commission's approach to ensuring the transparency of such arrangements;
- While we support the removal of the "20-minute" rule, we do not support the replacement "35-minute" rule that the Commission proposes for a few genres;
- We urge the UK Government to resist any moves from other member states to dilute the Country of Origin principle that is the very foundation of Europe's vibrant broadcasting sector.

INTRODUCTION

We welcome the European Commission's decision to review the Television Without Frontiers Directive.

In the seventeen years since the Directive was first introduced, broadcasting in the UK (and indeed across Europe) has experienced wave upon wave of change. The advent of multichannel television via satellite and cable offered audiences unprecedented choice. The digital revolution of the late 1990s then expanded this choice exponentially, and introduced new forms of interactivity. Today, we are grappling with the impact of technologies that allow viewers to exert substantially more control over their viewing than ever before – scheduling their own entertainment from rich libraries of options.

We strongly believe that adapting to this latest (and arguably most profound) change demands a revised pan-European regulatory framework – but we disagree with the Commission's proposals to extend regulation to the emerging sector of advanced on-demand services. While there is much to commend in the Commission's draft (including, for example, new proposals to liberalise rules governing commercial communications), the extension of scope beyond linear television presents a threat to new and emerging business models.

Flextech Television is responding to this consultation primarily in our capacity as a content provider to a number of different platforms, but we also support the views expressed by ntl:Telewest's response in their response.

THE SCOPE OF THE DIRECTIVE

A FOCUS ON LINEAR TELEVISION

We believe that Option 3 (as outlined by the Commission in its impact assessment) is the preferable approach to revising the Directive. This would reform some of the restrictions around commercial communications in a beneficial way, and would create absolute clarity about the focus of the Directive on broadcast television – however it is delivered.

Flextech Television has a long history of providing UK audiences with what the commission terms “linear audiovisual media services”. Our portfolio of wholly-owned and joint-venture channels now includes seventeen individual services, plus a number of time-shifted versions. However, as our audiences have adapted to the potential of new technology, so have our channels.

For example, our Bravo channel has been available to UK viewers for seventeen years. Even with innovations such as ntl:Telewest’s TV Drive and Sky+ (which provide audiences with greater ability to pause, rewind or timeshift their viewing) viewers largely exert the same control as they did when the channel first launched. The paradigm remains one of a “push” from broadcaster to recipient, and therefore justifies a regulatory framework of appropriate safeguards and minimum standards that reflects the relative passivity of audiences. However, as the Commission recognises, this is changing.

Homes with cable television can now experience Bravo in both linear and non-linear forms – able either to “lean back” and watch whatever our schedulers have chosen for them, or use their Electronic Programme Guides to access Bravo content that they select themselves from a library of programming. While cable is the primary platform by which we offer video-on-demand services, we also provide branded non-linear content through other means.

Bravo was one of the first channels to have a supporting website, which has grown in richness and interactivity over the years. Today, that website is the hub for a wide range of content, demonstrating the complexity of the marketplace that the Commission is now proposing to regulate. The website still offers text-based schedules, programme support information, competitions and chatrooms as it always did, but in addition to gaming and e-commerce, we now also offer opportunities to stream whole television episodes or clips to a screen connected to a PC, or to download episodes to a hard drive, iPod or PSP for viewing at other times and in other places. Sometimes, these downloads are free of charge to the user, but in other cases, they are offered on a pay-per-view, pay-per-download or a subscription basis. Future iterations of the website may incorporate user-generated content, an innovation that we have pioneered on the website that supports our Trouble channel brand. Users post their own content direct to the web through video messaging – these films are then viewed, recommended and rated by other users.

The potential should be clear – even through the brief example of Bravo – for new services to deepen and extend relationships between media providers and audiences. But each of these individual elements forms a different type of relationship between the channel and its audience, with each relationship requiring a different regulatory approach in response.

In the context of the rapid change outlined above, we strongly believe that the focus of this Directive must remain services akin to traditional broadcasting –

where the available content is chosen, scheduled and delivered simultaneously to a large number of consumers in a form that we would all recognise as linear television. This continues to recognise the fixed, inflexible, one-way character of scheduled broadcast television. Given the multiplicity of ways in which this kind of linear service is delivered today – whether via cable, satellite, digital terrestrial television or even via DSL broadband – we have no objection to a framework that applies a technologically neutral approach to regulation of linear services, as Option 3 would do. Audiences have a right to expect the same service to be regulated consistently, regardless of what technology delivers that service, or on which device they consume it.

However, we are aware of no pressing need for new types of service to be regulated at a European level. These new services enable individuals to exert infinitely more choice in determining their own experience – “pulling” content down, rather than having it “pushed” at them. This transforms the relationship between media provider and consumer.

THE IMPORTANCE OF CLARITY

Notwithstanding our wish to see the scope of the Directive restricted, we recognise that the debate has progressed since the Commission’s original draft. There appears to be great momentum behind the extension of scope, and we therefore believe it is critically important for any revised Directive that does cover new services to be absolutely clear about what will and will not be captured by the new rules. As the UK Government, Ofcom and the Broadband Stakeholders Group (among others) have pointed out, there is a very real danger that the Commission’s definition of “non-linear” services includes a number of activities that neither look, feel nor behave like television.

We are also unclear how the revised Directive will interact with the existing e-Commerce directive, which already regulates many of the non-linear services that the Commission is seeking to regulate.

REGULATING APPROPRIATELY

In its April 2006 position paper, Ofcom cited some of the successful self-regulatory initiatives that are in operation in the UK (and in the EU) and stated:

“Our experience in the UK has demonstrated that self-regulation, supported by a strong focus on media literacy, is a key element of any regulatory ecology for the audiovisual sector”.

We agree. We strongly urge the UK Government to defend the co- and self-regulatory mechanisms that already act in the interests of consumers.

In 2005, we commissioned the consultancy Headlight Vision to investigate the changing role of television in the lives of 13-19 year old multichannel viewers. Among other things, this research project investigated young people’s expectations and attitudes to content. As Headlight Vision noted in their report for us:

“For many consumers, what was once a social activity has become a private affair, with young people having unprecedented control over the types of media content that they consume.”

The need to “stay grounded” within an increasingly pressured and demanding modern world makes young audiences more media literate than any previous generation:

Whilst most gatekeepers and parents believe that controlling media content is important, the overall belief is that by the age 13 or 14, young people are sufficiently mature and experienced enough to cope with self censorship. For parents, the benefits of younger self-censorship outweigh the disadvantages.”

For us, this highlights the importance of adopting appropriate regulatory frameworks that reflect the constantly shifting expectations of increasingly empowered audiences: protecting them through restrictions and limits when appropriate; while allowing self-censorship and informed choice wherever possible.

COMMERCIAL COMMUNICATIONS

All but a few of Flextech’s channels are exclusively available to pay-TV customers, which makes subscription an important part of our revenue model. However, a very significant – and growing – proportion of our revenue is derived from advertising. These combined income streams are absolutely key to sustaining a level of income that supports our substantial investment in UK-originated content.

Pressure on traditional spot advertising has already highlighted the importance of exploring new models to support advertisers and their brands – including interactive advertising and advertiser-funded programming. We therefore welcome moves to modernise the rules around commercial communication, especially those relating to product placement and sponsorship.

SPONSORSHIP AND PRODUCT PLACEMENT

We have already responded to Ofcom’s recent consultation on the issues around product placement. We welcome the possibility of its introduction, subject always to sensible measures to protect editorial integrity and preserve the trust of viewers. For example, we support the continuation of the ban in news and current affairs programmes, and in programming for younger children who are at a less media-literate stage of their development.

However, while we agree that the use of product placement should be transparent, we believe that the Commission’s proposals are insufficiently flexible to allow broadcasters to highlight the inclusion of product placement in ways that do not detract from viewers’ enjoyment of a programme. In particular, we have concerns that the requirement to identify the presence of product placement at the beginning of a programme will diminish the impact of paid sponsorship, and may actually succeed in drawing greater attention to the products than would ordinarily be the case.

On sponsorship, we agree that news and current affairs programming should not be sponsored and we also welcome the Commission’s proposal to allow companies producing medical products and treatments to sponsor programmes.

SPOT ADVERTISING AND THE 35 MINUTE RULE

Although we also welcome the Commission's proposal to lift the daily advertising limits and abolish the "20-minute rule", we do not support the replacement "35-minute rule" that is proposed for a few genres.

This proposal would limit the commercial viability of news and children's programmes – which typically (in the UK at least) occupy 30-minute timeslots. It would also bring into question the commercial viability of films by allowing less frequent advertising than is currently permitted. We believe that these rules should be lifted entirely.

Finally, we are disappointed that the Commission's proposals continue to the limitations on isolated spot advertising.

OTHER ISSUES

EUROPEAN CONTENT

Commissioning increasing amounts of original programming is a key part of Flextech's overall strategy – although the different editorial propositions of our channels demand different mixes of content appropriate to those propositions. Although our own overall approach should lead to a greater and greater proportion of European works across our portfolio of linear channels, we strongly believe that individual channels should be free to determine their own target levels of original and European content. We therefore welcome the retention of the "where practicable" caveat in the Commission's draft.

Again notwithstanding our overall rejection of the extension of scope, we do not believe that non-linear services should be subject to any quotas or targets for European works. It is unclear to us how they would be implemented in the context of the various forms of on-demand service we offer to consumers.

COUNTRY OF ORIGIN

The application of the Country of Origin principle to the original Directive has created the conditions for a thriving market in pan-European broadcasting. Flextech benefits from this principle by distributing its channels to paying subscribers in the Republic of Ireland, subject to broadcast licences issued and monitored in the UK. We welcome the regulatory clarity that the Country of Origin principle provides.

We are aware of moves by some member states to damage Country of Origin, which would be profoundly damaging to all EU-businesses engaged in pan-European broadcasting. We urge the UK Government to resist all such attempts, and stand firm on the vital importance of a strong Country of Origin principle to the revised Directive. We refer DCMS to the response from the Satellite and Cable Broadcasters Group (of which we are a member) which addresses this issue in more detail.

Flextech Television
8 September 2006