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EUROPEAN AUDIOVISUAL OBSERVATORY
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Video on demand and catch-up TV in Europe

October 2009

A report by the
European Audiovisual Observatory
and the
Direction du développement
des médias (DDM)
with the collaboration of NPA Conseil

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1.1. DEFINITIONS AND SCOPE OF THE STUDY

In the professional audiovisual field, the discussion of on-demand audiovisual services has, because of its complex nature, often been limited in the last few years to a small number of experts. Despite the growing popularisation of the services, most professionals still feel excluded from a subject often perceived as hermetically sealed off from them. The objective of this study is to provide non-specialised audiovisual professionals with an overview of the development of on-demand audiovisual services in Europe. The concern will be more to provide a structured summary of disparate information than new data on a booming market. Each day brings with it new information, often of a technical nature, from many different sources and its strategic importance needs to be measured in the light of a comprehensive understanding of the subject. We therefore considered it necessary to bring together this information, which has been systematically collected from primary sources, in order to produce a complete and precise, if not exhaustive, overall picture.

First of all, we believe it is advisable to clarify a number of problems with regard to definitions as the same terms may cover different situations depending on whether they are employed in a technical or legal context or in everyday speech.

1.1.1. The technical definition proposed by the ITU.

The technical definition in English recommended by the ITU in 2004 for the transmission of (VoD) is as follows: "Program transmission method whereby the program starts playing after a certain amount of data has been buffered while receiving subsequent data in the background, where the program is completely created by the content provider."[1]

Graphic 1 : Graph of a VoD service proposed by the ITU

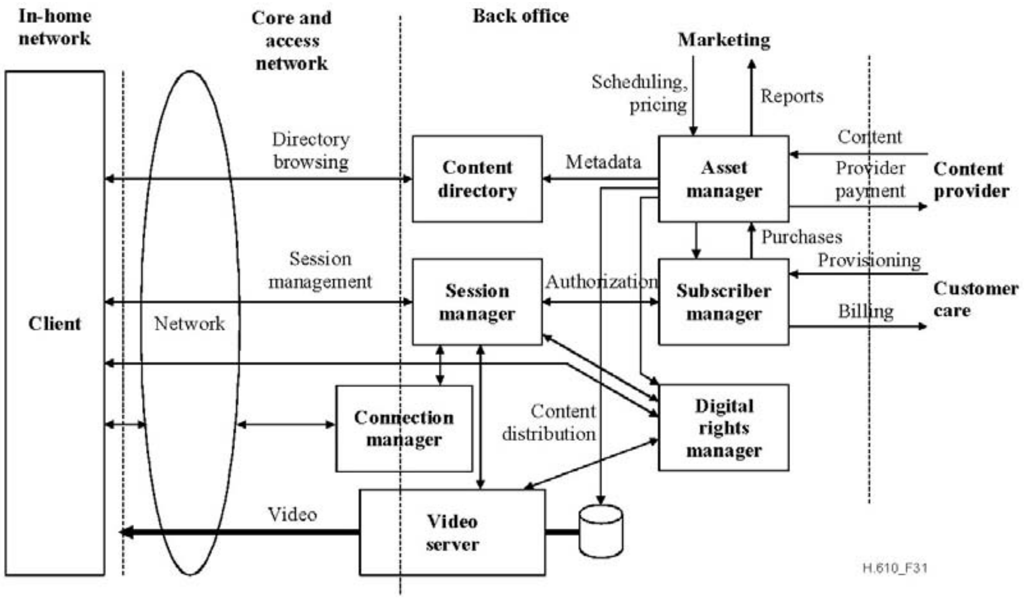


Figure 31/H.610 – VoD back office management

Source: ITU (2004)

1 ITU, J.127 (04), 3.3

In a technical context, the legal status, the usage forms and types of content are not taken into consideration. Services that offer films and television broadcasts generally put onto a server by professional providers may be included, as may services based on the principle of making programmes provided by individual users available ("user generated content").

1.1.2. The legal definition provided by the Audiovisual Media Services Directive

A legal definition of on-demand services is provided by the European Audiovisual Media Services Directive (AVMSD), which was adopted in November 2007: *"an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider"*. This is more restrictive than the technical definition because it excludes from its scope VoD forms that are not part of the normal service activities or cases where the use of VoD techniques is not part of the main objective of a service. In particular, the directive's definition does not cover services consisting of programmes provided by users.

1.1.3. Common definitions

In the previous study published by the European Audiovisual Observatory and DDM, NPA Conseil wrote "*The term "video on demand" […] covers a wide range of technologies, all of which allow the selection and rental – or remote purchase in a non-physical form – of video content for immediate or later viewing on various types of device (computer, television, telephone, portable player) for a limited or unlimited period."*

This definition involves a number of restrictions itself since it presupposes that the VoD services are supplied against payment (for a purchase or rental). However, one of the big developments in 2007 and 2008 was the rise in the number of services, either public or commercial, which do not require payment but are funded by other means (advertising, licence fee, sponsorship, etc) and thus enable the user to receive programmes free of charge. This is sometimes referred to as "free on demand" video (FOD). At the same time, there has in the last few months been quite a strong trend towards distinguishing between VoD services offering "stock programmes" (especially cinema films) for purchase or rental and catch-up television, which enable the user to view programmes distributed by a television channel after they have been broadcast and even in some cases as preview screenings. While these two main types of service correspond to on-demand services within the meaning of the directive, there is an increasing tendency to draw a distinction (especially in connection with commercial contracts relating to literary and artistic property rights) between VoD as such and catch-up TV.

1.1.4. The scope of this study: video on demand, catch-up TV and video sharing services

In the context of this study, the main focus will be on on-demand audiovisual services such as those defined in the AVMSD (commercial VoD services, whether free or subject to payment, catch-up TV services and pay-per-view services). The video sharing services (such as YouTube, Dailymotion, etc) will only be examined here insofar as they are open to the inclusion of programmes supplied by traditional professional players (television channels, film producers) and their success among users necessitates an additional analysis in terms of player strategies.

The study aims to describe the development of audiovisual services in Europe. However, owing to the international nature of the strategy of some players, it appeared necessary to extend the discussion to the situation in the United States and even Japan.

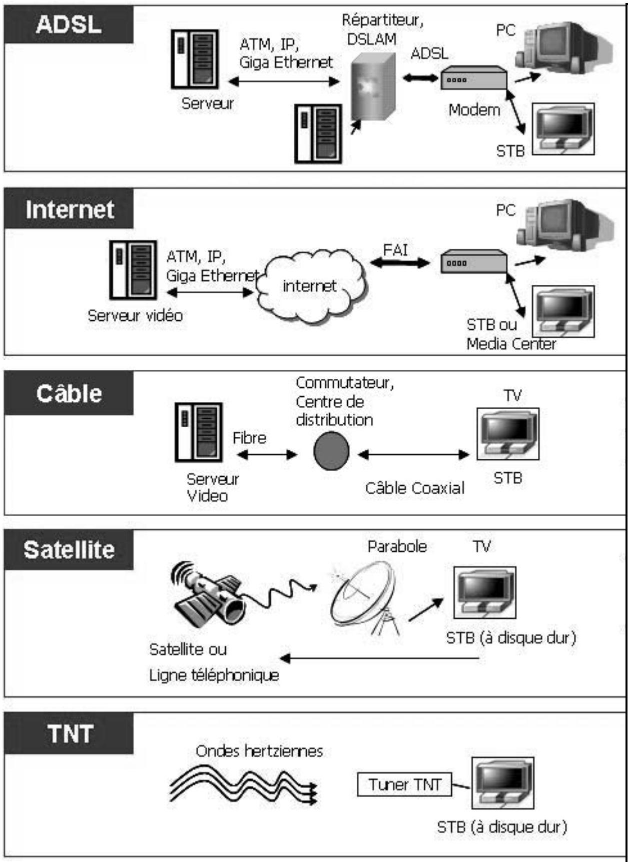
The scope has thus become complex and it is this complexity that we shall attempt to describe here. The study is based on extensive documentary work aimed at systematically identifying the primary source of information and making it available to the reader by means of precise references, as well as on an initial survey of the on-demand audiovisual services operational in Europe and on regular contacts with the professionals working in this field.

1.2. THE TECHNICAL CONDITIONS FOR THE PROVISION OF ON-DEMAND AUDIOVISUAL

Video on demand streams are accessible on several networks: Internet, IPTV, cable, digital terrestrial television, satellite, mobile telephony networks (3G). Each of the various services on the VoD market has chosen to operate on one or more of these networks for strategic and commercial reasons and, of course, in the light of the state of development of the networks in the target countries.

It is essential to understand the various technical methods employed for the distribution of services in order to comprehend the providers' strategies and the many different developments as far as the national markets are concerned. In 2008 and 2009, this problem became all the more significant as it was compounded by the question of the distribution of on-demand audiovisual services in HD quality. The launch in 2006 of the first HDTV services in Europe and the rapid growth in the number of channels broadcast in HD, the lowering of the cost of HD receivers leading to an increase in their popularity[2] and the clarification in January 2008 of the HD video market brought about by the victory of Blu-ray over DVD HD

Graphic 2 : Networks for distributing on-demand audiovisual services



- Various types of architecture are possible; ideally servers are located as near to subscribers as possible
- Video content reaches the TV via either a dedicated STB or an outlet on a multi-functional ADSL modem

- The delivery of video flows is transparent, with the service's capacity limited only by the subscriber's connection speed
- Two possible reception modes: streaming and download

- Bi-directional, large bandwidth
- Servers located at the network head-end
- The order reaches the server, which delivers a high-quality MPEG-2 flow to the digital receiver

- The satellite can transmit films in a loop by starting them every 30 minutes
- On-demand functions are possible, but necessitate "client" storage: an advanced STB can store a library of titles locally, but choice remains limited. No return path unless coupled with a broadband connection
- On-demand functions are possible, but necessitate "client" storage: delivery relies on dedicated transmission channels and an advanced STB able to store a library of titles locally. Choice remains limited.

Source: NPA Conseil

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2 According to Screen Digest, 4.6 million European households, or 2% of the total, were equipped with HD televisions at the end of 2008. According to the British company's forecasts, more than 50 million households, or about 20% of the total, should be equipped by the end of 2013. "High-definition Television in Europe: A clearer picture emerged during the past year", *Screen Digest*, March 2009, pp.77-84.

could not leave the providers indifferent to the growing insistence of consumers to be provided with HD with quality in the case of on-demand services too.

1.2.1. On-demand services via the Internet[3]

A large number of on-demand services are accessible on the Internet, either directly from an ADSL connected computer, cable or any other Internet access technology.

Video is delivered on the basis of the transport capacities of the international network and the network of Internet access providers. The on-demand service operator does not manage the content delivery network, so it has considerable freedom regarding its ability to offer a service. VoD online, i.e. on the Internet, thus covers a wide variety of services, either free or subject to a charge and offering both works produced by professionals and personal creations (also referred to as user generated content, or UGC).

Only the subscriber's Internet connection speed limits the capacities of the service.[4]

1.2.1.1. Downloading and streaming

In the case of most on-demand audiovisual services, programmes are stored on a central server. Videos can be distributed:

- either by downloading them and storing them on the user's computer hard drive (or another device). Depending on the case, the viewing of a downloaded programme may or may not be subject to a time-limit. In the latter case, the term download-to-own is used.
- or as streamed content (sometimes called progressive download), In this case, the programme is not stored on the user's device: the process permits an audio or video to be played as it is being broadcast. In most instances, services that employ streaming do not authorise downloads, but the service operator can offer downloading as an option[5]. There is a large amount of software available that enables a user to capture a streamed programme and to store it on its terminal.

The on-demand audiovisual services on the Internet cover a wide range of offerings, whether free of charge or subject to payment. The video sharing services of the type provided by YouTube or Dailymotion normally employ streaming. The distribution principle is the same but users have the possibility of uploading the videos they want to share themselves.

1.2.1.2. The range of multimedia players

The offerings on the Internet can normally be viewed using one of the classical multimedia players that users can download free of charge (Microsoft Media Windows Player and

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[3] For a complete technical presentation, the reader should refer to specialised publications. See for example Y. Dony, *Video-on-Demand over Internet*, *A Survey of Existing Systems and Solutions*, Facultés Universitaires Notre-Dame de la Paix, Namur, 2008, http://www.fundp.ac.be/pdf/publications/66101.pdf

[4] For example, a study carried out by Ofcom has shown that, in the United Kingdom in September 2008, the average speed of the broadband networks was 3.6Mbps, i.e. half the average speed advertised by the access providers. This speed is considered sufficient for the normal reception of most online services, such as music and standard definition video in the case of services like YouTube and the BBC iPlayer, as well as HD services. Ofcom press release, 8 January 2009, http://www.OFCOM.org.uk/media/news/2009/01/nr_20090108

[5] This is the case for example with the sharing service Viméo: programmes are streamed but videos can also be downloaded if the rights holder offers this option.

Microsoft Silverlight, Apple's Quicktime, the Adobe Flash Player, the Real Player of RealNetworks International, the DivX of DivX Inc., etc).

According to Nielsen Online, the Windows Media Player continues to dominate the market (50.7% market share in January 2009) but Apple's iTunes had become the second most popular at the end of 2007. This popularity grew in 2008 and a market share of 27.8% was recorded in January 2009.[6] According to WebsiteOptimization.com, if the iTunes growth continues at the same rate, the market share of Apple (which also publishes the QuickTime player) is likely to exceed that of Microsoft in the first quarter of 2012.

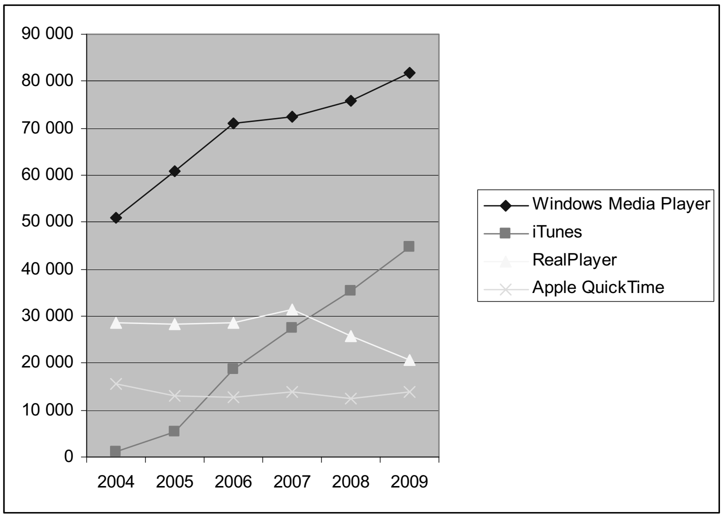
It should be noted that, in contrast to the Adobe Flash Player, the iTunes player and Microsoft's Silverlight, many DRM systems designed for the Windows Media Player are not compatible with the Apple and Linux operating systems, thus de facto limiting the universality of the on-demand services using them.

Table 1 : Multimedia players – Unique users (in 000s) (2004-2009)

	iTunes	Apple QuickTime	RealPlayer	Windows Media Player
Jan-04	1,118	15,458	28,593	51,056
Jan-05	5,370	13,136	28,182	60,782
Jan-06	18,568	12,817	28,687	71,112
Jan-07	27,396	13,934	31,309	72,510
Jan-08	35,269	12,531	25,800	75,810
Jan-09	44,764	13,832	20,709	81,795

Source: Nielsen Online

Graphic 3 : Multimedia players – Unique users (in 000s) (2004-2009)



Source: NielsenOnline

6 "iTunes Player Hits a High Note, Passes RealPlayer - US Broadband Penetration Increases to 86.79% Among Active Internet Users - January 2008 Bandwidth Report", Optimization Week Issue #92, Jan. 22, 2008, http://www.websiteoptimization.com/bw/0801/; "Apple Streaming Media Players Target Microsoft", WebSiteOptimization.com, March 2009, http://www.websiteoptimization.com/bw/0903/

"Comparison of multimedia players", a Wikipedia article comparing standard multimedia players that can play video, http://en.wikipedia.org/wiki/Comparison_of_media_players

It is also worth mentioning the growing success of the Adobe Flash Platform, which can be explained by the fact that it is used by free services such as YouTube, Hulu, Viméo and the BBC iPlayer. Adobe claims to be the market leader, pointing out that the penetration rate of the Adobe Flash 7 in the mature markets (North America, Europe, Japan) was higher than 98% and that of the most advanced version, the Flash Player 10, higher than 85% in June 2009.[7]

Some providers of on-demand audiovisual services use a proprietary player, which is often a derivative of the existing players.[8]

1.2.1.3. Territorial limitation

In most cases, access to on-demand audiovisual services via the Internet is universal but some sites employ forms of territorial limitation, either for the whole of the service or for certain catalogue titles. The territorial limitation is usually carried out by identifying the user's IP address (geolocation) but may in the case of paid services be carried out by identifying the country of residence (especially through the credit card number).

1.2.1.4. The computer as the main reception device

The images downloaded via the Internet can primarily be viewed on a computer and, perhaps, a television set if the user has linked his or her TV screen to the computer. This connection was one of the major industrial achievements in the development of the market (see 1.2.7 below).

1.2.1.5. Peer-to-peer architectures

The standard solutions of distribution for downloading and streaming from a central server have been joined by peer-to-peer (P2P) technology. This is used for the exchange of files (music, videos, software, photographs, etc) between different users connected simultaneously to the Internet. In the case of P2P, the various machines play the role of both server and client. P2P services require the use of software based on BitTorrent type protocols[9], GNUtella, WinMX, Ares, Kazaa, eDonkey, eMule, Kademlia.[10] P2P permits the transfer of data directly between the remote machines of various users connected to the Internet. The files exchanged are stored on the users' computers and are thus directly downloaded from one PC to another. There is no server that centralises all the files.

The P2P architecture is frequently used by Internet users for the unauthorised, indeed unlawful, sharing of programmes. However, this type of technology may just as well be used for transfers of large standard files or legal offerings, a trend that emerged in 2007. The following might be mentioned as examples of this:

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7 "Adobe Flash Player Version Penetration" , Adobe System website, July 2009, http://www.adobe.com/products/player_census/flashplayer/version_penetration.html

8 For example: the BBC iPlayer, the FNAC Video Manager, the player of the Austrian service Filmladen or the Filmkey player of the Swiss service Artfilm.

9 "About us", BitTorrent site consulted on 26 July 2009. (http://www.bittorent.com). For a detailed presentation, see G. de Menten, "BitTorrent, le chaînon manquant des protocoles *peer to peer* ?", Faculté d'informatique, Namur, http://www.info.fundp.ac.be/~ven/CISma/FILES/40b3681836cb72004_dementen_gaetan.pdf

10 Kademlia is a distributed hash table created to decentralise the other P2P file exchange networks. See article entitled "Kademlia", http://fr.wikipedia.org/wiki/kademlia, consulted on 3 August 2009.

- the free VoD service Joost, which was launched in 2007 and employs a P2P architecture;[11]
- the Swiss-based Clickmovies VoD service, which employs the "Push2Peers" solution developed by the French company Djingle;[12]
- the Nordic VoD service Film2Home, which formed a partnership with the service provider Ameibo to launch the Film2home P2P service in June 2009;[13]
- in Norway, the public service broadcaster NRK uses a BitTorrent system based on the Opentracker software (which is also used by The Pirate Bay to broadcast television programmes online);[14]
- in the United States, the video sharing service Vuze[15] also uses a P2P architecture.

BitTorrent, a P2P system with an incentive mechanism that encourages sharing, is probably the most popular protocol: around fifty software applications using BitTorrent protocol ("BitTorrent clients") have been developed.[16] BitTorrent claims to have a global base of 160 million items of software installed. According to estimates provided at a specialised forum and based on data supplied by BitTorrent, there are between 50 and 70 million active clients a month, or 5% of all web users.[17] According to a study published by PC Pitshop[18], the most popular BitTorrent client in Europe is the uTorrent, whose market share was estimated in early 2008 at 11.6% of European PCs. In the United States, the most popular software is LimeWire.

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11 BitTorrent, Joost put download tech to legal use", *Reuters*, 25 February 2007, http://www.reuters.com/article/musicNews/idUSN2518922420070228

12 http://www.djingle.fr/index.php?tree_id=8 .

13 Film2Home press release, 9 June 2009, http://www.film2home.se/se/press/pdf/film2home_b%C3%B6rjar_med_fildelning_v1_juni_2008_2_.pdf.

14 "Norwegian Broadcasting Corporation sets up its own bittorrent tracker", *NRKbeta*, 8 March 2009. http://nrkbeta.no/2009/03/08/norwegian-broadcasting-corporation-sets-up-its-own-bittorrent-tracker/

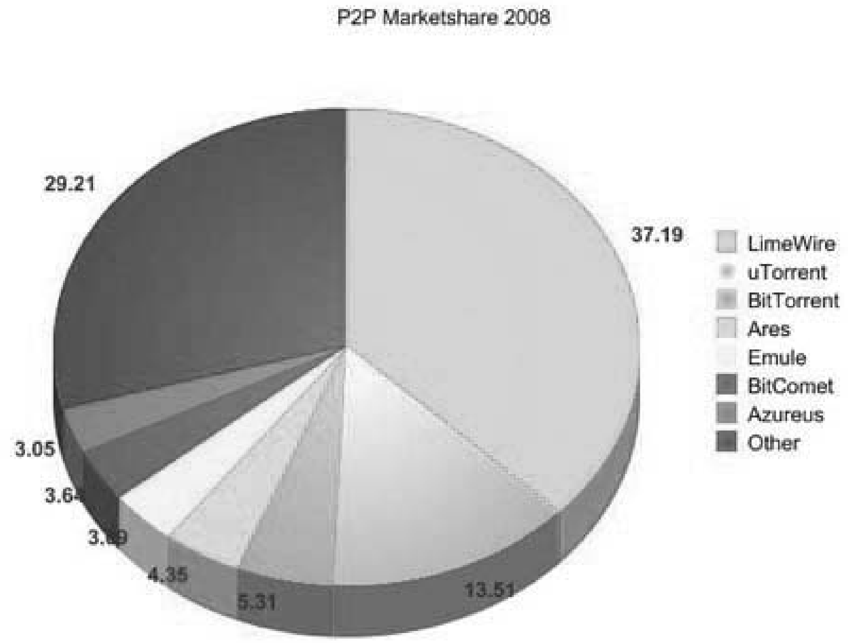
15 http://www.vuze.com

16 Wikipedia article entitled "Comparison of BitTorrent clients", consulted on 27 July 2009, http://en.wikipedia.org/wiki/List_of_BitTorrent_clients
BitTorrent is particularly liked by the pirate community because it encourages file sharing, thus providing a response to the practice of free riding, which enables the resource to be used without making a contribution in return. However, it should be noted that some BitTorrent clients can be used to carry out a download without contributing anything in exchange. This is the case with BitThief, a so-called "free rider client" developed by the Distributed Computing Group of ETH Zurich (http://dcg.ethz.ch/projects/bitthief/).

17 http://forums.techarena.in/web-news-trends/1093373.htm, May 2008, consulted on 27 July 2009

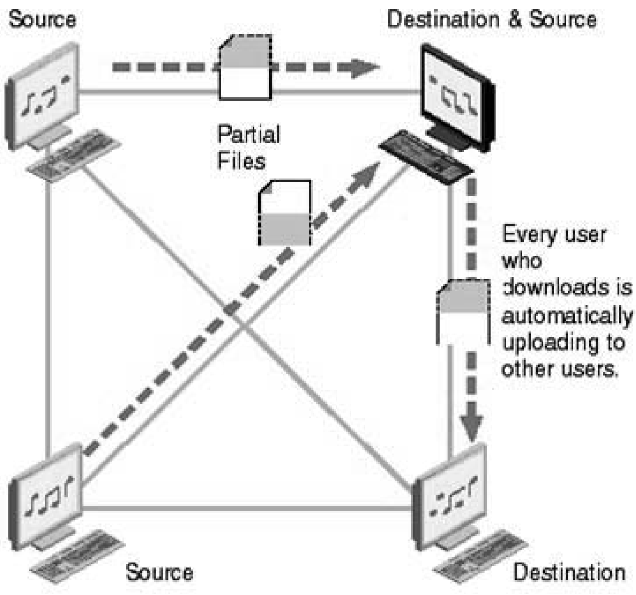
18 Study mentioned in "Filesharing Report Shows Explosive Growth for uTorrent", TorrentFreak, 26 April 2008, http://torrentfreak.com/p2p-statistics-080426/

Graphic 4 : Global market shares of the BitTorrent client software at 1 January 2008



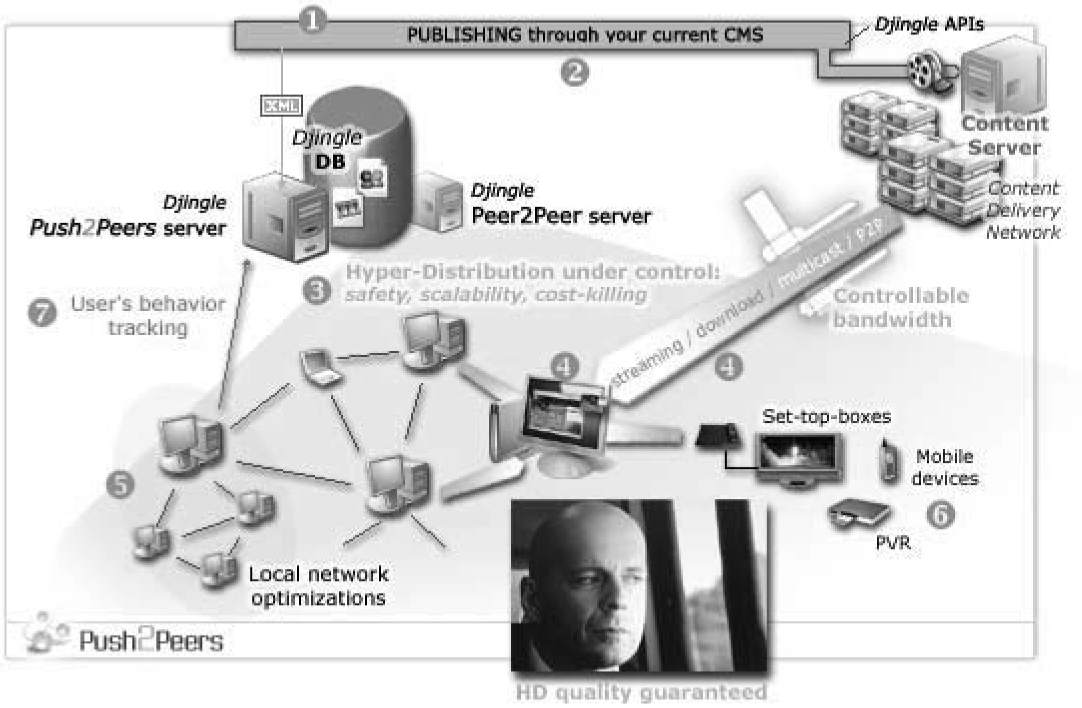
Source: Torrentfreaks on the basis of data from PC Pitshop

Graphic 5 : The use of peer-to-peer for the distribution of VoD works



Source: The Computer Language Co.

Graphic 6 : Architecture of the Push2Peers solution provided by Djingle



Source: Djingle

1.2.2. On-demand audiovisual services on DSL networks

More and more telecommunications operators (incumbent telephone companies) are offering on-demand services via IPTV. This is normally part of a triple-play offering (Internet, telephony, television), with the video feed channelled according to the IP protocol on a dedicated part of the network via the telephone networks (in DSL mode) – separate from the Internet stream – and the content channelled onto the television via a set-top box dedicated both to television services and on-demand services. Since they use the IP protocol, television services and on-demand services distributed on DSL networks are commonly referred to by the generic term “IPTV”. However the use of the IP protocol is not specific to these networks and it may also be used on fibre to the home (FTTH) networks and in some instances of satellite distribution.

Some operators provide on-demand services in the IPTV mode outside the framework of a triple-play offering. In this case, the service requires the user to obtain a set-top box dedicated solely to the on-demand services.[19]

The coverage of the ADSL networks and the quality of service have certain limits, which is usually due to the territorial rollout. In France, for example, the length of the pair of copper

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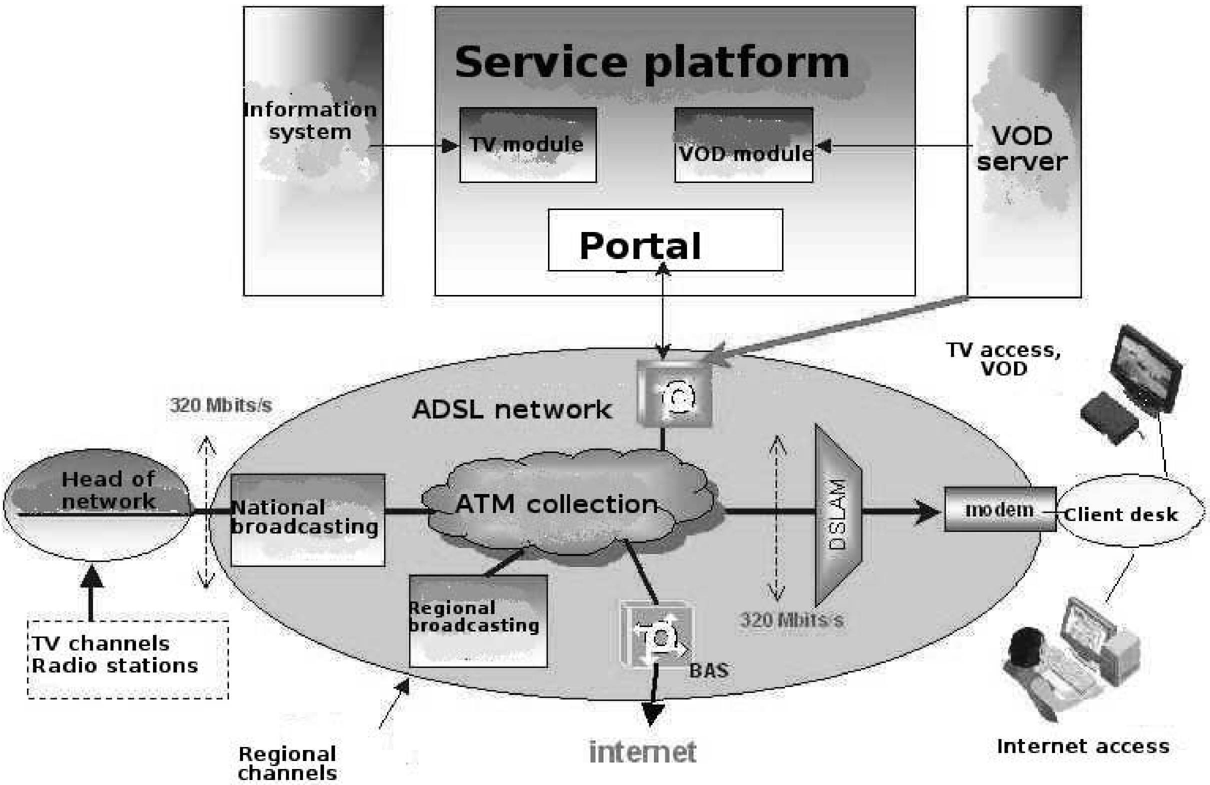
[19] See for example the following services described in the following pages: Vudu in the United States, Netgem/FNAC in France, the TV version of the Maxdome services and Video Buster in Germany.

Graphic 7 : Architecture of a TV and VoD service in the context of an ADSL network



Source: Wallu

wires enables television to be brought to about two-thirds of households but the service is generally limited to unbundled areas. In practice, 50% of French households in mid-2009 were potentially able to receive audiovisual services by ADSL. Since the summer of 2008, some operators, such as Orange, have increased the coverage of their ADSL network by means of satellite delivery for areas not served.[20]

1.2.3. On-demand audiovisual services on digital cable networks

The modernisation of the cable networks in hybrid fibre optic/coaxial cable networks began in the mid-1990s. The situation has changed from one where all networks used coaxial cable to one where the part using coaxial cable is limited to the last few hundred metres linking the network to households. The improvement in the networks has enabled the cable operators to offer new services, including those that require a return path, such as Internet access, telephony and on-demand audiovisual services.

Under the aegis of the professional association Cable Europe, Cable Europe Labs defines the technical standards for network digitisation. The most recent, EuroDOCSIS 3.0., adopted in August 2006 includes VoD ("Entertainment Video").[21]

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[20] ARCEP, "Rapport relatif à l'état du marché français des services de diffusion audiovisuelle", submitted to Parliament on 30 June 2009, http://www.arcep.fr/uploads/tx_gspublication/rapp-march-audiov-parlemt-170709.pdf

[21] "EuroCableLabs Integrates European Requirements Into DOCSIS® 3.0", EuropeCableLabs press release, 29 August 2006, http://www.cableeurope.eu/uploads/MediaRoom/documents/pub-30_en-060828_td_ecl_pr_docsis3-0_final.pdf

Table 2 : Evolution of EuroDOCSIS norms for European cable networks

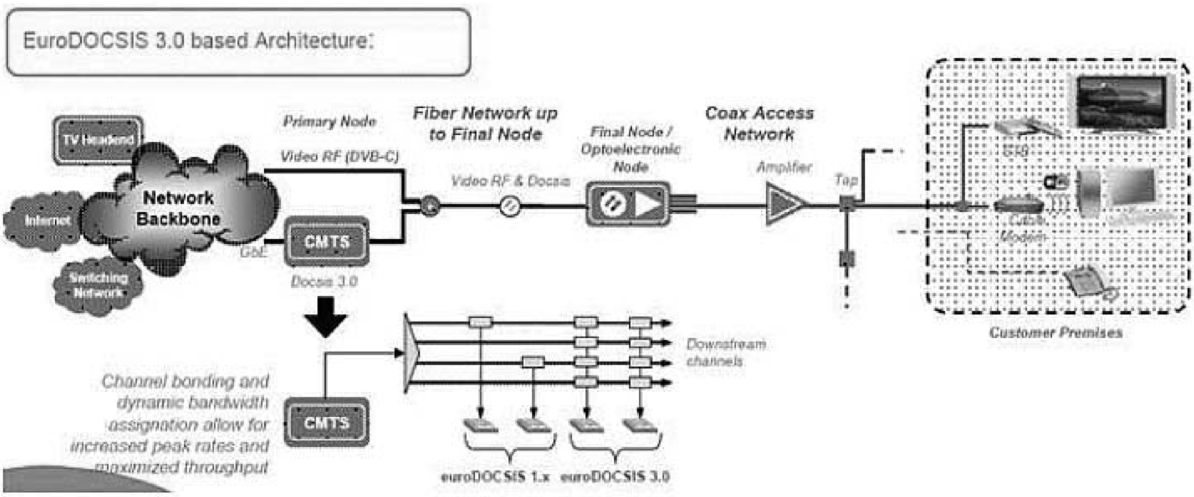
EuroDOCSIS evolution

Source: CableLabs®, U.S.A. (adapted for Europe)

EuroDOCSIS Version	*EuroDOCSIS 1.0*	*EuroDOCSIS 1.1*	*EuroDOCSIS 2.0*	*EuroDOCSIS 3.0*
Services				
Broadband Internet	*X*	*X*	*X*	*X*
Tiered Services		*X*	*X*	*X*
VoIP		*X*	*X*	*X*
Video Conferencing			*X*	*X*
Commercial Services			*X*	*X*
Entertainment Video				*X*
Consumer Devices				
Cable Modem	*X*	*X*	*X*	*X*
VoIP Phone (MTA)		*X*	*X*	*X*
Residential Gateway		*X*	*X*	*X*
Video Phone			*X*	*X*
Mobile Devices				*X*
IP Set-top Box				*X*
Downstream Bandwidth				
Mbps/channel	*55*	*55*	*55*	*N x 55*
Gbps/node (in ~750 MHz)	*5*	*5*	*5*	*5*
Upstream Bandwidth				
Mbps/channel	*10*	*10*	*30*	*N x 30*
Mbps/node	*150 (in ~45 MHz)*	*150 (in ~45 MHz)*	*270 (in ~55 MHz)*	*270 (in ~55 MHz)*

Source: Cablelabs

Graphic 8 : Architecture of a EuroDOCSIS 3.0 cabled network



Source: Cablelabs

1.2.4. *On-demand audiovisual services on fibre optic cable to the home (FTTH)*

It is generally acknowledged that the capacity of telephone and coaxial cable networks will ultimately not enable sufficient quality to be supported for all services (broadband Internet, telephony, television and on-demand audiovisual services), especially in the context of the development of high-definition television and on-demand audiovisual services. It is therefore necessary to develop very fast broadband networks (symmetrical speeds of 50 to 100Mbps). The rollout of fibre to the home (FTTH) networks likely to meet the growing demand for speed is thus one of the main issues for the various operators of VoD services. The first to adopt the FTTH networks were the pioneers of ADSL (Fastweb in Italy[22] and Bredband Bolaget in Denmark at the beginning of the decade and Free in France in 2006). In 2007 and 2008 there was an increase in the number of announcements made by the incumbent telecommunications operators. Major cable operators, such as Virgin Media in the United Kingdom and Numericable in France, are also interested in the FTTH technology.[23]

According to the FTTH European Council, FTTH networks are particularly competitive owing to the video services (especially IPTV services, VoD and RF overlay) and telephony services they carry.[24] A study by the Yankee Group shows that television and on-demand audiovisual services are at the core of the strategy of operators investing in FTTH. Half the operators studied provide HDTV services, sometimes as a pay option, half offer DVR services, over half offer VoD services and some offer catch-up TV services. All the providers acknowledge that HDTV is one of the factors for subscribing.[25] An analysis carried out by Ovum shows that there is no great change in usage in fibre optic households apart from entertainment. By contrast, the consumption of video online is cited as the main usage (30%), followed by teleworking (20%). A traffic analysis also shows that users who subscribe to fibre optic also engage more in the practice of exchanging files.[26]

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22 In May 2009, the catalogue of the Fastweb VoD service contained over 5,000 titles. Source *Trade Home Entertainment*, September 2009.

23 Although it is in principle faster than the 25Mbps offered by its competitors, especially British Telecom, the 50Mbps announced on 10 December 2008 by cable operator Virgin Media is not strictly speaking FTTH but a combination of coaxial cable and fibre to the curb (FTTC). It is interesting to note that in the United Kingdom the Advertising Standards Authority, acting on a complaint by BSkyB, asked Virgin Media not to exploit, as it had done in its advertising, the confusion between FTTC and FTTH technology, which suggested to consumers that it was not necessary to wait for the rollout of BT's FTTH network and that it was more advantageous to subscribe to its service directly. ASA Adjudication, 4 February 2009, http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_45720.htm

In connection with the same problem, the incumbent Portuguese telecommunications operator PT has lodged a complaint against the cable operator ZON for untruthful advertising. ZON had launched a campaign in which it referred in an ambiguous manner to its use of fibre optic cabling. The Portuguese regulatory body ICAP forced ZON to modify its campaign. See "Guerra PT-ZON vai chegar aos tribunais", *Expresso*, 1 August 2009.

24 For a technical description of fibre optic to the home (FFTH), see the *FTTH Handbook*, published by the FTTH European Council in June 2009, http://www.ftthcouncil.eu/resources/newsroom/studies/studies/ftth_handbook_2009/?cid=31&nid=317&catid=4

25 Yankee Group, "Next Generation Access Services. Analysis of Portofolios" Presentation, 2007, http://www.ftthcouncil.eu/documents/studies/Analysis_of_Service_Portfolios.pdf

26 OVUM, "Fibre: the socio-economic benefits", 2007, http://www.ftthcouncil.eu/documents/studies/Socio-Economics_Study.pdf

1.2.5. On-demand audiovisual services via digital terrestrial television and satellite

Since digital terrestrial television and satellite do not have a return channel (or only have a very limited return channel capacity), they face the same constraints. In order to compensate for the absence of a return path, it is necessary to temporarily connect the device to the telephone line so as to provide services with a minimum of interactivity (recording of pay-per-view orders in the context of near video on demand (nVoD) services). In order to offer on-demand audiovisual services, the operators who use these services mainly resort to storing items on the customer's personal video recorder (PVR). The delivery of VoD requires dedicated transmission channels and a set-top box with a hard drive able to store a library of videos locally (in the user's home). This is referred to as *push VoD*. The choice of titles is limited by the storage capacity of the set-top box hard drive(s).

In December 2008, only one on-demand service delivered via digital terrestrial television was available in Europe: Top Up TV Anytime, provided by the British company Top Up TV Ltd. and mainly made up of catch-up TV from various thematic channels. However, projects are now being studied in France (by the terrestrial network operator TDF), in Finland and in Norway.

1.2.6. Hybrid services

One of the trends that are beginning to emerge in response to the capacity limits of the xDSL networks on the one hand and the weakness common to satellite distribution and DTT is the trend towards hybrid (so-called "over the top", or OTT ,systems. Television services are broadcast by satellite or digital terrestrial television, while on-demand services are transmitted via a broadband network or an ADSL network in the IPTV mode.

An example of this has been provided by British Telecom, whose service BT Vision is in fact a hybrid between digital terrestrial broadcasting (in the case of the television channels) and the use of telephone lines for the distribution of on-demand services and "over-the-top" services.

Some operators that distribute channels by satellite have also set up hybrid systems:

- in the United States, hybrid/satellite broadband services were launched in 2007 by the satellite operator Dish Network and in 2008 by DirecTV;[27]
- in France, in September 2008, Canal+ launched a hybrid version of its VoD service Canal+ à la demande, which is available to subscribers with a last-generation Dual-S set-top box;[28]
- in March 2009, the Scandinavian satellite distributor Viasat launched a satellite/IPTV hybrid distribution system. The service is available to all subscribers equipped with a ViasatPlusHD PVR (supplied by Pace) and a broadband Internet connection. Subscribers access the VoD via the electronic programme guide (EPG) of the set-top box and the content is loaded onto the hard disk of the PVR via the connection to the broadband network. Viewing begins as soon as a sufficient quantity of content has been loaded onto the hard disk and while the rest of the content is still being loaded. The content is deleted 24 hours after viewing begins.[29]

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[27] "DirecTV takes on video-on-demand", *CNET News*, 13 March 2008, http://news.cnet.com/8301-10784_3-9893052-7.html

[28] Canal+ Group press release, 9 September 2008, http://media.canal-plus.com/file/11/8/118118.pdf

[29] NDS press release, 24 March 2009, http://www.nds.com/press_releases/Viasat_PDL_240309.html ; Screen

According to the conclusions of a seminar organised by Rapid TV News, this solution could be envisaged in the future by the operators of IPTV services in order to distinguish themselves even more from the cable operators.[30]

1.2.7. On-demand audiovisual services to mobile telephones

The technical conditions for on-demand audiovisual services to mobile telephones are rapidly evolving.

1.2.7.1. Downloading programmes in compatible formats via an Internet-connected PC

The first method that emerged simply consisted in downloading programmes from the Internet in formats supported for mobile telephones (especially the AVI format). This method can also be used for downloading content to the various types of portable devices that support video (iPod, Archos tablets, etc) and cannot strictly speaking be regarded as on-demand audiovisual services to mobile.

1.2.7.2. Mobile Internet connection and access via streaming

On-demand audiovisual services to mobile telephones are possible on the UMTS (3G) telephone networks either via the browser or by using applications that permit fast interfaces with the Internet (WAP, i-Mode, Apps for the Apple iPhone, etc). On-demand audiovisual services are then possible either as part of the paid service of telephone operators that also provide linear television services or in connection with specific applications. Free services funded by advertising are also possible.[31]

1.2.7.3. Direct downloads

Apple's launch of the iPhone 3GS on 19 June 2009 introduced the possibility of accessing the iTunes Store and downloading content direct via a 3G network or a Wifi Internet connection but without a connection to a computer. This direct access is made possible by the new application available from the iTunes Store but also by the speed of the iPhone 3GS, which is much faster than that of the first iPhone generation and all the other smartphones on the market.[32]

1.2.7.4. The 4G perspective: LTE technology

The development of on-demand mobile audiovisual services is likely to be promoted by the move to fourth-generation (4G) networks. In July 2009, the EU member states, like the European Parliament, approved the Commission's proposal on updating the 1987 GSM directive with the aim of making the 900MHz band available to other technologies, including

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Digest, May 2009, p.153. "Carriers See Over-The-Top Video as Way to Fill Holes in Offerings", ABI Research press release, 24 November 2008, http://www.abiresearch.com/press/1310-Carriers+See+Over-The-Top+Video+as+Way+to+Fill+Holes+in+Offerings

30 Chris Forrester, "IPTV must offer hybrid services", Rapid TV News, 5 March 2009. http://www.rapidtvnews.com/index.php/200903153371/iptv-must-offer-hybrid-services.html

31 See for example the free VoD channels specialising in sport, environment programmes or music programmes ofered by the British company Yamgo: http://yamgo.tv

32 http://www.anandtech.com/weblog/default.aspx, "iPhone 3GS Performance: A Significant Performance Bump", *AnandTech*, 19 June 2009, http://www.anandtech.com/gadgets/showdoc.aspx?i=3587

LTE (Long Term Evolution) Advanced, which will offer mobile Internet speeds up to a hundred times faster than those offered by the present 3G networks. LTE is becoming the technology preferred by the companies operating in this sector for their next mobile telephone generation, especially thanks to the substantial funding granted by the EU for research in this area since 2004. It is currently being tested by European operators in Finland, Germany, Norway, Spain, Sweden and the United Kingdom and should be available for commercial used in Sweden and Norway in the first half of 2010.

On 18 August 2009, the European Commission announced that, from 1 January 2010, the EU would be investing 18 million euros in research that will underpin the future 4G mobile networks.[33] The LTE technology should enable mobile telephones to be turned into powerful mobile computers. Millions of new users could obtain ultra high-speed Internet access on their mobile device wherever they are, which will create tremendous opportunities and considerable growth prospects for the digital economy.

The European Commission sees strong potential in the rollout of LTE and LTE Advanced technology.

- LTE will boost the capacities of network operators, enabling them to provide faster mobile broadband to more users at lower prices, revolutionising Europe's mobile telecoms market.
- LTE Advanced will propel mobile broadband speeds up to 1 gigabit (a thousand megabits) per second, allowing users on the go to fully benefit from sophisticated online services such as high quality TV or video on demand.
- LTE uses radio spectrum more efficiently, enabling mobile networks to benefit from the “digital dividend” and use the frequencies freed by the switchover from analogue to digital TV.
- LTE could bring mobile broadband to less populated regions and contribute to the reduction of the “digital divide” between rural and urban areas. In late 2008, 23% of the population in rural areas of the EU still could not subscribe to a DSL Internet connection.

1.2.8. Personal mobile television (PMT) in the DVB-H mode is not adapted to on-demand audiovisual services

Personal mobile television, using the DVB-H standards, is developing slowly in Europe. With these standards, near VoD services (perhaps as pay-per-view) are possible but the system does not lend itself very well to downloading and, therefore, genuine VoD.[34] In addition, PMT suffers from the same weakness as digital terrestrial television and satellite broadcasting, which is the absence of a return path. Moreover, as it cannot really be consumed using a connection to a PVR, it is difficult to see how it could lend itself to the launch of push VoD services.

Furthermore the unexpected success of services using the Apple iPhone applications has fostered 3G distribution and undermined the development of PMT.

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[33] Europa RAPID press release, 18 August 2009, http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1238&format=HTML&aged=0&language=EN&guiLanguage=en

[34] ETSI TR 102 377v.1.3.1, (2009-03), Digital Video Broadcasting (DVB) ; DVB-H Implementation Guidelines, EBU, March 2009, http://www.dvb-h.org/PDF/tr102377.V1.3.1.p.pdf

Strategic Analytics, which in 2006 estimated that the global mobile TV broadcasting market would be worth $5.4 billion in 2010 has revised its prediction down to $280 million.[35] Screen Digest believes that broadcasting to mobiles in Europe suffers from a lack of investment in content delivery platforms and from the telecommunications operators' excessive control over the services. The British firm predicts that PMT revenues will rise tenfold in the next four years and reach 900 million euros in 2012, or only 25% of the total world mobile television market.[36]

1.2.9. Services that provide help to make recordings

The development of on-demand audiovisual services needs to be put in the context of a market where television viewers are already used to the time-shifted consumption permitted by the analogue video recorder and, subsequently, the digital video recorder (DVR, PVR), the most advanced versions of which enable their users to programme their recordings using the electronic programme guide or even, as in the case of TiVO, record their preferred type of programme in advance. The aim of these services is to meet the same objective as the actual on-demand services, which is to enable consumers to watch programmes whenever they want.[37]

The market for PVR services is not as advanced in Europe as in the United States. In Europe, it has mainly been explored by channel distributors (Sky, Canalsat, IPTV operators, etc), who have turned made these services an argument for persuading people to buy top-of-the-range decoders.

More recently, both in the United States and Europe, solutions that enable the user to programme or actuate recordings remotely have been added to this market. As examples of this might be mentioned:

- the possibilities of making recordings remotely on a PVR provided in the United States by the RS-DVR of the cable operator Cablevision[38] or by means of mobile applications that enable the DVR of TiVo (DVR Remote)[39], AT&T[40] or DirectTV to be actuated;[41]
- the possibility of making a recording remotely provided by the top-of-the-range +Le Cube set-top box, a hybrid HD satellite/IP decoder[42], available from Canal+ and Canalsat. When the subscriber has activated the service on the +Le Cube decoder linked to the Internet, they can control the recording functions from wherever they are from a PC or Mac via the canal-plus.fr or canalsat.fr portal;

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35 "Apps could be a nail in the coffin for broadcast mobile television", *Taipei Times*, 12 July 2009. http://www.taipeitimes.com/News/bizfocus/archives/2009/07/12/2003448480

36 "Mobile TV Boost as Recession Bites", *Screen Digest*, January 2009, p.3.

37 See in particular, Goldsmiths – University of London, "Easy to use digital television receivers: remote control buttons and functions used by different types of consumer", prepared for Ofcom, March 2007, http://www.ofcom.org.uk/research/tv/reports/dso.pdf

38 In the United States, this application was the subject of a breach of copyright suit filed by broadcasters but the Supreme Court refused to hear the final appeal, thus leaving Cablevision free to roll out its system. "Cablevision remote DVR stays legal: Supremes won't hear case", *Ars Technica,* 29 June 2009, http://arstechnica.com/tech-policy/news/2009/06/cablevision-remote-dvr-stays-legal-supremes-wont-hear-case.ars

39 http://www.stutsmansoft.com/dvrremote/

40 http://www.att.com/Common/iptv/files/dvrMiniSite/

41 http://www.directv.com/DTVAPP/global/contentPageNR.jsp?assetId=3460014

42 Canal+ Group press release, 16 June 2009. http://media.canal-plus.com/file/56/8/145568.pdf

- BSkyB's Sky Remote Record system;[43]
- the iPhone application of the VUDU VoD service (in the United States), which enables a film to be downloaded remotely via the set-top box.[44]

1.2.10. The accessibility of on-demand services on a television set

1.2.10.1. The aim invoved with regard to access to a television set

The first few years in which on-demand audiovisual services were available were characterised by the impression that the future of these services would be played out on the Internet, and therefore the computer screen, and the success of the iPhone in 2008 focused attention on the smartphone market. By 2009, however, it seemed that the possibility of accessing on-demand services on a television set was becoming the operators' main concern. Various examples illustrate this trend:

- the situation in France, where the development of VoD as part of IPTV services is more advanced than elsewhere, showed that the VoD market was much more television set than PC screen based: according to statistics drawn up by the French Film agency CNC, in 2008, 90.7% of the volume of pay-VoD transactions were carried out in connection with IPTV services (compared with 85.2% in 2007). The number of pay transactions in connection with IPTV services rose by 76.2% in 2008 whereas those carried out on the Internet only increased by 3.9%;[45]
- in Germany, where the IPTV market is less highly developed, the position of the Maxdome service can probably be explained by the fact that it is not only distributed via the Internet but is also available via a dedicated set-top box;
- in the United Kingdom, the BBC, not content with the success of its BBC iPlayer on the Internet, has undertaken multiple initiatives to make the service available on television screens (agreements with Nintendo for programmes to be played on the Wii console, Project Canvas with BT Vision for IPTV distribution, agreement with the set-top box manufacturer FetchTV for a connection via the Fetch TV Smartbox, etc).

The progress in digitising the cable networks and the development of the DSL or fibre optic network permit the gradual roll-out of on-demand audiovisual services on TV sets but they are not the only way forward. The ultimate objective of most manufacturers and access providers is still the fulfilment of the long-standing promise to enable a television set to be connected directly to the Internet.

1.2.10.2. Media centre PC, games consoles and dedicated set-top boxes

In some situations, it is, of course, possible to link a television to an Internet-connected computer. Various "media centre PC" solutions have been proposed in the form of software or intermediate devices. This type of solution will be of interest to a technologically versed audience but has not found a mass audience and is not the "living-room" solution likely to meet with large-scale success. Even if it is technically possible to connect a PC to a television set, there are still many practical obstacles that prevent this from becoming a daily reality in most households.

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43 http://www.sky.com/portal/site/skycom/skyhelpcentre/producthelp?nodeId=79e7d1fc-1e2c-4dc7-a586-d2b31e634752&articleId=11374503

44 "Introducing the VUDU iPhone App", http://www.vudu.com/product_iphone.html

45 CNC annual report 2009, Paris, May 2009, p. 117.

The advanced games consoles (Nintendo Wii, Microsoft Xbox 360, Sony PSP3) can also be used as interfaces between the broadband network and the television set. These solutions are generally adopted by young audiences but are not the “living-room” solution sought either.

The equipment manufacturers have therefore proposed devices that provide an easier and more universal interface between the audiovisual offerings available on the Internet and television sets.

In the United States, the Apple TV and Apple TV Take 2 (which provide access to the iTunes store on a television screen), Roku Digital Video Player (used for the Netflix and Amazon on Demand services), Vudu (which permits access to the Vudu VoD service), the most recent TiVo models, etc, and, in Europe, set-top boxes dedicated to VoD, such as those offered in France by Netgem and in the United Kingdom by Fetch TV, have only met with limited success. On several occasions since 2007, Steve Job has described the Apple TV set-top box as a “hobby”[46], a description repeated by Apple COO Tim Cook in January 2009, despite the launch and upgrading of the Apple TV Take 2 and a tripling of sales in the fourth quarter of 2008 compared with the same period in 2007.[47]

HP introduced its HP MediaSmart in January 2008 and began marketing it in June. This is an advanced set-top box that uses the Microsoft Media Center Extender technology and enables the Internet and various storage devices to be connected to a television. The internal connections are made using wireless networks. The system enables the CinemaNow[48] VoD service, the Snapfish photo sharing service and YouTube to be accessed. People who use the system with Windows Vista can also access services like Vongo, MovieLink and FOX Sports. The Windows Media Center also includes the Internet TV Beta service, which offers more than 100 hours of programmes from MSN Video, with new items from the channels A&E, Bio, CNBC, DIY, Fine Living, Food Network, FOX Sports, HGTV, History Channel, iFilm, MSNBC, National Geographic, NBC News and StupidVideos.

Various studies by Park Associates reveal the consumers’ desire for a set-top box capable of displaying content from different sources. One such study shows that American and British consumers are willing to pay $5.99 or £4 for such an arrangement. The application most people want is the ability to view photographs, followed by the possibility of watching premium video content and listening to music. They like the idea of being able to view YouTube but the availability of premium services may be the decisive factor.[49]

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[46] The first occasion was at D 2007. See “Steve Jobs live from D 2007”, *Engadget*, 30 May 2007, http://www.engadget.com/2007/05/30/steve-jobs-live-from-d-2007.

[47] “Apple TV sales up threefold, will see continued investment”, *AppleInsider*, 21 January 2009. http://www.appleinsider.com/articles/09/01/21/apple_tv_sales_rise_300_will_see_continued_investment.html

[48] HP press releases, 7 January 2008, http://www.hp.com/hpinfo/newsroom/press/2008/080107xa.html, and 17 June 2008, http://www.hp.com/hpinfo/newsroom/press/2008/080617xb.html?jumpid=reg_R1002_USEN

[49] “TV 2.0: The Consumer Perspective”, Park Associates, 3Q2008, http://www.parksassociates.com/research/reports/tocs/pdfs/Parks-TV2.pdf
Global Digital Living. Entertainment 2.0. in Europe, Park Associates, 2008, http://www.parksassociates.com/research/multiclients/global_multiclients.htm ”From Boob Tube to YouTube: Consumers and TV”, Park Associates, March 2009, http://newsroom.parksassociates.com/article_display.cfm?article_id=5139

1.2.10.3. *Side-loading systems*

An alternative to a connection via a set-top box is so-called "side-loading", which involves the user downloading a file onto a computer and transferring it to another device that can be connected to a TV:

- in 2007, Apple introduced its Component AV Cable, which enables an iPod or iPhone to be connected to a television set. The cable does not permit HD quality reception and only met with a limited take-up.[50] In April 2009, a few weeks before the launch of the new iPhone 3GS, the press rumoured the launch of an HD compatible cable;[51]
- another system of side-loading is the one offered in January 2009 by MOD Systems, in partnership with Warner, Paramount and various independent producers, and involves the use of a memory card. It enables the user to download a programme from a public server, store it on the memory card, burn it onto a DVD and watch it on a TV set.[52]

1.2.10.4. *Direct connection from a TV to the Internet*

Finally, the possibility, announced some time ago, of connecting a television directly to the Internet started to become a reality in 2008. In January 2007, Sony presented its Bravia Internet Video Link interface[53], which it has marketed in the United States since March 2008 and makes it possible to access the VoD services of Amazon, Netflix, Google and YouTube[54]. The amount of content offered has been increased and includes services provided by Yahoo!, AOL, Sports Illustrated, blip.tv, Conde Nast's Style.com, Men.Style.com, the Crackle service of Sony Pictures, the Minisode Network and Inside Sony Pictures. However, it only received a lukewarm welcome from the specialist press.[55]

A more advanced solution involves a television with a built-in Ethernet port (web-enabled TV). The content from the Internet is displayed on the screen in the form of widgets, which can be superimposed on the TV picture (full or split screen). Various TVs with this built-in connection were put on the market in 2008, with most manufacturers partnering with service providers:

- in May 2008, Panasonic launched the Panasonic Viera PZ850 HD[56], which is based on the tru2way technology. Following an agreement reached with Google, the Vieracast system enables sites such as YouTube or Picasa Photos to be visited

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50 See the criticism by J. Horowitz, "Apple component AV Cable", *ilounge.com*, 29 October 2007, http://www.ilounge.com/index.php/reviews/entry/apple-component-av-cable-ipod-iphone

51 "Apple Consolidating AV Cables Ahead of iPhone HD Launch", *Phonenews*, 18 April 2009, http://www.phonenews.com/apple-consolidating-av-cables-ahead-of-iphone-hd-launch-7648/

52 MOD Systems, http://www.modsystems.com/

53 "Bravia Internet Video Link brings online video to Sony TVs", *CNET News*, 7 January 2007, http://news.cnet.com/8301-17938_105-9672957-1.html
Presentation and description of the BRAVIA® Internet Video Link Module at the SonyStyle website: - http://www.sonystyle.com/webapp/wcs/stores/servlet/CategoryDisplay?catalogId=10551&storeId=10151&langId=-1&identifier=S_BrandShowcase_BIVL
http://www.sonystyle.com/webapp/wcs/stores/servlet/ProductDisplay?catalogId=10551&storeId=10151&langId=-1&productId=8198552921665090966

54 "YouTube content now available on Sony Bravia Internet link", Sony Electronics USA press release, 5 June 2008, http://news.sel.sony.com/en/press_room/consumer/television/release/35397.html

55 "Sony Bravia Internet Video Link lacks luster", *CNET Review*, 6 October 2009, http://news.cnet.com/8301-17938_105-10059147-1.html

56 http://www2.panasonic.com/consumer-electronics/learn/televisions/whats-hot-pz850.jsp

directly using the TV's remote control. Following an agreement with Amazon, Panasonic has also provided access to the catalogue of the Amazon on Demand VoD service on all Viera range receivers since April 2009;[57]

- in September 2008, Sharp introduced its Aquos LCD TV. An agreement with NBC Universal enables users to access various items of content distributed by the group: "Access Hollywood" presents headlines on Hollywood. Applications that enable content from the NBC and CNBC channels to be accessed were announced;[58]
- in February 2009, Philips introduced its 9700 series of television sets incorporating the Net TV system, which provides quick access to various websites from a TV screen. Partnerships have been established with various service providers, such as YouTube, eBay, TomTom, MeteoGroup, Netlog, Funspot and MyAlbum, and a number of national partners. The partner websites have to be adapted for viewing on a TV screen. They can be viewed using the remote control, with no need for a set-top box or additional subscription;[59]
- in March 2009 Sony introduced a new range of Bravia TVs featuring an Ethernet connection[60] and permitting access to the VoD services of Amazon, YouTube, Sony Music, and NBC Universal, to which the Netflix VoD service was added in July 2009;[61]
- in January 2009, LG Electronics introduced its range of TVs using the NetCast Broadband system, which enables YouTube, Netflix and Yahoo's photo sharing site Flickr to be accessed in the United States;[62]
- in January 2009, Yahoo! Announced the launch in spring 2009 of widgets that would enable Internet services to be accessed on web-enabled televisions made by Samsung, Sony, Vizio and LG Electronics;[63]
- in July 2009, Samsung announced that the Blockbuster VoD service in the United States would be integrated into its HD TVs, its home theatre systems and Blu-ray players;[64]
- some analysts predict that Apple could also enter this market.[65]

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57 Panasonic USA press release, 22 April 2009, http://www2.panasonic.com/webapp/wcs/stores/servlet/prModelDetail?storeId=11301&catalogId=13251&itemId=344245&modelNo=Content04212009051957124&surfModel=Content04212009051957124

58 Sharp press release, 4 September 2008, http://www.sharpusa.com/products/FunctionPressReleaseSingle/0,1080,831-34,00.html

59 Philips, press release, 19 February 2009, http://www.search.philips.com/search/jsp/clickout.jsp?clicklocation=1&type=searchhit&text=%22net%20TV%22&section=all&locale=global&url=http://www.digitalnewsroom.philips.com/press/net-tv_pr.doc

60 "Sony debuts more networked Bravia HDTV", Sony Electronics USA press release, 2 March 2009, http://news.sel.sony.com/en/press_room/consumer/television/release/39206.html

Visual presentation: http://reviews.cnet.com/2300-6482_7-10000836-1.html?s=0&o=10000836&tag=mncol;page

61 "Netflix streaming coming to Net-enabled Sony Bravia TVs", CNET News, 9 July 2009, http://news.cnet.com/8301-17938_105-10282740-1.html

62 LG Electronics press release, 7 January 2009, http://www.lge.com/us/press-release/article/lg-electronics-launches-broadband-hdtvs-with-netcast-entertainment-access.jsp

63 Yahoo! press release, 7 January 2009, http://yhoo.client.shareholder.com/press/releasedetail.cfm?ReleaseID=358066

64" Blockbuster, Samsung set on-demand video pact", Reuters, 14 July 2009, http://www.reuters.com/article/technologyNews/idUSTRE56D0RD20090714

65 For example, Gene Munster of the investment bank Piper Jaffray. See "Is Apple planning a DVR and web-enabled TV set?", *TechRadar.com*, 2 March 2009, http://www.techradar.com/news/computing/apple/is-apple-planning-a-dvr-and-web-enabled-tv-set--559416

1.2.10.5. Connection via DVD players, Blu-ray players and home theatre systems

Connecting to the Internet is also possible via certain DVD and Blu-ray players. In the United States, the Toshiba XDE500 DVD player and, since August 2009, the Blu-ray players in the Panasonic Viera Cas range[66], permit access to the Amazon Video on Demand service. Some Blu-ray players and home theatre systems (such as the LHB953 and the LHB977 of LG Electronics) and Samsung's HT-BD1250 and HT-BD7200 can also be connected to the Internet.

LG Electronics has joined forces with Sonic Solutions to permit access to the Roxio CinemaNow VoD service on the BD370N and BD390 Blu-ray players and the LHB953 and LHB977 Home Theatre systems[67] The BD390 is equipped with WiFi capabilities and offers a download-to-own and pay-per-view option, enabling the user to access the Roxio CinemaNow catalogue with a click on the remote control. The BD370 and BD390 also permit access to YouTube and Netflix.

In April 2009, Sony introduced the Sony S560 BD Player, which can be connected to the Internet via Wifi and has the same abilities as the PSP3. It was released on the American market in August 2009.[68]

1.2.10.6. A promising market

According to Kurt Scherf, a Parks Associates analyst, the percentage of TV sets with an Internet connection accounted for 1% of sales in the United States in 2008 and 2% in 2009 and will probably account for 14% of sales in 2012 (i.e., between 26 and 28 million units) and 20% in 2013.[69]

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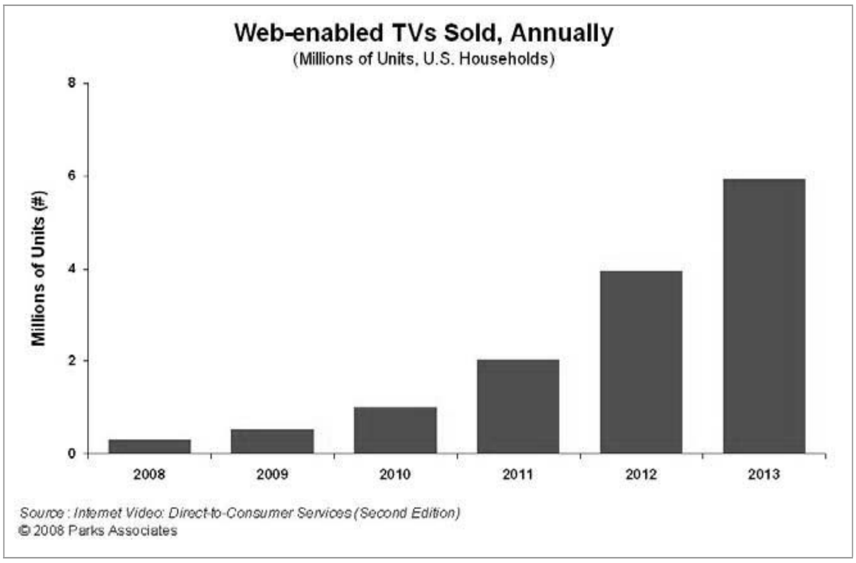
66 Panasonic USA press release, 4 August 2009, http://www2.panasonic.com/webapp/wcs/stores/servlet/prModelDetail?storeId=11301&catalogId=13251&itemId=364494&modelNo=Content08032009060037268&surfModel=Content08032009060037268

67 Sonic Solutions press release, 7 June 2009, http://www.sonic.com/about/press/news/2009/06/lg-instant-access.aspx

68 http://www.sonystyle.com/webapp/wcs/stores/servlet/ProductDisplay?catalogId=10551&storeId=10151&langId=-1&productId=8198552921665791068

69 K. Scherf, "Hot Topic for 2009: Web-enabled TV", Parks Associates, Research Analyst Blog, 31 December 2008, http://parksassociates.blogspot.com/2008/12/hot-topic-for-2009-web-enabled-tvs.html. Also quoted in "Internet-Ready TVs Usher Web Into Living Room", The Wall Street Journal, 5 January 2009. http://online.wsj.com/article/SB123111603391052641.html

Graphic 9 : Forecasts of sales of web-enabled TVs (2008-2013)



Source: Park Associates

According to the Yankee Group, 50 million households in the United States will be equipped with a TV incorporating an Internet connection in 2013, 30 million will have Blu-ray players connected to the Internet and 11 million will have bought adapters.[70] According to ABI Research, in 2011 20 million television sets with WiFi connectivity will have been distributed worldwide.[71]

The accessibility of Internet video services on TV sets has also revived the competition on the media player platform market. In April 2009, Adobe launched a version of its Flash platform, the Adobe Flash Platform for the Digital Home, which supports the online provision of video in high definition and enriched applications on televisions, set-top boxes, Blu-ray players and other connectable devices.[72] Adobe is competing on this market with Microsoft, which is developing its Silverlight platform. In May 2008, Adobe also launched the Open Screen Project, which groups together manufacturers, mobile telephone operators and service providers and aims to promote the Flash platform solution. In April 2009, it said that the first equipped television sets should come onto the market from the second half of 2009. The software publisher has signed agreements with chip manufacturers (Intel, NXP Semiconductors and STMicroelectronics) and content distributors (Disney Interactive, Netflix, etc), which will enable Internet content and DH video to be streamed directly to television sets, set-top boxes and Blu-ray players.[73]

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70 "Big Growth Ahead for Connected HDTVs, Blu-ray Players and Digital Media Adapters", Yankee Group press release, 1 June 2009, http://www.yankeegroup.com/pressReleaseDetail.do?actionType=getDetailPressRelease&ID=2456

71 ABI Research press release, 20 July 2009, http://www.abiresearch.com/press/1456-20%20Million%20Wireless%20Networked%20TVs%20To%20Ship%20in%202011

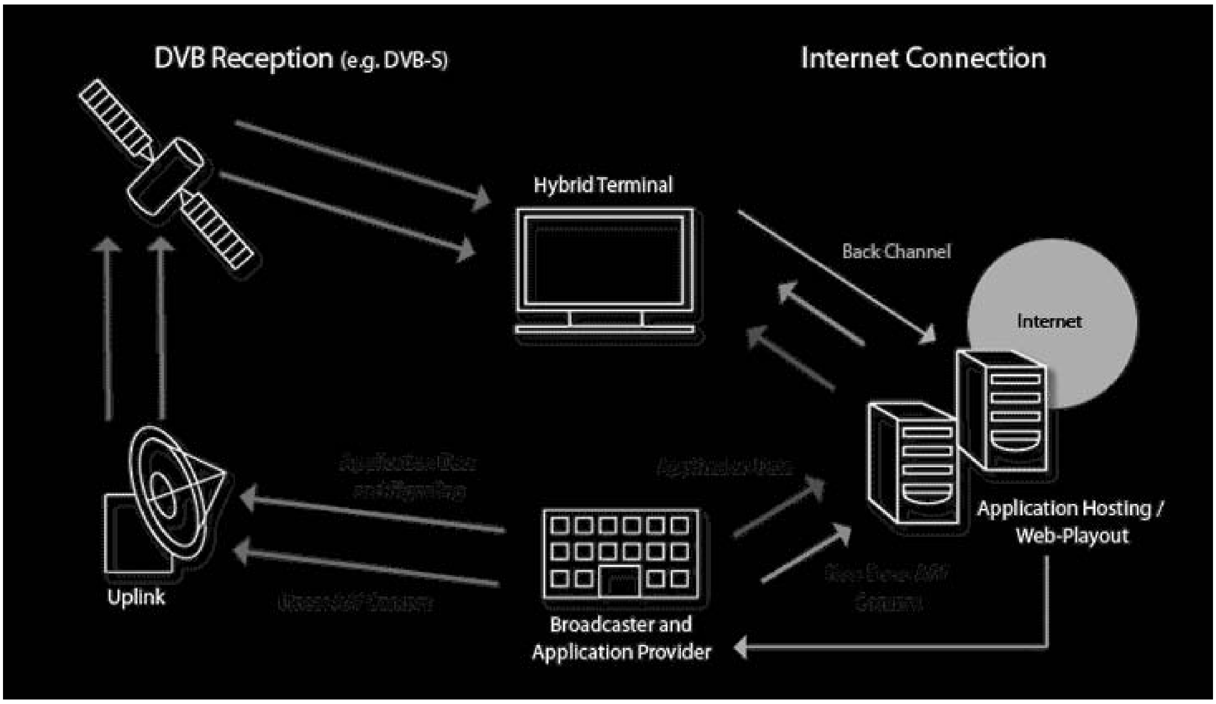
72 Adobe press release, 20 April 2009, http://www.adobe.com/aboutadobe/pressroom/pressreleases/200904/042009AdobeNABUmbrella.html

73 http://www.openscreenproject.org/

1.2.11. The HbbTV initiative

At the end of August 2009, a consortium of European companies (including in particular SES Astra, Philips, Canal+, France Télévisions, TF1, the German institute IRT, ANT, Kaon Media and OpenTV) announced the launch of the HbbTV (Hybrid Broadcast Broadband TV) initiative, the aim of which is to harmonise the broadcast and broadband delivery of audiovisual content. These specifications integrate elements of the existing standards and web technologies, in particular those of the Open IPTV Forum, CEA, DVB and W3C. HbbTV products and services will be accessible on a hybrid terminal (enabled TV, set-top box) via the remote control and will be developed for the various distribution forms (satellite, cable, terrestrial networks).[74] The system is described as a further development of the German SD teletext system, which is used by more than 14 million consumers each day in Germany.

Graphic 10 : Outline of the HbbTV system



Source: HbbTV

The first demonstrations were given 2009 in Berlin at the IFA 2009 international consumer electronics fair by the two German public broadcasters ARD and ZDF. The HbbTV consortium's activities in Germany have developed against the background of the launch of HDTV services by the broadcasters, which at the same time provide teletext services in HD quality, interactive programme guides and improved radio services.[75]

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[74] HbbTV press release, 27 August 2009, http://www.hbbtv.org/news.htm

[75] "Forget 'Canvas 'and 'Hulu': Read HbbTV", *Rapid TV News,* 27 August 2009, http://www.rapidtvnews.com/index.php/200908274567/forget-canvas-and-hulu-read-hbbtv.html

1.3. WHAT NETWORKS FOR THE FUTURE DEVELOPMENT OF ON-DEMAND AUDIOVISUAL SERVICES? – CURRENT SITUATION AND FORECAST

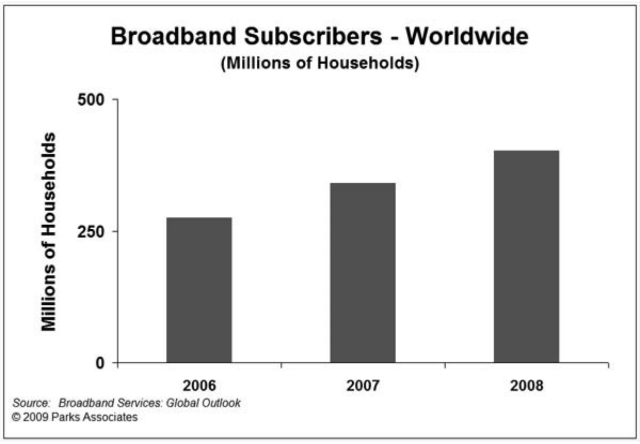
The technical solutions available for setting up networks are one thing but their market rollout is quite another. The level of development of the broadband, DSL, optimised cable, fibre optic, digital terrestrial television and satellite television networks depends on the structures of the country concerned. The diversity of the national audiovisual systems in terms of their regulation, the sharing of the market between various industry players and socio-cultural differences in the population means that specific methods of implementing on-demand audiovisual services are employed. There can be no question of describing each national situation in this report[76] and we shall merely indicate the main European trends, as identified by the specialised research companies and public bodies in some of the major European countries.

1.3.1. Broadband networks

The perception of on-demand audiovisual services by the public and policy-makers is still bound up with the availability of these services on the Internet and, therefore, on the broadband networks. Compared with the other forms of distribution, the Internet has one important advantage, which is its universality and potential to be ultimately available in all households, as was the case of the telephone and analogue television in the 1960s. However, it has a long way to go before it reaches this goal.

There are many different sources of statistics on global and European broadband penetration.

Graphic 11 : Estimates of the number of broadband subscribers worldwide (2006-2008)



Source: Park Associates

[76] The reader is referred to such publications as *Television in 36 European States,* Vol. 1 of the Yearbook of the European Audiovisual Observatory, Strasbourg, 2009, and *European Broadband Cable 2009*, Screen Digest, 2009.

Park Associates estimates that the number of subscriber households exceeded 400 million worldwide in 2008 (+18% compared with 2007) and predicts that more than 640 million will be connected at the end of 2013.[77]

In December 2008, the OECD calculated that 263.9 million households in its 30 member states were connected.[78] The average subscription rate was 22.4 inhabitants out of 100. The highest penetration rates were recorded in five European countries (Denmark, Netherlands, Norway, Switzerland and Iceland). However, four European countries (Greece, Slovakia, Poland and Turkey) were among the last five of the ranking. With figures between 27.4% and 28.5%, Germany, France and the United Kingdom have slightly higher penetration rates than the United States (25.8%) but lower than South Korea (32%) and Canada (29%).

The statistics published by Eurostat[79], which are drawn up according to different criteria (as a percentage of households and not individuals equipped), also point to very different situations across Europe: the northern European countries have the most connections whereas the penetration is generally weaker in southern and south eastern Europe.

The American firm Strategic Analytics provides more optimistic figures than those of Eurostat: 61.4% of European households were connected at the end of December 2008 and the penetration rate is likely to reach 82.9% at the end of 2013.[80]

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77 "Parks Associates forecasts over 640 million broadband households worldwide by 2013", press release, 7 July 2009, http://newsroom.parksassociates.com/article_display.cfm?article_id=5167

78 OECD Broadband Portal, undated, 2009, http://www.oecd.org/document/54/0,3343,en_2649_34225_38690102_1_1_1_1,00.html

79 Eurostat database, last update 22 July 2009, http://epp.eurostat.ec.europa.eu/portal/page/portal/product_details/dataset?p_product_code=TIN00089

For all the data on broadband published by Eurostat, see: http://epp.eurostat.ec.europa.eu/portal/page/portal/product_results/search_results?mo=containsall&ms=broadband&saa=&p_action=SUBMIT&l=us&co=equal&ci=,&po=equal&pi=

80 "Two Thirds Of Europe's Homes To Have Broadband By End 2009", Strategy Analytics, press release, 10 June 2009, http://www.strategyanalytics.com/default.aspx?mod=PressReleaseViewer&a0=4744

Table 3 : Broadband penetration rate in the OECD countries by technology (number of subscribers per 100 inhabitants) (December 2008)

Rank	ISO country code	DSL	Cable	Fibre/ LAN	Other	Total	Total subscribers	Source
1	DK	22.6	9.9	3.6	1.1	37.2	2,021,404	Government supplied
2	NL	21.8	13.4	0.6	0.0	35.8	5,855,000	Government supplied
3	NO	23.8	6.9	3.1	0.7	34.5	1,607,750	Government supplied
4	CH	23.2	9.7	0.4	0.3	33.5	2,533,643	Government supplied
5	IS	31.6	0.0	0.6	0.6	32.8	99,883	OECD estimate
7	SE	19.1	6.2	6.5	0.2	32.0	2,905,000	Government supplied
8	FI	25.9	4.1	0.0	0.7	30.7	1,616,900	Government supplied
9	LU	25.6	4.2	0.1	0.0	30.0	141,584	OECD estimate
11	GB	22.4	6.1	0.0	0.1	28.5	17,275,660	Government supplied
12	BE	16.4	11.4	0.0	0.3	28.1	2,962,450	Government supplied
13	FR	26.6	1.4	0.1	0.0	28.0	17,725,000	Government supplied
14	DE	25.4	1.9	0.0	0.0	27.4	22,532,000	Government supplied
19	AT	13.9	7.2	0.1	0.5	21.6	1,792,408	Government supplied
20	ES	16.5	4.0	0.1	0.2	20.8	9,156,969	Government supplied
21	IE	15.1	2.4	0.1	2.9	20.6	896,346	Government supplied
22	IT	18.5	0.0	0.5	0.1	19.2	11,283,000	Government supplied
23	CZ	6.8	3.7	0.7	6.0	17.2	1,769,684	Government supplied
24	HU	7.9	7.6	0.5	0.9	16.8	1,696,714	Government supplied
25	PT	9.4	6.3	0.0	0.2	16.0	1,692,306	Government supplied
26	GR	13.5	0.0	0.0	0.0	13.5	1,506,614	Government supplied
27	SK	6.6	1.2	2.1	1.6	11.5	618,871	Government supplied
28	PL	7.2	3.1	0.0	0.1	10.5	3,995,458	Government supplied
29	TR	7.7	0.1	0.0	0.0	7.8	5,736,619	Government supplied
6	KR	7.7	10.5	13.8	0.0	32.0	15,474,931	Government supplied
10	CA	13.0	15.6	0.0	0.4	29.0	9,577,648	OECD estimate
15	US	10.3	13.7	1.0	0.9	25.8	77,437,868	OECD estimate
16	AU	19.9	4.3	0.0	1.2	25.4	5,368,000	Government supplied
17	JP	9.1	3.2	11.3	0.0	23.6	30,107,327	Government supplied
18	NZ	19.5	1.3	0.0	1.0	21.9	914,961	Government supplied
30	MX	5.1	1.9	0.0	0.2	7.2	7,604,629	Government supplied
	OECD	13.3	6.4	2.2	0.4	22.4	263,906,627	OECD

Source: OECD

Table 4 : Percentage of households subscribing to broadband in Europe (2003-2008)

ISO country code	2003	2004	2005	2006	2007	2008
AT	10	16	23	33	46	54
BE	n/a	n/a	41	48	56	60
BG	n/a	4	n/a	10	15	21
CH	11	n/a	n/a	n/a	n/a	n/a
CY	n/a	2	4	12	20	33
CZ	1	4	5	17	28	36
DE	9	18	23	34	50	55
DK	25	36	51	63	70	74
EE	n/a	20	30	37	48	54
ES	n/a	15	21	29	39	45
FI	12	21	36	53	63	66
FR	n/a	n/a	n/a	30	43	57
GB	11	16	32	44	57	62
GR	1	0	1	4	7	22
HU	n/a	6	11	22	33	42
IE	1	3	7	13	31	43
IS	n/a	45	63	72	76	83
IT	n/a	n/a	13	16	25	31
LT	2	4	12	19	34	43
LU	7	16	33	44	58	61
LV	n/a	5	14	23	32	40
MK	n/a	n/a	n/a	1	n/a	n/a
MT	n/a	n/a	23	41	44	55
NL	20	31	54	66	74	74
NO	23	30	41	57	67	73
PL	n/a	8	16	22	30	38
PT	8	12	20	24	30	39
RO	n/a	n/a	n/a	5	8	13
SE	n/a	n/a	40	51	67	71
SI	n/a	10	19	34	44	50
SK	n/a	4	7	11	27	35
TR	n/a	0	2	n/a	n/a	n/a
EU 27	n/a	15	23	30	42	49
CA	36	n/a	n/a	n/a	n/a	n/a
US	20	n/a	n/a	n/a	n/a	n/a

Source: Eurostat

Table 5 : Forecasts for the development of the broadband market in Western Europe (2004-2013)

Broadband Market Forecast: W. Europe

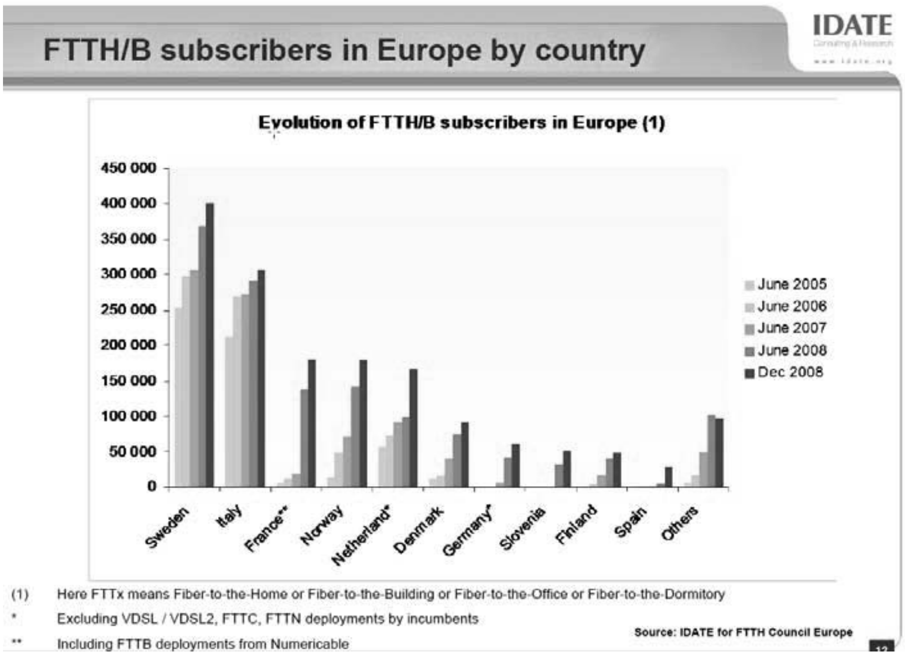
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Subscribers (Millions)	38.9	57.4	75.6	91.7	105.1	115.1	124.5	133.4	141.5	149.7
Household Penetration	23.6%	34.5%	45.0%	54.1%	61.4%	66.7%	71.4%	75.8%	79.4%	82.9%

Source: Strategy Analytics' Multiplay Market Dynamics service, June 2009

1.3.2. The rollout of fibre optic networks

The rollout of fibre optic cabling to the home (FTTH) or to the building (FTTB) is an important factor for the development of on-demand audiovisual services. However according to an IDATE study carried out for the FTTH European Council, the rollout rate in Europe is still low: for all the 31 countries analysed, 11.2 million homes were passed by an FTTH/B network in December 2008 but only 1.7 million were actually connected. Nonetheless, the number of connections grew by 278% and the number of subscriptions by 25% in the second half of 2008.[81]

Graphic 12 : FTTH/B subscribers in Europe by country



Source: IDATE

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81 IDATE, FTTH European Panorama December 2008, FTTH Council Europe Conference, Copenhagen, 11 February 2009, http://www.ftthcouncil.eu/documents/studies/Market_Data-December_2008.pdf

Table 6 : FTTH penetration in Europe at 30.6.2008 (in 000s)

Country	Number of households	FTTH connected households		Growth 2008/07 in %	Rate of penetration (1)
		30.06.2007	30.06.2008		30.06.2008
CZ	4,176	n/a	15.2	n/a	0.36%
DE	39,447	7	41.5	492.9%	0.11%
DK	2,377	40	75.5	87.0%	3.17%
EE	549	n/a	5.8	n/a	1.05%
FI	2,424	17	39.7	128.3%	1.64%
FR	25,985	n/a	137.8	n/a	0.53%
IE	1,500	n/a	4.0	n/a	0.27%
IS	110	n/a	4.2	n/a	3.79%
IT	24,013	272	291.5	7.4%	1.21%
LT	1,212	n/a	13.2	n/a	1.09%
LV	859	n/a	7.9	n/a	0.92%
NL	7,218	92	98.5	7.7%	1.36%
NO	2,050	72	141.6	97.5%	6.91%
PL	12,902	n/a	15.3	n/a	0.12%
SE	4,441	307	367.5	19.7%	8.28%
SI	768	0,5	32.3	6368.0%	4.21%
SK	1,734	n/a	11	n/a	0.64%
Source	**EUROSTAT/OBS**	**FTTH European Council**	**FTTH European Council**	**OBS**	**OBS**

(1) Our estimated rates of penetration are slightly different from those published by the FTTH European Council as we have used different data for the total number of households by country.

Source: European Audiovisual Observatory, on the basis of data from IDATE / FTTH European Council

According to a study carried out by Heavy Reading[82], the fibre optic rollout in Europe is proving slower than expected (slow start by the incumbent telecommunications operators, uncertainty with regard to the regulatory framework, deterioration in the economic climate and difficulties in obtaining loans) and hard to predict (work hardly begun in most countries, significant differences between countries, development factors difficult to forecast). There are various factors that make it possible to anticipate a positive development, especially the fact that the last few months of 2008 showed that the consumer electronics market was still very active. However, most of the positive indicators at the end of 2008 could deteriorate in 2009 against the background of the economic crisis. The calculation basis employed by this study differs from the one employed by IDATE: Heavy Reading identified 2.4 million homes connected to an FTTH network at the end of 2008 and predicts that 20.5 million will be connected at the end of 2013. Russia, France[83] and Germany will be the leaders in 2013 as far as the number of connections is concerned and Sweden, Slovenia and Norway will have the highest penetration rate. The countries with the least connections are Turkey, the United Kingdom and Ireland.

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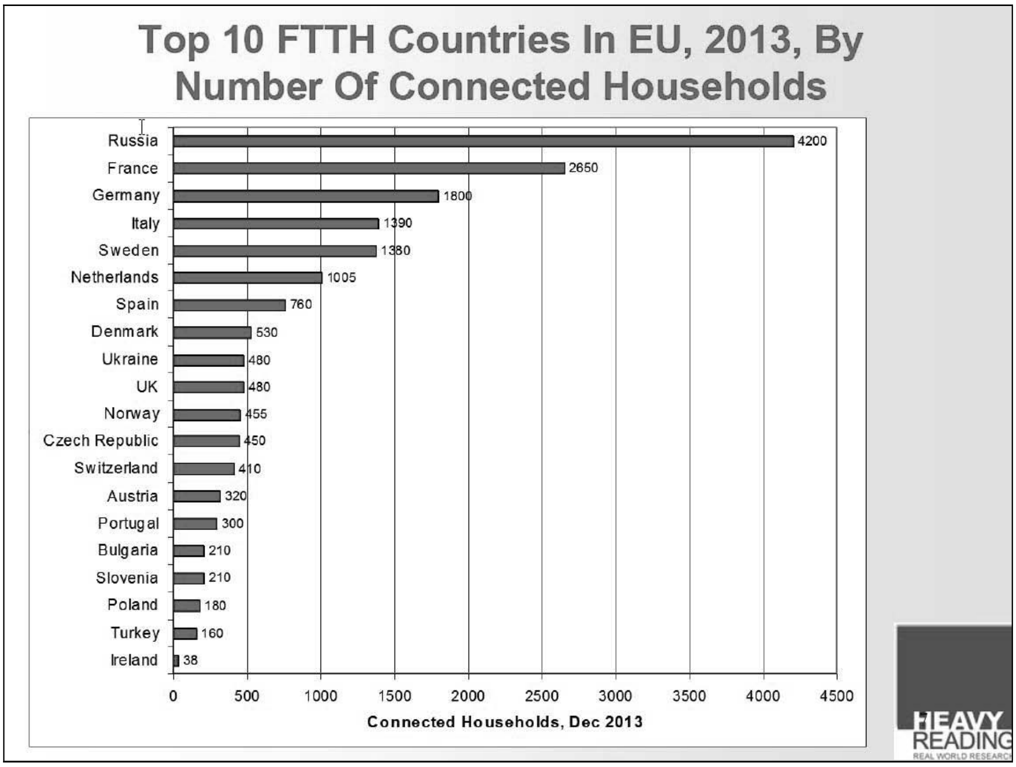
[82] G. Finnie, "European FTTH Forecast, 2008-2013", Heavy Reading, Presentation FTTH Council Conference, Copenhagen, 10 February 2009, http://www.ftthcouncil.eu/documents/studies/Market_Forecast.pdf

[83] In France, in June 2009, the government and the regulator ARCEP announced measures aimed at the rapid development of fibre optic networks. According to ARCEP, "Deploying new ultra high-speed digital networks nationwide constitutes a major challenge for France, from both an economic and societal standpoint and in terms of regional development. On the fixed network front, the momentum in the broadband market in France and the willingness of several operators to invest in a new fibre-to-the-home (FTTH) local loop is helping to create a unique environment in Europe, which is particularly propitious to nationwide ultra broadband rollouts." ARCEP press release and documents, 25 June 2009, http://www.arcep.fr/index.php?id=8571&L=1&tx_gsactualite_pi1[uid]=1177&tx_gsactualite_pi1[annee]=&tx_gsactualite_pi1[theme]=&tx_gsactualite_pi1[motscle]=&tx_gsactualite_pi1[backID]=26&cHash=a72424f18f

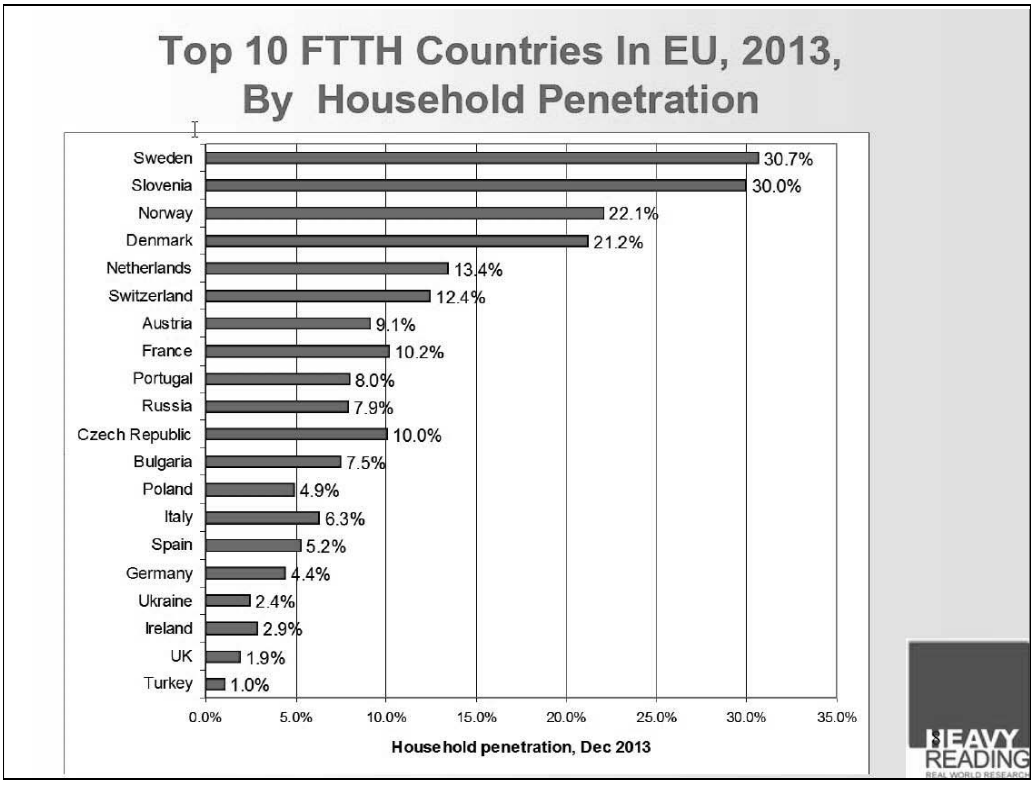
On 20 July 2009, the Senate adopted Senator Xavier Pintat's private member's bill aimed at reducing the digital divide. It seeks to foster the development of fibre optic networks, especially by permitting several connections per home, and is due to be examined by the National Assembly. See http://www.senat.fr/dossierleg/ppl08-394.html.

Graphic 13 : Forecasts for the number of FTTH households in Europe in 2013



Source: Heavy Reading

Graphic 14 : Forecasts of FTTH penetration in Europe in 2013 (in % of households)



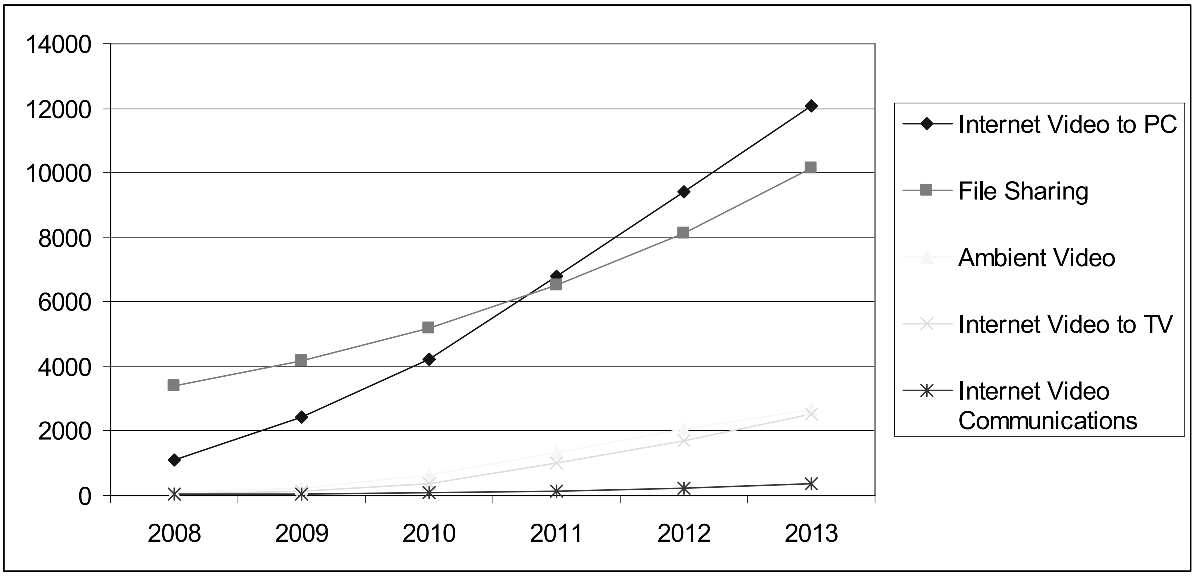
Source: Heavy Reading

1.3.3. Forecasts of the development of online video

1.3.3.1. The Cisco global Internet traffic forecasts

The Cisco Visual Networking Index produced by the IT company Cisco, is generally considered a reliable source with regard to measuring the global Internet traffic. In its last edition, published in June 2009[84], it estimates that Internet the video (excluding P2P video file exhanges) accounted for about one-third of consumer Internet traffic in 2009. The sum of all forms of video (TV, VoD, Internet and P2P) is likely to account for 91% of consumer Internet traffic in 2013. Internet video alone will probably make up 60% of that traffic in 2013.[85] At the global level, Internet video-to-PC will probably exceed P2P file exchanges.

Graphic 15 : Forecasts for the growth of video communications in the global consumer Internet traffic (2008-2013) – in petabytes per month



Source: Cisco VNI, 2009

As far as Western Europe is concerned, Cisco believes it will be necessary to wait until 2013 for the figures for Internet video to PC to exceed those for file piracy. In Western and Eastern Europe, P2P file sharing is likely to remain the principal form of video traffic at the end of the period considered.

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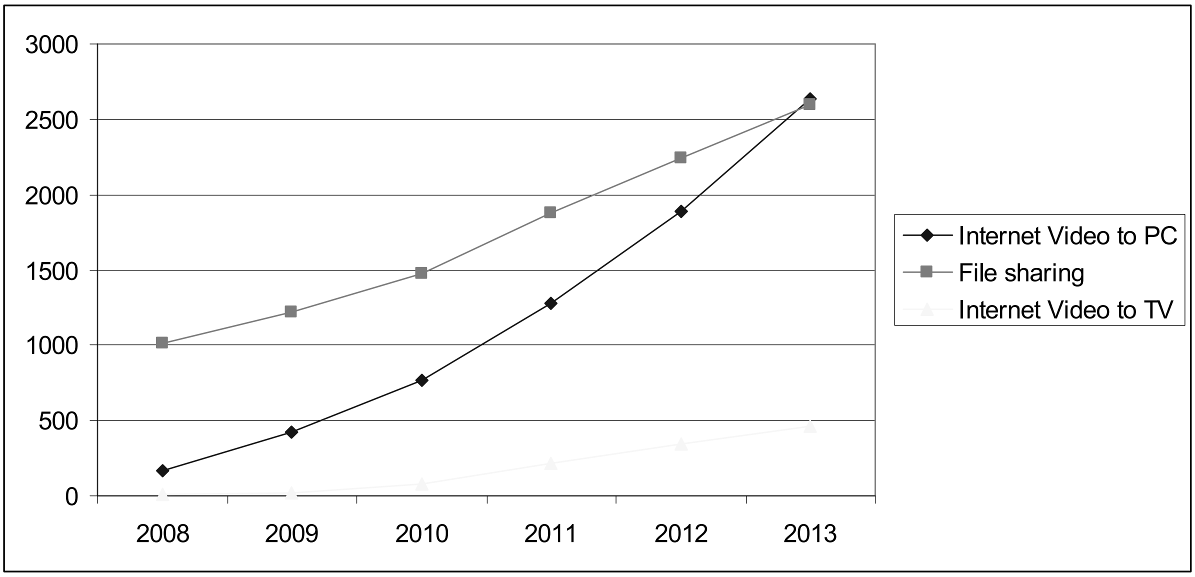
84 *Cisco Visual Networking Index: Forecast and Methodology 2008-2013*, June 2009, http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-481360_ns827_Networking_Solutions_White_Paper.html

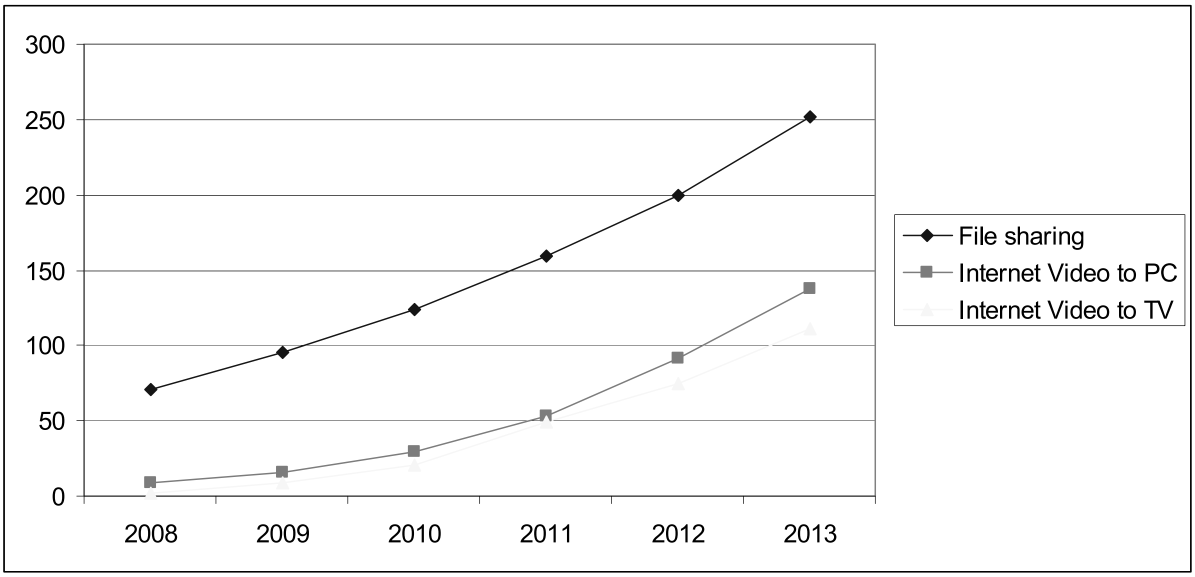
85 Cisco estimates that exchanges of video files accounted for 70 to 80% of the P2P traffic in 2009. The "Internet Video" category includes video communications, video to PC and video to TV, via set-top boxes or games consoles. The category "Ambient Video" includes nannycams, petcams, home security cams and other persistent video streams.

Graphic 16 : Forecasts for the growth of video traffic on Internet in Western Europe (2008-2013) – in petabytes per month



Source: Cisco VNI, 2009

Graphic 17 : Forecasts for the growth of video traffic on Internet in Central and Eastern Europe (2008-2013) – in petabytes per month



Source: Cisco VNI, 2009

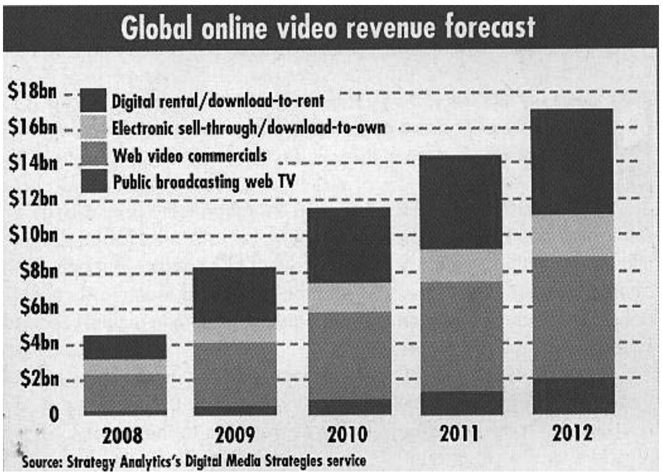
1.3.3.2. *Forecasts concerning the online VoD market*

It is generally acknowledged that the online VoD market is made up of two segments and five sub-segments:

- paid video online, which includes
  - electronic sell-through and download-to-own,
  - rental,
  - subscription.
- free video online, which includes:
  - services funded by advertising,
  - public services, funded from public sources (e.g., licence fees, subsidies).

According to Strategy Analytics, the global online video market was worth $2 billion in 2007. Half of this revenue was generated by advertising-funded services and 6% by funding from public broadcasters. The rest was made up of sales ($500 million) and rentals (just under $400 million).[86] Strategy Analytics forecast a global market of $4.7 billion in 2008 and $7.3 billion in 2009, made up of $3.8 billion for paid services (sales, rentals, subscriptions) and $3.5 billion for free services. For the first time, the revenues of paid services will exceed those of the free services. The company predicts an average annual growth rate of 38% until 2012, with paid services growing faster than free services owing to the crisis in the advertising market.[87]

Graphic 18 : Forecasts for the development of the global online video market (2008-2012)



Source: Strategy Analytics (2008)

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[86] D. Mercer, "Assessing the online threat", *DVD and beyond*, 10th Anniversary edition, 2009, http://www.dvd-intelligence.com/display-article.php?article=152

[87] "Paid Video to Overtake Free Video on the Web in 2009", Strategy Analytics press release, 13 July 2009, http://www.strategyanalytics.com/default.aspx?mod=PressReleaseViewer&a0=4764

Table 7 : Digital TV reception in Europe (31.12.2007 – Estimates) **in '000s of TV households**

ISO Country code	No. of digital TV households			Subscribers to DSL TV services	Total no. of digital TV households	Total no. of TV households	Percentage of digital TV households
	Cable	Direct satellite reception	DTT (June 2007)				
AL	n/a	n/a	n/a	n/a	n/a	n/a	n/a
AT	237	1,304	141	21	1,703	3,431	49.6%
BE	719	60	n/a	305	1,084	4,460	24.3%
BG	0	370	0	0	0	2,684	n/a
CH	401	470	265	60	1,196	3,148	38.0%
CY	0	53	0	0	0	263	n/a
CZ	150	474	390	80	1,094	3,901	28.0%
DE	2,585	9,023	3,661	190	15,459	36,981	41.8%
DK	126	410	500	35	1,071	2,443	43.8%
EE	261	0	17	51	0	500	n/a
ES	939	2,065	8,599	575	12,178	15,919	76.5%
FI	877	70	1,318	6	2,325	2,369	98.1%
FR	1,444	6,000	8,224	5,142	20,810	26,495	78.5%
GB	3,261	8,860	9,690	172	21,983	25,500	86.2%
GR	0	347	551	27	925	3,667	25.2%
HR	65	60	0	44	169	1,401	12.1%
HU	62	480	80	6	628	3,881	16.2%
IE (1)	269	535	0	12	816	1,459	55.9%
IS	12	13	0	0	67	110	60.9%
IT	0	4,400	5,734	299	10,433	23,907	43.6%
LI	n/a	n/a	n/a	n/a	n/a	,	n/a
LT	12	0	0	17	29	1,338	2.2%
LU	112	0	4	0	116	180	64.4%
LV	40	80	0	87	207	890	23.3%
MK	n/a	41	0	0	0	473	n/a
MT	40	0	25	0	65	128	50.8%
NL	1,560	600	500	111	2,771	7,139	38.8%
NO	315	340	101	75	831	1,996	41.6%
PL	197	2,900	30	48	3,175	13,782	23.0%
PT	283	455	0	47	785	3,765	20.8%
RO	65	2,000	0	1	2,066	7,383	28.0%
RU	2,000	2,500	100	100	4,700	49,592	9.5%
SE	726	930	709	389	2,754	4,368	63.0%
SI	20	0	0	71	91	737	12.3%
SK	15	247	7	20	289	1,938	14.9%
TR (1)	n/a	n/a	n/a	n/a	n/a	17,640	n/a
EUR 27	13,948	41,663	40,155	7,546	102,857	199,508	51.6%
EUR 35	16,793	45,087	40,646	7,991	109,820	273,868	40.1%

(1) Data correct at 01/01/2007

Source: European Audiovisual Observatory

1.3.4. *Digital television distribution networks*

It is not always easy to establish the state of development of the digital television distribution networks, which are alternatives to the broadband networks for the distribution of on-demand audiovisual services. This is because of the many different sources and methodologies and the rapid developments in the rollout of digital terrestrial television and of IPTV services on DSL or FTTH networks. According to estimates published by the European Audiovisual Observatory, more than 50% of households in the European Union received digital television in one form or another at the end of December 2007.[88]

Complete European data for 2008 are not yet available but first indications are that there was strong growth in 2008 in the digitisation of the cable networks and in subscriptions to IPTV services.

Strategy Analytics forecasts that, despite the economic crisis, there will be a remarkable rise of over 46% in 2009 in the number of households subscribing to a digital television service.[89] This growth will mainly result from the rollout of digital terrestrial television (+21.5 million homes equipped) and cable (+11.6 million new households equipped), but the strongest growth (+69%) will be experienced by the IPTV services.

Table 8 : Number of households with digital TV by main subscription type (in millions, 2008-2009)

	2008	2009	New households equipped	Growth
Digital satellite	40	48.2	8.2	20.5%
Digital cable	17.1	28.7	11.6	67.8%
Digital terrestrial television	36.1	57.6	21.5	59.6%
IPTV	10	16.9	6.9	69.0%
Total digital subscriptions	**103.2**	**151.4**	**48.2**	**46.7%**

Source: Strategy Analytics, Western Europe Digital Television Forecast: 1H'09

1.3.4.1. *Cable*

According to figures drawn up by Screen Digest and published by Cable Europe, 4 million households were digitised in the European Union in 2008. The number of households receiving digital cable television rose by 33% in 2008. 29% of cable households in the EU (18 million) had access to digital cable.[90] The European cable operators' total revenue is reported to have reached 18.8 billion euros in 2008, which is an increase of 5.4% compared with 2007.[91]

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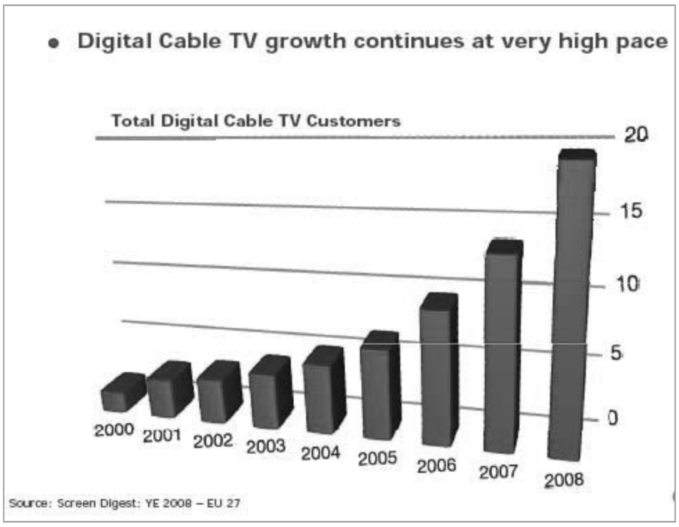
[88] European Audiovisual Observatory, *Yearbook 2008, Vol. 2, Trends in European television,* Strasbourg, 2008.

[89] "Western European Digital TV Breaks Through 100 Million Mark in 2008", Strategy Analytics press release, 12 March 2009, http://www.strategyanalytics.com/default.aspx?mod=PressReleaseViewer&a0=4605

[90] "Digital Cable TV Switchover", Cable Europe press briefing, 18 March 2009, http://www.cableeurope.eu/uploads/090723_Latest%20Industry%20Figures%20and%20Outlook.pdf

[91] Screen Digest press release, 27 July 2009, http://www.screendigest.com/press/releases/pr1_27_07_2009/view.html

Graphic 19 : Number of digital cable TV subscribers in the European Union (2000-2008)

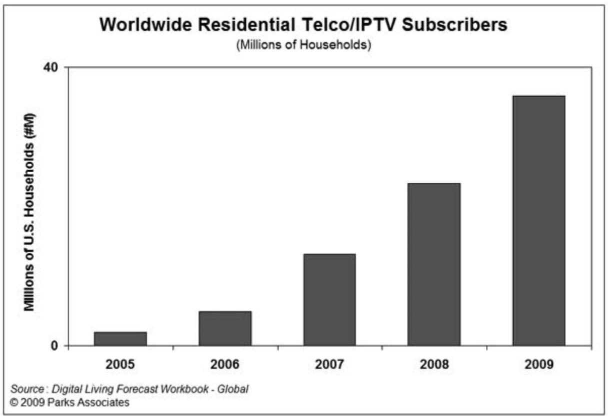


Source: Screen Digest/Cable Europe

1.3.4.2. IPTV

According to Parks Associates, the number of subscribers to IPTV services worldwide more than doubled between 2007 and 2008 and reached nearly 40 million. It is likely to exceed 100 million by 2013.[92] According to a study by Pyramid Research, the economic crisis will impact IPTV service revenue growth differently across Europe. The study states that at the end of 2008 IPTV subscriptions accounted for only 8.2% of total pay-TV accounts in Europe, generating 2.1 billion euros in revenue. Pyramid predicts that, in spite of the impact of the economic crisis, these revenues will double by 2014 and that IPTV will double its share of the pay-TV market.[93]

Graphic 20 : Growth in the number of subscribers to IPTV services worldwide (2005-2009)



Source: Strategy Analytics

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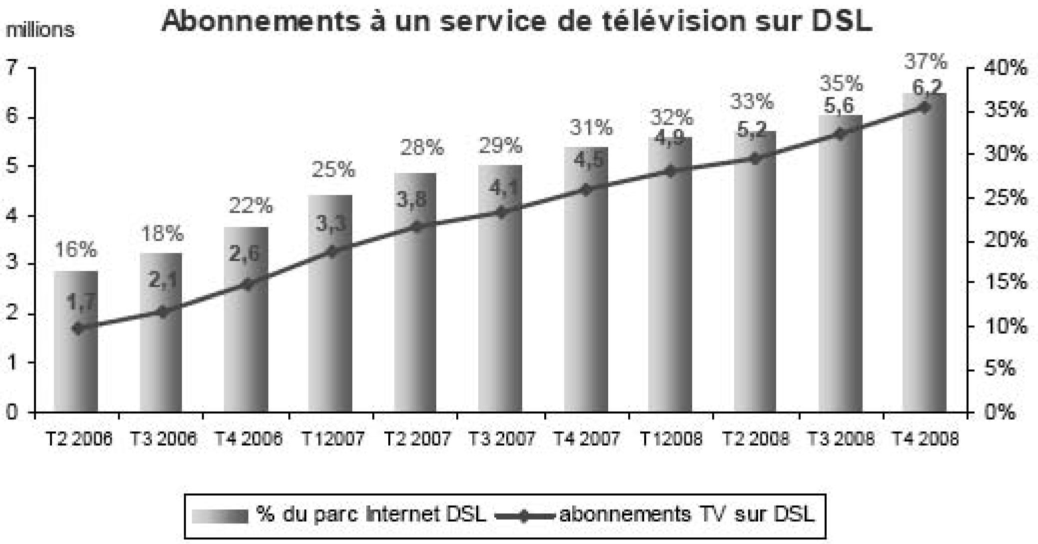
92 "Over 100 million households worldwide to have telco IPTV services by 2013", Parks Associates, 12 March 2009, http://newsroom.parksassociates.com/article_display.cfm?article_id=5141; "Telco/IPTV subscribers to total almost 40 million households worldwide in 2009, with significant implications to digital home development", Parks associates press release, 21 July 2009, http://newsroom.parksassociates.com/article_display.cfm?article_id=5170

93 Pyramid Research press release, 9 June 2009, http://www.pyr.com/pr_prlist/PR060909_INEUR1.4.htm

Not every household connected to a DSL network for the purpose of accessing the Internet is necessarily a subscriber to an audiovisual service, but the example of France shows tha,t as the DSL Internet rollout progresses, the number of subscriptions tends towards the number of equipped households. According to the regulator ARCEP, ADSL television is currently the driving force for pay-TV growth in France. The number of subscriber households rose by 37% in 2008 and reached 6.7 million at 31 December.[94]

Graphic 21 : France – Number of subscriptions to an ADSL television service (2006-2008)



Source : ARCEP-Observatoire des marchés

1.3.4.3. *Satellite services*

One of the main factors in the slow development on on-demand audiovisual services is the predominant position of satellite and digital terrestrial television on the pay-TV market. As we have seen, these two methods of distribution only allow forms of near-video-on-demand (nVoD) or push VoD using PVR storage technology.

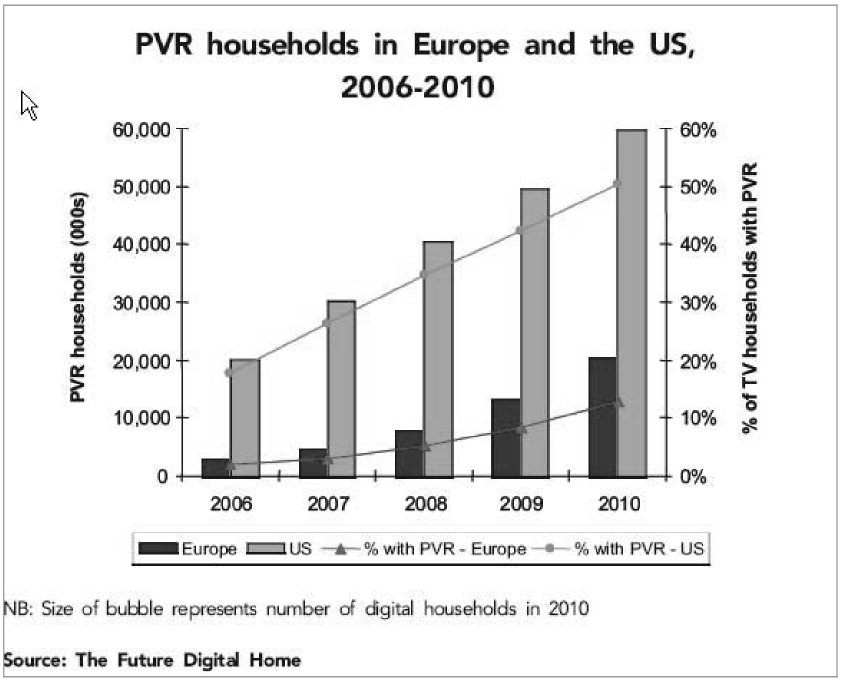
The development of on-demand audiovisual services in the context of services offered by satellite package operators depends on whether households are equipped with a PVR (bearing in mind that the solutions offered by these operators can significantly contribute to the growth in the number of PVRs). However, the number in use is relatively low in Europe compared to the United States. A study published in 2007 by Global Business Insights[95] estimated that 20% of American households were equipped with a PVR in 2006 and that over 50% would have one in 2010. In Europe, the penetration rate was under 5% in 2006 and, according to the study, will be less than 15% in 2010. This estimate is more pessimistic

94 ARCEP *Rapport relatif au développement du marché français des services de diffusion audiovisuel,* submitted to Parliament on 30 June 2009, http://www.arcep.fr/uploads/tx_gspublication/rapp-march-audiov-parlemt-170709.pdf

95 Business Insights, *The Future Digital Home*, 2007, http://www.globalbusinessinsights.com/content/rbtc0096m.pdf

than that of Screen Digest, which believes that 15% of European households already had a PVR in 2008 and that 30% will have one in 2012. Screen Digest thinks the revenues of the classical pay-per-view (nVoD) services are not likely to be reduced by the arrival of genuine VoD, especially as the programmes offered by these services are often more attractive than those offered by genuine VoD services.[96]

Graphic 22 : Growth in PVR households in Europe and the United States (2006-2010)



Source: Global Business Insights (2007)

According to Park Associates study, 35% of British households subscribing to a broadband network owned a DVR at the end of 2008. The penetration rate is lower in France, Italy, Germany and Spain. The study shows that possessing a DVR does not necessarily replace the consumption of live television, even among young audiences.[97]

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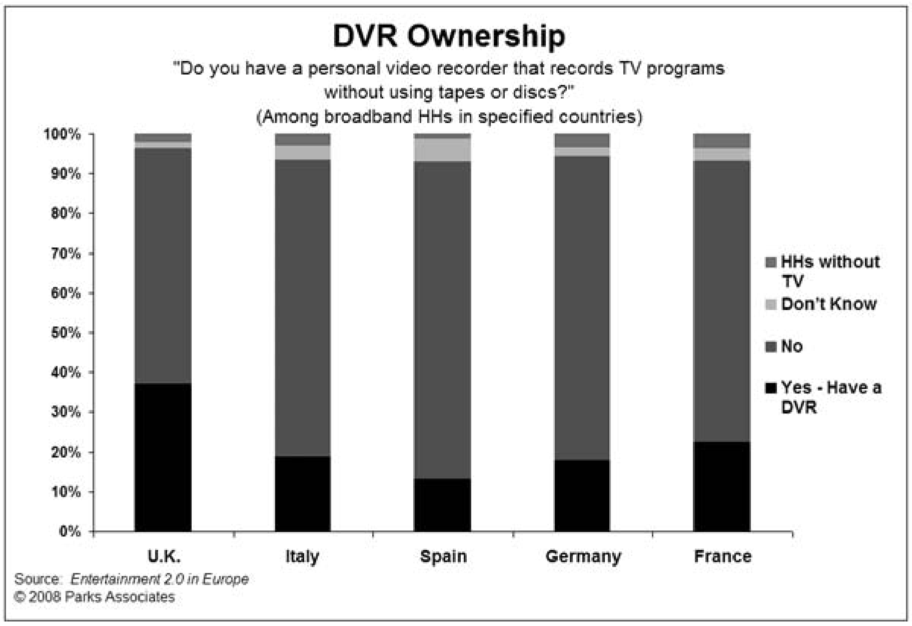
96 "Video-on-Demand yet to develop", *Screen Digest*, January 2009, pp.13-20.

97 Park Associates research shows U.K. the Leading European Nation for DVRs", Park Associates press release, 2 December 2008, http://newsroom.parksassociates.com/article_display.cfm?article_id=5117

Graphic 23 : DVR ownership by broadband households (2008)



Source: Park Associates

1.3.4.4. Digital terrestrial television

As far as digital terrestrial television is concerned, Europe still aims to switch the analogue signal off in 2012 but, as pointed out by some TV channel executives, the pay-TV market and, all the more so, the market for on-demand audiovisual services on this type of network, seem weak, if not under threat. The rollout of digital terrestrial television is accordingly not very likely to benefit from on-demand audiovisual services in the near future.

In the United Kingdom[98], the only European country where on-demand audiovisual services are available on digital terrestrial television, the growth in the number of households equipped to receive DTT increased by 1.7% in 2008 and 7% in the first six months of 2009 compared with the same period in 2008. However, the number of subscribers to the only pay-DTT service with on-demand services went down from 400,000 in the first half of 2008 to 200,000 in the same period in 2009, which would seem to indicate an appreciable decline, or at least the absence of significant growth in digital pay-TV. In France too, pay-DTT has met with “no more than moderate success” according to an ARCEP report. Two of the main French audiovisual groups, ABSat and Lagardère, have abandoned their projects in this area.[99] In Italy, the pay-DTT service Mediaset Premium offers pay-per-view services (sports

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98 Ofcom, Digital Television Update – 2008 – Q4, Digital Television Update – 2008 Q4, http://www.OFCOM.org.uk/research/tv/reports/dtv/dtu_2008_04/
Ofcom, Digital Television Update - 2009 Q1, http://www.ofcom.org.uk/research/tv/reports/dtv/dtu_2009_01/; “TV viewers taking greater control as nine million digital video recorders sold”, Ofcom, 26 June 2009, http://www.ofcom.org.uk/media/news/2009/06/nr_20090629

99 “La télévision numérique terrestre payante dans l'impasse”, Les Echos, 15 January 2009; ARCEP, op.cit., p.9

and television series) on smartcard-based subscription but not video on demand. The service had 3.5 million subscribers at 30 June 2009, with 2.2 subscriptions about to expire.[100]

1.3.4.5. On-demand services to mobile telephones

Although this market is still limited in terms of both services offered and their consumption, it is developing rapidly under the combined effects of:

- the increase in the size and quality of mobile telephone screens,
- the increase in the speeds available on the networks using the latest technologies,
- the development of the consumption of audiovisual content on mobiles.

This still embryonic market has development potential, at least in certain fields (sport, youth, news), and this could result in the establishment of a new rights market. Sports rights, which already include specific rights for mobile transmission in most European markets, are indicators of the potential implications for audiovisual producers and rights holders.

According to a study by comScore, 6.5 million Americans were watching video on a mobile in August 2008. The types most watched were amateur videos (available on video sharing sites), music videos, comedies and trailers.[101] However, according to Nielsen the average monthly number of minutes spent by Americans watching video on a mobile telephone fell from 3 hours 37 minutes in the second quarter of 2008 to 3 hours 15 minutes in the second quarter of 2009, constituting a drop of 10%.[102]

1.3.4.6. Conclusion: cable, the most suitable VoD carrier?

The Internet will continue to play a role but its relative importance will depend on how fast interfaces with television sets develop. The often employed argument that the web is the network preferred by the young must be qualified, as we shall see. In addition, young people have relatively little money and are attracted towards free services, so there importance is more secondary as far as setting up a proper market is concerned.

The digital cable, DSL and FTTH/B networks are probably the ones that will contribute most to the development of on-demand audiovisual services owing to their speed, their ability to support HDTV and their ease of connection to a television set.

According to the aforementioned Cisco Visual Networking Index study[103], as far as non-Internet IP video traffic is concerned (i.e., closed VoD services on cable or IPTV networks), the MPEG-2 cable networks will continue to account for most of the traffic at the global level.

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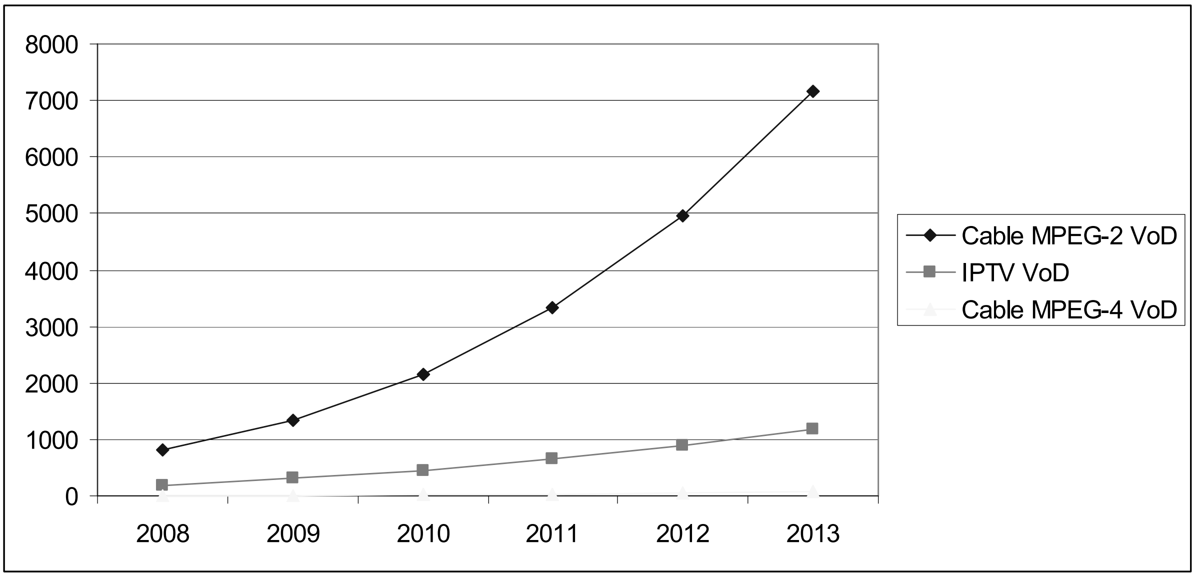
100 The renewal of these subscriptions is the subject of speculation by analysts. According to Paolo Calvani, Mediaset's Director of Communications, 500,000 of the 2.2 million subscriptions had been renewed at 21 July 2009. "Le tessere attive Mediaset Premium", *La Repubblica*, 22 July 2009, http://ricerca.repubblica.it/repubblica/archivio/repubblica/2009/07/22/le-tessere-attive-mediaset-premium.html

101 "comScore Reports 6.5 Million Americans Watched Mobile Video in August", comScore press release, 31 October 2008, http://www.comscore.com/Press_Events/Press_Releases/2008/10/Mobile_Video

102 Nielsen, *Three Screen Report 2Q 2009*, September 2009, http://blog.nielsen.com/nielsenwire/online_mobile/three-screen-report-media-consumption-and-multi-tasking-continue-to-increase/

103 Cisco estimates that exchanges if video files accounted for 70 to 80% of the P2P traffic in 2009. The Internet Video category includes video communications, video to PC and video to TV, via set-top boxes or games consoles. The Ambient Video category includes nannycams, petcams, home security cams and other persistent video streams.

Graphic 24 : Forecasts for the growth in global non-Internet consumer IP traffic for 2008-2013 – in perabytes per month



Source: Cisco VNI, 2009

According to Screen Digest, the key to the development of VoD in Europe lies in the cable networks rather than IPTV. Whereas the IPTV services on DSL networks launched VoD in Europe in 2005-2006, Screen Digest estimates that, from 2006 onwards, VoD revenues on cable networks were higher than those from IPTV and that the gap is likely to widen in the years to come: in 2012, revenues from VoD on cable are likely to be more than 500 million euros, compared with just under 400 million for IPTV services on DSL networks.[104] It suggests that cable is therefore the key to the development of VoD.

Screen Digest's forecasts are based on a sound knowledge of the current state of the infrastructure and the number of subscribers to the services available in the various European countries, as well as on regular contacts with the operators. In the absence of data published by the operators on their revenues from on-demand services, Screen Digest develops hypotheses on the basis of the average expenditure per subscriber for VoD services. The British firm puts forward three arguments to underpin its hypotheses:

- the average expenditure for VoD is higher among cable than IPTV subscribers, who are regarded as typically recalcitrant pay-TV consumers;
- the cable services are more successful than IPTV services in obtaining interesting content. They have a greater ability to obtain providers of content available for free delivery and a greater capacity for promoting on-demand services. The small operators of IPTV services find it hard to attract their customers to these services;
- finally, even though cable operators are slower in implementing VoD services than the operators of IPTV services, they can expect a much larger subscriber base.

The validity of these arguments is debatable:

- is it also clear that an IPTV household spends less on VoD than a cable household? Does a statement to this effect apply to all European countries? In France especially, the significant take-up of IPTV is probably due just as much to the under-development

[104] "Video-on-demand yet to develop", *Screen Digest*, January 2009, pp.13-20

of the cable networks and the unfavourable image they have acquired after twenty years of unconvincing twists and turns involving regulators and operators. The operators of IPTV services have been able to back a marketing strategy that emphasises innovation and thus sign up the early adopters – people who generally belong to the better-off sections of the population, so it is hard to see why they should spend less on VoD on these networks than on cable networks, especially as the services offered are usually of a similar nature;

- the comparison of the operators' ability to obtain VoD content is also debatable: the main IPTV services are run by the major incumbent telecommunications firms and they have more financial resources available than the cable operators for investing in the purchase of content (or even in its production, as in the case of Orange in France).

Screen Digest also points to the specific features of the markets in Central and Eastern Europe, where pay-TV is less well-developed, the cable network digitisation process has been slow to get off the ground and the satellite package operators provide fewer pay-per-view (nVoD) services. It is thus possible to launch VoD services without cannibalising the existing services, but at the same time the pay-TV culture is still relatively undeveloped, with the result that it is from the outset more difficult to persuade the public to buy new services. Most IPTV services have been launched on the initiative of subsidiaries of the big Western European operators (Telefónica, France Telecom/Orange, Deutsche Telekom, TeliaSonera), but considerable successes have been achieved by new entrants to the small markets (SIOL in Slovenia, O2TV in the Czech Republic). As far as cable is concerned, the pan-European group UPC, which has a major presence in this part of Europe, has announced its intention to roll out VoD services but is mainly doing so on its principal markets (Netherlands and Belgium). As regards the providers of satellite packages, they are looking at the model for the development of push VoD but this model needs major markets and has up to now only been adopted in Poland (Cyfra+ and N) and Russia (NTV+).

1.4. THE TECHNICAL COSTS OF VIDEO ON DEMAND

In order to conduct an in-depth analysis of the implications of VoD and the relevance of the various models it is necessary to identify the processes involved in setting up a platform and the costs associated with this.

1.4.1. Operating costs

In order to establish a VoD platform, it is first necessary to acquire the rights in the content to be offered. The acquisition of these rights is the primary problem because:

- they normally have to be acquired for periods that do not clash with other exploitation windows;
- they involve a transaction cost[105] even when the rights holder has been identified;
- when the rights holder(s) are unknown, the VoD platform operator has to pay an additional cost to establish its identity in order to legalise the exploitation.

Since VoD is a recent phenomenon, this work identifying and clarifying VoD rights proves a very substantial undertaking, and platform providers may be tempted to avoid it by considering that the rights in the old films in their possession have been already acquired, which means a loss of earnings for the producer and the rights holders.

Once the rights have been acquired, the content must be:

- digitised;
- linked to metadata detailing the nature of the programme, its genre, its duration, all the rights holders associated with the work, the duration of the associated rights and any other useful information from the point of view of rights management and commercial activities surrounding the work;
- compressed, ie processed in a way that optimises the file size/quality balance;
- “DRMed”[106] or subjected to a process that will enable the use to be subsequently monitored online;
- stored on a video server.

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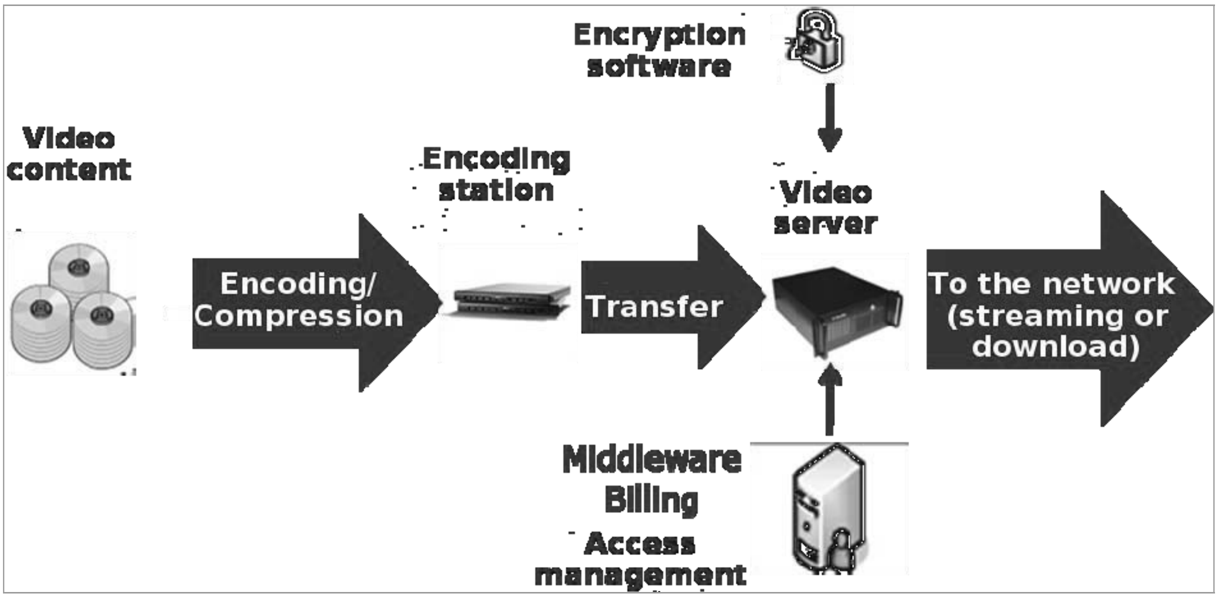
[105] In economic theory, the transaction cost corresponds to the costs generated, inter alia, by the work involved in searching for information, establishing contacts and negotiating with co-contractors.

[106] DRM: digital rights management.

Graphic 25 : The VoD exploitation chain



Source: NPA Conseil

When the customer has made a purchase, a set of software and hardware tools are employed to establish his or her identity, authorise the debiting of the sum involved (or a deduction from the account in the case of a subscription), handle the billing, identify and send the file chosen and, in most cases, add content security elements to prevent pirating. The files sent must also be encapsulated according to the standards of the delivery network used (IP, for example), this last stage ensuring the proper execution of the delivery to the customer in conditions acceptable in terms of the quality of the restored video.

As far as the purchaser is concerned, the terminal device (PC or set-top box) which, by means of the reading software installed inside it, will decode the information packages received from the video server and restore them in the form of a video sequence that is, ideally, uninterrupted and free-flowing. Finally, the service provider has to issue a bill and collect the amounts due.

A platform operator wishing to offer its catalogue to the consumer needs to have a “shop window” consisting either of an electronic programme guide or a website offering a range of programmes enabling the user to navigate between the various offerings.

1.4.2. Cost structure

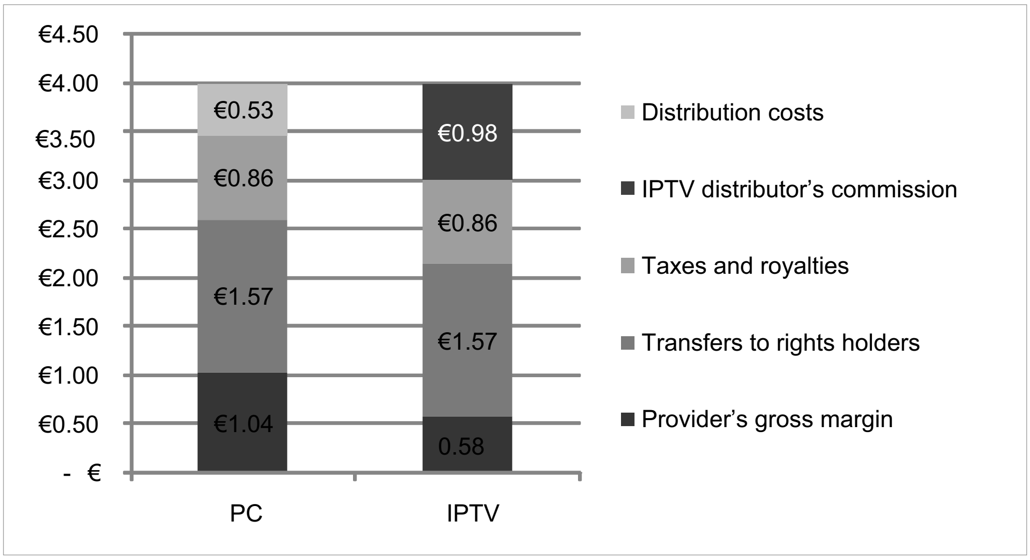
In view of the many different types of platform for the distribution of on-demand audiovisual services (Internet, IPTV, cable, satellite, TNT, fixed telephone, mobile), the various types of player involved (operators, Internet players, video distributors, television channels) and the differences in the prices of the main cost items between the European countries, drawing up a model cost structure for European on-demand audiovisual services is a risky undertaking.

On the other hand, it is possible to draw on the conclusions from the work carried out at the national level. For example, it emerges from the study published by CNC in France and entitled *L’économie de la VoD en France* (“The Economics of VoD in France”)[107], that the

[107] Media Consulting Group, *L’économie de la VoD en France,* CNC, March 2008, http://www.cnc.fr/CNC_GALLERY_CONTENT/DOCUMENTS/publications/etudes/Etude_Vod_180308.pdf

main cost item for the service provider is the payments to rights holders, whatever the method of distribution.

Graphic 26 : Breakdown of the costs of video rental services in France – per title, in euros (2008)



Source: CNC/Media Consulting Group 2008

Depending on the access method chosen (online distribution or IPTV), the provider does not incur the same costs: in the one case, there are distribution costs (delivery and bill-collection charges) and in the other there is the IPTV provider's commission for the use of its technical resources. It should be emphasised that in the case of services offered by the IPTV service providers themselves these commission costs are internalised and rebilled. On the basis of a retail price of €3.99, the provider's pre-tax margin will be €1.04 in the case of an online offering and €0.58 in the case of IPTV.

An analysis of cases in the CNC study reveals the following:

- the platform set-up costs are in the region of €0.50 per title offered in the catalogue, whatever the platform size;
- the acquisition costs are close to €1.20 per catalogue title for "traditional" content, while the value of the content with strong audience potential is nearly €4.30 per catalogue title;
- the digitisation costs are uniform and come to about €0.20 per catalogue title;
- the distribution costs depend to a large extent on the number of customers, in particular the number of potential simultaneous customers, and are close to €2.60 per customer. According to this study, the delivery costs vary enormously depending on the type of terminal device to which the programmes are distributed (TV or PC);
- the editorial costs are around €0.50 per catalogue title and depend to a considerable extent on the promotional work carried out by the VoD platform operators;
- finally, the overheads are nearly €1.30 per catalogue title.

Table 9 : Estimates of the costs on three types of VoD platforms (in euros)

	Platform A	Platform B	Platform C	Average
Set-up and development costs per title	0.40	0.40	0.60	0.47
Content acquisition costs per title	0.84	1.41	4.28	2.18
Digitisation and storage costs per title	0.18	0.22	0.20	0.20
Distribution costs per customer	3.14	2.30	2.31	2.59
Editorial and marketing costs per title	0.30	0.27	0.83	0.46
Overheads per title	1.20	1.49	1.11	1.27

A: 50 titles, 0.2% market share, B: 500 titles, 3% market share, C: 1000 titles, 20% market share

Source: NPA Conseil using 2008 data supplied by CNC/ Media Consulting Group

The acquisition costs represent between 30 and 35% of the platforms' sales revenues, while the distribution costs (digitisation, encoding, delivery and bill collection) represent 25 to 30% of the sales revenues. The rights holders bear part of the transaction costs associated with the negotiation of rights, as previously mentioned.

By comparison, according to several estimates the bandwidth costs of a user generated content (UGC) site, such as YouTube, account for between $0.50 and 1$ per 1,000 videos viewed.[108] There is a difference between the players with regard to charging for the bandwidth costs. For example, the telecommunications network operators optimise the use of the resource available and can share the costs arising between different services (voice, data, etc) while independent players have to pay for using this resource.

The costs of accessing the service are borne by the customers through the receiving device (decoder, PC, software) and through a subscription contract in the case of pay-TV networks (IPTV, cable and satellite [excluding aerial service], pay-DTT).

A study carried out by the firm KEA for the European Parliament[109] puts the figure for establishing a pan-European VoD portal (available in 27 languages) dedicated to the promotion of the European cinema heritage (24 to 27 films initially proposed from each EU country) at between €900,000 and €1.7 million. Assuming the higher figure of €1.7m, the staff costs are estimated at €330,000 and the costs of developing the platform at €370,000, €16,200 of this for the creation of digital masters, €5,400 for encoding, €2,700 for the addition of metadata and the same amount for the inclusion of watermarking[110] and DRM, €20,000 for the establishment of the asset management system and €65,000 for setting up the marketing website (design, programming, content editorialisation).

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108 http://spreadsheets.google.com/pub?key=pYFPEp3S18PRcVZwuNLlGfA and http://archives.i.canblog.com/2006/09/21/youtube_bandwidth.html

109 KEA, "European Cinema Online – Past and Present", September 2008, http://www.europarl.europa.eu/activities/committees/studies.do?language=en

110 See below.

1.4.3. Cost control models

For many independent players wishing to enter the VoD market, the first barrier lies in the costs of acquiring the expertise and technologies.

This problem can be solved by turning to specialised service providers that are able to assume responsibility for certain processes involved in platform set-up. In France, companies like Kewego, Dailymotion or La Banque Audiovisuelle offer ready-made solutions to players unable to handle the technical aspects of setting up a platform.

Being part of a large telecoms or audiovisual group also turns out to be a good solution as the technical costs of the VoD service are then internalised in the company's general operations. This applies for example to the catch-up offerings of the Lagardère youth channels[111], which benefit from the technical infrastructure of the group's television arm.

The peer-to-peer network architecture benefits legal offerings

Further down the value chain, the high distribution costs have led many VoD players, especially ADSL, to consider a means of distribution using the peer-to-peer network architecture, where each user's computer becomes a content storage server. The peer-to-peer network architecture, which is used among other things in the context of content piracy, can, however, benefit legal offerings. In this type of architecture, part of the storage and distribution costs are passed on to the customers, which also enables the size of the distribution network to be varied according to the number of users. This is the model chosen by the BBC for one of the versions of its iPlayer service, which is modelled on the operation of the file-sharing software BitTorrent or Headweb in Sweden.

For players without a network, certain problems associated with on-demand audiovisual services may arise. For example, network operators have called on the BBC to share in the funding of the rollout of very high speed networks owing to the additional resources required because of the success of its iPlayer catch-up television service.[112] Although the regulator rejected this demand,[113] the issue of the funding of networks by the operators of audiovisual services could arise again in the future. It would be all the more difficult to resolve against the background of the planned switchoff of analogue broadcasting, which forces households to choose a digital distribution network, but also because of the obligations imposed on the providers of audiovisual services, in this case the public service obligations imposed on the BBC.[114]

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[111] Canal J, TiJi, Gulli, Filles TV.

[112] http://www.independent.co.uk/news/business/news/Internet-groups-warn-bbc-over-iplayer-plans-461167.html

[113] http://uk.gizmodo.com/2008/04/26/ofcom_backs_the_bbc_against_is.html#comments

[114] Ofcom has also called on the BBC Trust to consider the problem of bandwidth needs in its analysis of the "public value" of BBC content to be offered on the iPlayer in HD. http://www.guardian.co.uk/media/2007/sep/18/bbc.television2

1.5. PIRACY

It is generally acknowledged by audiovisual professionals that one of the main obstacles to the development of legal on-demand audiovisual services, especially pay-VoD, is the large-scale piracy taking place.

1.5.1. The forms of piracy on the Internet

There are various technical forms of piracy carried out using the network of Internet communication and they involve factual and legal situations that are clearly distinct from one another:

- the sending of files as attachments is the simplest method but can only be used for small files containing excerpts, short films or music videos;
- the use of P2P technologies. This is definitely the most frequent form and the one that has attracted the most attention from anti-piracy organisations and legislators. Pirates make use of the BitTorrent type protocols or programs such as GNUtella, Grokster[115], WinMX, Ares, Kazaa, eDonkey, eMule[116], Kademlia[117], etc, to which various networks that make the files available correspond. "Torrents" of works made available by users are identified by P2P index servers, such as "BitTorrent trackers", of which The Pirate Bay and Mininova are the best known in Europe, although Superfundo seems the most popular worldwide.[118] The user can also be alerted to the availability of new

[115] The Supreme Court gave judgment against Grokster in March 2005 following a complaint lodged by MGM.

[116] Police action against servers using the eMule technology has been carried out in Belgium (21 February 2006 and Germany (September 2007).

[117] Kademlia is a distributed hash table created to decentralise the other P2P file exchange networks. See article entitled "Kademlia", http://fr.wikipedia.org/wiki/kademlia, consulted on 3 August 2009.

[118] Of the other well-known sites, mention might be made of Torrentz, TorrentPortal, Seedpeer, Fomdb, MovieRumor, Pullmylink, RapidShare and Megaupload.

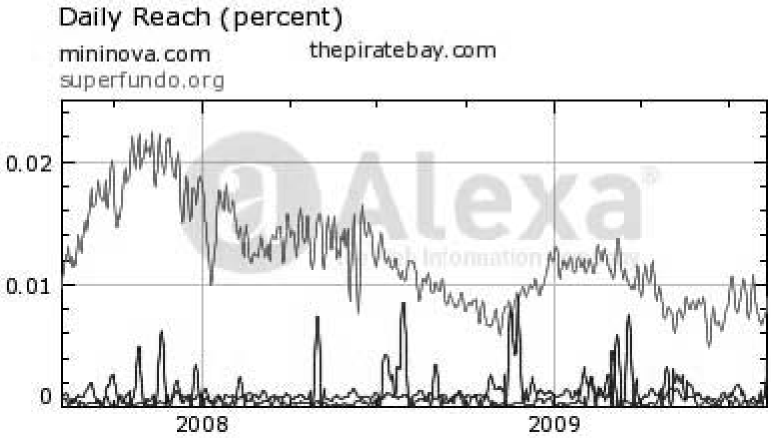
In December 2007, the MPAA obtained a court ruling against TorrentSpy in the United States forcing it to disclose its users' names. This resulted in its operators closing down the site in March 2008. See 'TorrentSpy ordered to start tracking visitors", *CNET News*, 8 June 2007, http://news.cnet.com/TorrentSpy-ordered-to-start-tracking-visitors/2100-1030_3-6189866.html, "TorrentSpy shuts down, *CNET News*, 27 March 2008, http://news.cnet.com/8301-10784_3-9904496-7.html ; http://www.torrentspy.com/

The Stockholm District Court gave judgment against The Pirate Bay on 17 April 2009 (see M. Plogell and E. Ullberg, "The Pirate Bay Case", IRIS 2009-6:17/29), http://merlin.obs.coe.int/iris/2009/6/article29.en.html.

The Pirate Bay was also temporarily prohibited in the Netherlands on 3 August 2009 but the site was subsequently still operational. On 30 June 2009, the company Global Gaming Factory bought The Pirate Bay with the intention of turning it into a legal site. This move has provoked considerable scepticism, especially since the delisting of Global Gaming Factory from the Stockholm stock exchange on 9 September 2009, http://www.aktietorget.se/NewsItem.aspx?ID=52569

Mininova does not host its own BitTorrent tracker but provides a search engine for locating links to thousands of bit torrents of films, music, books and games.In August 2009, the site statistics recorded more than 9 billion downloads, with 8,8 million a day (http://www.mininova.org/statistics). The Dutch company Mininova B.V., which said it had a turnover of 1 million euros in 2007, is trying to develop into a legal model and enables rights holders to request links to bit torrents of protected content, a measure considered insufficient by Arda Gerkens, Chair of the Dutch Parliament's Committee on Piracy. The site believes that BitTorrent is a means of distribution that benefits artists and independent labels and wants to help them to profit from its operations. After having launched a distribution service to highlight the legal content provided free of charge by its partners, offered the streaming of the content of its MP3 partners and tested the funding of content by advertising, Mininova has launched a new function that enables creators to sell users premium content. It has agreed to work with the MPAA to install a filtering system for series such as *Lost* and *Prison Break*. However, the Dutch anti-piracy association BREIN has brought an action against it and the first hearing was in June 2009. See "Mininova aide les artistes à gagner de l'argent grâce à BitTorrent", *Numerama*, 31 March 2009, torrents by RSS flows. The downloading of content is then referred to as "broadcatching".[119] In countries with very fast broadband networks (especially the Nordic countries), pirates also use the DC++ open source client software employed with the Direct Content Network or ADC protocols;

Graphic 27 : Daily reach of Mininova, The Pirate Bay and Superfundo (2008-2009)



Source: Alexa[120]

- exchanging files on the intranet or at specialised forums to which access is reserved;
- the use of Internet video sharing services to post and watch unauthorised protected material rather than user generated content (see Part 6);
- the use of file-exchange services, thus permitting either confidential exchanges or the distribution of uploaded files. The most popular service of this type is the Swiss based RapidShare (http:/www.rapidshare.com), which is controlled by a Germany company;[121]
- the circumvention of geolocation filters by using proxy servers to hide the computer's IP address.[122] This technique makes it possible to access services that are intended for a given territory and are in principle not authorised in the country where the user is located. European users employ this technique (which is facilitated in particular by

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http://www.numerama.com/magazine/12490-Mininova-aide-les-artistes-a-gagner-de-l-argent-grace-a-BitTorrent.html; "Mininova Denied Rectification From Dutch Government", *TorrentFreak*, 9 July 2009, http://torrentfreak.com/mininova-denied-rectification-from-dutch-government-090709/; "Mininova : le filtrage du site de liens BitTorrent devant la justice", *Numerama*, 3 June 2009, http://www.numerama.com/magazine/13062-Mininova-le-filtrage-du-site-de-liens-BitTorrent-devant-la-justice.html
The Californian site Superfundo.org, which was set up in 2007, is a BitTorrent site that, according to Alexa , is more popular than The Pirate Bay or Mininova. Its European audience seem limited to the United Kingdom. The isoHunt site provides comparative statistics on the most used BitTorrent sites: http://isohunt.com/stats.php

119 *Wikipedia* article entitled "Broadcatching", consulted on 27 July 2009, http://en.wikipedia.org/wiki/Broadcatching

120 For a definition and the methodological limits of data provided by Alexa, see 7.4.3.2 below.

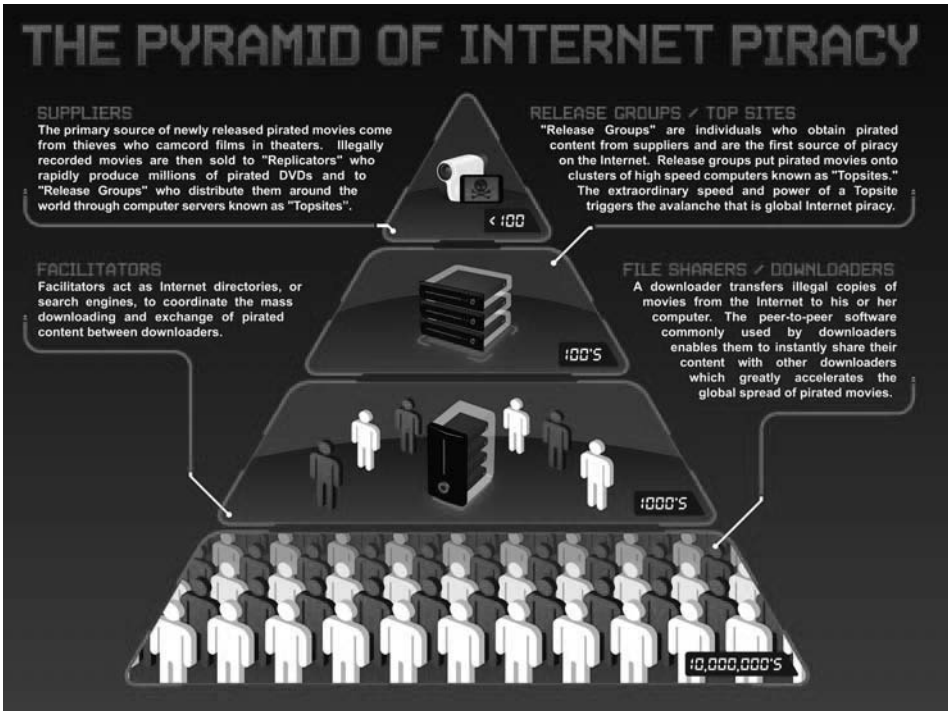
121 In January 2007, the German collecting rights society GEMA won a court case against RapidShare concerning the publication of links to files containing copyright protected programmes. RapidShare said it checked the links relating to content made public by users but would not "spy out the files that our clients faithfully upload". "RapidShare will not control Uploads", RapidShare newsletter, 26 October 2008. http://rapidshare.com/news.html

122 A proxy server acts as an intermediary for requests from clients seeking resources from other servers.

AnchorFree's Hotspot Shield software) to access the American Hulu service or the BBC iPlayer, thus enabling them to view television series before they are broadcast in the United States or the United Kingdom. Since May 2009, Hulu has prohibited access to anonymous proxy servers, and users wishing to view the service have to find a correspondent in the United States that agrees to make a proxy available or use AnchorFree's Hotspot Shield.

The MPAA highlights the "pyramid of Internet piracy" and the fact that at the beginning only a small number less than a hundred) providers[123] make films available to release groups that manage very high speed servers (known as *topsites*) that send them to facilitators, which in act as an interface to connect with the broad mass of consumers who download them. However, the general availability of software (such as RealDVD[124]) that enables the DVD protection systems to be circumvented permits an increasing number of users to make pirated films available.

Graphic 28 : The pyramid of Internet piracy according to the MPAA



Source: MPAA

To these technical forms of Internet piracy may be added a form that has more to do with the field of broadcasting: the exploitation of the functionality of broadcasting and the sharing of

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[123] One of the most active providers is aXXo, which has become the reference "brand" in the world of piracy. According to BigChampagne, a third of the films trafficked on BitTorrent are aXXo files. See "aXXo", Wikipedia, consulted on 11 August 2009, http://en.wikipedia.org/wiki/AXXo;"AXXo You Are a God", *slate*, 12 November 2008, http://www.slate.com/id/2204367/pagenum/all; "Hunting aXXo - pirate king of the Torrents, enemy of Hollywood", *The NewZealand Herald*, 5 January 2009 http://www.nzherald.co.nz/technology/news/article.cfm?c_id=5&objectid=10550551

[124] In October 2008, the MPAA obtained a court ruling against RealNetworks, the publisher of the RealDVD software. MPAA press release, 7 October 2008, http://www.mpaa.org/press_releases/realdvd statement tro 10.7.pdf

works available to IPTV service subscribers.[125] Subscribers can download works by connecting their DVD to the set-top box. The access to the programmes available is via the television screen using the remote control. This type of service is still relatively marginal as this functionality is not very widespread but it does constitute a “living-room” version of piracy.

1.5.2. Statistical observations on piracy

1.5.2.1. Questionnaire surveys

Various national studies have been undertaken to try to understand piracy practices by questioning consumers direct.

In the United Kingdom, a study has been carried out on three occasions by IPSOS at the request of the UK Film Council. This has made it possible to identify an increase in the various practices.[126] According to this study, the number of titles unlawfully downloaded in the United Kingdom rose from 44.1 million in 2006 to 52.15 million in 2007, to which must be added 27.75 million titles received by email and copied onto a memory card and 46.8 million titles viewed via unauthorised streaming.[127]

Studies on piracy practices have been carried out in Germany on the initiative of the Federal Film Board FFA[128], in France on the initiative of the CNC[129] and in Italy on the initiative of Univideo.[130]

At the European level, the most recent important study is the *Community survey on ICT usage in households and by individuals 2008*, conducted by Eurostat and the national statistical offices in the 27 EU member states.[131] This shows that 29% of the individuals who have downloaded content online (audiovisual or music) state that they have done so without paying, but this proportion rises to 60% in the 16-24 age group.

However, caution should be exercised when interpreting these figures: the individuals who said they had not paid did not necessarily access unauthorised content since many sites offer the possibility of downloading or receiving streamed audiovisual content or music free of charge and perfectly legally (a technical distinction that does not appear in the Eurostat questionnaire and which a significant proportion of people questioned would certainly have had difficult with).

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125 Such a function exists, for example, under the label TV Perso in connection with the service provided by the French operator Free (http://www.free.fr/assistance/613-freebox-tv-perso-principe-1.html). In December 2008, we were able to establish the presence on this service of recent French films, Indian films and adult films. Unlike P2P piracy, the user who initiates the transmission of a work is easily identifiable. “La TV Perso de Free dans le collimateur de Canal+ et du CSA”, *LeJournalduNet*, 16 July 2007. http://www.journaldunet.com/ebusiness/telecoms-fai/actualite/0707/070716-canal-plus-tvpero-free-csa.shtml

126 “Film theft in the UK. Anti-Piracy Task Force: an analysis and recommendations for action”, UK Film Council, London, 2005, and “Digital and Physical Piracy in GB”, IPSOS presentation, November 2007, http://www.ukfilmcouncil.org.uk/media/pdf/g/m/Ipsos_Piracy_UK_2007.pdf.

127 For the United Kingdom, see also the chapter “Copyright theft” in *BVA Yearbook 2008*, BFA, London, 2008, p.110-111.

128 *Brennerstudie 2005*, FFA, 2005: http://www.ffa.de/downloads/publikationen/brenner_studie4.pdf

129 “La piraterie de films : motivations et pratiques des internautes”, CNC, 2004, http://www.cnc.fr/Site/Template/T1.aspx?SELECTID=1716&ID=1060&t=1

130 *Rapporto Univideo 2009 sullo statuto dell’editoria audiovisiva in Italia*, Univideo, Rome, September 2009, http://www.univideo.org/cms/attach/editor/Rapporto_completo_Univideo_2009.pdf

131 http://epp.eurostat.ec.europa.eu/portal/page/portal/information_society/introduction

The survey shows us above all that 16-24year-olds, who have little money, are more willing to consume content free of charge than pay for it; it does not presuppose that 60% of young Europeans should be regarded as pirate consumers.

Incidentally, the subsidiary question “What might make you pay for online audiovisual content?”, which was only asked of those who said they had downloaded something without paying, indicates that only 14% of all age groups and 28% of 16-24year-olds are not willing to pay.

Table 10 : Ways of accessing online audiovisual content

Response to the question "In the last 3 months, have you paid for online audiovisual content?”
(Question asked of individuals interviewed who said they had downloaded music or films in the last 3 months)

ISO country code	Whole of population			Population 16-24	
	Paid	Did not pay		Paid	Did not pay
EU27	5%	29%		10%	60%
AT	5%	26%		10%	52%
BE	3%	28%		6%	62%
BG	2%	23%		3%	57%
CY	1%	20%		2%	54%
CZ	4%	22%		8%	54%
DE	5%	37%		10%	68%
DK	14%	43%		28%	61%
EE	1%	35%		3%	72%
ES	3%	37%		6%	77%
FI	9%	39%		24%	59%
FR	5%	13%		13%	36%
GB	12%	34%		23%	56%
GR	2%	22%		4%	63%
HR	2%	22%		4%	64%
HU	2%	30%		4%	59%
IE	2%	9%		3%	23%
IS	13%	55%		19%	70%
IT	0%	21%			52%
LT	3%	33%		5%	73%
LU	12%	45%		16%	78%
LV	4%	38%		8%	76%
MT	3%	32%		7%	76%
NL	7%	51%		9%	84%
NO	10%	33%		23%	58%
PL	2%	30%			73%
PT	2%	25%		4%	76%
RO	4%	15%		8%	38%
SE	16%	31%		27%	47%
SI	3%	35%		10%	72%
SK	3%	35%		4%	74%

Source: EUROSTAT Community survey on ICT usage in households and by individuals (2008 - Version 28.4.2009)

Table 11 : Reasons that might persuade individuals who have downloaded content without paying to pay for online audiovisual content

All age groups

ISO country code	Lack of free content available	Right to share protected content legally	More convenient methods of payment	Lower prices	Better quality of paid content vs free content	Wider choice, more easily accessible	Other (e.g., support for artists)	Nothing. no willingness to pay
EU27	6%	5%	6%	8%	4%	1%	6%	14%
AT	6%	4%	6%	10%	5%		6%	12%
BE	2%	1%	3%	4%	1%	1%	3%	20%
BG	3%	1%	4%	2%	2%	0%	2%	13%
CY	6%	3%	6%	5%	4%	3%	7%	7%
CZ	2%	0%	2%	3%	0%	1%	2%	15%
DE	5%	6%	6%	9%	4%	2%	5%	17%
DK	5%	4%	4%	8%	3%	8%	7%	20%
EE	15%	9%	16%	14%	10%	4%	15%	9%
ES	11%	7%	8%	11%	8%	1%	9%	19%
FI	17%	15%	11%	22%	9%		19%	12%
FR	7%	8%	6%	10%	6%	2%	8%	2%
GB	4%	1%	5%	4%	1%	2%	3%	19%
GR	2%	2%	3%	3%	2%	1%	3%	14%
HR	7%	3%	4%	5%	4%	7%	7%	7%
HU	8%	4%	5%	8%	6%	2%	7%	16%
IE	1%		0%	1%	0%	0%	1%	7%
IS	21%	19%	14%	24%	19%	2%	22%	22%
IT	7%	4%	5%	8%	6%	0%	7%	10%
LT	5%	3%	15%	5%	2%	1%	3%	13%
LU	18%	12%	14%	18%	13%	4%	18%	15%
LV	11%	6%	10%	11%	7%	6%	11%	13%
MT	3%	0%	3%	4%	0%	1%	2%	23%
NL	19%	11%	10%	22%	9%	3%	17%	18%
NO	18%	12%	14%	19%	13%	1%	18%	6%
PL	4%	2%	7%	8%	3%		5%	15%
PT	9%	7%	8%	12%	7%		9%	8%
RO	2%	1%	2%	2%	2%	1%	1%	10%
SE	6%	5%	5%	6%	7%	0%	5%	19%
SI	18%	14%	19%	23%	17%	0%	18%	5%
SK	5%	2%	8%	6%	2%	1%	4%	17%

Source: EUROSTAT Community survey on ICT usage in households and by individuals (2008 - Version 28.4.2009)

Table 12 : Reasons that might persuade individuals who have downloaded content without paying to pay for online audiovisual content

16-24 years

ISO country code	Lack of free content available	Right to share protected content legally	More convenient methods of payment	Lower prices	Better quality of paid content vs free content	Wider choice, more easily accessible	Other (e.g., support for artists)	Nothing. no willingness to pay
EU27	13%	10%	13%	18%	9%	2%	13%	28%
AT	15%	9%	16%	25%	12%		14%	19%
BE	4%	3%	7%	8%	3%	1%	6%	46%
BG	7%	2%	10%	5%	4%		4%	36%
CY	13%	6%	18%	12%	8%	8%	17%	19%
CZ	5%	1%	5%	8%	1%	3%	5%	35%
DE	10%	12%	13%	18%	7%		10%	29%
DK	12%	7%	10%	17%	7%	9%	11%	26%
EE	29%	16%	31%	28%	18%	9%	31%	20%
ES	21%	14%	16%	22%	14%	2%	18%	42%
FI	27%	25%	19%	36%	16%		31%	13%
FR	19%	18%	14%	24%	15%		21%	
GB	6%		10%	9%				29%
GR	6%	6%	8%	10%	5%	3%	8%	39%
HR	19%	7%	12%	10%	11%	13%	20%	20%
HU	15%	9%	11%	15%	11%	4%	13%	31%
IE				2%				20%
IS	35%	30%	25%	39%	32%		37%	18%
IT	17%	8%	12%	19%	13%	1%	17%	26%
LT	12%	6%	35%	11%	3%	3%	8%	29%
LU	41%	25%	31%	41%	32%	9%	36%	18%
LV	22%	13%	22%	23%	14%	12%	24%	24%
MT	8%	1%	7%	10%	1%	2%	7%	53%
NL	37%	19%	19%	43%	18%	6%	33%	25%
NO	31%	19%	26%	34%	24%	2%	31%	10%
PL	10%	6%	17%	20%	7%	2%	13%	37%
PT	27%	23%	24%	36%	23%		26%	26%
RO	3%	3%	6%	4%	4%	2%	3%	24%
SE	11%	8%	9%	11%	12%	2%	9%	25%
SI	36%	34%	40%	53%	36%	1%	41%	7%
SK	10%	3%	14%	12%	2%	3%	8%	40%

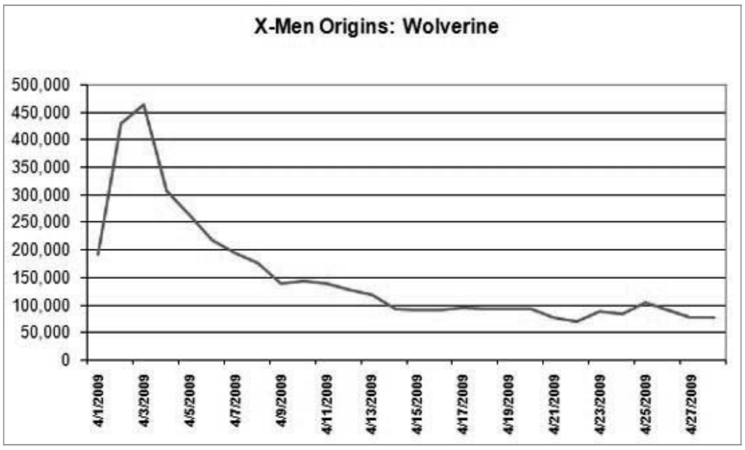
Source: EUROSTAT Community survey on ICT usage in households and by individuals (2008 - Version 28.4.2009)

1.5.2.2. The electronic monitoring of peer-to-peer networks and video sharing sites

A more costly method consists in measuring, by means of specialised software, the downloads actually carried out from the main P2P sites. Since 1999, various companies have specialised in the creation of computerised systems aimed at tracking file exchanges on P2P networks and/or video sharing sites.

BigChampagne[132] is an American company that has developed a system that makes it possible to identify when a given title has been downloaded from a P2P network. The results of the measures it has carried out have in particular shown that the top 10 most downloaded films did not correspond to the list of American box-office hits.[133] According to BigChampagne CEO Eric Garland, "piracy of TV shows is growing faster on the Web (in 2009) than illegal sharing of movies and music".[134]

Graphic 29 : Number of unauthorised downloads of the film X-Men Origins: Wolverine (March 2009)



Source: BigChampagne (quoted in Crave).[135]

An international comparison of the significance of unauthorised downloads from the main P2P sites is provided by the MARC service of the American company Nexicon.[136]

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132 http://www.bigchampagne.com

133 *Wired*, 28 December 2007.

134 Eric Garland, statement of 1 July 2009, http://bigchampagne.tumblr.com/page/2

135 "Will Wolverine benefit from (Bit)Torrent of publicity?", *Crave*, 5 May 2009, http://asia.cnet.com/crave/2009/05/05/will-wolverine-benefit-from-bit-torrent-of-publicity-/

136 http://www.nexiconinc.com/meet-marc. The MARC methodology is not accepted by some anti-piracy associations.

Graphic 30 : Number of illegal downloads identified by MARC between 26 June 2009 and 26 July 2009

TOP 10 COUNTRIES - MOVIES

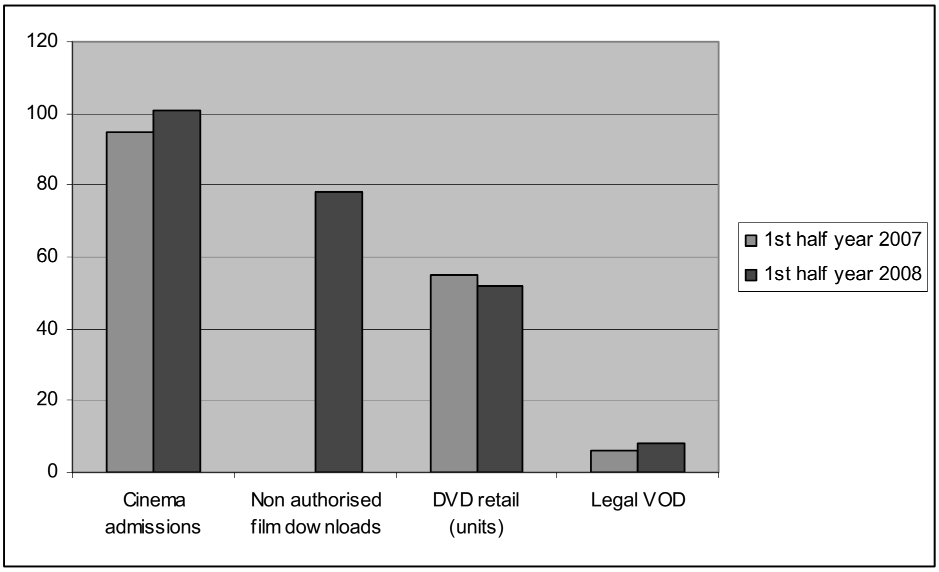
Country	Weeks in Top 10*	Weekly Trend	Downloads
UNITED KINGDOM	30	↓ -21.29%	943,388
GERMANY	27	↓ -87.53%	671,762
UNITED STATES	30	↓ -37.55%	670,000
FRANCE	30	↓ -17.49%	337,032
CANADA	30	↓ -33.87%	260,402
ITALY	29	↓ -40.24%	243,563
SPAIN	30	↓ -31.07%	173,164
NORWAY	19	↓ -15.90%	118,796
INDIA	27	↑ 19.21%	113,642
NETHERLANDS	28	↓ -34.04%	103,450

*Since January 1, 2009.

Source: MARC/Nexicon (consulted on 27 July 2009): http://nexiconinc.com/live-reports-marc

In France, the anti-piracy body Association de Lutte contre le Piratage Audiovisuel (ALPA)[137] has set up a piracy monitoring centre[138] in partnership with Thomson and Advestigo. The electronic monitoring of the main P2P sites offering the French public films for unauthorised downloading assessed the number of downloads in the first half of 2008 at 76.5 million. During the same period, cinema attendances were 100.9 million, DVD sales 53.8 million and the number of downloads as part of the legal VoD service 6 million.

Graphic 31 : Comparison of film consumption practices in France (1st half of 2007 and 1st half of 2008)



Source: European Audiovisual Observatory on the basis of data from CNC, ALPA, GfK and NPA

137 http://www.alpa.asso.fr/
138 http://www.01net.com/editorial/387589/450-000-films-telecharges-illegalement-chaque-jour/

1.5.3. Assessment of the impact of piracy

1.5.3.1. Assessment of the economic costs of piracy

In the first part of the decade, assessments of the amounts involved in piracy activities were published by the Motion Picture Association of America (MPAA) and suggested that the industry lost earnings because of both industrial and online piracy[139]. According to a study carried out in 2006 by LEK for the MPAA, Internet piracy meant a loss for the studios of $2.3 billion, while the total loss for all forms of piracy was $6.1 billion. The losses for the studios resulting from Internet piracy were split between $447 million in the United States and $1.8 billion in the rest of the world. For the entire global film industry, the losses from Internet piracy were $7.1 billion, $918 million in the United States and $6.2 billion in the rest of the world. Some European countries (France, United Kingdom, Russia, Spain, Germany, Italy) were highlighted as being among those with a considerable amount of piracy. This study showed the significance of unauthorised downloading in the 16-24 age group, who accounted for 58% of the pirates in the 22 countries studied and 71% in the United States.

The methodology was based on interviewing 20,600 film consumers in the 22 countries studied, on an assessment of the number of downloads or illegal copies made and on a calculation of the number of tickets or DVDs that the pirates would have bought if they had not watched pirated versions. Such an assumption is questionable: young people who make copies or download items obviously do not have the purchasing power that would enable them to procure the same works at market prices. The relevance of the MPAA data is all the more relative as this organisation that represents the majors does not publish any detailed information on the legal markets, thus making the perception of the data on piracy problematic. Moreover, the MPAA was forced in January 2008 to acknowledge before Congress that the figures in the LEK study attributing to students 44% of the losses due to piracy in the United States were erroneous and that the exact percentage was 15%.[140]

In Europe, according to the MPAA, Internet piracy is growing at a faster pace than anywhere else in the world owing to the rapid development of broadband, legal systems considered weak by the association and “lenient public and official perceptions”. The MPAA says that P2P systems are mainly used in Belgium, the United Kingdom, France and the Netherlands, whereas in the countries with the highest broadband penetration rates (especially the Nordic countries) pirates mainly resort to the use of “direct connection” applications such as DC++, “swarming” systems such as BitTorrent and simple FTP servers.[141]

The suspicion created by the MPAA figures has enabled market research firms to set themselves up as an alternative without always explaining the methods employed to assess the extent of the piracy taking place. In the United States, one of the most recent studies, published by In-Stat in June 2009, estimates that American web users download 14 billion films and other audiovisual programmes a year, only 15% of which are authorised content. Only a minority (9%) are involved in substantial downloading, with 90% content to watch videos provided by YouTube and Hulu.[142]

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139 LEK Consulting, *2005 Piracy Data Summary,* MPAA, 2005, http://www.mpaa.org/researchStatistics.asp ; MPAA press release, 3 May 2006, http://www.mpaa.org/press_releases/2006_05_03lek.pdf
For country-by-country data, see the International Intellectual Property Alliance website: http://www.iipa.org

140 MPAA press release, 22 January 2008, http://www.mpaa.org/press_releases/lek college student data_f.pdf, “MPAA admit error in piracy study”, *Reuters,* 23 January 2008.

141 “MPA Europe – Anti Piracy”, http://www.mpaa.org/inter_europe.asp, consulted on 12 August 2009.

142 ”Converting illegal viewers to paying customers to yield $2.5 billion”, *Video Business*, 7 July 2009, http://www.videobusiness.com/article/CA6669533.html

1.5.3.2. *Academic studies*

While music and film industry professionals point to the negative impact of piracy on the legal market with the aim of persuading governments to provide better protection for their rights, academic studies have sought to analyse the impact of piracy practices on the market by adopting a more problem-based approach.[143] An article by the economist Sylvain Dejean, which discusses the various empirical studies on the impact of P2P on disk and DVD sales, shows that the diversity of the data collected and of the methodologies employed makes it hard to compare the studies available.

Dejean also demonstrates that the impact of P2P on the consumption of films is not necessarily the same as on the consumption of music. Countering the traditional arguments put forward by industry representatives, a regression analysis such as the one carried out by Smith and Telang on the impact of online piracy on DVD sales in the years 2000-2003, shows that the growth of Internet access could have contributed to an increase in DVD sales to the tune of 9.3%. The same authors, having studied the availability of films on the BitTorrent networks over a period of 8 months in 2005-2006, did not find any strong correlation between file sharing and DVD consumption. By contrast, the French study by Bounie et al. on student practices suggests that P2P has no impact on cinema attendances but does affect DVD sales and rentals. This study, like other, more recent studies carried out in the United States by Rob and Waldfogel, confirms the importance of revising the life cycle of films by adapting the release windows.

1.5.3.3. *Drop in cinema attendances and video market crisis*

Whatever the situation might be with regard to the analysis of the correlations between piracy and other audiovisual consumption practices, it is worthwhile extending the debate to include recent market trends.

Cinema attendances

In the European Union, cinema attendances fell by 88.7 million between 2004 and 2008 but this was not a steady decline: attendances decreased by 1012.9 million in 2004 to 898.9 million in 2005 but subsequently rose again to 931.6 million in 2006 and 924.2 million

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[143] The first studies concerned the impact of the pirating of musical works. For a bibliography of the studies published up to 2005, see A. Lange, *Report and studies of the economic and sociological dimensions of peer-to-peer*, European Audiovisual Observatory, http://www.obs.coe.int/db/gavis/piracy.html#3
More recent scientific studies have been devoted to the impact of peer-to-peer on the film and video market. See in particular:

- D. Bounie, P. Waelbroeck, M. Bourreau "Piracy and the Demand for Films: Analysis of Piracy Behavior in French Universities", *Review of Economic Research on Copyright Issues*, Vol. 3, No. 2, pp. 15-27, 2006 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1144313 ;
- S. Dejean, "What Can We Learn from Empirical Studies About Piracy? CESIfo Economics studies", April 2009, http://cesifo.oxfordjournals.org/cgi/content/short/55/2/326
- R. Rob and J. Waldfogel, "Piracy on the Silver Screen", *Journal of Industrial Economics*, 55(3), 2007, pp. 379-95.
- M.D. Smith and R. Telang, "Privacy or Promotion? The Impact of Broadband Internet Penetration on DVD sales" Working Paper, H. John Heinz III School of Public Policy and Management, Carnegie Mellon University
- D. Waterman, S.W. Ji and L.R. Rochet, "Enforcement and Control of Piracy, Copying, and Sharing in the Movie Industry", (2007), *Review of Industrial Organization*, http://www.springerlink.com/content/4w8k26w13g620121/

in 2008. In the United States, they fell by 2.6% in 2008, reaching their lowest level since 2007.[144]

Video market

According to data produced by Screen Digest for the International Video Federation[145], DVD sales continued to rise in Europe in 2008 and reached 778.2 million units, equivalent to an increase of 1.9% over 2007, but the average price of a DVD fell by 4.7% based on a fixed exchange rate. As a consequence, based on a fixed exchange rate, DVD sales dropped by 2.3% in value. DVD rentals declined by 16% from 540 million in 2007 to 454 million in 2008. At a fixed exchange rate, rental prices decreased by 18%.

In the United States, DVD sales declined by 24 billion in 2006 to 22 billion in 2008. Depending on the data source, the decline in 2008 compared with 2007 was 8.4% (NATO), 9% (Digital Entertainment Group) or even 11% (Screen Digest).

According to Adams Media Research, DVD sales in the United States fell by 14% in the first six months of 2009 and were not made up a rise in sales of Blu-ray Discs. In all, the Home Entertainment market declined by 5% in the first six months of 2009.[146]

The decline in the video market is probably more serious for the American producers (it is generally estimated that the revenues from this market account for 40 to 50% of the studios' net income) than for the European producers, whose video revenues are apparently less important.

1.5.4. Legal offers of on-demand audiovisual services as a response to piracy

The development of industry strategies and audiovisual policies often relies more on common sense than methodically argued analyses, and the academic studies of the type mentioned above tend to make professionals suspicious rather than give them food for thought. Afraid of going through the same crisis as the music industry, the film industry is responding by taking action aimed, on the one hand, at curbing piracy through the implementation of a punitive policy and, on the other hand, at introducing legal offerings to provide an alternative to the free content provided by the P2P systems and by streaming, which is a growing threat as it is easier to access. Since the middle of the decade, the availability of legal works has thus become the industry's new credo. It is still too soon to establish whether this alternative will ultimately succeed or whether the free-content culture will take root to the detriment of the pay model on which the film industry has been based since the end of the 19th century, in which case it will be necessary to develop other economic models for creator remuneration.[147]

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144 For detailed figures, see *FOCUS 2009, World Film Market Trends,* European Audiovisual Observatory, Cannes Film Market, 2009, http://www.obs.coe.int/online_publication/reports/focus2009.pdf

145 IVF, *The European Video Yearbook 2009*, Brussels, 2009.

146 Adams Media Research, 31 July 2009, http://www.adamsmediaresearch.com/news/news-usvi-073109-rj/view.html

147 In France, the Minister of Culture Frédéric Mitterand has entrusted to Patrick Zelnik, together with Jacques Toubon and Guillaume Cerutti, the task of investigating the legal availability of cultural content on the Internet, creator remuneration and the funding of the cultural industries. The aim of the remit is to enable both consumers and creators to enjoy all the benefits of the new statutory framework provided by the "Hadopi Law" (see section 2.1.4 below) thanks to the development of an attractive legal offering and new sources of remuneration and funding for artists and the companies that support them. Minister of Culture's press release, 3 September 2009, http://www.culture.gouv.fr/mcc/Espace-Presse/Communiques/Frederic-Mitterrand-confie-a-Patrick-Zelnik-accompagne-de-Jacques-Toubon-et-de-Guillaume-Cerutti-une-mission-sur-l-offre-legale-de-contenus-culturels-sur-Internet-et-sur-la-remuneration-des-createurs-et-le-financement-des-industries-culturelles

1.5.5. *Revising the release windows in response to piracy*

Legal offerings cannot, however, be introduced without taking account of the significance of the amount of free material provided by piracy. This free content is not only exerting pressure on the prices of legal content but also forcing the industry to review its release windows, i.e. the period between the first release of works in cinemas or on television and their being made available for other purposes. In order to respond to the speed with which pirates are able to make new works available after their initial distribution, industry professionals now acknowledge the need to shorten the period before releasing works as pay-VoD, generally making it the same as for their release as pay-per-view and on DVD.

In the United States, the windows arrangements are bound up with the strategy employed by the producers, and, as we shall see, the majors have made various strategic choices in the last few years with regard to the availability of works as VoD. In Europe, the traditional ways of organising the release windows, which mainly concern the period before films can be shown on television, vary from one country to another: in some countries (France, Portugal and, but only for subsidised films, Germany and Austria), it is the subject of legal provisions, while in most countries the legislature has either not acted on this subject or has only taken marginal action by stating that it falls within the scope of the law of contracts.[148]

1.5.5.1. *The new French provisions governing release windows*

As far as the release windows for on-demand audiovisual services are concerned, even France has preferred the system of professional consultation to regulation. It is significant that the legal basis for the window arrangements was reviewed in connection with the Law on Creation and the Internet, which was passed on 12 June 2009 – and therefore in the context of the development of an anti-piracy policy.[149]

With regard to exploitation in the form of videograms, the minimum period is laid down by law. The new section 30-4 of the Film Industry Code (Code de l'industrie cinématographique) provides for a period of four months from the cinema release date, with the possibility for the CNC to permit an exception reducing it to no more than three months. As far as on-demand audiovisual services and television services are concerned, the legislature placed the emphasis on professional consultation. For example, sections 30-5 and 30-6 of the Code provide that the period after which a cinematographic work may be exploited by an on-demand audiovisual service and a television service may be established by professional agreement. Although the legislature laid the emphasis on professional negotiations, it nonetheless imposed a time-limit in the case of on-demand audiovisual services with the aim of ultimately achieving the rapid establishment of new time-limits.

In this connection, a new professional arrangement following negotiations conducted under the auspices of the CNC was concluded on 6 July 2009 between, on the one hand, professional organisations that represent the cinema sector and, on the other hand, providers of services and professional organisations that represent the video sector and the various categories of on-demand audiovisual media and television services that are the

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148 For more details on the legal framework in Europe, see Martin Kuhr, *Media Windows in Flux. Challenges for Audiovisual Media Chronology*, IRIS Plus, European Audiovisual Observatory, April 2008, http://www.obs.coe.int/oea_publ/iris/iris_plus/iplus4_2008.pdf.en

149 Here, we draw on the description of the new arrangements summarised in the CNC's July-August 2009 newsletter, pp. 4-5, http://www.cnc.fr/CNC_GALLERY_CONTENT/DOCUMENTS/Lettre_du_CNC/Lettre66_OK.pdf

subject of the agreement.[150] The parties agreed to apply the following release window time-frames:

- for pay-per-view on-demand audiovisual services, the same period that applies to a video on a physical medium was adopted, namely four months from the cinema release date, with the possibility of an exception being made but without reducing the period by more than four weeks, for works that have realised less than 200 admissions in their fourth week of exploitation;
- for unencrypted television services and pay-TV services other than film services, periods that vary according to the commitments entered into by the service providers in favour of film production:
    - twenty-two months from the cinema release date when the service provider undertakes to subsidise co-productions with a minimum sum amounting to 3.2% of its turnover (including the proportion accruing from television broadcasts);
    - thirty months in other cases;
- for subscription based on-demand audiovisual services, a uniform period of thirty-six months from the cinema release date was agreed;
- with regard to making cinematographic works available on demand to the consumer free of charge, except for strictly limited promotional operations this is only possible after forty-eight months have expired from the cinema release date;
- finally, a cinematographic work may be made available as part of a catch-up television service after it has been broadcast, the two exploitation methods being linked to one another.

1.5.5.2. The discussions underway in other European countries

A review of the media release windows is also under discussion in other European countries:

- in Germany, SPIO, which represents German film sector companies, has launched an in-depth emprirical study to find out more about actual practices, which prove to be quite different according to whether American, German or European films are involved;
- in Italy, the Coordinamento Nazionale delle Videoteche Associate, which represents video clubs, proposes shortening the video rental window in order to respond better to the competition from illegal download sites and streaming sites (such as Megavideo), which offer the Italian version barely three months after the cinema version has been released. According to this organisation, the planning of video windows should be based on box office forecasts so that the windows for the rental of films considered to have weak box office potential could be shortened. ANEC, which represents the operators says is is ready to hold discussions but considers it unrealistic to believe that a shortening of release window is a solution to combat piracy and does not want to see the video market pose a threat to theatrical exploitation.[151] It remains an open question as to whether the pay-per-view or rental VoD window would be identical to that of video rentals, hypothèse considered a serious danger by Antonio Allocati,

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[150] It should be noted that the consensus was not unanimous: the collecting rights societies SACD and ARP, which represent authors and directors/producers respectively, did not sign up to the agreement as they considered that the conditions that would encourage the rapid development of attractive on-demand services did not exist. See the SACD press release of 6 July 2009, http://www.sacd.fr/Accord-sur-la-refonte-de-la-chronologie-des-medias.1278.0.html,
and the ARP press release of the same date, http://www.larp.fr/article.php3?id_article)901

[151] "Window, dibattito acceso", *Trade Home Entertainment*, July/August 2009, p.30-31.

director of the magazine *Trade Home Entertainment*, which specialises in matters concerning the traditional video markets;[152]

- in Belgium, the Francophone distributors and operators are afraid that shortening the release window for films sold on DVD, which has just been decided in France, will have an impact on the market: DVDs imported from France could in fact be available at the time of the cinema release of the films;[153]
- in the United Kingdom, the release windows for rental VoD services are normally in line with those of pay-per-view nVoD services, i.e. films are generally available six to seven months after their cinema release. Download-to-own VoD services have the same windows as in the case of releae on DVD, i.e. four months after the cinema release. In the absence and regulations, there may be considerable differences depending on the title.[154] The distributor Curzon Artificial Eye is trialling the simultaneous release of European films in cinemas, as VoD and as pay-per-view (see 4.5.4.6. below).

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152 Antonio Allocati, “Window, discutiamone seriamente”, *Trade Home Entertainment*, July/August 2009, p.9.

153 Speech by Eliane Dubois, director of the distributor Cinélibre, at the European Cinema Summit, Brussels, 17 July 2009.

154 *Statistical Yearbook* 09, UK Film Council, London, 2009, p.105.

PART 2:

ON-DEMAND AUDIOVISUAL SERVICES IN THE CONTEXT OF EUROPEAN AUDIOVISUAL POLICY

2.1. DEVELOPMENT OF A REGULATORY FRAMEWORK FOR ON-DEMAND AUDIOVISUAL SERVICES

The European institutions have introduced various regulatory and support measures to give a boost to the European on-demand audiovisual service market. [155]

2.1.1. The adoption of the Audiovisual Media Services Directive

The adoption of the new Audiovisual Media Services Directive[156] now constitutes the Community's legal framework for VoD services, but this framework will not take effect until the member states have incorporated the directive into national law.

On 29 November 2007, the European Parliament approved without amendments the Council's Common Position on the proposed new Audiovisual Media Services without Frontiers Directive. The Common Position adopted on 15 October 2007 formalised a text which had throughout the legislative process been the object of inter-institutional negotiations: the informal contacts between the Parliament, the Commission and the Council culminated in a final text approved with no amendments by the Parliament .[157]

The Commission had originally proposed a regulatory construction consisting of a core of rules applicable to all audiovisual media services and an additional layer of obligations applicable only to television broadcasting. This approach was deemed the best option because, as stated in Recital 42 of the Directive: "on-demand audiovisual media services are different from television broadcasting with regard to the choice and control the user can exercise, and with regard to the impact they have on society. This justifies imposing lighter regulation on on-demand audiovisual media services, which should comply only with the basic rules provided for in this Directive". This approach has thus been retained, although some structural changes to the initial text have been introduced (creation of new chapters and reordering of certain articles). Concerning more substantive changes brought about in the initial version of the text, the Commission has stated that the text meets the aims of the Commission's initial and modified proposals.

The Directive clarifies the extension to the scope of the Directive proposed by the Commission: as explained by the Council, the underlying philosophy is that the "on-demand services" now included should compete for the same audience as television broadcasts. The The Parliament had at first reading already clarified the definition of "audiovisual media service" and emphasised that this includes neither services where the provision of audiovisual content is merely incidental to the service and not their principal purpose nor the press in printed and electronic form. The Directive for its part opens with a list of definitions in Article 1. An "audiovisual media service" means a "service as defined by Articles 49 and 50

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[155] This section is provided for the record and does not necessarily reflect the views of the Department for Legal information of the European Audiovisual Observatory. For more information on the legal and regulatory context of VoD, reference is made in particular to the legal publications of the European Audiovisual Observatory, especially: *Legal Aspects of Video on Demand*, IRIS Special, European Audiovisual Observatory, Strasbourg, 2007, http://www.obs.coe.int/oea_publ/iris_special/2007_02_details.html; *Ready, Set … Go?, The Audiovisual Media Services Directive*, IRIS Special, European Audiovisual Observatory, July 2009, http://www.obs.coe.int/oea_publ/iris_special/2009_02.html

[156] Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007, amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:332:0027:0045:EN:PDF

[157] Extracts here been borrowed here from Mara Rossini, Council of the European Union / European Parliament: "Audiovisual Media Services Directive Adopted", IRIS 2008-1:5/3, European Audiovisual Observatory, May 2008.

of the Treaty which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of Article 2(a) of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this Article or an on-demand audiovisual media service as defined in point (g) of this Article". Points (e) and (g) respectively state: "'television broadcasting' or 'television broadcast' (i.e. a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule" and "'on-demand audiovisual media service' (i.e. a non-linear audiovisual media service) means an audiovisual service provided by a media service provider for the viewing of programmes at the moment chosen by the viewer and at his individual request on the basis of a catalogue of programmes selected by the media service provider".[158]

The major principles laid down by the directive (in particular the establishment of territorial responsibility according to the service's country of origin) are applicable in a similar way to both linear and non-linear services.

In two areas, rules specifically adapted to the nature of non-linear services have been spelled out:

- the protection of minors: the new Article 3g provides that content that might seriously impair the physical, mental or moral development of minors should only be made available in such a way that it ensures that minors will not normally hear or see such on-demand audiovisual media services;
- cultural diversity: under the new Article 3i, member states must ensure that non-linear services promote the production and access of European works. This may in particular take the form of a financial contribution of these services to the production and rights acquisition or of a substantial prominence of European works in the catalogues.

The articles on the objectives of promoting European audiovisual works have, however, been subjected to separate consideration in the case of the non-linear services. The directive calls on states to have these services contribute to the provision of support for and to the financing of European works and thereby to the preservation of cultural diversity in the EU.

This contribution could, for example, take the following forms:

- financial contribution to the production of European works and the acquisition of rights in them;

and/or

- compliance with a minimum percentage of European works in the VoD catalogues;
- the prominence of the presentation of European works in the catalogues of the programmes offered.

A study requested by the Commission provides an initial analysis of the extent to which the operators are aware of these new provisions and examines the problems raised by their implementation and its monitoring.[159]

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158 It should be noted that this definition, especially the reference to a catalogue of programmes selected by the provider of media services, excludes video sharing sites from the scope of the directive.

159 Attentional et al, "Study on the application of measures concerning the promotion of the distribution and production of European works in audiovisual media services (i.e. including television programmes and non-linear services)", Draft report, 21 October 2008.

2.1.2. The drawing up of a European policy to promote creative content online

Drawing on a study[160] on interactive content in the EU25 referring to the potential 400% growth in revenues from the sale of online content by 2010, the European Commission published on 3 January 2008 a communication[161] urging states to work towards the establishment of a European market for online creative content.

Anxious to ensure the development of this new method of distributing content while at the same time preserving the competitive balance between telecoms operators and audiovisual distributors, the Information Society and Media Commissioner Viviane Reding identified, following a public consultation held in 2006, four major challenges to the emergence of an economic model for European online content:

- the availability of creative content,
- the need to improve licensing mechanisms by permitting multi-territory licensing,
- interoperability and transparency of DRMs,
- the development of legal offers and the resolution of the problem of piracy.

The Commission has launched a new consultation on the basis of its communication. It has received and published nearly 250 contributions from public bodies, professional organisations and companies as well as a large number of contributions from citizens.[162]

The 2008 Communication also proposed setting up a stakeholders discussion and co-operation platform ("Content Online Platform") to examine the forthcoming challenges. The final report of this platform was published in May 2009.[163]

2.1.2.1. Encouraging rights holders to foster the distribution of content

According to the European Commission, there is at present a real reluctance on the part of rights holders with regard to putting content they own online. This can be explained not only by the fear of online piracy but also by the difficulties in drawing up an agreement between rights owners and online distributors on the conditions for exploiting creative content. The Commission has invited the latter to contribute to formulating solutions[164], especially via a discussion platform that it hopes to place at the contributors' disposal.[165] It also proposes introducing a "code of conduct" between access and service providers, rights owners and consumers.

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http://ec.europa.eu/avpolicy/docs/library/studies/art4_5/draft_final_report.pdf

The final report was published by the European Commission on 28 May 2009: http://ec.europa.eu/avpolicy/docs/library/studies/art4_5/final_report.pdf

160 "Interactive Content and Convergence; Implications for the Information Society", study commissioned by the European Commission's DG Information Society and Media and published on 26 January 2007, http://ec.europa.eu/information_society/eeurope/i2010/docs/studies/interactive_content_ec2006.pdf

161 The Commission's Communication SEC(2007) 1710 to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on "Creative Content Online in the Single Market". http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0836:FIN:EN:PDF

162 http://ec.europa.eu/avpolicy/other_actions/content_online/consultation_2008/index_en.htm

163 http://ec.europa.eu/avpolicy/docs/other_actions/col_platform_report.pdf

164 Commission's Communication, http://ec.europa.eu/avpolicy/docs/other_actions/col_annex_en.pdf

165 Ibid

The Commission also wishes to solve the problem of orphan works[166], which is also contributing to the lack of availability of creative content.

2.1.2.2. Multi-territory licences

According to the Commission[167], copyright territoriality is a significant obstacle to the development of offers to distribute works online. The harmonisation of copyright systems at the European level for creative content should enable online services to be rolled out at less cost throughout Europe. It is a fact that if a provider wants to offer content in several EU countries today it must pay the distribution rights specific to each member state. To solve this problem, the Commission proposes in particular to study the drawing up of separate multi-territory licences depending on whether they apply to the primary or secondary markets.

a. Incorporating online content services into a common market governed by free circulation

Fees for the exploitation of cinematographic and audiovisual works are supervised on a country-by-country basis. This is the territoriality of rights principle or the “protecting country” concept.

In accordance with the territoriality principle, the nature and scope of an intellectual property right are governed by the country in which the creator seeks to ensure the protection of his or her work. Accordingly, when a work is exploited for VoD purposes in several countries, its creator’s protection is split into as many rights as countries involved. The rights are granted separately by each country or group of countries (for example, Germany, Austria and Switzerland).

An overview of the various regulations shows that the identification of the holders of copyrights or neighbouring rights varies widely from one country to another.[168] In addition to these differences with regard to identifying rights, contractual and commercial practices for the exploitation of works as VoD differ a great deal from country to country. Moreover, the rules governing the chronology of release windows are not the same everywhere.[169]

This heterogeneous nature of the legal systems applicable to copyright exploitation could be detrimental to the circulation of works in the European Community and, especially, to their exhibition in all countries via VoD. In order to remedy this, the European Commission is discussing the possibility of introducing multi-territory licensing to enable the distributors of VoD to avoid having to negotiate copyrights on a country by country basis.[170]

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[166] An orphan work can be defined as a work that is protected by copyright or neighbouring rights and whose rights holder cannot be identified or located by someone who wants to make use of the work in a manner that requires their consent. See Stef van Gompel, “Audiovisual Archives and the Inability to Clear Rights in Orphan Works”, *IRIS Plus*, 2007-4, European Audiovisual Observatory, 2007.

[167] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0836:FIN:EN:PDF

[168] See *Creativity Comes at a Price. The Role of Collecting Societies*, IRIS Special, European Audiovisual Observatory, 2009, http://www.obs.coe.int/oea_publ/iris_special/2009_01.html

[169] For a legal analysis of release window chronology, see Martin Kuhr, *Media Windows in Flux*, IRIS Plus, European Audiovisual Observatory, April 2008.

[170] Commission Communication on creative content online in the Single Market, 3 January 2008, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0836:FIN:EN:PDF

b. The Commission's proposals

The aim of the Commission's proposal is to enable providers of VoD services to negotiate the exploitation of cinematographic and audiovisual works for the entire territory of the European Community and not on a country-by-country basis. The Commission believes that the costs involved in the negotiation of rights in each country are an obstacle to the exploitation of works beyond the national territory where they originate: *"The online environment allows content services to be made available across the Internal Market. However, the lack of multi-territory copyright licences makes it difficult for online services to fully benefit from the Internal Market potential"*.

The Commission therefore proposes to set up a system whereby rights holders would be encouraged to grant a secondary multi-territory licence in addition to the main licence. This idea was already mentioned at the signing of the European Charter for the Development and Take-up of Film Online[171] during the Cannes Film Festival on 23 May 2006 under the Commission's aegis. This document, which was signed by representatives of the film and content industry, Internet service providers and telecommunications operators, states that *"Europe-wide or multi-territory licences and clearances should be encouraged, where appropriate, especially for European films with limited distribution outside their principal territories"*. This proposal addresses the key challenges set out in the Commission's study on interactive content.[172]

The Commission's communication of 3 January 2008 could result in the adoption of a communication of the Parliament and the Council on creative online content in the single market.

c. Mixed reactions

Many of the contributors to the consultation welcome the Commission's desire to develop online content services beyond national borders to make works accessible to the largest possible number of consumers. However, there are also many people who believe that the present system works well and that it is perhaps too early to introduce multi-territory licensing.

The *Federation of European Film Directors* (FERA)[173] identifies three obstacles to the achievement of the Commission's goal:

- the commercial value of these new forms of distribution is still unknown (which makes it hard to set up a fixed exploitation framework);
- the rights holders' fear of the digital networks owing to the danger of piracy;
- the possible emergence of conflicts with the rights holders concerning access to these networks and those relating to the traditional broadcasting services.

The *European Film Companies Alliance* (EFCA)[174] thinks pan-European licences are a key element in the generation of value, especially financial value, from the catalogues of works. Most production companies in the EU are very small and thus have much to gain from the

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[171] European Charter for the Development and Take-up of Film Online, 23 May 2006, http://ec.europa.eu/avpolicy/docs/other_actions/film_online_en.pdf

[172] "Interactive Content and Convergence; Implications for the Information Society", 2006, http://ec.europa.eu/information_society/eeurope/i2010/docs/studies/interactive_content_ec2006.pdf

[173] http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/fera_en.pdf

[174] http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/efca_en.pdf

negotiation of rights in groups (covering several territories and several carriers).

However, it would, according to EFCA, be dangerous to abandon territory-by-territory negotiations. European cinema depends on many sources of funding, which results in the fragmentation of rights. Most films are made for a national audience and this is reflected by their budget structure. Moreover, the costs of exploiting a work (marketing, dubbing, etc) differ from one country to another, which means variations in licence rates.

On VoD platforms, European works risk being marginalised compared with American works. The Hollywood majors possess very large catalogues and can therefore negotiate to their advantage at the multi-territory level. As a consequence, owing to their lack of visibility and means to negotiate terms the European companies, most of which produce less than two films a year, would be offered “cut-price” agreements.

The professional organisations that represent film writers and directors have generally expressed their scepticism, indeed hostility, regarding the principle of the possible compulsory character of multi-territory licensing. For example, SACD considers that *“the introduction of multi-territory licensing presuppose that the rights holders have given their agreement, with the result that the system of multi-territory licences could only be imposed by the European Union in violation of the provisions of the Treaty of Rome. The holders of intellectual property rights must be able to continue to sell to whomever they wish and within the territorial limit they specify.*”[175] SACD also believes that *“the first matter that needs to be resolved with multi-territory licensing for audiovisual works is the shortcomings in the systems for remunerating scriptwriters and directors in Europe. In point of fact, the latter receive virtually no remuneration when their work is broadcast outside the initial territorial limits, especially in the case of VoD. This is a particularly unjust situation and should be dealt with at the Community level before the adoption of new models for exploiting works online”.* FERA, however, recognises that it would be worthwhile discussing with the professionals concerned a voluntary model of a multi-territory online licence for territories where the film has not been distributed after a certain period of time.[176]

The *International Federation of Film Producers Associations* (FIAPF)[177] and the *Independent Film & Television Alliance* (IFTA)[178] consider that removing the rights holder’s ability to go to arbitration in the case of the acquisition of multi-territory rights would be dangerous for the creative economy. There are many elements that determine the conditions for this acquisition: exclusivity, release windows, national traditions, languages, etc. Needs and practices regarding the consumption of content differ from one country to country, so it is normal for rights holders to adapt accordingly. Moreover, the commercial value of a work is optimised by case-by-case negotiations.

This position is shared by *Vivendi*[179], which believes it is necessary to “let the market develop”. The group wants to see the preservation of contractual freedom, which would not be an obstacle to the multi-territorial exploitation of works today but would enable rights holders to make a conscious choice concerning the limits they expect to the geographical exploitation of their works. Such licences would therefore be “superfluous” and “disproportionate” and would not be reconcilable with the reality of the market. Similarly, the Motion Picture Association (Brussels) and Fox Pathé Europa[180] (UK) believe that restrictions

175 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/sacd_fr.pdf

176 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/fera_en.pdf

177 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/fiapf_en.pdf

178 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/ifta_en.pdf

179 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/vivendi_fr.pdf

180 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/mpa_en.pdf

on the current licensing system or a single multi-territory licensing model would penalise the rights holders, so they advocate retaining the latter's contractual freedom in negotiations with collecting rights societies.

An additional factor needs to be taken into account in these discussions: the financing of many programmes or works is based on the involvement of players from different national markets (co-productions, advance purchases) who in return acquire the future exploitation rights in their own territory. For the association Eurocinéma[181], the distribution of works according to a fixed release window chronology specific to a particular territory is not only linked to the receipts from each of the windows but also the pre-financing of these works: the exclusive arrangements granted to the various media services (cinema distributors, video publishers, television channels) determine the ability of the work to circulate outside the national market.

It has also been suggested that multi-territory licensing could have adverse consequences, such as the concentration of rights management (the arrival of new entrants might be more difficult) and a reduction in the diversity of cultural offerings. For the European Producers Club, multi-territory licensing would favour the big distribution companies, in this case the American majors.[182] The *British Screen Advisory Council*[183] thinks the small platforms do not have the resources (technical, marketing) to develop in several countries, so this would favour the big players. Consequently, with the exception of some northern European platforms (SF Anytime) and pan-European media players (ProSiebenSat.1, RTL Group), which have accepted the situation up to now, the introduction of such licences would mainly benefit a few new European entrants to the content distribution market.

It is interesting to note that MPA, which represents the Hollywood majors, does not think a recommendation from the Commission and the European Parliament is needed to address the issue of multi-territory rights licensing and says the present principle of allowing rights holders contractual freedom already permits them to grant multi-territory licences if they deem this appropriate.[184]

As far as the cinema is concerned, the French authorities believe that the arrival of VoD is leading to changes in its mode of consumption and that in this connection the market players (rights holders and distribution platforms) should continue to take their own decisions on the model they find the most suitable for serving the interests of European films.

Cinema distributors, which are represented by FIAD[185] and video publishers/distributors, which are represented by IVF[186], have also expressed their reluctance, stating that the possibility of negotiating on a territorial basis remains the privilege of rights holders as it enables them to reap the most financial reward from their works and that the complexity of the licensing system does not prevent the circulation of works.

Broadcasters also expressed their misgivings. The Association of Commercial Television in Europe (ACT) thinks it is unnecessary for the Commission to address the question of multi-territory rights licensing for audiovisual works since television and VoD services are going to continue to develop predominantly on a national/linguistic rather than pan-European basis.[187]

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181 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/eurocinema_en.pdf

182 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/epclub_en.pdf

183 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/bsac_en.pdf

184 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/mpa_en.pdf

185 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/fiad2_en.pdf

186 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/ivf_en.pdf

187 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/act_en.pdf

The UK distributor, broadcaster and triple-play operator BSkyB[188] points out that the current system is based on years of negotiations and works very well. Moreover, the pursuit of rights management at the national level is not incompatible with the development of works for extraterritorial distribution. The *European Broadcasting Union* (EBU) thinks it is not possible to separate the issue of multi-territory licensing for works distributed online from other forms of distribution, such as cable and satellite, which is the subject of the 1993 Satellite and Cable Directive.[189] While recognising the merits of the Commission's objectives, the cable operators, such as Liberty Global Europe[190], or the association Cable Europe[191] argue that provisions more favourable for the Internet operators would be discriminatory since cable services are required to apply the principles of the aforementioned directive.

On the other hand, international telecommunications operators, such as *Orange*[192], Internet service providers, such as *Google*[193] or *Microsoft*[194], and manufacturers, such as Nokia[195], would look favourably on the introduction of multi-territory licensing, which would simplify their copyright negotiations and enable them to easily and comprehensively access the entire European market. They believe it is normal for licences to adapt to the flexibility of digital technology. For *Google*[196], "it is important for rights holders to work with the Internet access providers to develop "flexible, practical and commercially viable licensing mechanisms allowing the development of online content services at European level".

Most of the broadcasters that replied to the consultation back the principle of multi-territory licensing but some reservations regarding the Commission's proposals have been expressed.

For the EBU which groups together a large number of European broadcasters (including the *Austrian Broadcasting Corporation* [ORF])[197] and the Swedish broadcaster *Sveriges Television AB* [SVT][198]), the aim is to diversify the range of online content. In order to do this, broadcasters need to adapt their policies on rights acquisition, remuneration and distribution to the users' consumption habits. Moreover, the EBU promotes the principle of technological neutrality, stressing that the country of origin principle established in the 1993 Satellite and Cable Directive should also be applicable to online services. The *BBC*[199] shares this view and states that measures facilitating the creation of rights licensing models on a multi-territory and multi-platform basis would enhance broadcasters' online creative content offering. The BBC backs the implementation of a European one-stop shop.

Like the Danish public service broadcaster DR[200] and SVT, the EBU also recognises the benefit of introducing the mechanism of extended collective licences (ECLs), which have already been introduced in Sweden and other Scandinavian countries.

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188 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/bskybe_en.pdf
189 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/ebu_en.pdf
190 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/liberty_global_en.pdf
191 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/cable_europe_en.pdf
192 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/fto_en.pdf
193 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/google_en.pdf
194 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/microsoft_en.pdf
195 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/nokia_en.pdf
196 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/google_en.pdf
197 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/orf_de.pdf
198 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/swedish_tv_ab_en.pdf
199 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/bbc_en.pdf
200 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/dr_en.pdf

As regards the Commission's proposed licensing model*, Mediaset*[201] and the *Association of Commercial Television in Europe (ACT)*[202] consider that regulation in this area could have a negative effect on the distribution of online content and on competition in this sector.

At any rate, as SACD pointed out in its contribution[203], such licences cannot be introduced without the stakeholders' agreement and a guarantee of their fair and just remuneration.

There are in fact very big differences between the systems for remunerating audiovisual writers and directors in Europe, especially with regard to online rights, so VoD platforms should not be able to subject their multi-territory licence agreement to the least favourable legislation for these individuals and in this way offer their services in all European Community countries.

According to SACD, before any multi-territory licensing is introduced, European harmonisation could be necessary in order to ensure the general application of the mechanisms that guarantee the remuneration of audiovisual writers and directors.

With this in mind, the development of rights management companies could improve the system of remuneration and European law could make it compulsory for the exploitation of works online to be managed only by them. According to SACD, that would guarantee the writers' and directors' rights in the face of the economic weight of certain international platforms. However, this would clash with the of the contractual relations management philosophy adopted by some market.

In addition, European law could provide that writers and directors are entitled to fair remuneration. The "rental and lending rights" directive already does so in the case of the renting of works and writers do not want to waive this right. SACD states that "multi-territory licensing can only be introduced following the adoption of these principles at the European level for audiovisual writers and directors". During the negotiations on their multi-territory licences, the writers and directors could accordingly rely on these rights recognised at the European level.

The debate is thus far from being settled on the question of multi-territory licensing and the feasibility of such a system is not so obvious, at least given the present state of national copyright legislation and in the absence of European harmonisation.

A study was launched in 2008 to analyse the rights market in the various member states in greater detail. The results should be available in spring 2010.[204]

d. *The consumer and industry Roundtable on opportunities and barriers to online retailing and the European Single Market*

On 17 September 2008, the European Commission's DG Competition organised a "consumer and industry Roundtable on opportunities and barriers to online retailing and the European Single Market".[205] In particular, the participants examined the obstacles resulting

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201 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/mediaset_en.pdf

202 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/act_en.pdf

203 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/ngo/sacd_fr.pdf

204 Study concerning Multi-territory licensing for the online distribution of audiovisual works in the European Union- SMART 2008/0002 - Selected contractor: Kern European Affairs (in partnership with Armines), http://www.keanet.eu

205 See http://ec.europa.eu/competition/sectors/media/online_commerce.html. The round table documents are

from territorial licensing in the retailing of music and cinematographic and audiovisual works. In this context, the Commission examined the difference in the treatment of the distribution of content on a physical medium (CD, DVD, etc) and distribution without the involvement of a physical medium (television, online distribution) and questioned the legitimacy of this different treatment:

> *"One issue of concern to Commissioner Kroes is that the online provision of copyrighted content as digital data files is often limited to the territory in which the consumer requesting the service is located. The provision of the same content in a physical format is usually not subject to the same territorial limitation. In addition, the provision of copyrighted content in a physical format is clearly subject to EU competition rules on Vertical Restraints, but the position for digital data files is less clear. Put another way, we appear to have a more fragmented European market for the online sale of copyrighted products available in electronic format, than we do for the same content in physical format."* [206]

e. The problem of classification

The problem of classification is an additional obstacle to the circulation of works in Europe.[207] Audiovisual works and films available in the member states are subject to classification, the aim of this being to restrict the access of minors to certain works likely to do serious harm to their "physical, mental or moral development". However, these classifications are highly national in character since they have been established by regulatory bodies or national film agencies on the basis of specific criteria.[208]

2.1.3. Developing rules for the transparency and interoperability of the various digital rights management systems

The majority of players concerned consider that the DRM systems enable action to be taken against illegal copying, but stress the need to increase their interoperability in the interests of consumers.[209] It is also considered necessary to guarantee the transparency of DRM and, consequently, of the information given to consumers on any restrictions on interoperability and the use of content.

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available at: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1338&format=HTML&aged=0&language=EN&guiLanguage=en

206 Extract from the issues paper that served as a basis for the round table, http://ec.europa.eu/competition/consultations/2008_online_commerce/online_issues_paper_annex.pdf
On this question, see in particular, S. Jacquier, W. Maxwell and X. Buffet Delmas, "Industries de contenu : quel avenir pour les licences territoriales ?", *Revue Lamy Droit de l'immatériel*, Paris, March 2009.

207 Carmen Palzer, "Horizontal Rating of Audiovisual Content in Europe: An Alternative to Multi-level Classification?", IRIS Plus, European Audiovisual Observatory, October 2003.

208 "Empirical Study on the Practice of the Rating of Films Distributed in Cinemas Television, DVD and Videocassettes in the EU and EEA Member States".

209 On the legal framework for DRM, see F.J. Cabrera, "Digital Rights Management Systems (DRMs): Recent Developments in Europe", *IRIS Plus*, 2007-1, European Audiovisual Observatory, 2007. See also the conclusions of "Towards effective interoperability", Workshop 3 of the "Creative online content" seminar organised by the French EU presidency (Paris, 18-19 September 2008).

2.1.4. Guaranteeing proper protection for copyrighted works

The rapid development of the unauthorised downloading of films or audiovisual programmes available on the Internet is the main challenge for the viable development of legal VoD sites, and the studies available highlight the importance of this issue.

With the aim of combating the growing practice of making illegal copies of films available on the P2P network and the practice of unofficial downloads, the Commission wishes to establish genuine co-operation between the Internet access providers, service providers, rights owners and consumers through "codes of conduct" in order to guarantee a diversified and attractive range of online offerings, user-friendly online services and proper protection for copyrighted works and to raise awareness of the importance of copyrights for ensuring the availability of content and the ongoing fight against piracy and illegal file-sharing.

A first stage in this connection was the signing, on the initiative of Commissioner Viviane Reding of the European Charter for Film Online, which has been endorsed by the major industry players.[210]

The consultation launched by the Commission in January 2008 chiefly called on the parties concerned to make known their opinion on the so-called "graduated response" of the type proposed by France. In France, in accordance with the objectives set at the time of the establishment of the expert mission led by Denis Olivennes[211], professionals from the audiovisual, film and music sectors, Internet access providers and government representatives signed, on 23 November 2007, the Elysée Agreement for the development and protection of creative works and cultural programmes on the new networks, to which reference is made in the Commission's communication. Based on the 13 recommendations issued by the committee of experts set up in September 2007, the agreement, concluded by 42 signatories, is the first real compromise between the major creative and online content distribution players.

In France, the partnership procedure established by the Elysée Agreement resulted, after many political twists and turns and a heated public debate, in the passing of the Law on Creation and the Internet (the so-called "Hadopi Law"), which was signed and then published in the Official Gazette on 13 June 2009.[212] This law is intended as a response to the problems facing all players in laying the necessary foundations for the development of an online content market, especially video on demand. The key focus of the debates was on the principle of a graduated response (issuing a warning to users who illegally download content then cutting off their Internet access). The Constitutional Council struck down the punitive measure initially entrusted to an administrative authority rather than a court of law, which led the government to draft an additional law that came to be known as "Hadopi 2", which is expected to be passed in September 2009. The work of identifying illegal downloads will be carried out by a provider of technical services delegated by the collecting societies (two were listed in August 2009: AdVestigo and TMG) and notifications will be made by the service provider chosen by Ministry of Culture: Extelia, a Post Office subsidiary.[213]

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210 http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/672&format=HTML&aged=1&language=EN&guiLanguage=en

211 http://www.culture.gouv.fr/culture/actualites/conferen/albanel/rapportolivennes231107.pdf

212 http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020735432

213 *Les Echos*, 21 July 2009.

The agreement[214] concluded in the United Kingdom in July 2007 between the British Phonographic Industry and the Internet access providers, under the strict supervision of the authorities, is also part of an overall approach aimed at improving the protection of creators' rights. In Ireland, in January 2009, IFPI and Eircom, the main telecommunications operator, concluded an agreement by which Eircom agreed to set up a system with a graduated response.[215] Warning campaigns were due to begin in August 2009, to the considerable annoyance of P2P supporters.[216]

The passing of the Hadopi Law was closely followed by other European countries. The graduated response principle could be adopted in other proposed legislation, especially in the Netherlands[217] and Italy, where it has been given industry support but has also caused disquiet on the part of the privacy authority Garante per la Privacy (an independent administrative authority responsible for the protection of personal data).[218]

In Sweden, the law implementing the Community directive on the enforcement of intellectual property rights (the so-called "IPRED Law") came into force on 1 April 2009. It should enable people who breach these rights to be identified because it is now possible, for example, to access their IP address. In order to guarantee a balance between the rights of right holders and the interests of users, a request to obtain an IP address IP via an Internet access provider can only be granted by a court with jurisdiction in the matter.[219] According to statistics published by Netnod, a firm that co-ordinates the Internet in Sweden, traffic fell dramatically after 1 April 2009, the day the law came into force, but subsequently picked up again.[220]

However, the graduated response principle is far from gaining unanimous acceptance either in France or at the European level. In the context of the review of the "Telecoms Package" on 24 September 2008, the European Parliament adopted by a very large majority (573 in favour, 74 against), the amendment proposed by the MEPs Bono and Cohn-Bendit to the effect that the national regulatory authorities should ensure that no restriction may be imposed on a citizen's freedom of expression and information without a prior ruling by the judicial authorities. This vote was seen by the supporters of the French law as a threat to the principle of the graduated response, which the French presidency intends to defend in the Council of Ministers. President Nicolas Sarkozy wrote to the President of the European Commission calling for the rejection of this amendment[221], but the Commission officially

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214 Annex D of the "Consultation on legislative options to address illicit peer-to-peer file-sharing", July 2008, http://www.berr.gov.uk/files/file47139.pdf

215 "Ireland - P2P infringement case settled", *IFPI press release*, 29 January 2009. http://www.ifpi.org/content/section_news/20090129a.html

216 "Ireland's Largest ISP Starts Throttling and Disconnections", *TorrentFreak*, 25 July 2009, http://torrentfreak.com/irelands-largest-isp-starts-throttling-and-disconnections-090725/

217 "Netherlands looking to French-style crack-down on Internet piracy", *EU Observer*, 18 June 2009, http://euobserver.com/871/28331

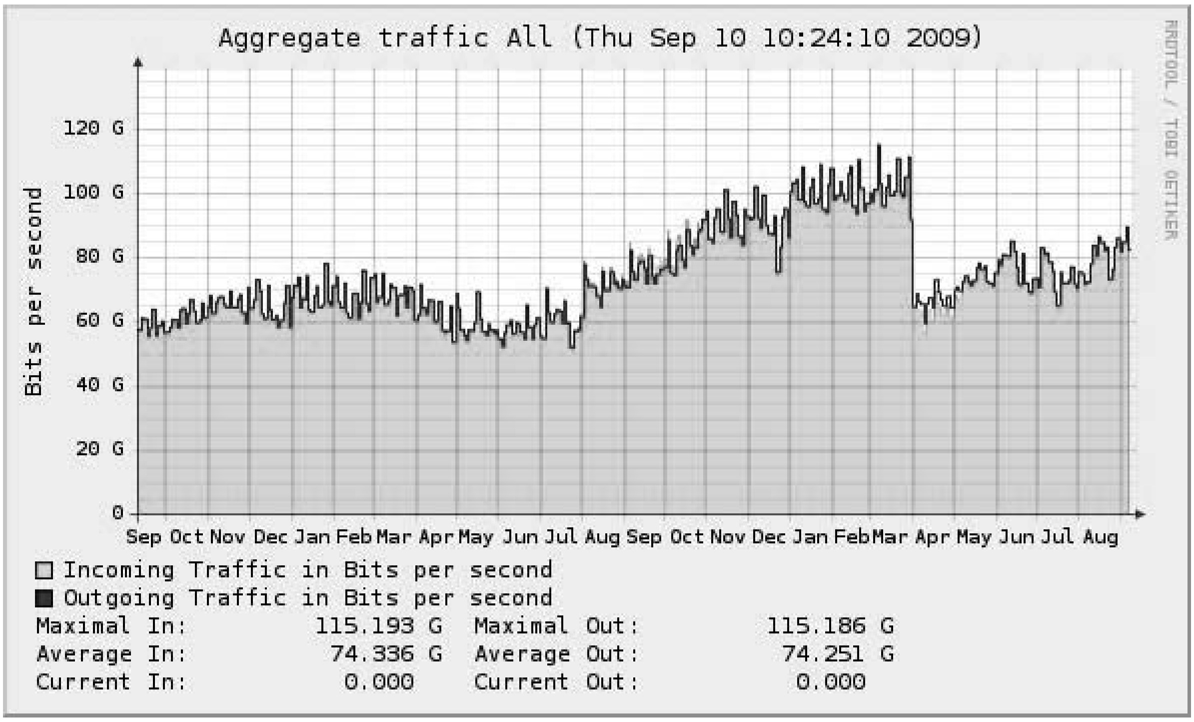
218 "Pirateria. Sarkozy alle industrie italiane di audiovisivo, editoria e musica: ' La nostra Legge sia da esempio agli altri Paesi Ue'", *Key4Biz*, 30 June 2009, http://www.key4biz.it/News/2009/06/30/Policy/pirateria_download_illegale_p2p_peertopeer_nicolas_sarkozy_siae_Afi_Aie_Anem_Fem.html
"Lotta alla pirateria: per il Garante Privacy, 'Il web senza regole favorisce interventi repressivi'", *Key4Biz*, 9 July 2009, http://www.key4biz.it/News/2009/07/09/Policy/privacy_Francesco_Pizzetti_pirateria_Viviane_Reding_Hadopi_2.html

219 H. Miksche, "Sweden – Implementation of the Enforcement Directive in Sweden", IRIS, May 2009, http://merlin.obs.coe.int/iris/2009/5/article32.fr.html

220 "Swedish ISPs vow to erase users' traffic data", *CNET News*, 28 April 2009, http://news.cnet.com/digital-media/?keyword=IPRED ; http://stats.autonomica.se/mrtg/sums/All.html

221 *Les Echos*, 9 October 2008.

Graphic 32 : Web traffic on the Swedish networks (September 2007-August 2009)



Source: Netnod

rejected his request on 6 October 2008, stating that it did not want to give preference to one member state over the others. However, on the initiative of France, which held the EU presidency at the time, the Bono amendment Bono was withdrawn from the Telecoms Package agreed unanimously by the Council of Telecoms Ministers on 27 November 2008. After various twists and turns, the European Parliament adopted on 6 May 2009 a new amendment that was essentially the same as the Bono amendment, thus delaying the final adoption of the Telecoms Package, which is to be re-examined by the Conciliation Committee on 29 September 2009.

In a public speech on 9 July 2009, Commissioner Viviane Reding outlined what, in her opinion, should be the new European Commission's "digital priorities". She placed at the head of these priorities a policy that permits easy access to digital content by modernising the law relating to intellectual property rights through the general introduction of multi-territory licensing.[222] She does not exclude punishing people for illegal acts of piracy but stresses that the best weapon to deter consumers from taking advantage of illegal offerings is to make works available legally.

222 Viviane Reding EU Commissioner for Telecoms and Media: "Digital Europe – Europe's Fast Track to Economic Recovery", The Ludwig Erhard Lecture, 2009 Lisbon Council, Brussels, 9 July 2009, http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/336&format=HTML&aged=0&language=EN&guiLanguage=en

2.2. A RENEWED EUROPEAN SUPPORT POLICY TO TAKE ACCOUNT OF THE NEW MEDIA

The emergence of VoD is leading to changes in the policy for providing financial support to audiovisual and film production introduced by the member states and the European institutions.

2.2.1. The MEDIA 2007 programme: extension of EU support to include online distribution and the establishment of professional digital platforms

The EU's new MEDIA 2007 programme adopted in November 2006[223] and launched in February 2007 provides for a budget of €755 million for the European film industry over the next seven years.

The aims of the MEDIA 2007programme[224] are:

- to preserve and enhance European cultural diversity and its cinematographic and audiovisual heritage, guarantee accessibility to this for Europeans and promote intercultural dialogue,
- to increase the circulation of European audiovisual works inside and outside the European Union,
- to strengthen the competitiveness of the European audiovisual sector in the framework of an open and competitive market.

The European cultural content market is undergoing substantial restructuring under the impact of two linked factors:

- the phenomenon of delinearisation resulting from the digitisation of content,
- the enlargement of the EU to include markets with new characteristics in terms of the organisation of the audiovisual creation and distribution sector.

The Commission has consequently reviewed all its structures and aid programmes in order to possess tools that are more suited to the pursuit of its objectives.

The €755 million will be allocated to the pre- and post-production stages of film-making: training (7%), development (20%), distribution (55%), promotion (9%), horizontal actions intended to make it easier for SMEs to access funding and to increase the presence of European films on digital platforms (5%) and pilot projects experimenting with new technologies for film development, production and distribution (4%).

a. Preservation and promotion of cultural diversity

The primary objective mainly responds to the European nations' need to celebrate their cultural heritage and diversity in a single market with the potential to standardise the cultural offerings available. This objective of promoting cultural diversity is a variation of the concept

[223] Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007)

[224] http://ec.europa.eu/information_society/media/overview/2007/index_en.htm

of “cultural exception” put forward by France in the GATT and GATS negotiations and on the occasion of the signing at UNESCO of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. These concepts emphasise the special status of cultural assets in a competitive market and the specific support measures from which they can benefit. In the case of audiovisual broadcasting, these objectives of promoting European culture have been reflected in obligations to broadcast national and European works, as mentioned above.

While the advent of digital technology and VoD enables a context more conducive to achieving this objective to be envisaged, it has to be pointed out that in many European countries the cinematographic works most consumed in the form of VoD are those that have had successful cinema releases, ie in many cases non-European productions. Specific tools are therefore necessary to help this entire industry to adapt to digitisation and maintain the position of European production in the range of VoD services.

In some European countries (Sweden, Hungary), the national linguistic minorities can also find a new way of promoting and sharing their culture after seeing the emergence of means of distribution that are more suitable for smaller audiences.

b. Increasing the circulation of works

The second objective is to provide European works with larger markets, especially coupled with EU enlargement.[225] It is a fact that, while digitisation enables works to be distributed at less cost to a wider audience, the question of accessibility over all the national territories remains. The MEDIA 2007 programme supports projects that use digital technologies and aim to increase information sharing and facilitate access to the rights in works throughout the member states’ territories. According to the European Commission, 90% of the European works currently circulating in the EU are supported by this programme.[226]

The previous programme had already allocated aid to a number of pilot VoD projects (Nodal, Zooloo Kids, SF Anytime, Reelport, etc).

Under the MEDIA 2007 programme, a “Video on Demand and Digital Cinema Distribution” scheme has been set up.[227] Support for these areas is one of the means by which the MEDIA 2007 programme ensures that the latest technologies and trends are incorporated into programme beneficiaries’ business practices. Digital technologies have made European audiovisual works more easily accessible outside their country of origin thanks to new ways of delivering audiovisual content. The competitiveness of the audiovisual content industry in Europe will very much depend on the use of these new technologies at the distribution stage.

The main objective of this scheme is to support the creation and exploitation of catalogues of European works for digital distribution across borders to a wider audience, on personal devices or in cinemas. When necessary, these advanced distribution services will include digital security systems to protect online content. The call for proposals under the scheme will encourage the European audiovisual industry to adapt to new developments in digital technology.

The digital and online environment will be a powerful channel for all types of content and also

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225 http://ec.europa.eu/infor mation_society/media/distrib/schemes/auto/index_en.htm and http://ec.europa.eu/information_society/media/distrib/schemes/sales/index_en.htm

226 Statement of Commissioner Reding at the Europe Days, Cannes 2008.

227 http://ec.europa.eu/information_society/media/newtech/vod_dcc/index_en.htm

result in the entry of important new players into the audiovisual market. Rights holders of European audiovisual works will need to respond vigorously to this challenge in order to increase the return on their investment and enhance the potential of European creation. Partnership development and resource pooling are key elements for achieving the objectives.

The scheme is aimed at rights holders of European audiovisual works (ie, the independent European production and/or distribution companies), cinema networks and European operators that make European content available.

After two calls for projects, the MEDIA 2007 programme now supports 12 VoD projects see box below).[228]

Most of these projects involve either national or pan-European VoD services (as in the case of the Scandinavian Movie Channel project being undertaken by the company Nordisk Film).

Mention should also be made of the support for the Glitner project, the aim of which is to set up a B2B database that will permit the rapid tracing of European works in which the rights can be acquired and make it possible to identify the rights holders concerned. The Glitner project [229] is being carried out by Universciné in co-ordination with Cinando (France), Autori Produttori Indipendenti (Italy), Budapest Film (Hungary) and Korpus (Slovenia). The project presented its experimental platform in October 2008.

Projects funded by MEDIA 2007 in connection with the provision of aid for the creation and exploitation of catalogues of European works for cross-border digital distribution:

Filmladen Filmverleih (Austria): creation of a portal and a digitisation platform dedicated to the promotion of European *arthouse* cinema online on the Austrian market and a number of European territories. The service is up and running and is initially offering 401 films (mainly Austrian) at prices between €5.90 and €7.90. http://download.filmladen.at.

Stichting Cinemien – Homescreen (Netherlands): creation of a service to offer a VoD service dedicated to *arthouse* cinema and cultural programmes in the Benelux countries. http://www.cinemalink.nl/

Stichting Docsonline (Netherlands): a VoD service that focuses on documentaries and has announced the intention to remit half the revenue from programmes to their creators. The service is up and running and offers, via streaming, documentaries from various countries and periods. http://www.docsonline.tv/

Nowtilus (Germany): a VoD service that employs an automated recommendation mechanism based on users' preferences and is available in around fifteen countries. The site is operational and provides open access to about 80 full-length German films, documentaries, animated films and short films. http://www.nowtilus.eu.

Idéale Audience (France): a project involving a VoD service offered by the VoD production and publishing company Idéale audience, which specialises in documentaries, music (concerts) and the performing arts. http://www.ideale-audience.fr/.

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[228] http://ec.europa.eu/information_society/media/newtech/vod_dcc/list/docs/results_call_13_2007.pdf

[229] http://www.glitner.eu/

Europa Film Treasures (France): service for the promotion of films originating from collections of 37 film archive managers in Europe. The portal in 5 languages also offers additional information and edutainment elements on the subject of films. Around fifty titles are already available. http://www.europafilmtreasures.fr

Mk2vod.com (France): This is a VoD service dedicated to *cinéma d'auteur* throughout the world and is offered by the French MK2 group. More than 1,200 titles are available: over 800 films, nearly 300 of which can be purchased to keep, classical television series (including, for example, 13 episodes of the first *Dr Who* series), documentaries, youth programmes, programmes with practical information and adult films. http://vod.mk2.com

Filmklik (Hungary): a Hungarian VoD service with a model that it aims to pass on to eastern European partners. It offers a comprehensive platform for managing the digital rights of films in Hungary. More than 310 films from various countries, as well as documentaries and amateur films, are available. http://www.filmklik.hu

Moviepilot (Germany): a film-community and information-sharing site. The initial version is in German but the project aims to develop in seven national territories, with five language versions. It offers over 70 films at a rental price of €3.99. Users can indicate their scale of preferences for the films. http://www.moviepilot.de

UniversCiné (France): VoD service owned jointly by independent French producers and distributors grouped together in the association "Le meilleur du cinéma français" ("The best of French cinema"). The project aims to promote independent French and European cinema and to spread its model to Europe as a whole. The catalogue contains nearly 450 films available for 48-hour rental at a price of €4.99. Considerable editorial work is being carried out on the site. http://www.universcine.com/

Scandinavian Movie Channel APS FIDD (Denmark). FIDD – The Filmmakers' Independent. Digital Distribution is a Danish company in which well-known Scandinavian directors and producers hold 50% of the capital. The aim is the digitisation, management and delivery of films in the form of VoD in the Scandinavian countries, to be followed by the Baltic countries. http://www.movieurope.com

Reelport (Germany): Reelport is not strictly speaking a VoD service but an international B2B service that enables producers to submit their work to more than 30 film festivals. A new service also enables film rights to be acquired online. http://www.reelport.com

c. Strengthening competitiveness

Finally, the third aim of the MEDIA 2007 programme is to set up a competitive European audiovisual sector and bring about a readjustment between the high-output markets (France, Germany, United Kingdom, Italy, Spain) and those countries with a much lower output. The competitiveness objective is reflected in the support for projects that take account of the need to spread a knowledge of the digital technologies (through the training of professionals)[230] and the new digital methods of distributing works (through specific support for distribution). Accordingly, a call for project proposals in the specific areas of VoD distribution and digital cinema was issued in 2007. The pursuance of the objective to support lower-output markets is reflected in obligations to ensure the diversity of the catalogues

[230] http://ec.europa.eu/information_society/media/training/guide/docs/guide2008.pdf

supported by the programme. The call for VoD and digital cinema project proposals[231] therefore contains the requirements that the projects presented must include programmes from at least four member countries, that the maximum programme content from any one country must not exceed 40% and that at least three European languages are represented in that content.

2.2.2. *The European educational website project proposed by the European Parliament*

In September 2008, the European Parliament published a study entitled "Cinema online – past and present"[232] produced by Kern European Affairs (KEA). This study examines the feasibility of setting up a pan-European portal devoted to the cinema, which would permit greater co-operation among the European Union's film professionals and increase public awareness of the importance of the European film heritage. This portal will probably enable one classical film per member state to be made available online for educational purposes. The report examines the potential of VoD for the European cinema industry and provides an overview of Community policy on the subject of VoD.

2.2.3. *Eurimages*

The Council of Europe's co-production fund Eurimages[233], also offers specific aid to online distribution. Eurimages has the dual objective of promoting the European cultures and addressing the economic aspects of the cultural industries. It is complementary to the EU's MEDIA 2007 programme and is in particular available to players from states not eligible to benefit from it.

Like MEDIA 2007, Eurimages also offers support for the digitisation of content production[234] in order to switch the whole of the audiovisual and cinematographic production chain to digital. In particular, the move of the entire chain to digital will permit the rapid and economic exploitation of films via VoD since there will no longer be any need to digitise the content.

Since it was set up in 1988, Eurimages has supported 1,212 works to the tune of €360 million under its production-assistance programme. Distribution aid has reached nearly €1 million a year since 2004 for 150 films supported.

2.2.4. *National initiatives to promote VoD*

Parallel to the initiatives of the European institutions, the national cinema agencies are beginning to draw up policies to support the introduction of VoD services. In a "Common Declaration in support of Digital Cinema" adopted in October 2006, the European Film Agency Directors (EFAD) stressed the importance of the digital distribution of films, especially via VoD.

In 2006, the UK Film Council commissioned and published a feasibility study on the online distribution of independently produced specialised films (a British term very similar in meaning to the French *art et essai*). However, the UK Film Council's work is directed more

[231] http://ec.europa.eu/information_society/media/newtech/vod_dcc/index_en.htm

[232] http://www.europarl.europa.eu/activities/committees/studies/download.do?file=22548

[233] http://www.coe.int/t/dg4/eurimages/Support/SupportDistri_en.asp

[234] Ibid.

towards support for digital cinema distribution than VoD platforms, although it is worth noting its interesting initiative to back a film destined for distribution at user generated content sites such as MySpace.[235]

The French Centre National de la Cinématographie (CNC) is probably the agency that has introduced the most ambitious scheme to promote the development of an online VoD service. This scheme, which was set up in 2008, consists of two separate programmes (see box):

- specific aid "for the exploitation of French and European works via video on demand" (see box).[236] The first aid was granted at the meeting of the specialised commission on 2 July 2008;[237]
- a "VoD supplement" for video publishers to extend their publication of video recordings to include VoD.[238]

In Spain, the new draft law on the cinema funding proposed by the new ICAA Director General Ignasi Guardans provides for revenues from VoD to be taken into account when calculating the "general aid" for depreciation.[239]

2.2.5. The proposals of the Think Tank on European Film and Film Policy

The Think Tank on European Film and Film Policy, which was set up on the initiative of Henning Camre, former director of the Danish Film Institute, published in July 2009 the conclusions of a seminar held in Istanbul on 17 and 18 April 2009 on the opportunities offered European films by the new distribution methods. This report establishes that VoD offers significant opportunities for the film industry to increase in audience worldwide.

The report[240] calls on policymakers to do more to include VoD in the formulation of public aid policy and proposes the following measures in particular:

- *Developing the right legal framework*. Referring to the blocking of Project Kangaroo by the UK's Competition Commission, it also called for a review of the application of competition rules so as not to inhibit the forms of concentration necessary for the launch of national platforms.
- *Helping producers improve rights management*. The report suggests that the mechanisms for the provision of public support should encourage producers to retain their VoD rights and set up collective rights management bodies to improve their negotiating position with the network gatekeepers.
- *Harmonising the distribution criteria* in order to standardise such elements as the Master, trailers, marketing materials, metadata, subtitles and electronic press kits so as improve the presence of European films on film promotion and VoD platforms.

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235 "UK Film Council backs 'Faintheart', the world's first user generated feature film", http://www.ukfilmcouncil.org.uk/10288

236 http://www.cnc.fr/Site/Template/T11.aspx?SELECTID=2949&ID=2009&t=2

237 http://www.cnc.fr/Site/Template/T3.aspx?SELECTID=3085&ID=2117&t=2

238 http://www.cnc.fr/Site/Template/T11.aspx?SELECTID=2308&ID=1530&t=2

239 "El Ministerio de Cultura envía al sector el proyecto de Orden Ministerial que desarrolla la Ley de Cine", 17 June 2009, http://www.elmundo.es/documentos/2009/06/17/orden_cine.pdf
"Las ayudas al cine español valorarán también las descargas 'legales' de Internet", *El Mundo*, 9 June 2009, http://www.elmundo.es/elmundo/2009/06/09/cultura/1244550370.html

240, M. Dale (ed.), *Core Think Thank Group Istanbul: Film Distribution – New Market* Opportunities (17-18 April 2009), Think Tank on European Film and Film Policy, July 2009, http://filmthinktank.org/papers/

- *Building European VoD infrastructures.* The report recommends forms of assistance for B2B models that enable intermediaries to work at the European level to promote European films via-à-vis national platforms rather than support an unlikely pan-European B2C service. The participants also pointed out that public aid had been given to too many small and economically unviable B2C services.

An example of national aid: the CNC's "aid for the exploitation of French and European works via video on demand" and the "VoD supplement"[241]

a) "Aid for the exploitation of French and European works via video on demand"

The CNC wishes to support the development of the VoD market, initially on an experimental basis. The aim of the current call for project proposals is to promote the exploitation of catalogues, the diversity of the offering and the showing of French and European works via VoD.

Aid beneficiaries
Any company based in France and having a catalogue of all types of VoD rights in French and European cinematographic and/or audiovisual works is eligible. Its president, director or manager and the majority of its administrative staff must have either French nationality or the nationality or status of a resident of a member state of the European Community, a state party to the Council of Europe Convention on Transfrontier Television or a non-member European country with which the European Community has concluded agreements relating to the audiovisual sector.

Catalogues eligible
The catalogue must be made up of French and European cinematographic and/or audiovisual works that have already been shown or are destined to be shown for the first time in cinemas or by a television service.
The catalogue that is the subject of the application must contain at least 50 cinematographic works or 75 hours of audiovisual programmes and a maximum of 100 cinematographic works or 150 hours of audiovisual programmes. It may be accompanied by additional information, of whatever nature (audiovisual, photographs, texts, etc).
The cinematographic works must have obtained the CNC's approval (*agrément de production*) and/or achieved the requisite number of points according to a schedule such as that annexed to the European Convention on Cinematographic Co-production.
The audiovisual works must belong to the genres fiction, documentary, animation or the filming of performing arts events and have received aid from the COSIP film production support fund and/or been designated European works by the *Conseil supérieur de l'audiovisuel* (CSA).

Projects eligible

- **The digitisation and editorial enhancement of a catalogue in connection with its VoD exploitation**

A company can apply for aid for the digitisation and editorial enhancement of a catalogue of French and European cinematographic and/or audiovisual works with a view to its VoD exploitation.

The digitisation in the form of pivot files of the catalogue titles and of the additional information pertaining to them has to be carried out within six months of the application date.

Eligible expenses: the costs of creating and storing the pivot file and the costs of producing and acquiring any additional information (bonus shorts, trailers, etc).

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241 "Aide à l'exploitation d'oeuvres françaises et européennes en vidéo à la demande", CNC, http://www.cnc.fr/Site/Template/T11.aspx?SELECTID=2949&ID=2009&t=2

- **Putting online and editorialising a VoD service catalogue**

A company that owns a catalogue of all types of VoD rights and is at the same time responsible for a VoD service can apply for aid to put the catalogue online and editorialising it on its platform.

The company must assume the editorial responsibility for the choice of the service's content and determine the way in which that content is organised. In addition, it must have already put at least 50 cinematographic works or 75 hours of audiovisual programmes onto its website at the time of its application. Only those services with innovative editorial strategies and realistic prospects of economic and commercial viability can be assisted.

The following are eligible expenses: the digitisation costs involved in making the works in the supported catalogue available through the VoD service (transcoding, DRM, etc) and the associated costs of editorialising the website content (expenses involved in producing VoD-specific additional information, creation of functionalities, etc). Only those expenses detailed during a period of six months from the application date will be considered.

If a company makes a joint application for both "aid for the digitisation and editorial enhancement of a catalogue" and "aid for putting online and editorialising a VoD service catalogue", the two applications have to relate to the same catalogue of works.

Assessment criteria

- **For the digitisation and editorial enhancement of a catalogue in connection with its VoD exploitation:**
    - the cultural interest of the works;
    - the quality of the editorialisation of the catalogue: editorial additions, proportion of subtitled original version works;
    - the proportion of new releases;
    - the technical quality of the works: encoding format, restoration quality of old films, proportion of works in HD, etc;
    - the attention given to protection against the illicit copying of pivot files (digital watermarking, digital fingerprinting);
    - the accessibility to the deaf and heard-of-hearing, audio description.

- **For putting online and editorialising a VoD service catalogue:**
    - the nature and composition of the overall VoD service offering, especially the proportion of French and European works;
    - the wealth of detail in the editorialisation of the VoD service content: film fact sheets, production and nature of additional information offered, recommendation tools, etc;
    - the VoD service promotion policy;
    - the prospects for the platform's economic and commercial viability.

Financial aspects of the subsidy

The aid is paid in the form of a subsidy in two instalments: 50% when the agreement is signed and 50% after the project has been completed. In the case of:

- aid for digitisation and the editorial enhancement of a catalogue, the payment of the second instalment is conditional upon the submission by the applicant of the contracts to market the works with a view to their VoD exploitation or any other document evidencing the actual exploitation of these works. Failing this, the applicant will have to furnish proof of the marketing measures undertaken.
- The aid is subject to the *de minimis* regime, in accordance with Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid. A company cannot obtain a total amount of aid subject to this regime exceeding €200,000 over a period of three consecutive fiscal years.

b) The "VoD supplement"

Aid beneficiaries

The beneficiary companies are video publishers based in France and eligible for selective aid for video publishing.

Works eligible

Works eligible are those eligible for selective video publishing aid, provided they have been exploited or are due to be exploited for the first time in cinemas or by a television service.

Projects eligible

The video publisher that develops an additional exploitation opportunity via DVD and VoD for a given title can apply, in connection with the selective per-unit aid for video publishing, for an increase in the subsidy allocated. This increase can only be granted if the work receives a selective per-unit subsidy for its publication on DVD. The application for the increase must be made at the same time as that for selective per-unit aid for video publishing.

Assessment criteria

- the strategy involving the additional distribution of the work on physical and non-physical media;
- the technical quality of the digitisation of the work;
- additional programme information on the work in connection with its VoD exploitation;
- the attention devoted to protection against the illicit copying of pivot files (digital watermarking, digital fingerprinting);
- the extent to which the work is new;
- accessibility for the deaf and heard-of-hearing, audio description.

Financial details of the subsidy

The amount of the increase is limited to 25% of the selective video publishing aid granted, up to a maximum of €2,000 per project.

PART 3:

ON-DEMAND AUDIOVISUAL SERVICES OFFERED IN EUROPE

3.1. DETERMINING THE NUMBER OF EXISTING SERVICES

There are various methodological problems that should be mentioned as far as determining the number of on-demand audiovisual media services in Europe is concerned.

3.1.1. Problems of legal definition

The first problem in drawing up relevant statistics on the number on non-linear audiovisual media services in Europe is the difficulty in defining precisely what such a service is on the basis of legal criteria, in particular the definition provided by the new Audiovisual Media Service Directive.

In the light of the definitions contained in Article 1(a) of the Directive, seven criteria necessary for defining an on-demand audiovisual media service can be establish:

1. It must be a service, which presupposes the existence of economic activity.
2. The service must be under the editorial responsibility of a media service provider.
3. The service must have the character of a public medium.
4. The service must aim to inform, entertain or educate the general public.
5. The main aim of the service must be to provide programmes.
6. The service must have an audiovisual character.
7. The service must be provided by electronic communication networks.

There can be no question here of detailing the legal interpretation problems resulting from the interpretation of the new directive in the various member states and among legal professionals, especially regulatory bodies and academic circles[242], and we shall limit ourselves to identifying a number of consequences of or difficulties posed by the directive from the point of view of statistical observation.

3.1.1.1. The concept of an audiovisual media service provider

Article 1(d) of the directive defines the media service provider as “the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised”. With regard to on-demand services, Article 1(c) defines editorial responsibility as “the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services”.

The question of the interpretation of editorial responsibility has been very keenly debated by lawyers.[243]

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242 The problems associated with the interpretation and transposition of the directive were discussed in particular at the working group’s meeting with the regulatory authorities organised by the European Commission (Brussels, 4 July 2008) and the General Assembly of EPRA (European Platform of Regulatory Authorities) (Dublin, 29-31 October 2008). See in particular *Proposals for the regulation of video on demand services*, a very detailed consultation document published in September 2009 by the British regulator Ofcom, http://www.ofcom.org.uk/consult/condocs/vod/

243 For a detailed analysis of the issue of editorial responsibility in the interpretation of the AVMSD, see W. Schulz and S. Heilmann, *Editorial Responsibility*, IRIS Special, European Audiovisual Observatory, Strasbourg, 2008.

In practice, the problem of identifying editorial responsibility mainly arises in the case of those on-demand services that form part of the range offered by companies that operate cable distribution networks and IPTV services. In many cases, these operators provide a number of catalogues (sometimes referred to as “shops”). These appear under separate brand names, thus clearly showing that they originate from other providers. For example, the ARTE VoD catalogue is included in the services offered by several French IPTV operators. It can be assumed that the companies that provide these catalogues have editorial responsibility when the brand of the service concerned (e.g., TF1 Vision, CanalPlay, ARTE VoD, BBC iPlayer, ViasatOnDemand, SF Anytime, etc) immediately indicates the name of the catalogue provider. However, identification may be more problematic in the case of a “white label” service (that is to say, when the name of the company that provides the catalogue is hardly or not at all apparent). In addition, there is no certainty that the composition of the catalogue will be absolutely identical in the case of a provider that markets its catalogue through different distributors under the same brand. Mere technical requirements may, for example, lead a distributor to reduce the number of titles made available on the basis of an initial catalogue. The question becomes even trickier to answer when the service offered involves the possibility of on-demand access to certain items taken from the programming of various television channels. For example, the British pay-DTT operator Top Up TV offers Top Up TV Anytime, which is made up of items from the programme schedule of 28 different channels, the brands of which are highlighted in the offering. Does this involve 28 different services of which the 28 channels in question are the providers or a single service of which Top Up Ltd is the provider? The same question arises with regard to the “channels” that form part of the iTunes service and are the result of partnership agreements with television companies, major studios or production companies with a familiar quality label.

3.1.1.2. Exclusion of user generated content services

User generated content services may be regarded as not falling within the scope of the directive because they do not meet the criteria of editorial responsibility as the platform operators are regarded as no more than technical intermediaries. This view seems to tie in with the basic parameters of this type of service, which is initially mainly driven by private individuals who offer amateur content with no commercial objectives. However, services like YouTube have experienced a proliferation of “Channels” tabs, which are managed by professional undertakings, institutions or professional directors. More generally, the growing proportion of content made available at these sites is professional in nature and subject to copyright, as evidenced by the agreements reached with content providers by certain sites, such as Dailymotion, which has concluded agreements with France 24, France 3, ARTE and BFM TV.[244]

3.1.1.3. The definition of audiovisual programmes

Article 1(b) of the directive defines a programme as a “set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and whose form and content is comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children’s programmes and original drama”. The list of examples is not exhaustive but it rather revealingly excludes news footage despite the fact that the most common types of content consist of news videos on websites run either by web television companies or press undertakings. From a practical point of view, should promotional content like trailers and highlights not also be regarded as programmes? A

[244] See below “The reappropriation of free models by the traditional players” (section 6.5).

number of websites that either belong to television companies or portal operators specialising in information on cinema programme schedules exclusively provide this type of content. Finally, what about advertising footage such as that to be found either on sites specialising in teleshopping or on sites that might specialise in anthologies of TV commercials?[245] Recital 18 of the directive states that the definition of an audiovisual media service should include audiovisual commercial communication. Can it be inferred from this that items of commercial communication footage are also programmes?

3.1.1.4. The term "principal purpose"

Recital 18 of the directive states that the definition of an audiovisual media service provider "should exclude all services whose principal purpose is not the provision of programmes, i.e. where any audiovisual content is merely incidental to the service and not its principal purpose. Examples include websites that contain audiovisual elements only in an ancillary manner, such as animated graphical elements, short advertising spots or information related to a product or non-audiovisual service".

This term "principal purpose" is subject to debate: from what point can the provision of videos not be regarded as the principal purpose? Many websites of television companies and press undertakings provide "Video" pages (which are usually marked by a tab or insert). Should the fact that videos do not appear as such on the first page be considered to signify they are not part of the site's principal purpose? This would mean that the principal purpose could only be identified when the video catalogue appears on the first page of the site or has its own URL.

3.1.2. Principles adopted for the inclusion of services in this edition

3.1.2.1. Types of service selected

In the context of this study, it has been decided for pragmatic reasons just to identify and include certain categories of on-demand services without mentioning all the services that might fall within the scope of the AVMSD.

Here, we have only chosen to include:

- VoD services that provide catalogues of stock works (films, audiovisual fiction, documentaries, cartoons, educational programmes, music programmes, archive programmes);
- vatch-up TV services, excluding services that only offer news footage (including sports news);
- paid services offering access on demand to live or time-shifted transmissions of sports events.

In this case, the following are not taken into account in our statistical data:

- video sharing sites, even when they include channels provided by audiovisual companies, especially broadcasters;

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[245] Such services exist in France. In June 2009, INA opened a special section of its website (http://www.ina.fr/pub) that provides access to 40 years of commercials broadcast by the French channels. In July 2009, France Télévisions launched an iPhone application that can be downloaded free of charge and enables users to call up on their telephone a catalogue of commercials broadcast over the last two weeks by the 55 channels whose advertising is handled by France Télévisions Publicité *Les Echos*, 9 July 2009).

- services that only offer adult programmes;
- websites that only offer news and information video footage, whether it originates from television programme makers, press undertakings or companies that operate websites (such as MSN Noticias or the Yahoo! video site in France, Spain, Germany and Italy). It is clearly becoming more and more difficult to carry out an exhaustive count of this type of service as its cost is relatively low and even local television stations can provide web pages with news and information videos. In addition, a significant number of newspapers publish video pages on their websites. However, the "principal purpose" of these pages and whether or not they can be described as services on the basis of the criteria set out in the directive is open to debate. An initial quick and non-exhaustive count enabled us to identify around sixty or so operational websites in Europe that offer this type of programme. For similar reasons, we shall exclude sites that offer sports news footage;
- websites that only provide catalogues of trailers[246], highlights or shopping programmes (sites run by teleshopping companies);
- websites that appear to be VoD sites but whose organisation is based on deep links to the VoD sites of other operators;[247]
- websites that provide a tool for searching for videos on other sites. These sites include search tools of the major search engines, such as Google Videos[248] or Bing Videos[249] or national sites like Find Any Film[250] in the United Kingdom or TotalVoD[251], VoDmajors[252] and mySkreen[253] in France.

Finally, VoD services distributed to mobile telephones have not been taken into account in our statistics.

3.1.2.2. Distinctions between alternative versions of an offering under the same brand

In our efforts to find the criteria of the AVMSD reflected in statistical observation, we have identified services on the basis of the presumed catalogue provider rather than the distributors (cable and IPTV operators in particular). An offering under the same brand distributed on different types of networks (for example, TF1 Vision, which is at the same time available on the Internet, cable, IPTV and iTunes) will be counted as three separate services, whereas an IPTV offering under the same brand but distributed by different IPTV operators will be counted as a single service.

At the same time, we have considered as two separate services the offerings of the same operator under the same brand but contained in two separate catalogues available under different conditions (for example, from a cable operator that offers not only films as rental

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246 For example, the British site Moovee (http://www.moovee.co.uk) or the French site Allociné (http://www.allocine.fr/).

247 This is the case for example with the site Stream.tv (http://www.stream.tv), which is offered by the German company Seto GmbH, which provides deep links to the free VoD sites of ARD, ZDF and RTL. We have also excluded the catch-up TV site offered by the Mauritius based company Media Resources Ltd, which provides programmes from the sites of the various British broadcasters that offer VoD services.

248 http://video.google.com/

249 http://www.bing.com/?scope=video&nr=1

250 http://www.findanyfilm.com/

251 http://www.totalvod.com/

252 http://www.vodmajors.com/

253 http://www.myskreen.com/

VoD but also television programmes as part of a subscription package).

3.1.2.3. The distinction between a service and a catalogue included in a service

Whenever it has not been possible to draw a clear distinction, in the context of editorial responsibility, between a catalogue owner and a distribution platform operator, we have based our work on the principle that, if a catalogue brand (the brand of a television channel, studio, production company, etc) is identifiable in the service offered by a distributor, then the company or group that owns the brand is the service provider and has editorial responsibility. This is a presumption, which has no legal significance but turns out to be practical when it comes to considering the players involved.

3.1.2.4. Counting transfrontier services

The AVMSD has confirmed, by qualifying it, the principle that it is the country of establishment of the service that must be deemed to have jurisdiction, as laid down in the 1989 European Convention on Transfrontier Television and in the Television Directive. In the case of transfrontier television channels, statistics can be drawn up either on the basis of the broadcasting country or the receiving country. The problem of the former method is that the statistics fail to provide a particularly good picture of the actual market in a given country, in this instance the number of services available to the consumer. On the other hand, since, in particular, many services accessible on the Internet are not territory-specific and all non-territory-specific services are likely to be received in all countries, there is no point in counting them.

We have therefore adopted the general principle that statistics on the number of on-demand services are drawn up to describe the services specific to a particular country. For a given country, we count:

- the territory-specific services directed at that country even if they are established in another country;[254]
- non-territory-specific services established in that country as long as they are in one of its official languages.

3.1.3. Identifying the services

In 2007 and 2008, there was a rapid rise in the number of VoD services devoted to cinema films and, even more, to catch-up television services. By and large, these rises have not yet been the subject of detailed national observation procedures carried out by public bodies. The European Film Agency Research Network (EFARN) has drawn up a set of indicators to be collected on VoD services but the collection is not yet in operation. In France, the CNC has set up a VoD Observatory with the aim of collecting pertinent data in co-operation with the operators.[255] In October 2008, the European Commission published the provisional version of a study that, in particular, examined the methodological problems involved in

[254] This leads to the double counting of some services available in the same language version in several countries. This is the case with services aimed at groups of people, such as the French-speaking countries (Clicmovies), the German-speaking countries (Premiere Direkt) and the Nordic countries (ViasatOnDemand, film2home, etc).

[255] http://www.cnc.fr/Site/Template/T1.aspx?SELECTID=3086&ID=2118&t=1

monitoring the new AVMSD, which was adopted in November 2007 and will have to be transposed into national law.[256] The final version was published in May 2009.

In the absence of registration with public bodies, it is not easy to identify the existing services. An initial count was carried out by NPA Conseil at the end of the first six months of 2008 and was supplemented and rendered more precise by the European Audiovisual Observatory in November 2008. An examination of the sites of the principal market operators (operators of IPTV, cable and satellite platform services), a study of the professional press and trawling the Internet enable services to be identified but do not guarantee a complete picture.

[256] ATTENTIONAL and others, Study on the application of measures concerning the promotion of the distribution and production of European works in audiovisual media services (i.e. including television programmes and non-linear services, Draft final report of 21 October 2008 and final report available at: http://ec.europa.eu/avpolicy/info_centre/library/studies/index_en.htm#eurworks.

3.2. 696 SERVICES IDENTIFIED IN DECEMBER 2008

When we counted the number of services in Europe (ie, the Audiovisual Observatory's 36 members), we identified 696 in operation at the beginning of December 2008.[257]

3.2.1. Breakdown of VoD services according to distribution network

The implementation of VoD services depends on the state of development of the digital networks. As this is specific to each country, there is no standard model for the roll-out of services.

A count of the number of services confirms the position of the Internet as the primary VoD distribution network. 394 out of the 695 services (or 56.6%) are distributed via websites or dedicated players (iTunes Store, Sky Player, BBC iPlayer). Paradoxically, as services openly available on websites are the most difficult to identify systematically our count is unlikely to be exhaustive.

Services distributed by IPTV networks are in second place (209, or 30%), followed by those distributed by cable networks (49, or 7%), via DTT (25 separate catch-up TV channels in the Top Up TV Anytime service) and by satellite (19, or 2.7%).

There are various factors that mitigate in favour of the Internet, including broader access to the network and the ability of small operators to create their service directly. The launch of channels by the iTunes Store has also increased the number of Internet-provided services. The fact that more services are available on the IPTV networks compared with cable even though the number of cabled households is much higher than those able to receive TV services as part of the range available from the telecommunications operators can be explained by the larger number of players in this segment, whereas in most European countries cable has experienced a concentration process that has resulted in a considerable reduction in the number of operators. The availability of catch-up TV services has also led to a rise in the number of channels available in replay mode.

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[257] This figure cannot be compared with those previously published by the European Audiovisual Observatory and DDM on the basis of work carried out by NPA Conseil. Firstly, the number of countries studied has been increased (services have been identified in particular in the Czech Republic, Greece and Russia); secondly the count criteria have been refined and consequently involve a different calculation methodology. Our survey has no official status. Initial estimates have been provided by the regulatory bodies in connection with the transposition of the AVMSD: according to the CSA, there are 175 services in France; according to Ofcom, the United Kingdom has approximately 150, 90 of them broadcaster-related (see Ofcom, *Proposal for the regulation of video on demand services*, London, September 2009, http://www.ofcom.org.uk/consult/condocs/vod/vod.pdf).

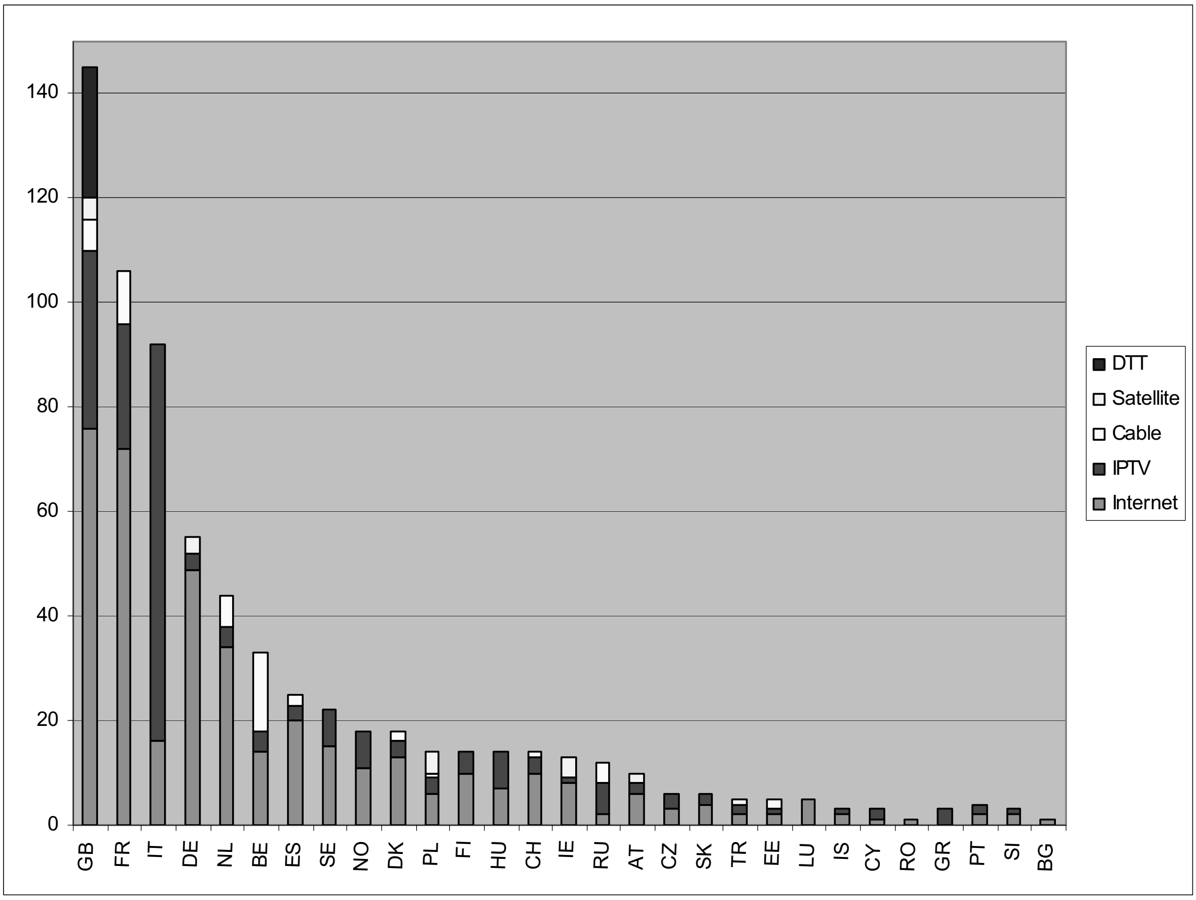
Table 13 : Number of on-demand audiovisual services in Europe by country of reception and type of network (December 2008)

	Total	Internet	IPTV	Cable	Satellite	DTT
AT	10	6	2	0	2	
BE	33	14	4	15		
BG	1	1				
CH	14	10	3	1		
CY	3	1	2			
CZ	6	3	3			
DE	55	49	3		3	
DK	18	13	3	2		
EE	5	2	1	2		
ES	25	20	3	2		
FI	14	10	4			
FR	106	72	24	10		
GB	145	76	34	6	4	25
GR	3		3			
HU	14	7	7			
IE	13	8	1		4	
IS	3	2	1			
IT	93	16	77			
LU	5	5				
LV	1		1			
NL	44	34	4	6		
NO	18	11	7			
PL	14	6	2	1	5	
PT	4	2	2			
RU	12	2	6	4		
SE	22	15	7			
SI	3	2	1			
SK	6	4	2			
TR	5	2	2		1	
Total	**696**	**394**	**207**	**49**	**19**	**25**
In %		56.6%	30.0%	7.0%	2.7%	3.6%

Non-territory-specific services distributed over the Internet and available worldwide are only counted in their country of origin.

Source: European Audiovisual Observatory

Graphic 33 : Number of on-demand audiovisual services in Europe by type of network (December 2008)



Non-territory-specific services distributed over the Internet and available worldwide are only counted in their country of origin.

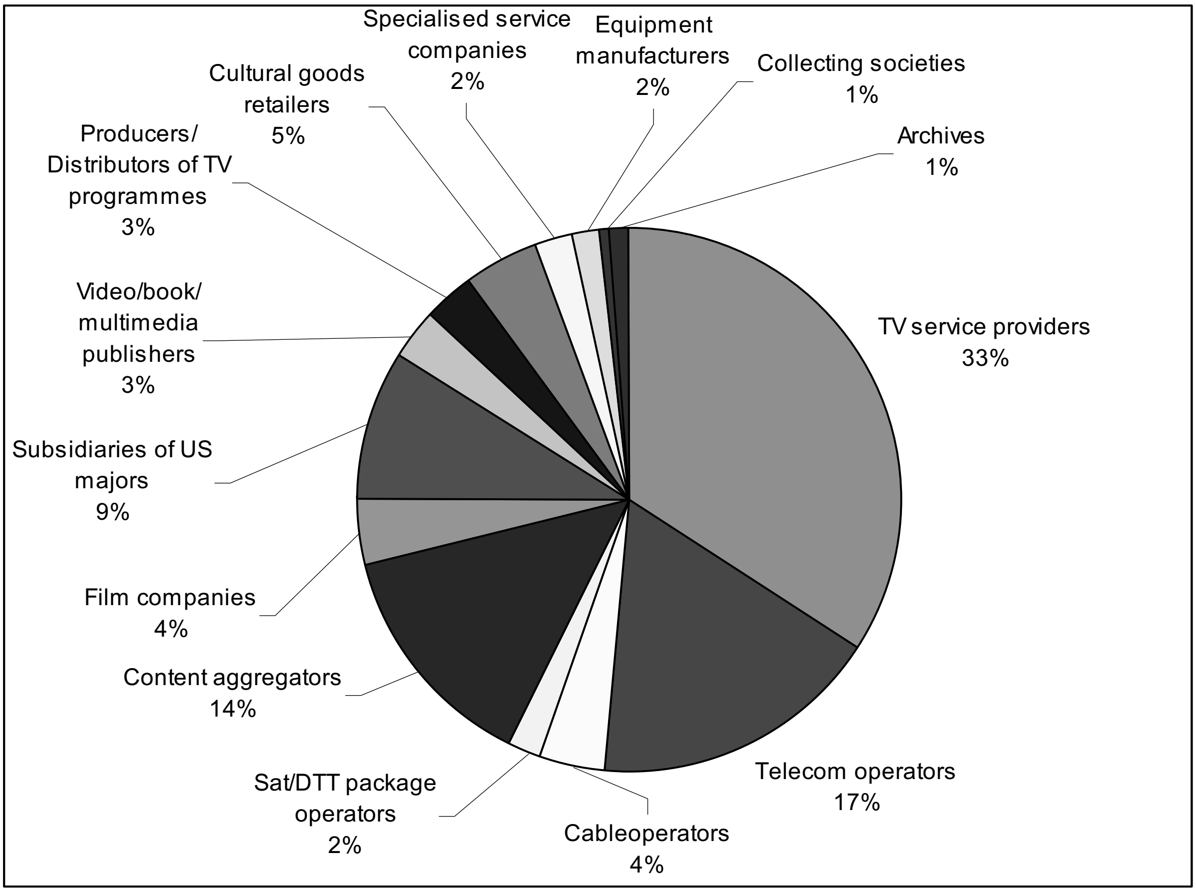
Source: European Audiovisual Observatory

3.2.2. *The different types of player that offer VoD services*

3.2.2.1. Identification of providers

We have identified 366 European companies that provide on-demand audiovisual media services (ie, companies we have assumed to have editorial responsibility). There are various reasons why this number is much lower than the number of services, for example one company may provide different services that either form part of the same range distributed by different distributors or of the same range distributed in different countries. The number of providers could even be reduced to below 300 if it were decided to count the groups and not individual companies.

Graphic 34 : Breakdown of on-demand audiovisual service providers in Europe by original business field (December 2008)



Source: European Audiovisual Observatory

Table 14 : Breakdown of on-demand audiovisual service providers in Europe by country of establishment and original field of business (December 2008)

Country	Cable operators	Film companies	Subsidiaries of US majors	Telecoms operators	Cultural goods retailers	TV channel providers	Video publishers	Specialised services	Content aggregators	Equipment manufac-turers	Performing rights societies	DTT/Satellite platform operators	TV programme distributors	Book/ multimedia publishers
AT		1		1										
BE	1		1	1		6	1						2	
BG									1					
CH	1			3	1	1	1	1	1					
CY				2		1								
CZ			1	2		3								
DE		1	4	5	1	16	1	1	4	1			1	
DK	1	1		3		3								
EE		1		1		1								
ES	1		2	4		8			1		2	1		
FI				2	1	4	1							
FR	1	4	3	6	3	21	2	1	11	1			1	4
GB	1	2	14	2	2	23	1	2	5	1		2	4	
GR				2										
HU		1	1	3		3			1				2	
IE				1		1								
IS				1		2								
IT		1	2	4	2	9			2					
LU										2				
LV				1										
NL	2	1		2	5	4			18					
NO				2		1		1						
PL	1		1	2		1		1	1			2		
PT				2		1								
RO									1					
RU	4			6					1					
SE	1	1		1	2	5			4			1		
SI				1		2								
SK				2		4								
TR				2		1						1		
IL						1								
US			4			3				1			1	
Total	**14**	**14**	**33**	**64**	**17**	**125**	**7**	**7**	**51**	**6**	**2**	**7**	**11**	**4**
	3,8%	3,8%	9,0%	17,5%	4,6%	34,2%	1,9%	1,9%	13,9%	1,6%	0,5%	1,9%	3,0%	1,1%

Source: European Audiovisual Observatory

The emergence of catch-up television has had a major effect of the proportion of VoD services run by broadcasters: 125 out of 366 companies (34.1%) belong to groups whose core business is the provision of television channels. Broadcasters have various advantages with regard to gaining a foothold on the VoD market: apart from the potential of catch-up television, they possess well-established brands and can also benefit from their position on the rights market to launch services specialising in the exploitation of film catalogues (as has been done in France by the TF1, Canal+ and ARTE groups, in Germany by Premiere AG – now Sky Deutschland - and the ProSiebenSat.1 Media group and in the United Kingdom by BSkyB and Channel 4). They can also exploit archive services (as in the case of RAI's RAI Teche service in Italy). Their predominance would be even greater if we had counted their news video services.

The second big group of on-demand audiovisual media service providers consists of various companies that are competing with one another on the television channel distribution market: telecommunications operators, which complement the television component of their triple-play service with a VoD service (a total of 64 companies, or 17.4%), cable operators (14 companies, or 3.8%), satellite platform operators (6 companies) and one digital pay-TV television operator (Top Up TV Ltd). Generally speaking, the cable operators can be considered to have fallen somewhat behind the operators of IPTV networks: network digitisation represents a major investment for them and has often resulted in complex concentration processes lasting several years. Some of them have to settle for pay-per-view services, which are clearly less attractive, but sometimes pass them off as VoD. In addition, the satellite platform operators are limited by the absence of a return channel, which forces them to offer nVoD services (push VoD). Some of them (Viasat, BSkyB, Premiere, Canalsatellite) partially compensate for this weakness by offering VoD services accessible via the Internet, doing so by exploiting their brand and, in most cases, the exclusive access they grant their subscribers.

The third big category of providers consists of the major American groups involved in film and audiovisual production and the distribution and exploitation of thematic channels. We have identified 33 companies (9% of the total) with some connection to the American majors that operate VoD or catch-up TV services in Europe. According to our figures, 139 out of the 696 services, or 20%, are provided by American companies or one of their European subsidiaries.

In contrast to the United States, where the majors played an important role in the launch of the first VoD services, the European film companies have hardly played a leading role in opening up the market, with the exception of the Bonnier Group (Svensk Filmindustri) through its SF Anytime service, which has been available in the Nordic countries since 2002. Only 14 service providers are European film companies (integrated groups such as Svensk Filmindustri in Sweden, MK2 en France, Fandango in Italy or Tallinfilm in Estonia), distribution companies (such as Cinemien in the Netherlands, Filmladen in Austria or Budapest Film in Hungary), sales agents (such as Wild Bunch, on the initiative of the French project Film TV). Film-makers only have direct access to VoD via consortiums (like the company Le Meilleur du cinéma français, which gathered together some sixty filmmakers to launch the Universciné service, or Filmmakers' Independent Digital Distribution, which brought together Danish filmmakers and distributors to launch the Movieurope project). There are also a small number (11) of companies that make or distribute television programmes and have in most cases accessed the VoD market by marketing their catalogue through the iTunes Store open channels.

A significant number of VoD service providers (51, or 13.9%) are "content aggregators". This term is somewhat overused in the profession and is also ambiguous since any VoD service provider is in some way a content aggregator, just as a television broadcasting company or video publisher aggregates content to create a brand effect. Contrary to some uses of the term, we will apply it here solely to companies that have been specifically set up to put together catalogues and VoD services and possibly set up web portals.

It would be possible to include in a category close to the content aggregators the various collecting rights societies (such as EGEDA and SGAE in Spain, respectively the originators of the services Filmotech and Acciné; in Italy, SIAE, which in July 2009 announced its intention to launch a "Legal Bay" service), archive companies or services (such as Pathe British in the United Kingdom, INA in France or the Royal Library in the Netherlands).

Some companies that supply specialised audiovisual technology or network technology services have extended their activities by becoming film suppliers. This is the case with a number of companies that specialise in the restoration of film archives such as the French company Lobster, which is developing the European Film Treasures project in partnership with eighteen European film libraries and is supported by the MEDIA 2007 Programme, or the companies 7digital Ltd (in association with the British Film Institute) or Norgefilm (in association with the Norwegian Film Institute). Among the companies that specialise in IT solutions, mention might be made of the Swiss company MC&C GmbH (Clicmovies service) or the French company Vodeclic. The German company SaT - Satellite and Transfer GmbH has launched a satellite download service. Among the companies that offer specialised services it is also interesting to note the involvement in the British Vizumi network project of Arts Alliance Media, which is better known as a "third party" in the implementation of digital cinema. Service providers also include a number of companies that specialise in the development of network solutions.

There are fewer video publishers involved in VoD services. We counted seven, four of them in France. They normally offer small specialised catalogues, but it might be pointed out that the French broadcaster TF1 has created various VoD services under the TF1 Vision brand via its video subsidiary.

The involvement of cultural goods distributors is no doubt more significant. At the moment, with the exception of Virgin Megastores in France, the distribution companies whose main activities are in shop retailing are not supplying VoD. FNAC, which only has a presence on the VoD market in France (although it also has shops in Belgium, Spain, Portugal and Italy), works in partnership with Glow Entertainment, which provides the Glowria catalogue and services. In this case, it seems Glow Entertainment should be considered the provider. In the United Kingdom, Zavvi Retail Ltd (the new name of the former Virgin Stores network) announced a VoD service on its website before it went into administration. The European subsidiaries of Blockbuster Inc., the video club giant, have not announced any VoD services but the parent company in the United States acquired the Movielink service in August 2007

The companies that specialise in online sales and rentals are more active. In the Nordic countries, the Swedish company CDON, the online sales market leader, launched a VoD service in 2006. However, it is mainly the DVD rental firms that, like the American company Netflix, have gained a foothold in the VoD segment: Lovefilm in the United Kingdom and the Nordic countries, Channel Films in the United Kingdom, Locafilm Interactive and Glow Entertainment in France, Homedia in Switzerland and France, Triboo and Millenium Storm in Italy and Winkelwiijs, Keeno, MovieMile Entertainment, Ster Digital and Videoland in the Netherlands. The French company Glow Entertainment, which also specialises in online DVD rentals and was acquired in 2008 by the equipment manufacturer Netgem, is definitely the most ambitious in this category: it provides its own Internet VoD service (Glowria) under its own name as well as at the AlloCiné website. In Germany, it has purchased various online DVD rental companies, such as Netleih GmbH, which provides the Video Buster service. In addition to its collaboration with Fnac in France, it has also entered into an alliance with the French mass retailer Carrefour for the launch of services in Belgium, Spain and France. In France, CDdiscount, a subsidiary of the mass retailer Casino and an online cultural goods and consumer electronics distributor, launched a short catalogue (4 titles) of free VoD in December 2008. As far as the Nordic countries are concerned, it should also be noted that the Swedish company Bonver Entertainment Group, which mainly operates as a wholesaler, has also secured a position for itself in the VoD segment with its film2home service by joining forces with the broadcaster NonStop AB in the Silverscreen service.

Last but not least, the manufacturers/developers Microsoft, Apple and Archos are beginning to develop VoD services with the clear aim of promoting sales of their hardware:

- the French company Archos is exploiting a catalogue of films on its "Multimedia Internet Tablet" in France, Germany, Italy and the United Kingdom;
- Apple, through iTunes S.a.r.l., which is registered in Luxembourg, mainly markets music and music videos for consumption on its iPod or iPhone. It distributes television programmes in three countries (United Kingdom, Germany and France). At the moment, it only operates a film distribution service in the United Kingdom, but Steve Jobs makes no secret of his interest in developing the VoD film market in Europe;
- Microsoft offers a film download service to its Xbox in France, Germany, the United Kingdom and Ireland. Finally, it should be noted that Microsoft's web portal, MSN, has launched a free VoD service with a catalogue of films in Germany, Austria and Switzerland;
- Sony, through its British subsidiary Sony Computer Entertainment Europe, has launched the service Go!View, which enables PSP owners in the United Kingdom and Ireland to download films, episodes of TV series or sports events via the Internet.

3.2.2.2. Distributors of VoD services

By distributors, we understand companies that market services or make them available to consumers without necessarily being the actual providers. We counted 294, 210 of which are in fact distributors of their own services offered via the Internet. In most cases, the services made available on the Internet are distributed directly by the video provider, but there are exceptions: some VoD services on the Internet are either white brands or the website operator is a company related to but separate from the video provider. However, video may be distributed via the Internet by a company that owns platforms and multimedia players. This applies in particular to Apple's Luxembourg based subsidiary iTunes S.à.r.l., which manages the access to the catalogues of the partner channels through its platform, and BSkyB, which manages access to the British and Irish markets of the catch-up services of a number of third-party channels. These owners of Internet market access platforms are in fact in the position of gatekeepers (analogous to that of the managers of other types of platform: cable operators, IPTV, satellite or DTT platforms).

Table 15 : Number of services offered by the main distributors of on-demand services in Europe (December 2008) (1)

Distributor	National markets	Platform	Network	Number of services offered (1)	of which own services	Third-party services
iTunes S.à.r.l. (2)	GB	iTunes Store	Internet	27	1	26
	DE	iTunes Store	Internet	20	1	19
	FR	iTunes Store	Internet	16	1	15
	IE	iTunes Store	Internet	2	1	1
	IT	iTunes Store	Internet	2	1	1
	LU	iTunes Store	Internet	2	1	1
	BE	iTunes Store	Internet	1	0	1
	CH	iTunes Store	Internet	1	0	1
	ES	iTunes Store	Internet	1	1	0
	NL	iTunes Store	Internet	1	0	1
	SE	iTunes Store	Internet	1	0	1
	Total Europe	*iTunes Store*	*Internet*	*74*	*7*	*67*
Tiscali Italia (3)	IT	Tiscali Replay	IPTV	52	31	21
Tiscali UK	GB	Tiscali Replay	IPTV	26	19	7
British Sky Broadcasting	GB	Sky Player	Internet	24	8	8
	GB	Sky Anytime	Satellite	4	2	2
	IE	Sky Anytime	Satellite	4	2	2
Fastweb	IT	Fastweb	IPTV	24	9	15
Numericable	FR	Numericable	Cable	10	1	9
Etablissements Darty	FR	Dartybox	IPTV	7	0	7
BT	GB	BT Vision	IPTV	6	3	3
Virgin Media	GB	Virgin Media	Cable	6	3	3
NextGenTel	NO	NextGenTel	IPTV	5	0	5
Free S.A.S.	FR	FreeBox	IPTV	5	1	4
SFR	FR	SFR Neufbox	IPTV	5	1	4
Telecom Italia France	FR	Alice Box	IPTV	5	2	3
Belgacom	BE	Skynet	IPTV	4	1	3

(1) Excluding information services and adult programmes
(2) Excluding iTunes U video services and podcasts
(3) Service discontinued as of 31 December 2008

Source: European Audiovisual Observatory

Platforms that host a large number of third-party services are in a paradoxical situation: they base their strategy on the inclusion of new material in their offering by diversifying their services and thus demonstrate a spirit of openness. At the same time, most of them are service providers themselves and are competing with the third-party services they host. The number of third-party services they manage to attract is a clear sign of their good foothold on the market. As the distribution operation itself involves choices concerning the exploitation of works or catalogues, these distributors risk being accused of abusing their position to promote their own services. The distributors that prefer to offer only one service that consists in their putting together their own offering based on rights collected from various catalogue companies run a lower risk of facing such an accusation.

PART 4:

THE PLAYERS' STRATEGIES

4.1. THE INTERNATIONAL STRATEGIES OF THE EQUIPMENT MANUFACTURERS AND IT SERVICE COMPANIES

The equipment manufacturers and IT service companies make up one of the smallest categories of service providers but occupy a significant, even dominant position. In at least three cases (Apple, Microsoft and Sony), this is due to their international dimension, so it would seem important to analyse their international and pan-European strategies.

4.1.1. Apple and its iTunes Stores

Apple's iTunes Stores are digital distribution platforms through which Apple markets different types of content likely to be read on its iPod player or iPhone multifunction telephone, television sets linked to an Apple TV set-top box or – something too often forgotten – a PC or Mac. This possibility of being present in both the PC and Mac environments is definitely one of the big advantages of the iTunes Store system.

The iTunes Music Stores were launched in the United States on 28 April 2003 and quickly revolutionised the online music market by making payment per download commonplace with pricing easy to understand because a single price was charged for each title downloaded, whereas the other platforms, which either offered pay-per-view or subscription services, were unsuccessful owing to their failure to find the right commercial argument – in this case, a suitable device – to persuade the web user to make a purchase. The service quickly became the world market leader for online music downloads. By June 2008, four billion music tracks had been downloaded and it is estimated that the iTunes Store accounts for 70% of the global online music market. In April 2008, Apple announced it had become the number one music retailer in the United States thanks solely to its offering in non-physical form, thus deposing the Wall-Mart chain, which specialises in physical distribution.[258]

At the end of December 2008, the iTunes service had 11 content categories, although some were not yet available on certain national markets:

- *App Store:* launched on 10 July 2008 to provide free and paid applications for the iPhone and iPod Touch,
- *iPod Games*: video games designed for the iPod and iPhone,
- *music:* tracks or albums,
- *audiobooks:* recorded books,
- *iTunes U:* audio or video educational content,
- *audio podcasts:* audio content provided by third parties with free-of-charge access,
- *video podcasts:* video content provided by third parties with free-of-charge access,
- *Pixar short films*: short animated films made by the company Pixar,
- music videos,
- television series,
- cinema films.

Although the iTunes U and video podcast sections contain audiovisual programmes, we will only be considering the last four sections mentioned for our analyses as they directly concern the commercial VoD market.

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[258] Apple press release, 3 April 2008, http://www.apple.com/pr/library/2008/04/03itunes.html

Table 16 : Sections of the iTunes Stores range according to country (December 2008)

	App Store	iPod games	Music	Audio-books	Audio podcasts	Video podcasts	iTunes U	Pixar Shorts	Music videos	TV programmes	Films
AT	X	_	X	X	X	X	X	_	_	_	_
BE	X	X	X	X	X	X	X	X	_	_	_
BG	_	_	_	_	_	_	_	_	_	_	_
CH	X	X	X	X	X	X	X	X	_	_	_
CY	_	_	_	_	_	_	_	_	_	_	_
CZ	X	_	_	_	_	_	_	_	_	_	_
DE	X	X	X	X	X	X	X	X	X	X	_
DK	X	X	X	X	X	X	X	_	_	_	_
EE	_	_	_	_	_	_	_	_	_	_	_
ES	X	X	X	X	X	X	X	_	_	_	_
FI	X	X	X	X	X	X	X	_	_	_	_
FR	X	X	X	X	X	X	X	X	X	X	_
GB	X	X	X	X	X	X	X	_	X	X	X
GR	X	X	X	X	X	X	X	_	_	_	_
HU	X	_	_	_	_	_	_	_	_	_	_
IE	X	X	X	X	X	X	X	X	X	_	_
IS	_	_	_	_	_	_	_	_	_	_	_
IT	X	X	X	X	X	X	X	X	_	_	_
LU	X	X	X	X	X	X	X	_	X	_	_
LV	_	_	_	_	_	_	_	_	_	_	_
NL	X	X	X	X	X	X	X	X	_	_	_
NO	X	X	X	X	X	X	X	_	_	_	_
PL	X	_	_	_	_	_	_	_	_	_	_
PT	X	X	X	X	X	X	X	_	_	_	_
RO	X	_	_	_	_	_	_	_	_	_	_
RU	X	_	_	_	_	_	_	_	_	_	_
SE	X	X	X	X	X	X	X	X		_	_
SI	X	_	_	_	_	_	_	_	_	_	_
SK	X	_	_	_	_	_	_	_	_	_	_
TR	X	_	_	_	_	_	_	_	_	_	_
US	X	X	X	X	X	X	X	_	X	X	X
CA	X	X	X	X	X	X	X	_	X	X	X
AU	X	X	X	X	X	X	X	X	X	X	X
NZ	X	X	X	X	X	X	X	X	X	_	X

Source: European Audiovisual Observatory

Table 16 enables a comparison to be made between the current situation regarding the services available from the iTunes Stores in the various European countries as well as the United States, Canada, Australia and New Zealand. It clearly shows that the services are rolled out differently according to the country concerned, which is probably due both to the state of development of the iPod and iPhone market and the rights available. With the exception of films (available either as rental or download-to-own VoD), all the content is offered on a download-to-own basis as this is a market for which the rights are harder to obtain.

4.1.1.1. *Audiovisual programmes and films in the iTunes Store in the United States*

Following on from its success in the music field, Apple was able to announce in October 2005 the launch of a new iPod and a new version of its iTunes player that enabled videos to be watched. The range has gradually developed in the United States with music videos, Pixar short films, television series and, since December 2006, films. The first items in the range of films offered were from the Disney catalogue but the other majors gradually joined the service (in particular, the agreement signed with MGM in April 2007 enabled the catalogue of films to be increased to 500 titles).[259] The catalogue of television programmes contained 550 titles at the end of July 2007.[260]

The launch of VoD by the iTunes Store was an outstanding success in the United States. The statistics published by Apple, although presented in an accumulated form and without any details on the geographical breakdown of sales, provide proof of this success:

- 1 million videos sold as of 31 October 2005, less than twenty days after the launch;[261]
- More than three million videos sold as of 6 December 2005;[262]
- 8 million videos sold as of the beginning of January 2006;[263]
- 15 million videos sold as of 23 February 2006;[264]
- 50 million television programmes and 1.3 million films sold as of 10 January 2007;[265]
- 2 million films sold as of 11 April 2007;[266]
- 200 million episodes of television programmes sold as of 16 October 2008.[267]

On 31 August 2007, Apple announced that the series in the NBC Universal catalogue would no longer be available because it refused to pay twice the wholesale price, which would have increased the retail price to the consumer from $1.99 to $4.99 per episode.[268] Apart from a disagreement on the price payable, it said the failure to renew the contract was motivated not only by the price issue but also its worries concerning the inadequate protection of works.[269] This withdrawal could have been a hard blow for the iTunes Store since it was estimated that the NBC Universal catalogue accounted for 40% of its video sales.[270] Some analysts saw in this move NBC's desire to curb the rapid development of the iTunes Store in the online distribution of television programmes at a time when the network was moving in the direction of the advertising-funded free-of-charge distribution of content offered by Hulu.[271] However,

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259 Apple press release, 11 April 2007, http://www.apple.com/pr/library/2007/04/11itunes.html

260 Apple press release, 31 July 2007, http://www.apple.com/pr/library/2007/07/31itunes.html

261 Apple press release, 31 October 2005, http://www.apple.com/pr/library/2005/oct/31itms.html

262 Apple press release, 6 December 2005, http://www.apple.com/pr/library/2005/dec/06nbc.html

263 Statement by Steve Jobs at Macworld '06, quoted in Computer World, http://www.computerworld.com/printthis/2006/0,4814,107631,00.html

264 Apple press release, 23 February 2006, http://www.apple.com/pr/library/2006/feb/23itms.html

265 Apple press release, 10 January 2007, http://www.apple.com/pr/library/2007/01/09itunes.html

266 Apple press release, 11 April 2007, http://www.apple.com/pr/library/2007/04/11itunes.html

267 Apple press release 16 October 2008, http://www.apple.com/pr/library/2008/10/16itunes.html

268 Apple press resease, 31 August 2007, http://www.apple.com/pr/library/2007/08/31itunes.html

269 "NBC may not renew iTunes contract with Apple", *AppleInsider*, 31 August 2007, http://www.appleinsider.com/articles/07/08/31/nbc_may_not_renew_itunes_contract_with_apple_report.html

270 "NBC sees a million downloads since return to iTunes", *AppleInsider*, 19 September 2008, http://www.appleinsider.com/articles/08/09/19/nbc_sees_a_million_downloads_since_return_to_itunes.html

271 See, for example, D.E. Dilger, "Forrester's James McQuivey Announces the Death of iTunes, Again", *Roughly Drafted Magazine*, 6 December 2007, http://www.roughlydrafted.com/2007/12/06/forresters-james-mcquivey-announces-the-death-of-itunes-again/

on 9 September 2008, Steve Jobs was able to announce the return of the NBC Universal programmes to the iTunes Store. NBC's lack of success with regard to free distribution seems to have confirmed the interest of the major audiovisual groups in the download-to-own VoD model offered by the iTunes Store, especially as distribution in HD was announced at the same time.[272] The record and film majors and the networks are in fact forced to negotiate with Apple because they do not know which business model will ultimately guarantee them the growth area expected on the Internet at a time when CD and DVD sales are declining. However, both NBC and the other companies involved in the Hulu project are continuing their experiment with this new service. According to Nielsen, Hulu was already the third most popular video site in the United States in November 2008, with 221 million videos viewed.

In January 2008, Apple and Twentieth Century Fox announced that some Fox DVDs would now include a digital copy for iTunes that would enable a DVD purchaser to transfer the item bought to a PC or Mac, iPod, iPhone or Apple TV.[273]

Although the iTunes Stores have dealt in sales and not rentals from the outset, Apple announced in January 2008 that it had signed agreements with all the major studios to launch a rental VoD model known as "iTunes Movie Rental": more than 1,000 titles are available at $2.99 for library titles and $3.99 for new releases. The HD versions can also be rented for $3.99 for library titles and $4.99 for new releases.[274] Consumers have 30 days to look at a film once it has been rented and 24 hours to finish watching it as soon as it has started.

On 1 May 2008, Apple announced that films from the major studios would be available on the same day as their DVD release.[275] As of that date, its catalogue contained 6 million songs, 600 TV shows and 1,500 films, including 200 in HD.

The pay-TV channel HBO made its major television series available for rental on the iTunes Store from 13 May 2008, thus increasing its catalogue of TV programmes to 800 titles, or 20,000 episodes.[276]

On 19 June 2008, Apple announced that 50,000 films were being rented or bought each day and that the catalogue now comprised 8 million songs, 20,000 TV episodes and 2,000 films, including over 350 in HD.[277]

On 16 October 2008, the range of TV programmes available was increased with the addition of programmes in HD provided by the four networks ABC, CBS, FOX and NBC. The episodes in HD are being marketed at $2.99 each, while the programmes supplied by 70 cable channels (including Bravo, Comedy Central, Disney Channel, ESPN, FX, HBO, MTV, Nickelodeon, SciFi, Showtime, USA, etc) are sold at $1.99. At that date, the total catalogue comprised 8 million songs, 30,000 TV episodes and 2,500 films, including 600 in HD.[278]

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[272] Prince McLean, "NBC returns to iTunes for 65 million viewers and HD action", *AppleInsider*, 9 September 2008, http://www.appleinsider.com/articles/08/09/09/nbc_returns_to_itunes_for_65_million_viewers_and_hd_action.html

[273] Apple press release, 15 January 2008, http://www.apple.com/pr/library/2008/01/15fox.html

[274] Apple press release, 15 January 2008, http://www.apple.com/pr/library/2008/01/15itunes.html

[275] Apple press release, 1 May 2008, http://www.apple.com/pr/library/2008/05/01itunes.html

[276] Apple press release, 13 May 2008, http://www.apple.com/pr/library/2008/05/13itunes.html

[277] Apple press release, 19 June 2008, http://www.apple.com/pr/library/2008/06/19itunes.html

[278] Apple press release, 16 October 2008, http://www.apple.com/pr/library/2008/10/16itunes.html

In April 2009, Apple released its 8.1.1. iTunes software update, which enables films to be downloaded onto a computer in HD. Before that, it was only possible to obtain HD quality from the iTunes Store by using the Apple TV set-top box.[279]

According to Screen Digest[280], the iTunes Store dominates the online film VoD market in the United States. This market (which includes electronic sell-through and download-to-own, rentals, subscriptions and funding by advertising) was estimated at $227 million. According to the British firm's estimates, Apple had an 87% share of the online film sales market and 53% of online VoD rentals in 2008. The only serious rival on the video rental market is the Xbox Live Video Marketplace, the market share of which is estimated at 33%.

According to Adams Media Research, Apple became the third-largest operator of VoD services in 2008 (all networks combined), boosting the growth in Internet on-demand spending to 79%, while spending in connection with the VoD services of pay-TV operators (cable operators, satellite platforms and IPTV) grew by only 16% to $1.1 billion.[281]

4.1.1.2. In Europe: centralised organisation but territory-based sales

In Europe, the launch of the iTunes Music Stores took place on 15 June 2004 in the United Kingdom, France and Germany and was followed on 26 October 2004 by Austria, Spain Finland, Greece, Italy, Luxembourg, the Netherlands and Portugal. On 15 May 2005, iTunes Stores were opened in Denmark, Norway, Sweden and Switzerland. The iTunes service is not yet available in the other European countries.

iTunes Store sales in Europe are managed by the Luxembourg based company iTunes S.à.r.l. All the national catalogues can be consulted everywhere but a filtering system based on the customer's credit card prevents purchases in other countries.

The problem of the compliance of this territory-based system with the rules of the single market was brought up in December 2004 by the British Office of Fair Trading (Oftel) following a complaint from the consumer organisation *Which?*, which pointed out that song prices were higher in the United Kingdom but British consumers were unable to access the catalogues of the other European countries. On 3 April 2007, the European Commission sent a Statement of Objections to the major record companies concerning alleged territorial restrictions on online music sales available via the *iTunes Music Store*. The investigation concerned Apple's commercial practices, which resulted in the territorial fragmentation of sales. The consequence of this fragmentation is that consumers can only buy music from the iTunes Store of their country of residence, this being verified through the information on their credit card. The Commission considered that this practice resulted in restrictions on the consumer's choice with regard to where to buy music, the music available and the price to be paid. According to the Statement of Objections, this practice has its origin in the distribution agreements between Apple and the record labels in question, and the terms stipulating such territorial sales restrictions amount to an infringement of article 81 of the EC Treaty.[282] The Commission's Statement of Objections contained no reference to an alleged dominant position of Apple or to the latter's use of its proprietary digital rights management to control

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[279] "iTunes 8.1.1 adds support for renting HD movies on computers", *AppleInsider*, 6 April 2009, http://www.appleinsider.com/articles/09/04/06/itunes_8_1_1_adds_support_for_renting_hd_movies_on_computers.html

[280] "Movie Download Market Fragments", *Screen Digest*, February 2009, p.44

[281] "Subscription network VoD losing share to Internet", Adams Media Research, 26 May 2009, http://www.adamsmediaresearch.com/news/news-usvi-052809-rj/view.html

[282] European Commission, MEMO/07/126, press release of 3 April 2007

usage rights for downloads from the iTunes online store.[283]

Following this communication, Apple announced in January 2008 that, short of opening up access to all the European iTunes Stores, it was going to standardise its prices in Europe.[284] 'We think prices should be the same. We think anybody in Europe should buy off any store", Steve Jobs, President of Apple, stated at a press conference held in Berlin in September 2007.[285] Apple considers its European development is being impeded by the different national laws and is a supporter of multi-territory licensing. After Apple's announcement that it would be standardising its prices, the Commission announced the suspension of the procedure on 9 January 2008.[286]

4.1.1.3. Audiovisual programmes and films in the iTunes Stores in Europe

The United Kingdom was the first European country in which the iTunes Stores offered a catalogue of television series, which it has done since 29 August 2007.[287] The series originate from contracts with ABC, Disney Channel, Nickelodeon, MTV, Paramount Comedy and Playhouse Disney. Initially, 28 different series were available for the British market. Each episode/programme is sold at £1.89. Since 4 June 2008, the United Kingdom has also been the first European country in which feature films are available on the same day as their DVD release: the catalogue provided by the major Hollywood studios contains 700 titles, including 100 in HD. The retail price is £6.99 for the catalogue titles and £10.99 for new releases, and the rental price is £2.49 for catalogue titles and £3.49 for new releases.

In Germany, television series have been available in the iTunes Store since April 2008.[288] "Channels" offer programmes from ZDF, ProSieben, Sat.1, Brainpool GmbH, the BBC and ABC Studios, and the price per episode varies from 1.99 to 2.49 euros. Feature films are proposed since April 2009.

In France, a catalogue of television programmes was made available on 29 May 2008.[289] The service offered, in the form of "channels", contains programmes from TF1, France Télévisions, Arte, Dargaud TV, Dupuis TV, the BBC and cult American programmes from the Walt Disney Company and MTV Networks. The presence of the main French channel (TF1) since the launch seems to have pleased the public, which seems very diverse both socially in its choices, and sales increased by a factor of six in as many months.[290]

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283 K. Maniadaki, "European Commission, Statement of Objections to Major Record Companies and Apple", *IRIS 2007-6:5/5*, European Audiovisual Observatory, June 2007.

284 Apple press release, 9 January 2008, http://www.apple.com/pr/library/2008/01/09itunes.html

285 Quoted from MacDailyNews, 20 September 2007, http://www.macdailynews.com/index.php/weblog/comments/14947/.

286 "Antitrust: European Commission welcomes Apple's announcement to equalise prices for music downloads from iTunes in Europe", European Commission press release IP/08/22, 9 January 2008. http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/22&format=HTML&aged=1&language=EN&guiLanguage=en

287 Apple press release, 29 August 2007, http://www.apple.com/pr/library/2007/08/29itunes.html V. Ramarques, "Les series videos arrivent sur iTunes en Europe", *NetEco*, 30 August 2007, http://www.neteco.com/79014-series-videos-itunes-europe.html

288 Apple press release, 2 April 2008, http://www.apple.com/pr/library/2008/04/02itunes.html

289 Apple press release, 29 May 2008, http://www.apple.com/fr/pr/20080529tvshows.html V. Ramarques, "L'iTunes Store français propose enfin des series TV", *NetEco*, 30 May 2008, http://www.neteco.com/141852-itunes-store-francais-series.html

290 Interview with Pascal Lechevallier, director of TF1 Vision, *MacGénération*, 3 December 2008, http://www.macgeneration.com/news/voir/132873/interview-les-six-mois-de-tf1-vision-sur-itunes

Table 17 : Partnerships of the iTunes Store in Europe (December 2008)

ISO country code	Service name	Provider's country of establishment	Film	Shorts	European TV Programmes	US TV Programmes	Music Videos	Others
BE	Pixar Shorts	US		X				
CH	Pixar Shorts	US		X				
DE	Aardman Animation	GB			X			
DE	ABC Studios	US				X		
DE	BBC	GB			X			
DE	Comedy Central	DE (US)				X		
DE	Disney Channel	DE (US)				X		
DE	Disney Playhouse	DE (US)				X		
DE	iTunes Store	LU (US)			X	X	X	
DE	Kabel eins	DE			X			
DE	MTV	DE (US)				X		
DE	MySpass	DE			X			
DE	Nick	DE (US)				X		
DE	Pixar Kurzfilme	US		X				
DE	Pro Sieben	DE			X			
DE	Sat.1	DE			X			
DE	Spassgesellschaft	DE (US)			X			
DE	Spiegel TV	DE						X
DE	Studio 100 TV	BE			X			
DE	Universum Film	DE			X			
DE	Warner Bros.	DE (US)				X		
DE	ZDF Enterprises	DE			X			
ES	iTunes Store	LU (US)					X	
FR	ABC Studios	US				X		
FR	ARTE	FR			X			
FR	BBC	GB			X			
FR	Courts métrages Pixar	US		X				
FR	Dargaud TV	FR			X			
FR	Disney Channel	FR (US)				x		
FR	Dupuis TV	FR			X			
FR	France 2	FR			X			
FR	France 3	FR			X			
FR	France 5	FR			X			
FR	Game One	FR (US)				X		
FR	iTunes Store	LU (US)			x	X	X	
FR	MTV	FR (US)				X		
FR	Nickelodeon	GB (US)				X		
FR	Playhouse Disney	FR (US)				X		
FR	Taffy Kids	FR			X	X		
FR	TF1 Vision	FR			X			

…/…

Table 17 (fwd)

ISO country code	Service name	Provider's country of establishment	Film	Shorts	European TV Programmes	US TV Programmes	Music Videos	Others
GB	Aardman Animation	GB			X			
GB	ABC Studios	US				X		
GB	BBC Worldwide	GB			X			
GB	Channel 4	GB			X			
GB	DC Comics	US				x		
GB	Disney Channel	GB (US)				x		
GB	E4	GB			X			
GB	Entertainment Rights	GB			X			
GB	Hanna Barbera	US				x		
GB	HBO	GB (US)				x		
GB	Hit Entertainment	GB			X			
GB	iTunes Store	LU (US)	X	X	x	x	x	
GB	ITV	GB			X			
GB	Jetix	GB (US)				x		
GB	Kult Kidz	GB			X			
GB	Looney Tunes	GB (US)				x		
GB	Manga Entertainment	GB (JP)						X
GB	MTV	GB (US)				x		
GB	Nickelodeon	GB (US)				x		
GB	Paramount Comedy	GB (US)				x		
GB	Playhouse Disney	GB (US)				X		
GB	Screen Gems	GB (US)				x		
GB	Sky 1	GB (US)				x		
GB	Sony Pictures	GB (US)				x		
GB	Universal	GB (US)				x		
GB	Warner Bros.	GB (US)				x		
IE	iTunes Store	LU (US)					x	
IE	Pixar Shorts	US		X				
IT	iTunes Store	LU (US)					x	
IT	Pixar Shorts	US		X				
LU	iTunes Store	LU (US)					X	
LU	Pixar Shorts	US		X				
NL	Pixar Shorts	US		X				
SE	Pixar Shorts	US		X				

Source: European Audiovisual Observatory

4.1.1.4. Audiovisual programmes and films in the iTunes Stores in Canada, Australia and New Zealand

In Canada, the service offering audiovisual programmes was launched on 12 December 2007.[291] In addition to the catalogues of the American networks, it includes programmes from the Canadian broadcasters (CBC and CTV) and the National Hockey League (NHL). Episodes are sold at C$1.90. A film catalogue was launched in Canada on the same day as in the United Kingdom.[292] The catalogue of television programmes became available in Australia on 25 June 2008 and contains, in addition to the American programmes, the programmes of three local networks (Australian Broadcasting Corporation, Seven Network and Nine Network).[293] The film catalogue was launched in Australia and New Zealand on 14 August 2008.[294]

4.1.1.5. Audiovisual services on the iPhone

The success of the iPhone, a 3G telephone with numerous multimedia applications, is strengthening Apple's position on the nascent mobile audiovisual services market. The iPhone enables the Internet to be accessed via a connection to a 3G or Wifi network, so it is possible access the iTunes Store and some Internet audiovisual services in this way if they can be viewed with the Safari browser.

However, access to some linear or non-linear services is possible via some of the iPhone "Apps" that can be downloaded from the App Store. On 14 July 2009, Apple announced that around 65,000 applications were available in the App Store and that 1.5 billion had been downloaded in one year.[295]

Some of these applications are published by broadcasters (BBC World News, France 24, Al Jazeera, TF1, etc) to provide live access to their channels, usually together with a catch-up TV catalogue. Others are published by television channel distributors (Orange, Bouygues Telecom, SFR, etc) to provide access to channel packages as part of a 3G subscription. Some applications (netTV, Live TV, etc) enable television channels to be accessed by picking up their webcasting signal. If they do not provide live services, other channels offer catalogues of news items (CNN, The Weather Channel, Deutsche Welle, RTL Lëtzebuerg), videoclips (MTV), popular programmes (NBC Universal), film trailers available as part of their VoD service (TF1 Vision) and sports events (Viasat Sport).

Since April 2008, the BBC's catch-up television service (BBC iPlayer) has been accessible via an iPhone application. The BBC is showing some reluctance with regard to the commercial terms and conditions proposed by Apple, and it is interesting to note that the BBC World News Live app, which permits access to the live version and catch-up videos of BBC World News is not distributed by the BBC itself but by Livestation and that the B World, B UK, B Sport, B Football, B Rugby Union, B Rugby League and B Cricket apps are distributed by the compaby Relaxaler, which repackages BBC content.[296]

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291 Apple press release, 12 December 2007, http://www.apple.com/pr/library/2007/12/12itunes.html

292 Apple press release, 4 June 2008, http://www.apple.com/pr/library/2008/06/04itunes_uk.html

293 Apple press release, 25 June 2008, http://www.apple.com/pr/library/2008/06/25itunes.html

294 Apple press release, 14 August 2008, http://www.apple.com/pr/library/2008/08/14itunes.html

295 Apple press release, 14 July 2009, http://www.apple.com/pr/library/2009/07/14apps.html

296 "BBC Hovers On iPhone Apps Due To Apple Terms", *Paidcontent*, 11 August 2009, http://paidcontent.org/article/419-bbc-hovers-on-iphone-apps-due-to-apple-terms/

Aggregators (Joost, Babelgum, iNet, Makayama.com) offer their catalogues of programmes. Several majors (Warner Bros., Sony Pictures, Universal Studios, Disney, Paramount) or specialised sites (Variety, Trailer International, iCine) offer trailers of film or television programmes.

Last but not least, an application for directly accessing YouTube is on the first page of default applications on the iPhone 3GS, which was launched on 19 June 2009. In the five days that followed this launch, YouTube recorded a 400% increase in the number of videos downloaded from a mobile.[297] The GS3 incorporates a camera and enables users to post their videos directly onto YouTube. By contrast, other video sharing services, such as Veoh and Vimeo, cannot be accessed: these services do not offer an iPhone App. Moreover, the incompatibility of the Adobe Flash Player with the Mac OS system means that their videos cannot be viewed by a direct Internet connection. The delay in announcing its openness to the Adobe Flash Player has given rise to many rumours in the specialised press about Apple's intention to maintain its controlling position through the acceptance of the Apps in the Apps Store.

Following the successful launch of the iPhone 3GS, Apple has definitely strengthened its positions on the mobile audiovisual services market. Various comparative tests indicate that it is this telephone that provides the best Internet connection speed, which is a key element for Apple to stamp its authority on this market. However, according to Strategy Analytics at the end of the first half of 2009, Apple's share of the global mobile telephone market was still small (1.9%).[298]

A few weeks before the launch of the 3GS, a number of press articles reported on a possible film VoD service that would not have to transit via the iTunes Store.[299] This rumour was confirmed by Apple on 8 June 2009: the iPhone 3.0 software enables videos to be downloaded via a wireless connection (3G, WiFi).[300]

4.1.1.6. Imprecise financial data

Like most of its competitors, Apple does not publish detailed data on its online services. This lack of precise information is confusing for analysts and the Apple share price is subjected to wide fluctuations as a result of the publication of alarmist reports.[301] In Apple's annual report, the sales revenues for the iTunes Store appear in the line "Other music related products and services". The proportion of sales from this segment, which appeared in the company's total

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297 *AppleInsider*, 25 June 2009, http://www.appleinsider.com/articles/09/06/25/iphone_3gs_spurs_400_increase_in_mobile_video_uploads_to_YouTube.html

298 "iPhone bucks handset fails", *BBC News*, 30 July 2009, http://news.bbc.co.uk/2/hi/business/8176753.stm

299 "iPhone to get iTunes TV and Movies!", *opensalon*, 22 May 2009, *http://open.salon.com/blog/kwamejones/2009/05/22/iphone_to_get_itunes_tv_and_movies* ;

"Apple briefs staff on wireless iPhone movie and TV downloads", *AppleInsider*, 29 May 2009, http://www.appleinsider.com/articles/09/05/29/apple_briefs_staff_on_wireless_iphone_movie_and_tv_downloads.html; "Direct video download coming to Apple iPhone and iPod Touch?", *CNET Reviews*, 4 June 2009, http://reviews.cnet.com/8301-19512_7-10247397-233.html

300 "Live blog: 2009 WDCC keynote", CNET News, 8 June 2009, http://news.cnet.com/8301-13579_3-10257637-37.html?tag=mncol;txt;
"Apple Announces the New iPhone 3GS—The Fastest, Most Powerful iPhone Yet", Apple press release, 8 June 2009, http://www.apple.com/pr/library/2009/06/08iphone.html
"Video download comes to iPhone and Touch", *CNET Reviews*, 8 June 2009, http://reviews.cnet.com/8301-12519_7-10259579-49.html?tag=mncol

301 See, for example, D. E .Dilger, "Forrester's James McQuivey Announces the Death of iTunes, Again", *Roughly Drafted Magazine*, 6 December 2007, http://www.roughlydrafted.com/2007/12/06/forresters-james-mcquivey-announces-the-death-of-itunes-again/

sales revenues in 2003, has stabilised since 2006 at around 10%. At the same time, the proportion of European sales (all segments combined) relative to total sales has risen slightly (from 21.1% in 2003 to 23.5% in 2008). The turnover of the Luxembourg company, iTunes s.à.r.l., which operates the various iTunes stores in Europe, has grown from 53 millions euros in 2005 to 353,4 millions euros in 2008.

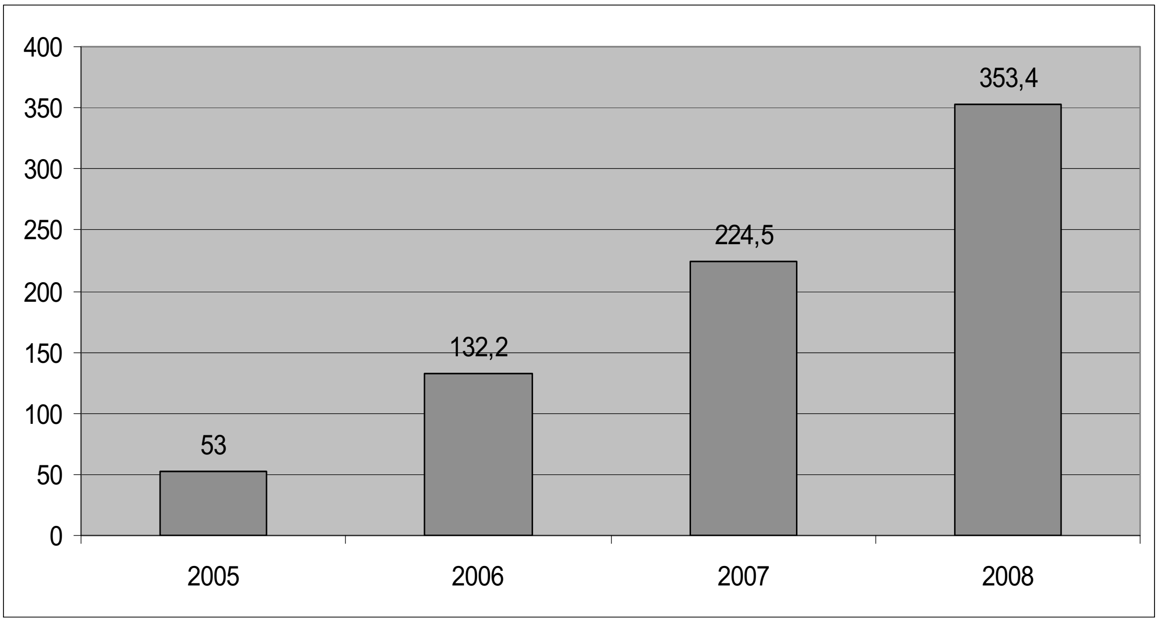
Table 18 : Sales of Apple Inc. (2003-2008)

In millions of dollars, financial years to 25 September

	2003	2004	2005	2006	2007	2008	2008/2007
Total sales	6,207	8,279	13,931	19,315	24,006	32,479	35.3%
European sales	1,309	1,799	3,073	4,096	5,460	7,622	39.6%
iTunes sales	36	278	899	1,885	2,496	3,340	33.8%
% European sales of total	21.1%	21.7%	22.1%	21.2%	22.7%	23.5%	3.2%
% iTunes Store of total sales	0.6%	3.4%	6.5%	9.8%	10.4%	10.3%	-1.1%

Source: Apple Inc./European Audiovisual Observatory

Graphic 35 : Revenue of iTunes Store s.à.r.l. (2005-2008) - In millions of euros



Source: iTunes Store S.A.R.L. / European Audiovisual Observatory

4.1.1.7. Apple in a dominant position in the online film market

According to Screen Digest[302], the iTunes Store's success in selling films has put Apple in a dominant position in the online film distribution market. The British firm estimates that the iTunes Store realised 80% of its film transactions in the United States in 2007. Although it only offers a film catalogue in three countries (United States, Canada and the United

302 "iTunes drives online movie sales. Apple's dominance in digital movies expected to continue", *Screen Digest*, July 2008.

Kingdom), it says the iTunes Store realised half of the online film transactions in North America and Europe in the first six months of 2008. Screen Digest believes the figure announced by Apple of 50,000 film transactions per day is realistic but compares this with the 11.9 million DVD transactions it says are carried out at the same time on the three markets analysed. The amount of daily film transactions is also very low when compared with the number of music transactions on the same platform, which are estimated at 6.4 million items per day.

Table 19 : iTunes Store — Online film transactions (in millions of items)

	2007 estimates	2012 forecasts
US	13.2	141.9
GB	0.2	9.1
CA	0	3.2

Source: Screen Digest

At the beginning of December 2008, some American observers drew attention to the rapid disappearance of recent films from the iTunes Store catalogue.[303] This practice, which as been confirmed by the operator and has also been noted in the Netflix catalogue, seems to result from an adjustment of exploitation windows. The majors are said to have accepted the networks' demand to shorten the period of availability as VoD in order to enable items to be broadcast more quickly on television. As receipts from VoD are still minimal (estimated by the consultancy Adams Media at 0.06% of total receipts), the majors are said to be anxious to maintain the best commercial conditions for their receipts from television stations.[304]

4.1.2. Microsoft: a pioneer on the VoD market

Microsoft is an important player on the VoD market for various reasons: it is a multimedia player provider, a designer of technological solutions and a service provider.

4.1.2.1. Windows Media Player, a leading multimedia player

The Windows Media Player[305], which is now in version 12 (introduced in October 2008), is the leading media player on the market and still has a comfortable edge over Apple's iTunes (see table 1).

In 2004, the European Commission roundly condemned Microsoft for abusing its dominant position.[306] The inclusion of the Windows Media Player in the Windows operating system was one of the complaints against Microsoft in the decision of 24 March 2004 in which the European Commission concluded that Microsoft was abusing its market power. According to the Commission, this enabled Microsoft to acquire a dominant position in the market for work group server operating systems and risked eliminating competition altogether in that market.

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303 "Where Have All the iTunes Store Movies Gone?", *Kirkville*, 5 December 2008 http://www.mcelhearn.com/article.php?story=20081205182044798

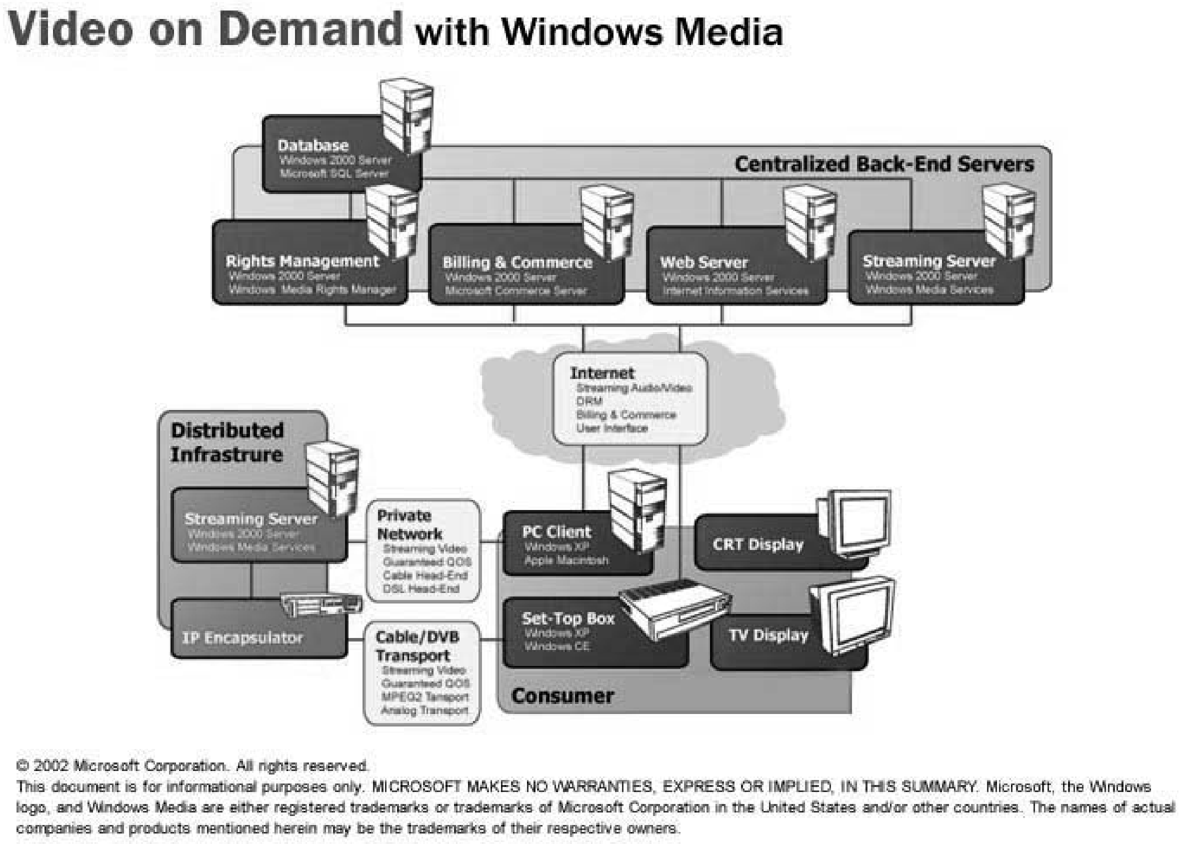
304 G. Sendoval, "TV has license to kill movies at iTunes, Netflix", *CNET News*, 9 December 2008. http://news.cnet.com/8301-1023_3-10119509-93.html

305 For a general presentation, see "Interactive Video-On-Demand (VoD)": http://www.microsoft.com/windows/windowsmedia/forpros/mediaent/ivod.aspx

306 http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/382&format=HTML&aged=1&language=EN&guiLanguage=en

The Commission also considered that Microsoft's conduct had significantly weakened competition on the multimedia player market. In compliance with the decision, Microsoft distributed new versions of Microsoft Windows XP Home Edition and Windows XP Professional in Europe that did not included the Windows Media Player.

Graphic 36 : Video on Demand with Windows Media



Source: Microsoft

4.1.2.2. Technological solutions proposed by Microsoft for VoD

Microsoft works on technological solutions used by various operators and was accordingly associated from 2001 onwards with the launch of Intertainer, the first VoD site in the United States. In 2005, Microsoft's Internet subsidiary MSN joined forces with the VoD service CinemaNow to develop a solution that would enable VoD to be streamed from a computer to a television screen. The solutions Microsoft TV, Microsoft TV IPG (Interactive Program Guide) and Microsoft Mediaroom are used by a number of American and European operators, especially the various IPTV services of Deutsche Telekom (T-Home), Arcor, etc. The Microsoft Mediaroom platform is used by about twenty operators of IPTV services, representing 1.5 million subscribers. On 12 September 2008, Microsoft presented the Microsoft Mediaroom Advertising Platform, which is a new tool for managing and measuring advertising spots on IPTV networks and enables advertising to be inserted into all TV content, including linear television, VoD services, interactive applications and EPGs.[307]

[307] "Microsoft Mediaroom Unveils Next-Generation Advertising Platform for IPTV Services", Microsoft press release, 12 September 2008, http://www.microsoft.com/tv/content/Press/PressReleases/IPTVAdvertisingPR.mspx

The Microsoft Silverlight application, which was launched in April 2007, is a virtual machine or plug-in for web browsers and enables rich web applications to be developed in a vector rendering engine. It has mainly been introduced as a means of developing VoD services that enhance the advertisers' brands.[308] In the United States, Silverlight has been used for the introduction of the streamed VoD service of Netflix, an online DVD rental company. In Europe, it has been adopted by various broadcasters and operators of VoD services, such as France Télévisions, ITV, L'Equipe TV, MSN UK, NRK, RAI, RTL, SBS, Setanta, TF1 and Sky.[309]

4.1.2.3. Free VoD service offered by MSN Deutschland

Microsoft's interest in VoD paid for by advertising seems to have been confirmed by the launch of a free advertising-sponsored VoD service on 17 November 2008 by MSN Deutschland, the German version of the MSN web portal operated by Microsoft Deutschland. The service, which offers a hundred American and European films, is only available in Germany, Austria and Switzerland.[310]

4.1.2.4. VoD on Xbox Live

Microsoft's considerable presence on the VoD market is due, however, to the success of its Xbox 360. Apart from its traditional games console functions, it can also be used as a device for viewing programmes downloaded from the Internet. The Xbox was launched in the United States and Canada on 22 November 2005 and the VoD service was introduced in the United States a year later, on 22 November 2006. Consumers can charge up a purchasing card with specialised retailers, such as the Best Buy network, and programmes are available at a dedicated website, the Xbox LIVE Marketplace.

The initial content offered consisted of 48 films and 47 television programmes, in high definition, provided by Paramount Pictures, CBS, TBS, MTV Networks, UFC, NBC, and Warner Bros. Home Entertainment. Programmes from other studios, such as Lionsgate, MGM and Disney, or television channels, such as ABC, Disney Channel and Disney Toon Channel, were subsequently introduced. In December 2008, the XBOX Live Marketplace offered 984 films, 571 television programmes, 327 music videos, 278 video games and 24 independent videos. Television programmes (series, magazines) are, incidentally, among the content most downloaded – the ten most popular downloads include the episodes of South Park ($2 each).

Using the rental VoD model, the Xbox 360 Live provides access to content for a period of two weeks and consumers have 48 hours to watch it after viewing has commenced. Consumers acquire prepaid cards with a system of points, from which the points corresponding to the programmes downloaded are deducted. This system has the advantage that it does not require individual payments for each transaction (which is a possible incentive for the consumer). Television programmes are also available as download-to-own VoD and can be transferred to an unlimited number of consoles.

On 14 July 2008, a major innovation was announced in the case of a service to be launched

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308 See the presentation by Brian Goldfarb, Microsoft Strategic Account Summit 2007 Seattle, 8 May 2007, http://www.microsoft.com/Presspass/exec/billg/speeches/2007/05-082007MSNSASBillg.mspx

309 "Silverlight Shines at international Broadcasting Conference 2008 in Amsterdam", *Microsoft Press Pass*, 16 September 2008, http://www.microsoft.com/presspass/features/2008/sep08/09-09silverlight.mspx

310 "MSN Movies bietet Filme in voller Länge kostenlos für deutschsprachige User", *Microsoft Advertising*, 17 November 2008, http://advertising.microsoft.com/deutschland/PI-MSN-Movie-online-videothek

on 19 November 2008: users in the United States were to be able to access a catalogue of films and television programmes of the Netflix VoD service as streamed content via the Xbox 360 to their television sets.[311] Access is available to Xbox Live Gold members who are also Netflix subscribers. The Netflix catalogue contains 10,000 films and TV episodes. At the same time, Sony/Columbia announced it would begin supplying films for Xbox 360 Live. In October 2008, Netflix announced that 300 titles would be available in HD.[312] In August 2009, Microsoft obtained from Netflix the exclusive distribution of the Netflix service on its games consoles, while Sony and Nintendo seemed interested in the distribution of the service on their own consoles.[313]

In Europe, the Xbox 360 Live service is available in the United Kingdom, Ireland, France, Germany, Italy, Switzerland, Austria, Belgium, Denmark, Finland, the Netherlands, Portugal and Sweden. The VoD film service was launched on 11 December 2007 in the United Kingdom, Germany and France and was then extended to Spain and Italy on 18 November 2008. In France, titles from the catalogue of the French studio Europacorp are available in addition to films from the Warner and Paramount catalogues.

In principle, the system is territory-based but it has proved possible to circumvent it. As it was better stocked, the North American naturally catalogue attracted consumers from other parts of the world so Microsoft announced in May 2007 that it was going to introduce measures to prevent consumers from downloading films not available in their region.[314]

Microsoft has begun to join forces with the main satellite platforms:

- in May 2009, Microsoft and BSkyB signed an agreement under which Xbox 360 owners will be able to access some of the television channles of the Sky package (especially the sports channels) and the Sky Player VoD service from autumn 2009;[315]
- in June 2009, Microsoft and the Canal+ Group announced a strategic partnership with the aim of distributing the latter's offerings and services (CanalPlay, Canal+ à la demande, Foot+) on the Xbox 360.[316] In other countries, the VoD offering is reduced to 25 or 26 independently produced American videos. The cinema films offered are directed at a young, mainly male audience.

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311 "Xbox 360 and Netflix Team Up", *Xbox360com*, 14 July 2008, http://www.xbox.com/en-US/community/events/e32008/articles/0714-netflixteamup.htm; "Microsoft and Netflix Unveil Partnership to Instantly Stream Movies and TV Episodes to the TV via Xbox LIVE", Netflix press release, 14 July 2008, http://netflix.mediaroom.com/index.php?s=43&item=275. A video presentation is available at CNET.tv: http://cnettv.cnet.com/2001-1_53-50002872.html?tag=rtcol%3brelvideos

312 "HD streaming set to premiere on all Netflix boxes", *The Webservice Report*, 29 October 2008, http://news.cnet.com/8301-13515_3-10078091-26.html

313 Xbox Dashboard Update, 11 August 2009, http://www.xbox.com/en-US/support/systemupdates/default.htm ; "Microsoft's Xbox Talks Up Netflix Exclusivity", *Paidcontent*, 11 August 2009, http://paidcontent.org/article/419-microsofts-xbox-talks-up-netflix-exclusivity/

314 "Microsoft to Tighten Up Xbox Live Marketplace Region Controls", *XBOX365.com*, 5 May 2007, http://www.xbox365.com/news.cgi?id=GGiLrdLGGi05051635

315 Sky/Microsoft press release, 29 may 2009, http://corporate.sky.com/media/press_releases/2009/xbox.htm

316 Canal+ Group/Microsoft press release, 29 June 2009, http://media.canal-plus.com/file/78/8/146788.pdf

Table 20 : Content of XBOX LIVE Marketplace (December 2008)

	Films	Video games	TV programmes	Music videos	Independent videos
US	984	278	571	327	24
CA	431	272	_	_	24
AT	_	226	_	_	26
BE	_	227	_	_	26
CH	_	226		_	25
DE	145	211	_	_	23
DK	_	227	_	_	26
ES	130	232	_	_	_
FI	_	20	_	_	26
FR	164	220	_	_	25
GB	291	236	_	_	30
IE	291	227			27
IT	112	232	_	_	26
NL	_	226	_	_	25
NO	_	227	_	_	27
PT	_	91	_	_	25
SE		227			27

Source: European Audiovisual Observatory

In addition, film prices (in contrast to video games) vary from one country to another. For example, films are "billed" at 480 points in the USA and 540 points in France, thus encouraging circumvention practices.

Much is made of the availability of films in HD in the marketing strategy of Microsoft, which above all offers action films and screen epics (directed at a young, mainly male audience). Half the films offered are in HD.

In addition, in order to promote its service and make it easier to carry out purchases, Xbox Live has introduced a number of promotions. For example, an event called "Le printemps du cinéma" ("The cinema spring"), offering five recent films at 50% off for three days, was launched in France in April 2008. An event of the same magnitude had already been carried out in the preceding Christmas period and led to an increase in sales.

Microsoft does not publish any data on its revenues from the service but, according to an article in the *New York Times* that appeared a little over eight months after the launch, sales had up to then enjoyed uninterrupted double-digit growth.[317] The Lions Gate Entertainment studio, of which a catalogue of 15 films was made available in February 2007, announced in early June that there had been 150,000 downloads in five months. Revenues from Lionsgate VoD had risen by 50% in the 2007 financial year, while VoD sales of the film *Employee of the Month* had soared to $3 million compared with box office receipts of $27 million.[318]

In January 2008, out of the 17.7 million Xbox 360 consoles installed worldwide, 10 million

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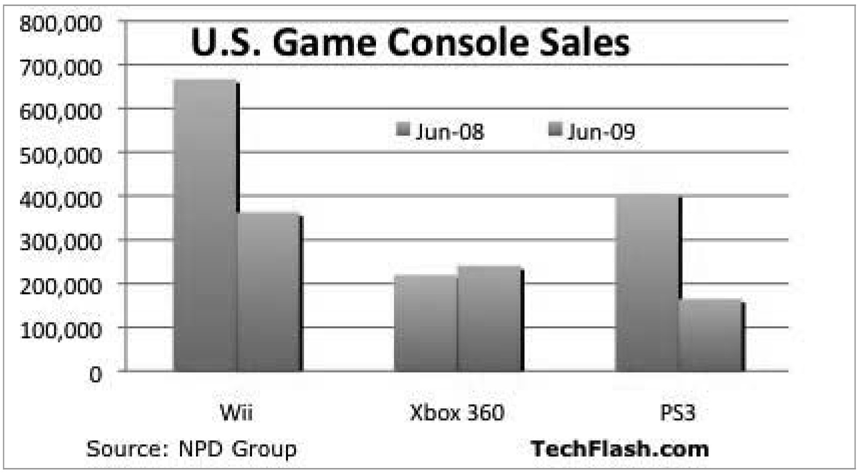
[317] "Xbox Offers a Forum to Reach Gamers Where They Live", *New York Times*, 2 July 2007, http://www.nytimes.com/2007/07/02/technology/02xbox.html?_r=1

[318] "Xbox Live boosts Lions Gate revenues", *gamesindustry*, 4 June 2006, http://www.gamesindustry.biz/articles/xbox-live-boosts-lions-gate-revenues

were owned by subscribers to the Xbox Live service, including one million in the United Kingdom and Ireland.[319] Customers are mainly recruited from the 15-24 age group. In November 2008, Microsoft announced that 500 million downloads had been carried out on the Xbox 360 since its introduction but did not provide any details on the respective positions of games, films and television programmes.[320]

According to figures published by NPD in July 2009, the Xbox 360 is in second place on the American market after the Nintendo Wii but it is the only games console whose US sales grew in the first six months of 2009. Microsoft Product Manager Aaron Greenberg says that this is an encouraging trend at a time when the US video games market has plummeted, and games downloads have increased by 70%.[321]

Graphic 37 : Game console sales in the United States (first six months of 2008 and 2009)



In June 2009, the Xbox LIVE service had 12 million users in 26 countries.

On 14 July 2009, Microsoft announced a partnership with Netflix, a leader in the online DVD rental market and one of the main players on the VoD market. In the context of this partnership, it has been announced that the next update of the Xbox, scheduled for autumn 2009, will enable users in the United States to download films from the Netflix catalogue directly (over 10,000 films and television programmes) without using a computer. User will also be able to share films they have rented with seven of their friends, thus creating a "virtual cinema". Users add the Netflix programmes they want to watch to the "individual instant queue" and the programme is available in 30 seconds.[322] This announcement was immediately followed by speculation that Microsoft – rather than Amazon, which has also

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319 "Xbox Live movie boost for Ireland is 'imminent'", *Silicon Republic*, 21 January 2008, http://www.siliconrepublic.com/news/news.nv?storyid=single10053

320 "Xbox 360 gets a makeover – and avatars", *MSNBC*, 19 November 2008, http://www.msnbc.msn.com/id/27811886/

321 "Microsoft's Aaron Greenberg on June NPD Xbox 360 Numbers", PC World, 17 July 2009, http://www.pcworld.com/article/168607/microsofts_aaron_greenberg_on_june_npd_xbox_360_numbers.html

322 "Microsoft and Netflix Unveil Partnership to Instantly Stream Movies and TV Episodes to the TV via Xbox LIVE", Microsoft press release, 14 July 2009, http://www.microsoft.com/Presspass/press/2008/jul08/07-14InstantStreamPR.mspx

been sounded out – could take control of Netflix.[323]

4.1.2.5. *Zune, a portable media player and iPod competitor*

Zune is the digital portable media player launched by Microsoft in the United States and Canada in November 2006 to compete with the Apple iPod.[324] It is available in two models: one with a hard drive and one with a memory card. It can store music and videos and pick up FM radio signals. The user must download the Zune software (currently in the Zune 3.0 version), and content can be purchased on the Internet at the Zune Marketplace.[325] Files can be exchanged, via a memory stick, with another Zune, an Xbox or a Windows PC.

The Zune Marketplace catalogue mainly consists of music titles but it also contains videos, most of them episodes of television series supplied by the major American broadcasters and the BBC.[326] It is also possible to access podcasts, games and audio books. Some films are preloaded onto the device. Zune Marketplace has been able to offer a number of programmes on the basis of temporary exclusivity, such as videos of the groups Chemical Brothers, Freeway and Duran Duran or the Halo 3 video game. In May 2008, Zune announced that its catalogue contained 3.5 million tracks, more than 1,200 episodes of television programmes, 4,800 music videos and 3,500 audio or video podcasts.[327]

Microsoft presented a new model, the Zune HD, on 13 August 2009 and it was released on 15 September 2009. It has a touch screen that supports high definition, an HD radio receiver and an Internet browser and it can be connected via a docking station to an HDTV in 720p.[328] On that occasion, Microsoft announced it was expanding its video offering on the Zune Marketplace, which will also offer films. Videos downloaded from the Xbox can be transferred and viewed on the Zune HD.

Microsoft does not publish any sales data on the Zune, but the decrease in the revenues of its Entertainment and Devices division since January 2009 has been put down to a drop in Zune sales, which would appear to confirm the press analyses that, despite its own original features, the device would not succeed in setting itself up as a genuine iPod competitor.[329]

4.1.2.6. *The growing role of the Entertainment Division in Microsoft's activities*

Microsoft's Entertainment and Devices Division groups together the marketing of products and services associated with the Xbox 360: consoles, games, Xbox Live and Zune, as well as professional applications and platforms for television and VoD (Mediaroom, Silverlight, etc). The lack of details means it is impossible to gain a precise idea of the relative importance of VoD. The VoD services of Xbox 360 are not even mentioned as such in Microsoft's annual report for 2008 and the company continues to present the device as a games console.

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323 Kara Swisher, "Amazon Buys Netflix? Microsoft Is a *Much* Better Guess as a Potential Acquirer", *All Things Digital*, 14 July 2009, http://kara.allthingsd.com/20090714/amazon-buys-netflix-microsoft-is-much-a-better-guess-as-a-potential-acquirer/

324 Microsft press release, 28 September 2006, http://www.microsoft.com/presspass/press/2006/sep06/09-14ZuneUnveilingPR.mspx

325 http://www.zune.net/en-US/software/marketplace/default.htm

326 http://social.zune.net/video/

327 Zune Press release, 28 May 2008, http://www.zune.net/en-us/press/2008/0528-tvshows.htm

328 Zune Press release, 13 August 2009, http://www.zune.net/en-us/press/2009/0813-zunehdpreorder.htm

329 "Microsoft's Zune slips", WSJ Blog, 23 January 2009, http://blogs.wsj.com/digits/2009/01/23/microsofts-zune-slips/

However, the financial information does make it possible to highlight the growing importance of this division in the group's activities as the relative proportion of revenues generated by it has almost doubled in five years.

Table 21 : Microsoft Inc. - Sales revenues (at 30 June) — in millions of dollars

	2004	2005	2006	2007	2008
Entertainment and Devices Division	2,876	3,242	4,732	6,069	8,140
Total	**36,835**	**39,788**	**44,282**	**51,122**	**60,420**
Annual growth					
Entertainment and Devices Division		12.7%	46.0%	28.3%	34.1%
Total		**8.0%**	**11.3%**	**15.4%**	**18.2%**
Percentage of the Entertainment Division	7.8%	8.1%	10.7%	11.9%	13.5%

Source: Microsoft/European Audiovisual Observatory

4.1.3 Sony

Japan's Sony Group is present on the video market in several capacities:
- as the owner of Sony Pictures (formerly Columbia) (see 4.5.1.5. below),
- as a manufacturer of video games consoles (Sony Electronic Entertainment),
- as a manufacturer of smartphones (Sony Ericsson),
- as a manufacturer of advanced television sets.

As Sony supplies films from the Sony Pictures catalogue to its competitors Apple and Microsoft, it could not allow itself to be sidelined as a hardware manufacturer. In 2007, the fact that it had failed to develop a strategy meant it was in danger of losing out to Apple, which was being carried along by the success of its iTunes and iPod[330]. The group has two significant advantages in the development of a VoD service that offers cinema films: its access to the catalogues of Sony Pictures and Sony Home Entertainment (which contains several blockbusters) and the victory of Blu-ray over HD DVD as far as HD standards are concerned.

4.1.3.1. VoD on PSP in Japan and the United States

In July 2005, the Sony Communication Network Corporation (SCN), Sony's subsidiary specialising in Internet and mobile services, launched the service Portable TV (P-TV in Japan). This system, described as "mobile VoD", enabled users to download films and television programmes onto a PC and transfer them to a memory stick for watching on their PlayStation Portable (PSP). As the service failed to interest enough users, it was abandoned in August 2007.[331]

However, this failure did not discourage Sony from continuing with its project to transform the

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330 "Does Sony finally have an iTunes answer?", *CNET News*, 5 September 2007, http://news.cnet.com/Does-Sony-finally-have-an-iTunes-answer/2100-1025_3-6206039.html?tag=lia;rcol

331 "Japanese VoD service P-TV coming to an end", *PSP Updates*, 2 August 2007, http://pspupdates.qj.net/Japanese-VOD-service-P-TV-coming-to-an-end/pg/49/aid/99056

PSP into a platform for viewing downloaded programmes. In June 2008, it announced the launch of a new service for downloading videos from the PlayStation Network.[332]

Since 15 July 2008, American consumers have been able to download films and television programmes onto their PS3 from the web portal PlayStation Network[333]. The service provides access to 300 feature-length films and 1,200 episodes of TV series, including some available in HD. The catalogues are provided by 20th Century Fox, Lionsgate, MGM Studios, Paramount, Sony Pictures, Warner Bros. and Walt Disney. Customers have fourteen days to watch the content rented. In March 2009, an agreement was also signed with NBC Universal[334]. The negotiations with the studios were helped by the support provided by Sony Pictures but proved complex, especially as far as defining the release window is concerned. The window adopted was the most typical for VoD, namely one month after the release on DVD, but "day-to-date" release is becoming a more and more common practice. Films normally remain in the catalogue for two months.

Customers have 24 hours to finish watching the video once it has started. The inclusive prices range from $2.99 to $5.99. Titles can be purchased for between $9.99 and $14.99. The average cost of renting a film is $3, but prices are higher for programmes in HD.

As regards DRM, Sony employs the Marlin open source technology, which has been developed by a consortium of which it is a member. In particular, the DRM enables content to be transferred to the PSP portable console, but Sony does not provide any further details on the possibilities of doing so.

4.1.3.2. VoD services for the PSP and the PS3 in Europe

In France, the Canal+ VoD service CanalPlay, has been partly accessible on the PSP console since 18 June 2008.[335] Via the CanalPlay portal, PSP owners can access a service that comprised 173 films and 8 seasons of television series in December 2008. Download-to-own and HD are offered for some titles.

Direct downloads onto a PSP have also been offered in the United Kingdom by BSkyB's Sky Player service since 14 July 2008. This service is offered by the company Go!View UK, which was born out of a partnership between Sony Computer Entertainment Europe (SCEE) and BSkyB. The system enables users to download films from their PC to their PSP under a subscription to "packs" of between £5 and £10 a month. The service offers television programmes from the catalogues of Disney-ABC-ESPN, BBC Worldwide, Sony Pictures Television, NBC Universal international, National Geographic and Sky Sports.[336] The catalogue available was enlarged in early December 2008 and the service comprises subscriptions to "packs" and offers the possibility of renting individual films and recent television programmes. Rentals cost from £1.50 per TV episode and £2.50 per film.[337]

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332 Sony press release, 26 June 2008, http://www.sony.net/SonyInfo/News/Press/200806/08-080E/

333 Sony Computer Entertainment America press release, 15 July 2008, http://www.us.playstation.com/News/PressReleases/480

334 Sony Computer Entertainment America press release, 10 March 2009, http://www.us.playstation.com/News/PressReleases/508

335 Canal+ Group/Sony Computer Entertainment press release, 11 June 2008, http://media.canal-plus.com/file/24/9/109249.pdf

336 "PSP video-on-demand service goes live in UK", *gamesindustry.biz*, 14 July 2008, http://www.gamesindustry.biz/articles/psp-video-on-demand-service-goes-live-in-uk

337 "GO!VIEW, the appointed hub of entertainment for PSP™ users, adds hundreds of hours of video in time for the Christmas holidays", *develop* press release, December 2008, http://www.mcvuk.com/press-releases/42958/GOVIEW-the-appointed-hub-of-entertainment-for-PSPtrade-users-adds-hundreds-of-hours-of-video-in-time-for-the-Christmas-holidays

On 20 August 2008, David Reeves, President of SCEE announced the forthcoming launch of a VoD service offering a catalogue of music videos streamed to PS3 consoles. Reception on a PS3 would be free but a charge would be made for a download onto a mobile telephone. The service was to be offered in collaboration with the Vidzone online music service provided the British company VidZone Digital Media[338], with which Microsoft also launched an online music service in the United Kingdom in January 2009. The service was launched on 11 June 2009 in the United Kingdom, France, Germany, Italy, Ireland, Australia and New Zealand.[339] It is available free of charge to PSP3 owners. SCEE also announced that a more complete service offering films, television and music programmes would be launched at a later date.

On 17 November 2008, SCEE announced the introduction of Shoot!, an initiative that supports the delivery of short films to PSP and PS3 consoles.[340]

4.1.3.3. Initial assessment of VoD services on PSP

A year after its launch, VoD on PSP seemed to be a success. At any rate, Sony executives appear more satisfied with this service than with the role of the console as a Blu-ray player. The catalogue currently comprises 2,000 films and more than 10,200 television programmes, provided by 38 different partners. About 35% of the catalogue is available in HD. The PlayStation Store has 25 million users, who have downloaded 500 million programmes. The majority of users are young men aged between 18 and 34 but Sony says it has been happy to see that more and more women are embracing the service.[341]

On 3 June 2009, Sony announced the release on 1 October of a new console, the PSPGo, which is lighter and will no longer require a disk but will make it possible to download games, films and television programmes from a WiFi connection, the PlayStation 3 (PS3) Computer Entertainment System or from a PC, by using a new application called Media Go. Programmes are stored on a 16GB flash memory card.[342]

4.1.3.4. Music and VoD services to mobiles

Through its subsidiary Sony Ericsson Mobile Communications AB, Sony is also a manufacturer of mobile telephones and therefore a competitor of Apple and Nokia on this market. In September 2008, a first step was taken on the online entertainment services market by launching the PlayNow service, which is competing with Apple's iTunesStore and Nokia's Comes with Music service.[343]

In February 2009, Sony Ericsson announced the launch of the platform Entertainment Unlimited, the aim of which is to facilitate the consumption of content on different devices by "(u)niting best in class entertainment experiences into one offering such as the Walkman™ music experience, the Cyber-shot imaging experience, Java gaming and messaging

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338 "Music Video Streaming Service Brings the Hottest Music Videos to PS3™", *SCEE* press release, 20 August 2008, http://www.scee.presscentre.com/Content/Detail.asp?ReleaseID=4664&NewsAreaID=2

339 Sony Computer Entertainment Europe press release, 2 June 2009, http://www.scee.presscentre.com/Content/Detail.asp?ReleaseID=4788&NewsAreaID=2

340 "Shoot!": Finest emerging film talent to premiere on PLAYSTATION®3 and PSP™, *SCEE* press release, 17 November 2008, http://www.scee.presscentre.com/Content/Detail.asp?ReleaseID=4732&NewsAreaID=2

341 "Sony's Playstation 3 sees VoD surge", *Variety*, 16 July 2009, http://www.variety.com/article/VR1118006112.html?categoryId=1009&cs=1

342 Sony press release, 3 June 2009, http://www.scei.co.jp/corporate/release/pdf/090603a_e.pdf

343 Sony Ericssson press release, 24 September 2008, http://www.sonyericsson.com/cws/corporate/press/pressreleases/pressreleasedetails/key.PressResource.PlayNow_plus_consumer_FINAL-20080924
The (geolocated) site is available at http://www.playnow-arena.com/

integrated with services and applications”. On that occasion, Sony relaunched its Walkman brand with a new telephone, the W955 Walkman.[344] A new all-in-one device (under the provisional code name Idou) has been announced for the second half of 2009 as a major contribution in the history of the Sony group. The Idou was unveiled in May 2009 as the Sony Ericsson Satio, one of the features of which is its “True 16:9, 3.5 inch widescreen”.[345] The Satio is a direct competitor of the Apple iPhone 3GS, in comparison with which it has the advantage of better screen resolution, a more open browser that, in particular, supports Flash format videos, two cameras, one with 12.3 megapixels (compared with 3 in the iPhone 3GS) and an FM receiver.[346]

On the occasion of the Satio presentation, Sony Ericsson has enlarged its PlayNow Arena content shop by including a film service. Around sixty films will be available over a period of 12 months. At any one time, users will have a choice of fifteen films. The service will initially be available in Sweden, Norway, the Netherlands, Germany and the United Kingdom.[347]

When it launched its W995 mobile phone, Sony Ericsson implemented an agreement with TF1 Vision that allowed it to offer four episodes of the series *Lost* and *Grey’s Anatomy* for every purchase of the device. 12 other episodes were offered for an additional €5. The rest of the seasons can be viewed for €1.99 per episode.[348]

Some analysts think that Sony should offer a PSP Phone, which would open up more possibilities for the PSP in the direction of telephony and improve its ability to compete with the iPhone. The Sony Ericsson Aino, which was introduced in May 2009, is perhaps a first step in this direction: this is a mobile telephone that can also serve as an entertainment platform and a link to the Sony PS3 games console. Its Media Home interface automatically pulls media content from Media Go on the PC over WiFi to the telephone. The Aino automatically synchronises with all the media content stored on the PC. The manufacturer’s aim is to simplify operations and enable users to load their preferred content without spending hours in the process. The Sony Ericsson Aino can also function as a remote control for the media content obtained via the Sony PS3 console, especially the live TV services available in several countries, such as PlayTV in France.[349]

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344 “Sony Ericsson launches Entertainment Unlimited, Reinforcing its Position as the Communication Entertainment Brand”, Sony Ericsson press release, 15 February 2009, http://www.sonyericsson.com/cws/corporate/press/pressreleases/pressreleasedetails/entertainmentpressreleasefinal-20090215

345 “Visual communication like never before with the Sony Ericsson Satio”, Sony Ericsson press release, 28 May 2009, http://www.sonyericsson.com/cws/corporate/press/pressreleases/pressreleasedetails/satiopressreleasefinal-20090528

346 “Sony Ericsson ‘Satio’ vs Apple ‘iPhone 3GS’ Specs Comparison”, *SonyInsider*, 12 June 2009, http://www.sonyinsider.com/2009/06/12/sony-ericsson-satio-vs-apple-iphone-3g-s-specs-comparison/

347 “PlayNow™ arena with movies brings feature films to mobile phones”, Sony Ericsson press release, 28 May 2009, http://www.sonyericsson.com/cws/corporate/press/pressreleases/pressreleasedetails/playnowarenamoviesfinal-20090528

348 The announcement of this service was a fairly low-key affair. See in particular *zone-numerique.com*, 9 June 2009, http://www.zonenumerique.com/news_5035_Lost_et_Grey_s_Anatomy_en_VOD_sur_mobiles_Sony_Ericsson.htm

349 “Sound and vision set free with the Sony Ericsson Aino”, Sony Ericsson press release, 28 May 2009, http://www.sonyericsson.com/cws/corporate/press/pressreleases/pressreleasedetails/ainopressreleasefinal-20090528

4.1.3.5. Television sets connected to the Internet

As a television manufacturer, Sony takes account of the development of the Internet and the VoD market. It introduced the Bravia Internet Video Link in February 2007 and began marketing it in the United States in April 2008. This is a set-top box for connection to a broadband network output and has an HDMI output for connection to a television set in the company's Bravia range.[350] This device competes with other set-top boxes, such as the Apple TV Roku Digital Player (Netflix Player) and the Vudu BX100. Sony has concluded agreements with various operators of Internet VoD services (Amazon[351], YouTube, Netflix[352], etc), which can now be viewed on a television screen.

In February 2009, Sony introduced the new generation of Bravia televisions, which incorporate the Applicast function, which enables a direct connection to a broadband network to be made via an Ethernet port.[353] Access to services other than television is via widgets that appear on the screen. The company is competing on this market for television sets with a user interface to the Internet with Panasonic's Viera Cast system and Sharp's Ex System.[354]

4.1.4. Nintendo

For a long time, Nintendo seemed to be withdrawing from VoD and concentrating on its position in the games market, but its Wii console, which was introduced in Europe in early December 2007 and is directed at less hardcore gamers than those targeted by the Xbox 360 or the PS3, is meeting with considerable success.

Nintendo has achieved an initial breakthrough in the area of on-demand services by entering into a partnership with the BBC. As a result, since 9 April 2008, British Wii owners have been able to view programmes included in the BBC's iPlayer catch-up TV service.[355] The partnership meets the BBC's desire to make the service available on as many platforms as possible. It enables users to view the service on a television screen.

Access to the iPlayer programmes is via the Internet pay-TV channel (which costs 500 points, or approximately £3.50), and it is necessary to have a sufficiently fast broadband Internet connection. Videos are distributed without DRM. BBC executives expect that this service will ultimately to be available free of charge by creating a specific channel in the Wii menu.

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350 For the official presentation, see the Sony Style site: http://www.sonystyle.com/webapp/wcs/stores/servlet/CategoryDisplay?catalogId=10551&storeId=10151&langId=-1&identifier=S_BrandShowcase_BIVL
For a critical analysis, see the review in *CNET News*, 2 October 2008, http://reviews.cnet.com/digital-media-receivers/sony-bravia-Internet-video/4505-6739_7-32763930.html?tag=mncol;lst

351 "Sony Bravia Internet Video Link now supports Amazon VoD", CNET News, 11 September 2008, http://news.cnet.com/8301-17938_105-10039078-1.html

352 "Netflix streaming on Net-enabled Sony Bravia TV", CNET News, 9 July 2009, http://news.cnet.com/8301-17938_105-10282740-1.html

353 Sony press release, 16 February 2009, http://presscentre.sony.eu/Content/Detail.asp?ReleaseID=332&NewsAreaID=2

354 "TV More Fun than Ever!", Nikkei Electronics Asia, 3 February 2009, http://techon.nikkeibp.co.jp/article/HONSHI/20090126/164598/

355 "BBC announces Nintendo Wii deal", *BBC News*, 9 April 2008. http://news.bbc.co.uk/1/hi/technology/7338344.stm

In Japan, Fujisoft, a company that specialises in IT solutions and has developed the multimedia player Ulexit, launched a VoD service called "Minna-no Theater Wii" ("Everybody's Wii Theatre") in Japan in January 2009.[356] In June 2009, Fujisoft announced an agreement with Sonic Solutions, owner of the Roxio CinemaNow VoD service[357] to provide the Minna-no-Theater Wii service with a Paramount Pictures catalogue of television programmes.[358] 54 films from the Warner Bros. catalogue have also been available since July 2009.[359]

It was initially planned to extend the Minna-no-Theater Wii service to other parts of the world in 2009, especially Europe.[360] The possibility of it being extended to the United States (especially with the VoD catalogue of Blockbuster, which has reached agreements with Sonic Solutions) has been mentioned by some commentators but seems unlikely given the fact that it is impossible for Wii to provide HD quality.[361] Rumours about an agreement with Netflix have also been circulating[362] but have been denied by Reggie Fils Aimé, President of Nintendo of America.[363]

On 25 December 2008, Nintendo announced[364] that it was going to launch, first in Japan and then in other countries, a service for distributing exclusive videos to owners of the Wii home console, which can be connected both to a television and the Internet. It was announced that this new service, made up of programmes specially produced for Nintendo, would be launched in Japan in spring 2009. It is based on the online platform for Wii, which already features downloadable games, news channels or virtual stores for teleshopping. Set up in co-operation with the Japanese marketing giant Dentsu, this new video service is likely to be free for viewers as it is funded by advertising, but Nintendo says a pay-per-view option will be offered later.

Nintendo has sold nearly 40 million Wiis worldwide (over 7 million of them in Japan) since the console was put on the market at the end of 2006, making this consumer electronics device one of the biggest commercial successes in the world of video games. About 80% are installed in family homes and connected to the main TV set, Nintendo stressed when giving its reasons why the console should be used as a new carrier of non-game audiovisual content. Nintendo's intention in launching this new service offering exclusive videos is to

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356 http://theaterwii.jp

357 CinemaNow has contracts with more than 250 content producers, including the major American studios, independent producers and broadcasters. Its catalogue contains over 14,000 titles. In 2008, Sonic Solutions took over Roxio, the publisher of the Toast software and leader in the DVD burning market.
Sonic Solutions press release, 8 January 2009,
http://www.sonic.com/about/press/news/2009/01/cinemanow-sdk.aspx

358 Sonic Solutions press release, 25 June 2009, http://www.sonic.com/about/press/news/2009/06/fujisoft.aspx

359 "Warner Delivers Movie Downloads to Wii", *Andriasang.com*, 14 July 2009,
http://www.andriasang.com/e/blog/2009/07/14/warner_wii_movie_downloads/

360 "Fujisoft video-on demand for the Wii", *Tech-on*, 1 October 2008,
http://techon.nikkeibp.co.jp/english/NEWS_EN/20081001/158931/
Ubergizmo, 3 October 2008,
http://www.ubergizmo.com/15/archives/2008/10/fujisoft_videoondemand_for_the_wii_live_video.html
http://theaterwii.jp/

361 "Could the Wii be Blockbuster's savior?", *DigitalBeat,* 15 January 2009,
http://digital.venturebeat.com/2009/01/15/could-the-wii-be-blockbusters-savior/

362 "Rumor: Netflix Streaming Hitting the Wii?", *Format War Central*, 25 March 2009,
http://formatwarcentral.com/2009/03/25/rumor-netflix-streaming-hitting-the-wii/

363 "Nintendo on Netflix: 'We will do Something Different'", *Format War Central*, 25 March 2009,
http://formatwarcentral.com/2009/03/25/rumor-netflix-streaming-hitting-the-wii/

364 "Nintendo va lancer un service de diffusion de vidéos exclusives pour Wii", AFP, 25 December 2008.
http://www.google.com/hostednews/afp/article/ALeqM5ghv17zVqiXhY6ol2GUGm2aaQGnUA

make its platform of online offerings more attractive and thus increase the proportion of Wiis connected to the Internet (40% at the moment).

4.1.5. Vudu

Vudu Inc. is a media technology company founded in 2004 by Tony Miranz and Alain Rossmann, the creator of WAP. It has brought together a team of veterans of technological innovation from such companies as TiVo, WebTV, Openwave, 2Wire, Slim Devices, Open TV and eDanger Inc. It developed a set-top box in some secrecy, but the development was revealed by the *New York Times* on 30 April 2007 and was immediately recognised as one of the most demanding solutions in the field of VoD.[365] Films are streamed on the Ethernet broadband networks in the MPEG-4 format and Dolby Digital Plus, ie the HD standards. The system is based on the use of peer-to-peer (P2P) networks, with each set-top box being used to provide the other set-top boxes with content. To ensure the immediate start of a film, each beginning is downloaded into the set-top box, the rest then being downloaded while the viewer is watching the initial part.

P2P technology, which has been the key to the success of unauthorised downloads since 2003, is now being harnessed for legal VoD. The Hollywood studios and the independent producers got it right when they signed agreements with Vudu, which launched its service on 6 September 2007. Since 15 November 2007, films from the three studios Paramount, Universal and Lions Gate have been available in HD. On 6 January 2008, Vudu XL, which has been adapted for home cinema environments, was introduced. On 24 January, the initial purchase price of the set-top box was lowered from $395 to $295. The Vudu Wireless Kit was launched on 5 June. The catalogue has rapidly expanded, and on 11 November 2008 Vudu announced it contained over 10,000 titles, including 1,100 in HD. On 18 November 2008, Vudu presented its Vudu XL2 set-top box, which has been designed to provide cinemas with VoD services.

Finally, on 16 December 2008, Vudu presented a new application known as Vudu RIA (Rich Internet Application), which enables Internet services to be viewed on a television screen. Through Vudu's home page, the owner of a set-top box is able to access a number of services grouped under the VUDU Labs label, including the catalogues of free-of-charge video services such as Flickr, Picasa and YouTube, as well as a service called On Demand TV containing catch-up programmes from more than 120 channels (but in reality no top programmes from the major channels). According to a Vudu representative, accessing the programmes of the major networks is made difficult by the need to watch them on proprietary players, which requires either a full web browser or (currently impossible) contractual arrangements with the various players in the value chain – both channel providers and software publishers.[366]

In February 2009, Vudu was the first operator to offer a download-to-own VoD service in HD quality. A catalogue of 50 titles from independent producers is available.[367] In June 2009, it was supplemented by a catalogue of 60 titles from the Buena Vista Home entertainment catalogue.[368]

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365 "Vudu Casts Its Spell on Hollywood", *New York Times*, 30 April 2007. See also the launch press release : http://www.vudu.com/press_release4.30.2007.html

366 "Vudu adds streaming from YouTube, Flickr", *CNET News*, 15 December 2008, http://news.cnet.com/8301-17938_105-10123525-1.html

367 Vudu press release, 24 February 2009, http://www.vudu.com/press_release02.24.2009.html

368 Vudu press release, 4 June 2009, http://www.vudu.com/press_release06.04.2009.html

Vudu's very rapid development has led to people wondering whether this "start-up" can stay the course given the competition from such well-established players as Apple, the Microsoft/Netflix partnership and Amazon (which launched its own VoD service on 7 September 2006). The magazine *Wired* believes it is not clear that Vudu RIA can really compete with Hulu, whose service is delivered via web browsers and thus does not require the acquisition of any hardware.[369]

Strategic choices made during the second half of 2008 (the laying off of 15% of its staff in August 2008, the opening up its programming to adult films and introductory offers of prepayment cards at $200 apiece) and the fact that, despite having been cut, the price of the set-top box ($299) is still higher than Apple TV's ($229) or the Netflix Roku player (£100) is raising concerns as to whether the company can weather the economic crisis hitting the United States.[370]

In the extremely competitive situation in the United States as far as VoD is concerned, it is too early to assess VUDU's chances of transforming the undeniable critical success obtained in the past few months into a real market breakthrough. Whether Vudu might roll out in Europe is being discussed at its Internet forum but no announcement has yet been made on the subject since the Santa Clara based company prefers to consolidate its success on the national market first.[371]

4.1.6. Archos

Compared with the American and Japanese IT manufacturers and companies, the Europeans seem rather passive with regard to launching initiatives on the on-demand audiovisual services market, at least as far as the provision of VoD to television sets and computer screens is concerned. Against the background of the emergence of 3G telephony, the European manufacturers actually seem to be attaching more importance to video on demand to mobiles, as illustrated by the strategies of Nokia and Archos.

Archos was set up in 1988 and has established itself on the market for digital set-top boxes, external hard drives and IT peripherals as well as portable digital audio players (before Apple) and personal digital assistants (PDAs). It launched its first portable video player in 2003. It has had a foothold on the VoD market since the launch of its fifth-generation hand-held multimedia player, the Archos 5, which enables users to connect to WiFi Internet and is entering into partnerships with various providers of VoD services, online television and video sharing sites. These various third-party services are grouped under the Archos Content Portal label, which was launched on 14 June 2007. According to the description provided, *"The launch of the Archos Content Portal … has brought the user a simple and intuitive way to buy video on demand. Archos can offer its customers access to the largest library of media content through its partnerships with the major actors in content provision"*.[372] At the end of 2007, there was a consumer craze for top-of-the-line portable devices, which was stimulated by the arrival of Apple's new iPods, and the Archos Generation 5, which had a favourable press, went out of stock during the festive season. The company sustained an

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369 J. Fermoso, "Vudu Reveals Open-Source RIA Platform, But is it Enough to Survive Heavy Competition?", *Wired*, 16 December 2008, http://blog.wired.com/gadgets/2008/12/vudu-reveals-op.html

370 C. Albrecht, "Will Opening Up Keep Vudu from Closing Down?", *NewTeeVee*, 15 December 2008, http://newteevee.com/2008/12/15/will-opening-up-keep-vudu-from-closing-down/

371 http://forum.vudu.com/showthread.php?p=22946

372 Archos press release, 19 October 2007, http://www.archos.com/corporate/investors/financial_doc/Communique_financier_Q3_2007_en.pdf

operational loss of three million euros in the second half of 2007.[373]

In November 2007, Archos set up its own VoD service, the Archos Media Club, the business model of which consists in selling an Archos 605 tablet for 1 euro, together with a monthly subscription of 19.99 euros that enables customers to download films and audiovisual programmes selected from the libraries of Warner, Vodéo (a French VoD service specialising in documentaries) and Dorcel (a French producer of adult films).

In 2008, Archos established itself as an alternative solution to Apple on the market for WiFI portable multimedia players and hard-drive players above 200 euros. Its strategic objectives are:

- to become the market leader in Internet-enabled multimedia devices;
- to embrace the new Internet access technologies, in particular the 3.5G (HSDPA), through partnerships with mobile telephone operators;
- to develop a range of on-device services to include entertainment and leisure.[374]

In February 2008, Archos announced a partnership with the mobile telephone operator SFR aimed at integrating 3G+ connectivity into the future generation of portable multimedia players. On 22 April 2008, it announced a new strategic diversification on the mobile television market with the introduction of its “TVportation” plug-in, which enables multimedia tablets to be converted into portable televisions.[375]

At the same time, Archos said it was enlarging its Media Club catalogue, announcing in this connection a partnership with Paramount Digital Entertainment. Some Paramount films will be preloaded onto the player, thus avoiding the need to download. On the same day, Archos also announced a plug-in that enables receive 9,600 web radio stations, 600 web TV stations and podcasts to be received on the portable player. On 3 June, it announced a partnership with Jamendo, the Internet platform that offers free music downloads, and Archos portable player users can now download 140,000 music titles free of charge.

On 18 November 2008, the company launched its Archos 7 tablet, which has an 800X400 pixel resolution screen and not only enables online newspapers to be read but also permits easy viewing and community video sharing sites.

By blending technological innovations and partnership agreements Archos has thus come into its own as a content aggregator in just a few months. On 20 August, it announced in a press release that the Media Club would now be offering 8,000 film and documentary titles.[376] Strangely enough, the manufacturer’s website continues to highlight the technological qualities of its flagship product and the content available from its Media Club is not highlighted at all.

The press releases published by Archos in 2008[377] do not enable the revenues generated by its VoD service to be separated from other revenues.

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373 Archos press release, 20 December 2007, http://www.archos.com/corporate/investors/financial_doc/Communique_fin_2007_Final_201207.pdf

374 Archos press release, 8 February 2008 http://www.archos.com/corporate/investors/financial_doc/Archos_RESULTAT_2007_ENG_080208.pdf

375 Archos press release, 22 April 2008, http://www.archos.com/corporate/press/press_releases/TVportationReleaseFinal_20080422.pdf

376 Archos press release, 20 August 2008, http://www.archos.com/corporate/press/press_releases/PR_IMT_Archos_EN_20080820.pdf

377 http://www.archos.com/corporate/investors/financial_rep_pr.html?country=global&lang=en&year=2008

Table 22 : Archos partnership agreements (November 2008)

	VoD Services	Online music services	TV channels	Video sharing sites	Store	Radio	Others
BE/LU/NL	Vodeo.tv, INA	Jamendo	Euronews, Deutsche Welle				
FR	TF1 Vision, Vodeo.tv, INA, VoDmania, Archos Media Club	MusicMe, Jamendo	Euronews, Deutsche Welle	Dailymotion	Archos Store, Fnac.com	NRJ	Dailybourse, Alcatel Media Motion
DE	INA, Archos Media Club	Jamendo, FourMusic	Euronews, Deutsche Welle		Archos Store		
ES	INA	Jamendo	Euronews, Deutsche Welle	Dailymotion	Archos Store		
IT	FilmIsNow, Archos Media Club	Jamendo	Deutsche Welle		Archos Store		
US	Movielink, CinemaNow, Archos Media Club	Jamendo	Euronews, Deutsche Welle	Dailymotion, Youtube	Amazon, Best Buy		Alcatel Media Motion
Canada	INA, CinemaNow, Archos Media Club		Euronews, Deutsche Welle	Dailymotion			
Global	INA	Jamendo	Euronews, Deutsche Welle	Dailymotion			

Source: Archos/European Audiovisual Observatory

4.1.7. Nokia

Nokia, the world's number one mobile telephone manufacturer, does not seem to have immediately seen the advantages of a strategy that involves using content as a means of adding value to devices shown to be efficient by the success of the video console manufacturers and Apple's iPod. Leaving aside the development of technological solutions in the fields of broadcasting and distribution (Nokia Broadband Media, Mulitiservice Access Platform) in 2001-2003, the company has been late in positioning itself on the VoD market proper. Its development in the direction of content became apparent in August 2006 when it bought the music platform LoudEye, which has a presence in 20 countries through its subsidiary O2. At the same time, Nokia presented a report commissioned from the London School of Economics emphasising the potential of television to mobiles, especially with regard to community sharing and certain types of audiovisual programme.[378] The agreement with YouTube announced on 12 February 2007 enabling the site to be viewed on the Nokia Nseries range of devices marked its actual entry into the field of audiovisual services. On that occasion, Nokia announced the launch of its "Video Center", Symbian S60 software that makes it possible to subscribe to RSS flows, view videos and synchronise them with a PC. According to Torsti Tenhunen, Nokia's Director of Multimedia, *"Our cooperation with YouTube paves the way for continued growth for Internet based content distribution. Enabling people to have access to a wide range of videos on their connected multimedia computers offers great potential for this area. Also, Nokia Video Center offers content producers and distributors a unique way to lead consumers directly to dynamic video*

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[378] "The future of TV will be personal", Nokia press release, 10 November 2006, http://www.nokia.com/NOKIA_COM_1/Press/Press_Events/mobile_tv_report,_november_10,_2006/The_future_of_TV_will_be_personal.pdf

The report is available at: http://www.nokia.com/NOKIA_COM_1/Press/Press_Events/mobile_tv_report,_november_10,_2006/Mobil_TV_Report.pdf *services which can easily be produced and tailored for various interests".*[379]

The first smartphones incorporating video (N70, N95) were introduced in early 2006. 7 million of the N95 model, which was launched in 2007, have been sold. The Nokia N96, introduced on 13 February 2008, is described as "a multimedia computer which is truly optimised for video and TV" and enables common formats, such as MPEG-4, Windows Media Video and Flash Video, to access videos distributed on the Internet. In some countries, the integrated DVB-H receiver offers live broadcast TV with an automatically updating programme guide. The massive memory can store up to 40 hours of video content. The Nokia Video Center provides a one-stop shop to discover and access a variety of mobile content ranging from film trailers and comedy to news from leading global content brands such as YouTube, Reuters and Sony Pictures. In October 2007, Nokia announced agreements between the Nokia Media Center and such partners as CNN, Jamba, IBN News, Sony Pictures, Rooftop Comedy, ROK and Versatility Entertainment.[380] The catalogue of Internet video streams is continually expanded with more regional and country-specific content.[381]

In its agreement with Youtube, Nokia's aim is not to publish videos on the Internet but to enable videos hosted on YouTube to be viewed from its mobile telephone. The agreement did not mean Nokia was turning into a video provider. In July 2007 the Finnish manufacturer bought the American photo and video sharing site Twango, thus taking its first step towards controlling content. The launch of the Nokia Mobile Filmmaking Awards seems to indicate the company's desire for closer ties with the creative world.

In August 2007, Nokia announced the opening of the Ovi Store, which enables applications, music, games and maps to be downloaded and messaging and photo/video sharing services to be accessed. After the launch of a beta version in August 2007[382], the Ovi Store was opened on 26 May 2009. It can be accessed by 50 million customers who own one of 50 Nokia devices.

It remains to be seen whether it will take the next step by providing its own audiovisual services. Nokia's contribution to the consultation on online content launched by the European Commission, a contribution that emphasised the importance of copyright levies and multi-territorial licensing, is perhaps an indicator of a rollout in the near future.[383] On 1 April 2009, Nokia announced an agreement with Tim Kring, the producer of the *Heroes* series, who will develop new programme content for the Ovi Store.[384]

However, in 2008 Nokia did not undertake any strong initiative that would enable it to stay competitive on its preferred market – smartphones – in the face of the lightning success of Apple's iPhone. Despite the launch of the online games service N-Games in the United Kingdom, Australia and Singapore, an online music service (Comes with Music) and the Ovi Store, it is not managing to make its mark as a distributor of services and entertainment applications similar to the iTunes Store. The applications available on the Ovi Store are aimed at low-capacity telephones (small screens, low resolution, low processing power, etc)

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379 Nokia press release, 12 February 2007, http://www.nokia.com/A4136001?newsid=1104222

380 Nokia press release, 2 October 2007, http://www.nokia.com/press/press-releases/showpressrelease?newsid=1157495

381 "Nokia N96: The one to watch", Nokia press release, 11 February 2008, http://www.nokia.com/A4136001?newsid=1190120

382 Nokia press release, 29 August 2007, http://www.nokia.com/press/press-releases/showpressrelease?newsid=1149749

383 http://ec.europa.eu/avpolicy/docs/other_actions/col_2008/comp/nokia_en.pdf

384 Nokia press release, 1 April 2009, http://www.nokia.com/press/press-releases/showpressrelease?newsid=1302146

and are thus likely to disappoint owners of top-of-the-range devices such as the 5800 and N97. According to some observers, Nokia could therefore be a victim of its excessive segmentation of the market by supplying many different models (more than fifty), whereas Apple is putting its faith in a limited number of iPhone models. However, the Ovi Store has the advantage of catering for a base of 50 million devices installed.[385]

According to statistics produced by IDC, in mid-2009 Nokia had lost nearly 2% of its share of the global mobile telephone market compared with the previous year.[386] Its turnover for the Devices & Services division for the first half of 2009 collapsed to 28% of the figure for the same period in 2008.[387]

Table 23 : Positions and market shares of the mobile telephone manufacturers (2nd quarter 2009)

Top Five Mobile Phone Vendors, Shipments, and Market Share, Q2 2009
(Units in Millions)

Vendor	2Q09 Shipment Volumes	2Q09 Market Share	2Q08 Shipment Volumes	2Q08 Market Share	2Q09/2Q08 Change
Nokia	103.2	38.3%	122.0	40.4%	-15.4%
Samsung	52.3	19.4%	45.8	15.2%	14.2%
LG Electronics	29.8	11.1%	28.1	9.3%	6.0%
Motorola	14.8	5.5%	27.9	9.2%	-47.0%
Sony Ericsson	13.8	5.1%	24.4	8.1%	-43.4%
Others	55.7	20.7%	54.0	17.9%	3.1%
Total	**269.6**	100.0%	302.2	100.0%	**-10.8%**

Source: IDC Worldwide Quarterly Mobile Phone Tracker, July 30, 2009

Top Five Mobile Phone Vendors, Shipments, and Market Share, Q2 2009
(Units in Millions)

Vendor	2Q09 Shipment Volumes	2Q09 Market Share	2Q08 Shipment Volumes	2Q08 Market Share	2Q09/2Q08 Change
Nokia	103.2	38.3%	122.0	40.4%	-15.4%
Samsung	52.3	19.4%	45.8	15.2%	14.2%
LG Electronics	29.8	11.1%	28.1	9.3%	6.0%
Motorola	14.8	5.5%	27.9	9.2%	-47.0%
Sony Ericsson	13.8	5.1%	24.4	8.1%	-43.4%
Others	55.7	20.7%	54.0	17.9%	3.1%
Total	**269.6**	100.0%	302.2	100.0%	**-10.8%**

Source: IDC Worldwide Quarterly Mobile Phone Tracker, July 30, 2009

4.1.8. Motorola

In 2008, Motorola published a study highlighting the need for content services that meet the mobility wishes of the younger generation.[388] In June that year, it very discreetly launched in the United Kingdom a service in collaboration with Paramount[389] that involved downloading films from the Internet for viewing on a mobile telephone. The launch was also announced in the other major European countries but the service was closed down less than a year

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385 "Nokia's Ovi store launches on 50m devices", *Screen Digest*, July 2009.

386 IDC press release, 30 July 2009, http://www.idc.com/getdoc.jsp?containerId=prUS21950309

387 "Nokia Conference Call, Second Quarter 2009 Financial Results", 16 July 2009, http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTAzNTR8Q2hpbGRJRD0tMXxUeXBlPTM=&t=1

388 "Motorola Survey Reveals Media Mobility is Key for the Millennial Generation", Motorola press release, 10 September 2008, http://www.motorola.com/mediacenter/news/detail.jsp?globalObjectId=10124_10053_23#

389 "Motorola and Paramount ink movie download deal", *NewMediaAge*, 24 April 2008. http://www.nma.co.uk/news/motorola-and-paramount-ink-movie-download-deal/37719.article

later.[390] It did not have a very attractive catalogue and was not given any significant promotion.

Motorola is also involved in developing technical solutions for on-demand services[391] and is in particular the solutions provider for the Spanish and Dutch cable operators ONO[392] and Ziggo.[393] It also supplies set-top boxes for Portugal Telecom's IPTV service.[394]

4.1.9 Samsung

As a manufacturer of consumer electronics, Samsung, like its competitors, is not only exploring the possibility of connecting television sets and Blu-ray players to the Internet (see 1.2.10.4 above), but also seeking to position itself on the market for mobile on-demand services.

Its mobile telephone manufacturing subsidiary Samsung Mobile launched the Samsung Movie service in the United Kingdom in March 2009. It enables films to be downloaded from the Internet[395] onto Samsung telephones that incorporate the AMOLED technology, PCs and portable computers.[396] Unlike Motorola, Samsung has succeeded in obtaining a sizeable catalogue of Hollywood titles, which it has done by joining forces with the Swiss aggregator Acetrax.[397] Over 500 titles from the Paramount, Warner Bros, NBC Universal International Television Distribution and Momentum catalogues are offered for sale or rental. The service is scheduled to be introduced in other European countries, especially Germany, in the second half of 2009.

4.1.10. LG Electronics

According to *Screen Digest*, LG Electronics is working on a mobile content distribution solution similat to the one adopted by Sony Erricsson.[398]

4.1.11. Netgem

The French company Netgem, which was founded in 1996, describes itself as a provider of

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390 "Motorola quietly withdraws movie service", *Know Your Mobile*, 24 March 2009. http://www.knowyourmobile.com/blog/223785/motorola_quietly_withdraws_movie_service.html

391 "Motorola Expands On Demand Platform to Enhance Support for Rapidly Growing On Demand Libraries", Motorola press release, 17 March 2009, http://mediacenter.motorola.com/Content/Detail.aspx?ReleaseID=10874&NewsAreaID=2
"On-Demand solutions?" Motorola USA, http://www.motorola.com/business/v/index.jsp?vgnextoid=ecabc47e5db86110VgnVCM1000008406b00aRCRD

392 "Motorola suministra decodificador digital número un millón a ONO », Motorola press release, 28 April 2008, http://mediacenter.motorola.com/Content/Detail.aspx?ReleaseID=6326&NewsAreaID=2

393 "Ziggo Selects Motorola Video Server to Power HD Video-on-Demand Service", Mototola press release, 8 September 2008, http://mediacenter.motorola.com/content/Detail.aspx?ReleaseID=5846&NewsAreaID=2

394 Motorola press release, 13 May 2009, http://mediacenter.motorola.com/Content/Detail.aspx?ReleaseID=11293&NewsAreaID=2

395 http://movies.uk.samsungmobile.com/

396 Samsung Mobile press release, 19 March 2009, http://uk.samsungmobile.com//footer/press/pressReleasesView.do

397 The Swiss aggregator Acetrax (http://www.acetrax.com/) says it holds licences for 10,000 titles but it only offered 500 in the first quarter of 2009. The catalogue of titles available for sale or rental will probably reach 2,000 at the end of 2009.

398 *Screen Digest*, July 2009, p. 219.

"innovative, high-performance hardware and software solutions for companies in the new television value chain, including telecom operators, Internet Service Providers, retailers, content owners, strong consumer brand owners and more".[399] Its customers are IPTV triple-play operators (such as Neuf Cegetel, Tele2, AOL and SFR in France and Saunalahti/Saunavision in Finland), television channels (TF1) and network operators (TDF, Eutelsat). The company mainly provides technological services but also produces top-of-the line reception devices (the NetBox range and the iPlayer). In particular, the company has played an important role in the launch of high-definition DTT services in France and is involved in the technical preparation of DTT pay-TV services. Netgem is also exploring audience measurement solutions in the context of the new services and set up a joint subsidiary with the French audience measurement institute Médiamétrie in July 2006.

4.1.11.1. Technical solutions for VoD

In connection with its activities focusing on the search for innovative solutions, Netgem has quite naturally begun research into solutions for VoD services. For example, on 5 April 2006 it announced a partnership with Microsoft and the specialist company RedBee to supply VoD solutions to British Internet access providers.[400]

The most recent device offered by Netgem is its Netbox 8160. This is an interactive device with an intuitive 3D interface. It is available to all households with a TV aerial and broadband access plus a storage capacity of 160MB. The service offered by Netgem provides access to DTT channels in HD, 5 DTT pay-TV channels (Eurosport, Planète, Paris Première, LCI and TF6) and three VoD catalogues.[401]

4.1.11.2. The acquisition of Glowria

Netgem took an important strategic step forward by announcing on 6 December 2007 its acquisition of Glow Entertainment Group SA, which is one of the main players on the French VoD market and is better known under its Glowria brand.[402]

Glowria develops IT solutions and has introduced in France a system of renting DVDs via the Internet along the lines of the American service Netflix. It launched its own Internet VoD service in July 2006. Since the end of 2006, it has also operated as a white brand, especially for Neuf Cegetel, FNAC, Dartybox, SFR and Allociné. It has established partnerships with most filmmakers and distributors (including Warner Bros., Universal, Sony Pictures, Paramount, EuropaCorp, Pathé, Gaumont, TF1, M6, MTV and Cartoon Networks). At the end of 2006, it consolidated its presence in Germany by taking over the two German companies DiViDi and InVDeo, which are now part of Glowria GmbH.

According to Netgem, *"bringing the two companies together will enable their partners and customers to be offered comprehensive solutions in the most promising segments for the development of digital television, VoD, high definition and DTT"*.

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399 Home page of the Netgem site, consulted on 16 December 2008, http://www.netgem.com/en/index.php

400 Netgem press release, 5 April 2006: http://www.netgem.com/admin/news-info/docs/RedBee_Netgem_MS_EN.pdf

401 Presentation (in French) at http://www.netbox.fr/

402 Netgem press release (in French), 6 December 2007: http://www.netgem.com/admin/news-info/docs/Netgem_Glowria.pdf

Following its acquisition by Netgem, Glowria interrupted its development in Germany by selling off Glowria GmbH to its competitor Video Buster Entertainment Group Holding AG (which operates a VoD service)[403] but has developed its strategy of entering into partnerships with other operators to market its service as a white brand. On 9 June 2008, the company announced a partnership with the Carrefour Group, France's leading distributor and the world' second largest, to develop and manage Carrefour VoD platforms in France, Spain and Belgium. The Carrefour VoD service was launched on 2 June 2008 in Spain and Belgium and in France in September 2008. In connection with the launch of this service, Glowria set up a new platform for storing and distributing content and for multi-country and multi language billing.

4.1.11.3. Audiovisual content rollout

On 3 October 2008, Netgem announced the takeover of the assets of the CPFK group, the insolvent French leader in the DVD rental field. Those assets consisted of a network of 500 franchise video clubs under the Video Futur name and 1,900 distribution machines (under the trade names Video Futur, Cinebank and Videopilot). This purchase also enabled it to combine VoD, online rentals and in-store rentals.

On 18 November 2008, Netgem announced a new partnership with FNAC with the aim of launching a new television service called Pack TV, which combines access to digital terrestrial television (including channels in HD) and 5 additional thematic channels. According to Marc Tessier, former President of France Télévisions and now Director General of the Netgem Group, "each channel will have its own environment and, if it so wishes, be able to put forward its own recommendations and offer its own interactive service or catch-up service, etc".[404] The package also includes direct access from a television set to a VoD service developed jointly by FNAC and Glowria. The service consists in an initial selection of 1,000 titles in the catalogue of 5,000 accessible as part of the Internet VoD service available at the FNAC.com portal. The service offers two thematic channels: "FNAC avant-première" (recent films available for the first time on television) and "Vidéoclub FNAC" (thematic groupings, exceptional films, etc). Pack TV is marketed at €259.90, or €149.90 when the customer takes out a one-year subscription to the Total TNT service at €5.90 a month. The VoD service employs the traditional pay-per-view method, with prices ranging from €1.00 to €4.90. Free-of-charge VoD offerings are being discussed with rights holders, and SVOD models with monthly subscriptions are being considered. According to Marc Tessier, "We believe this key approach meets the expectations of most French people, who do not want to commit themselves to paying large sums of money and over a long period. Everyone has their own personal preferences: some people want subscriptions at high cost but we have chosen the option of television à la carte".

The quarterly financial reports published by Netgem in 2008 do not provide any breakdown of the figures by individual activity, so it is not possible to establish the proportion of its 2008 sales revenues generated by Glowria. The main financial elements are as follows:

- Netgem generated consolidated revenues of €70.3 million and its projected sales for 2008 are 85 million (+ 20.9%);
- Glow Entertainment Group generated an operating income of €5.9 million in 2007 and sustained a net loss of €6 million;

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[403] "Konzentrationsprozess im Verleihmarkt schreitet voran. Video Buster übernimmt Online Verleih von Glowria", Video Buster press release, 14 January 2008, http://www.videobuster-holding.de/

[404] Interview with Marc Tessier, Director General of the Netgem Group, *Ecran Total*, 10 December 2008, pp. 16-17.

- the sales revenues of the German subsidiary Glowria GmbH were in the order of €1.5 million in 2007.

Table 24 : Glow Entertainment Group (2003-2007)

	2003	2004	2005	2006	2007
Operating income (EUR thousands)	253	1,489	2,912	4,297	5,944
Growth		488.5%	95.6%	47.6%	38.3%
Net profit before tax	-973	-3,255	-2,522	-6,429	-5,890
Changes in net profit		235%	-23%	155%	-8%

Source: Glow Entertainment Group

The publication of the sales figures for the first six months of 2009 has made it possible to highlight the tremendous success of the new content and services unit (VideoFutur), which, since 1 January 2009, has grouped together the multi-channel activities (own-run and franchised shops, vending machines, web and IPTV) for the distribution of digital video in the various formats (DVD, Blu-ray, VoD, HDTV, etc). The sales for this unit grew by 106% to 7.5 million, which was mainly due to the changes in the sphere of operation in 2008.[405]

In June 2009, Netgem introduced the Netbox, a new set-top box that can be connected to the Internet via a subscription to any of the Internet access providers.[406] At the same time, Netgem launched its first multi-service offering of pay-per-view entertainment, combining high-definition TV, video on demand and DVD rentals. Through its Netbox, the company distributes the channels of the Canal+ Group and the radio channels of the distributor Deezer.[407]

4.1.12. Other IT service companies

Other European companies specialising in IT services and technological solutions have also become providers of VoD services, many of which are atypical. Mention might be made in particular of the following.

4.1.12.1. Arts Alliance Media Ltd

Arts Alliance Media Ltd is a British company established in 2003. It is mainly known for its role as a “third party” in the process of digitising cinemas. In particular, it has been given the responsibility by the UK Film Council of completing the digitisation of 240 cinemas as part of the digital Screen Network project. Apart from cinema digitisation, it also operates in the field of film mastering and has a presence on the market for the distribution in digitised cinemas of “alternative content”, by which is meant films of events, such as a Queen concert or “ABBA: The Movie”.

In January 2007, Arts Alliance Media launched Vizumi, an Internet film download service that was one of the rare European services to offer both download to view and download to own. The service was suspended on 10 December 2008 but Arts Alliance Media continues to

[405] Netgem press release, 9 July 2009. http://www.netgem.com/admin/news-info/docs/CA1ersemestre2009.pdf

[406] Netgem press release, 18 June 2009.

[407] Netgem press release, 22 June 2009.

manage the Vizumi Network, which functions as a content aggregator by acquiring VoD rights, which are then exploited with other partner services, such as LoveFilm, Sofa Cinema (the Guardian newspaper's service managed by LoveFilm), Comedy Classics (a service managed by Vizumi offering the Fremantle Media catalogue of comedies) and Archos. Vizumi's agreements with five of the six Hollywood majors, independent filmmakers or ITV DVD (Granada ventures) enable it to manage a catalogue of 2,500 films.

Arts Alliance Media Ltd is also one of the main shareholders of LoveFilm, a leading British company on the rental DVD and rental VoD market.

4.1.12.2. 7digital Ltd

7digital Ltd is a service company specialising in online commerce solutions. It has set up its own online music sales service. In the VoD field, its main achievements include its development of the first system for downloading full-length films for the MTV channel in 2005 and its development of the services of Channel 5 and the Now Play It music training website. It is also planning to build up the demand for content by independent producers. It has developed the British Film Institute's "Film Download" service and seems to be the provider of this service.

4.1.12.3. Sat - Satellite and Transfer GmbH

SaT - Satellite and Transfer GmbH is a German company specialising in satellite transmission and has created a VoD service transmitted by the ASTRA satellite. The service requires a set-top box and a compatible PC to access the content and download it onto the hard disk, as well as a DVB-S card. Films are transmitted on a daily basis (in push-VoD mode) to the computer of the customer, who can place orders via a carrousel. The catalogue comprises around thirty films available at prices between 1.50 and 3.00 euros.

4.1.12.4. MC&C GmbH

MC&C GmbH is a Swiss company founded in 2005 and specialises in Internet solutions in the field of marketing. In 2006, it launched the Clicmovies site, which is accessible in Switzerland, France, Luxembourg and Belgium in partnership with DivX Inc., the American company that supplies the DivX multimedia player.[408] The DivX codec is quite popular in the case of the unauthorised use of films, in particular for DVD ripping. To our knowledge, the Clicmovies project is one of the rare VoD services to have adopted the DivX multimedia player in connection with its legal offering. MovieClick is also one of the rare download-to-own VoD sites in Europe.

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408 "DivX and MC&C Announce New Content Partnership For Video-On-Demand Content in Europe", DviX press release, 2 December 2006, http://investors.divx.com/releasedetail.cfm?ReleaseID=210482

Table 25 : On-demand services offered by specialised service companies in Europe (December 2008)

Catalogue publisher	Country	Name of service	Reception	Network	Type of service	Business model	Archives	Films	Shorts	TV progs	Others
7digital Ltd / BFI	GB	BFI Download Space	GB	Internet	Rental VoD	Pay per view	X	X			
ABRA MEDIA	PL	TV Fly	PL	Internet	Catch-up TV	Free of charge				X	
Arts Alliance Media Ltd	GB	Vizumi	GB	Internet	Rental VoD / Download-to-own VoD	Pay per view		X			
Lobster Films SAS	FR	Europa Film Treasures	Global	Internet	Free-of-charge VoD	Free of charge / Public service / Sponsorship	X	X	X		
MC&C GmbH	CH	ClicMovies	BE, CH, FR, LU	Internet	Rental VoD / Download-to-own VoD	Pay per view		X			
Norgefilm AS	NO	Filmarkivet	NO	Internet	Rental VoD	Pay per view	X	X	X		
Norgefilm AS	NO	Filmarkivet (Online.no)	NO	IPTV	Rental VoD	Pay per view	X	X	X		
SaT - Satellite and Transfer GmbH	DE	My VoD	DE	Satellite	nVoD	Pay per view		X			
Vodeclic SARL	FR	Vodeclic	Global	Internet	Free-of-charge VoD	Free of charge					x

Source: European Audiovisual Observatory

4.1.13. Review of the situation – The implications of diversification and of interoperability in relation to competition on the VoD market

4.1.13.1. The implications of diversification

The equipment manufacturers regard VoD as a means of diversifying the appeal of their devices by offering more and more content that could help to broaden their customer base, which has tended to be limited by their specialisation in video games (Microsoft, Sony, Nintendo) or online music (Apple/iTunes Store). This strategy is explained by Stephen McGill, Microsoft's head of UK Gaming and Entertainment:

> *"It might take time for people to perceive that on an equal footing, but a lot of what we're doing is around broadening our appeal to kids, to women, to girlfriends, mums and dads to a degree – whether that's gaming or broader entertainment."* [409]

The availability of delinearised content constitutes real challenges for the makers of games consoles that want to transform them into family living-room media centres. The development of a console market that not only caters for hardcore gamers appears all the more necessary as the best-informed observers conclude that consoles might be abandoned by those dedicated gamers who find that top-of-the-line PCs provide better platforms for games that require high-end performance.[410]

In the competition between console manufacturers, Apple enjoys certain advantages: although it depends on a proprietary player, the system is more accessible since the iTunes Stores are accessible both from a PC and Apple devices (MACs, iPods, iPhones, Apple TV). This greater accessibility enables Apple to dominate the online market and will probably lead it to extend its film offering beyond the five English-speaking countries to which it is currently confined, subject to the agreement of the major studios. The inclusion of films in the German Tunes Store, in April 2009, is a first indication that Apple's ambitions go beyond the English-speaking markets.[411]

As Screen Digest has found[412]*,* when Apple opens a new market it can sell films at prices that are competitive with existing services or are relatively low compared with DVDs. There are two factors that support this conclusion:

- Apple's domination on the music market, which provides it with an international base, strengthens its position in negotiations with the studios and enables it to obtain more favourable terms and conditions;
- low margins on sales of content are not a major concern for Apple (nor, incidentally, for Microsoft) since it can make up for them with the margins it makes on sales of its devices. That may enable it to charge more competitive prices than those charged by the

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409 "Video downloads will help broaden Xbox 360's appeal", *gamesindustry.biz*, 11 December 2007, http://www.gamesindustry.biz/articles/video-downloads-will-help-broaden-xbox-360s-appeal

410 "Gamers To Desert Consoles For PCs Say GFK", *Smarthouse*, 22 October 2008. http://www.smarthouse.com.au/Gaming/PC/W2V7C9L4

411 "Apple Premieres Movies on the iTunes Store in Germany", Apple press release, 16 April 2009. http://www.apple.com/pr/library/2009/04/16itunes.html,

412 "iTunes drives online movie sales", *Screen Digest*, July 2008, p. 195.

open services. Screen Digest provides the example of the film “The Bourne Supremacy”, which is sold for £6.99 on the iTunes Store and £16.99 as download-to-own VoD on the Coolroom site.

At the beginning of December 2008, with the approach of the festive season and the end of the year, the figures battle was raging, with manufacturers aiming to present themselves as market leaders in order to boost their sales. On 4 December 2008, David Reeves, President of Sony Computer Entertainment Europe (SCEE) announced that the PS3 was ahead of the Xbox 360, having sold 300,000 more units in the countries using the PAL standard.[413] That announcement was quickly tempered by the information from GfK Europe that the Xbox 360 had sold one million more units than the PS3 on the five key European markets (United Kingdom, France, Germany, Italy and Spain).[414] Whatever the case may be, the most recent data permit strong sales to be predicted for the second half of 2008: according to GfK, August 2008 sales in the United Kingdom increased by 29% in volume and 27% in value over August 2007.[415]

In addition, for the three video game giants (Sony, Microsoft and Nintendo) the success of Apple’s iPod and iPhone poses a threat in their own territory. The specialised press echoes the statements by John Geleynse, Apple`s Director of Technology Evangelism, that the iPhone is more a games console than a telephone and is accordingly likely to be a challenger to the Nintendo DS.[416] The fact that games are the most popular of the applications offered by the iTunes Store’s App Store is said to support this view[417], as does the growing penetration of Apple products among teenagers, who make up a demographic group targeted by the makers of consoles and video games.[418]

The entry of the games console manufacturers into the VoD market is thus based on a number of important considerations. However, they will have to contend with economic constraints on this market. Firstly, the VoD margins are lower than those generated by video games, which could adversely affect their overall profitability. Secondly, as negotiations with national rights holders (especially national film producers) might prove difficult, these players will have to set up ad hoc operational structures to penetrate the market or use content aggregators, as some telecommunications operators have in fact done. In addition, the majors, which have been taught to be cautious by the experience of the national film pay-TV monopolies in Europe, could be tempted to diversify their VoD distribution partnerships in order to avoid the risk of being confronted in the end with an overwhelmingly dominant player that might be able to dictate its prices, as in the case of the music industry.

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413 “Sony: We are ahead of Xbox”, *MCV*, 4 December 2008, http://www.mcvuk.com/news/32597/Sony-Were-ahead-of-Xbox-in-Europe

414 “Xbox 360 leads PS3 by 1m in Europe”, *Eurogamer*, 16 December 2008, http://www.eurogamer.net/article.php?article_id=344133

415 “Games Consoles exhibit impressive UK growth across the board”, GfK press release, 11 November 2008, http://www.gfkrt.com/news_events/market_news/single_sites/003164/index.en.html

416 “Apple: ‘the iPhone is a gaming console’”, *Endgadget*, 12 December 2008; “Apple declares iPhone a challenger to Nintendo DS”, *AppleInsider*, 12 December 2008, http://www.appleinsider.com/articles/08/12/12/apple_declares_iphone_a_challenger_to_nintendo_ds.html

417 “Briefly: Android sales vs. App Store, Intel notebook cooling”, *AppleÎnsider,* 23 October 2008, http://www.appleinsider.com/articles/08/10/23/briefly_android_sales_vs_app_store_intel_notebook_cooling.html

418 “Apple pulling away from competition in teenage mindshare”, *AppleInsider*, 7 October 2008, http://www.appleinsider.com/articles/08/10/07/apple_pulling_away_from_competition_in_teenage_mindshare.html

4.1.13.2. The Digital Entertainment Content Ecosystem project: new phase in the interoperability debate or a strategy to isolate Apple?

Another dimension of the competition taking place between the manufacturers is the debate on a copy-protection standard, which could be an alternative to that of Apple's iTunes. On 12 September 2008, the creation of the Digital Entertainment Content Ecosystem (DECE), a new consortium set up on the initiative of the Sony Corporation, was announced. This brings together virtually all the IT and equipment manufacturing giants (Microsoft, Intel, Philips, Toshiba, Cisco, HP and Alcatel-Lucent) and several of the Hollywood studios (Warner Bros., Fox, Lions Gate Entertainment, NBC Universal and Paramount), Microsoft and VeriSign, a company specialising in Internet security, retailers (e.g., Best Buy Co Inc.) and telecommunications companies (e.g., Comcast).[419] The aim of this consortium, the work of which will be set out in detail at the January 2009 Consumer Electronics Show, is to provide a "uniform digital media experience" that will permit the interoperability of devices and websites and enable consumers to copy content onto household playback devices and burn their content to physical media.

The plan will also provide consumers with a "rights locker", or virtual library, where consumers will be able to store and retrieve the programmes they have acquired. The development of specifications and a logo that will be placed on devices that meet them has also been announced.

The fact that the consortium is headed by Mitch Singer, Chief Technology Officer at Sony Pictures, and that Apple is not part of the consortium was immediately interpreted by the press as a Sony manoeuvre to counter the growing success of Sony's iTunes player.[420] According to Mitch Singer, quoted by Reuters, "the new digital framework would turn Apple Inc's 'closed' iTunes model on its head. This is very different from the Apple ecosystem. We encourage Apple to join the consortium. We don't ever anticipate Apple going away or this consortium replacing it". DECE has opened a home page.[421]

4.1.13.3 New questions on interoperability and opening up systems

The interoperability debate such as the one launched by Sony, naturally extends beyond the rivalry between major manufacturers, especially as it belongs to the debate on the conflicting aspects of the consumer's rights and the fight against the pirating of works. However, in the light of the manufacturers' strategies it is hard not also to interpret it as an attempt to destabilise the strategy of the market leader Apple, which has been trying to review its DRM strategy since 2007, at least in the field of music. The press reports that negotiations are taking place between Apple and three top recording companies on abolishing the iTunes DRM system, as has happened with the Amazon online music service, in order to enable files to be read on devices

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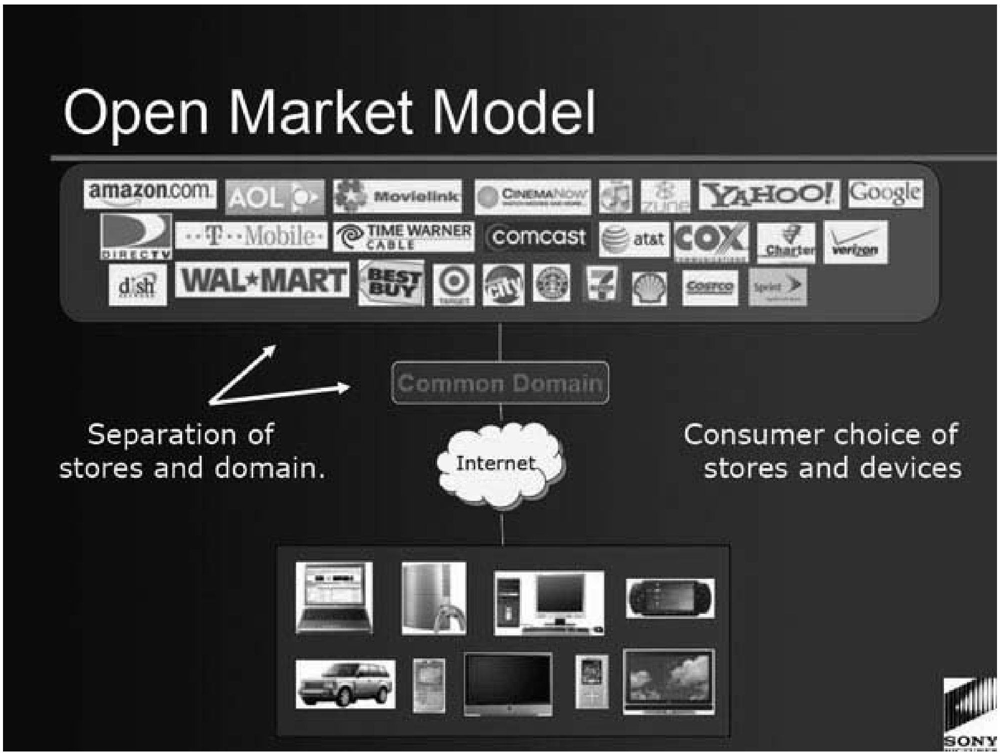
419 "Media group to create new digital video 'ecosystem'", Reuters, 12 September 2008, http://www.reuters.com/article/technologyNews/idUSN1234778920080912?sp=true.
See also "Studios form digital-download 'ecosystem'", Reuters, 15 September 2008, http://www.reuters.com/article/industryNews/idUSN1534200820080915

420 See, for example, "Video industry plans escape from iTunes with 'open' standard", *AppleInsider*, 15 September 2008, http://www.appleinsider.com/articles/08/09/15/video_industry_plans_escape_from_itunes_with_open_standard.html

421 http://www.decellc.com/

Graphic 38 : **The Apple and DECE models, according to Sony.**



Source: Sony presentation reproduced in AppleInsider*, 15 September 2008.*

other than iPods and iPhones.[422] However, no agreement has been confirmed since the initial announcement. It seems the major labels are pursuing different approaches as far as marketing models are concerned. In particular, Warner would like the iTunes Stores to introduce variable pricing, which would make it possible to get away from the standard prices for tracks introduced by Apple since the launch.[423] The iTunes Stores already have variable pricing for their video offerings but it seems clear that such a change in Apple's practices in the field of music, which would definitely be interpreted as a victory of the majors over Apple, would not be without its impact on practices as far as television programmes and films are concerned. On 6 January 2009, Apple announced the abandonment of its DRM system for music tracks following an agreement with the record majors[424] and introduced three different price points for songs. The statement came at the same time as an announcement concerning the possibility of downloading songs directly onto an iPhone via the WiFi network without a connection to a computer. The abandonment of DRM thus appears to have been the key to the online services via WiFi, which the launch of the iPhone 3GS in June 2009 was to extend to films and videos. By sacrificing the DRM, Apple opened a new functionality, and this will probably be decisive if it is to establish its hegemony on the mobile phone market in the medium term.

New questions on interoperability and the limits to the type of development based on a closed system like Apple's have emerged in the context of the success of the iPhone,

A technical but strategically important question is what multimedia players are supported by mobile telephones. Most of the free audiovisual services available on the Internet use the Adobe Flash Player but this format is currently not supported by all mobiles, especially the iPhone. The fact that the iPhone version of the Safari browser does not support the Flash Player has been criticised since its launch.[425] When Apple announced in June 2007 that YouTube was available on the iPhone, it appeared that only videos with the H264 codec supported by Apple were available.[426] In June 2008, Adobe Systems executives announced the company was working on producing a compatible version but the specialist press expressed scepticism regarding Apple's willingness to accept an open system. Adobe Systems announced in June 2009 that the beta version of Flash 10 compatible would be available in October 2009.[427] This version should be compatible with the following operating systems: Google Android (the delivery by Sony Ericsson of which has also been announced for October 2009), PalmWEb OS, Windows Mobile and

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422 "Sources: Apple, music labels talk DRM-free songs", *CNET News*, 19 November 2008, http://news.cnet.com/8301-1023_3-10102414-93.html

423 "Inside the Major Label Negotiations with iTunes", *Hypebot*, 14 December 2008, http://www.allaboutjazz.com/php/news.php?id=26953

424 "Changes Coming to the iTunes Store", Apple press release, 6 January 2009, http://www.apple.com/pr/library/2009/01/06itunes.html

425 "iPhone Adobe Flash Support Coming", *Gizmodo*, 5 July 2007, http://gizmodo.com/275317/iphone-adobe-flash-support-coming

426 It may be noted that at least two applications available from the App Store enable videos available in the Google catalogue to be downloaded onto the iPhone: myVideos (Daniel Lüthi) and Video Downloader iWoopie Lite (Accessport Inc.). According to the developer, Apple has refused to publish the 1.6 version of myVideo if the download function is not suppressed. MyVideo also states that it permits access to Dailymotion, Veoh and Break, as well as sharing sites for adult videos. See http://www.myvideo2iphone.com, undated, consulted on 27 July 2009.

427 Adobe Systems Earnings Call, 16 June 2009, http://www.adobe.com/aboutadobe/invrelations/09q2analyst/, "Adobe Flash Coming To Apple's iPhone – Maybe, Someday", The Business Insider, 17 June 2008, http://www.businessinsider.com/2008/6/adobe-flash-apple-iphone-maybe-someday.

"Adobe's Narayen Says Flash on IPhone Is a Challenge", *Bloomberg.com*, 30 January 2009, http://www.bloomberg.com/apps/news?pid=20601087&sid=a19HIOO8r_6c

Nokia S60/Symbian.[428] Compatibility with the Apple iPhone MacOS system has been discussed on several occasions in the specialist press. After the announcement in June 2008 by the President of Adobe Systems that his company was working on a solution, and following much speculation in the specialist press concerning Apple's willingness to accept the Flash Player, co-operation between the two companies was confirmed in January 2009.[429] At the end of July 2009, Apple's acceptance of the Flash 10 compatible had not yet been confirmed.[430]

Another strategic question (but one that has also begun to be studied by the regulators) is the possibility of an abuse of a dominant position or an infringement of the principle of pluralism as a result of the operation of "Apps Stores". Here, too, Apple finds itself in the dock. The process that it operates for the selection and inclusion in the App Store of applications developed by third parties was quickly criticised by developers and the specialist press.[431] Hackers and developers challenged by Apple have established the practice of "jailbreaking", that is to say making Apps not accepted by Apple available or commercialising them via websites or via an unauthorised App such as Cydia.[432] Apple puts forward various arguments, such as security, the protection of morality and respect for copyright, to justify rejecting certain applications. In particular it insists that jailbreaking is an infringement of its intellectual property rights and that the employment of this practice by the user is a breach of the software license agreement between him or her and Apple.[433] In February 2009, the Electronic Frontier Foundation accordingly decided to ask the U.S. Copyright Office to authorise the practice of jailbreaking as part of the 2009 DCMA rulemaking.[434]

This debate took a new turn in August 2009 when Apple refused to include Google Voice, a new application developed by Google Inc. that permits the portability of telephone numbers. In response to this refusal, Google complained to the FCC, calling on the electronic communications regulator to intervene on the issue of app stores.[435] On 31 July 2009, the FCC asked Apple, AT&T and Google for explanations.[436]

Insofar as they pose questions of principle with regard to technological developments, these

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428 "Adobe's Flash 10 for Android: A big win for mobile web apps", *Digitalbeat*, 22 June 2009, http://digital.venturebeat.com/2009/06/22/adobes-flash-10-for-android-a-big-win-for-mobile-web-apps/

429 "Adobe's Narayen Says Flash on IPhone Is a Challenge", Bloomberg.com, 30 January 2009.

430 "Adobe's Mobile Flash to get accelerometer, multi-touch support in 2010", *DigitalBeat*, 21 July 2009, http://digital.venturebeat.com/2009/07/21/adobes-mobile-flash-to-get-accelerometer-multi-touch-support-in-2010/

431 See in particular "Rejected By Apple, iPhone Developers Go Underground", *Wired*, 6 August 2009. http://www.wired.com/gadgetlab/2009/08/cydia-app-store/

432 See the *Wikipedia* article "Jailbreak (iPhone OS)" , http://en.wikipedia.org/wiki/Jailbreak_(iPhone_OS) (consulted on 11 August 2009).

433 Before the U.S. COPYRIGHT OFFICE, LIBRARY OF CONGRESS, "In the matter of Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, Docket No. RM 2008-8, Responsive Comment of Apple Inc., In Opposition to Proposed Exemption 5A and 11A (Class #1)" http://www.copyright.gov/1201/2008/responses/apple-inc-31.pdf

434 "Apple Says iPhone jailbreaking is illegal", Legal analysis by Fred von Lohman , Electronic Frontier Foundation, 12 February 2009, http://www.eff.org/deeplinks/2009/02/apple-says-jailbreaking-illegal
Before the U.S. COPYRIGHT OFFICE, LIBRARY OF CONGRESS, "In the matter of Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies", Docket No. RM 2008-8, Comment of the Electronic Frontier Foundation, http://www.eff.org/files/filenode/dmca_2009/EFF%2BRM%2Bproposals.pdf

435 "Apple Rejects Google Voice App, Invites Regulation", *Wired*, 28 July 2009, http://www.wired.com/epicenter/2009/07/apple-rejects-google-voice/

436 http://www.fcc.gov/ftp/Daily_Releases/Daily_Business/2009/db0731/DA-09-1737A1.txt

discussions clearly extend beyond the case of Apple alone and cover a much wider area than the activities of on-demand audiovisual services. However, the way in which they are dealt with by the American regulators may have a direct impact on the market for on-demand services. For example, it will be very interesting to find out if Apple will accept an app currently being developed that should enable Netflix to offer access to its VoD service (a competitor of the iTunes Store) on the iPhone.[437]

It also remains to be established to what extent the European regulators could also be asked to deal with these matters.

[437] "Netflix on the iPhone Will Work - But Only With Offline Mode", *Wired*, 4 August 2009, http://www.wired.com/epicenter/2009/08/netflix-on-the-iphone-will-work-but-only-with-offline-mode/

4.2. THE STRATEGIES OF THE TELECOMMUNICATIONS AND CABLE OPERATORS

4.2.1. The telecommunications network operators

The telecommunications network operators play an important role in the establishment of VoD services and are at the forefront with regard to their operation. Most of the incumbent network operators and a number of Internet access providers have included a VoD service in their broadband offerings.

4.2.1.1. The benefits of triple-play services for network operators

Since 2003, the European broadband network operators have developed a strategy for the provision of IPTV pay-TV services, which normally comprise a VoD service in addition to the distribution of television channels. For a network operator, there are various advantages in being able to offer IPTV in addition to telephone and Internet access services:[438]

- a reduction in the churn rate. It appears that churn rates are lower in the case of pay-TV than in the telecommunications services field. The provision of a pay-TV service in connection with a multi-service offering thus makes it possible to consider reducing the churn rate;
- the development of average revenue per user (ARPU): pay-TV and VoD services make it possible to increase subscription revenues and thus reduce fixed costs in a more balanced way;
- the greater attraction of the service;
- the long-term possibility of launching pay-TV services at higher prices (premium channel packages, high-definition VoD services, etc.).

In order to position themselves on the pay-TV and VoD market the network operators have been able to enjoy various competitive advantages:

- their economic size and financial capacity are on an altogether different scale from most sector players, including the large cable groups. Out of the 25 top multimedia convergence groups operating in Europe in 2007[439], there are 17 telecommunications companies compared with just two cable groups. With a turnover of 6.1 billion and 6 billion euros respectively, Liberty Global Inc. and Virgin Media hardly match up to the telecoms operators of small countries such as Swisscom AG, Portugal Telecom or Belgacom. The principal broadcasters – British Sky Broadcasting, the BBC or the Canal+ Group – are themselves lightweights compared with the telecommunications groups, which have been in their business a long time and possess much higher long-term investment capabilities;

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[438] See in particular on this subject: “IPTV Business Models. Profit and loss in the telco TV space”, *Screen Digest*, London, 2008.

[439] European Audiovisual Observatory, *Yearbook 2008, Vol. 2, Trends in European television,* Strasbourg, 2008, pp. 12-15-

- the digitisation of the cable networks is a slow and costly process, so the telecommunications operators have been able to pip the cable operators to the post with regard to launching VoD services while the cable operators struggled to make a profit from any pay-per-view service they managed to introduce;
- the broadband networks enable interactive services to be provided that benefit from the ability to offer genuine VoD services in cases where the absence of a return path limits the abilities of the digital satellite package operators (the traditional leaders of pay-TV), such as those operating in the United Kingdom and Ireland (BSkyB), France (Canal+ Distribution, formerly Canalsat), Germany (Premiere/Sky Deutschland), Italy (Sky Italia), Spain (Canalsatelite), etc;
- finally, the telephony operators generally have good experience in managing subscriptions.

The Internet access providers and distributors of ADSL television services are expanding their activities but are already subject to an economic concentration process. In France, whereas it was possible in 2007 to subscribe to access services that offered IPTV from nine different operators, only five of these services were still available on 1 September 2008 (Free, Orange, SFR, Alice, Darty), a sixth subsequently being launched by the Bouygues group. In Italy, Tiscali suspended its service on 31 December 2008 and the press reported in March 2009 on the possible takeover of Tiscali UK by BSkyB.

4.2.1.2. From TV channels distribution to provision of TV channels

Some telecommunications operators have gone a step further by setting up their own television channels and attempting to reserve exclusive distribution rights for themselves.

- in Belgium, Belgacom was the first operator to do this by acquiring the right to the football championship in order to launch Channel 11. This enabled it to sign up 300,000 subscribers at the end of 2007 and 443,000 at the end of September 2008;
- in the Netherlands, Tele2 did the same with the rights to the Dutch championship but the venture did not produce the desired results and the company sold its rights for the 2008 season to its competitor KPN, an operator of both IPTV and DTT services;
- in Cyprus, the incumbent operator Cyta has launched five exclusive channels as part of its IPTV offering: three sports channels, one film channel and one documentary channel;
- in France, France Télécom launched the channels Orange Sport and Orange Cinema Series in 2008. However, on 23 February 2009 the Paris Commercial Court, to which two other operators had appealed, put an end to the exclusivity of Orange's IPTV distribution service.[440] However, this judgment was set aside by the Paris Court of Appeal on 14 May 2009, thus enabling France Télécom to relaunch its projects.[441] However, the matter has not yet been finally decided as SFR has lodged an appeal on points of law with the Court of Cassation.[442] The debate on exclusive distribution rights was intensified in July 2009 when the French competition authority Autorité de la concurrence issued a consultative

[440] "Orange perd l'exclusivité sur sa chaîne Orange Sport", *Les Echos*, 24 February 2009.

[441] "Orange va pouvoir reprendre la vente de sa chaîne sportive", *Les Echos*, 15 May 2009.

[442] "SFR va se pourvoir en cassation sur le foot contre Orange", *Les Echos*, 28 May 2009.

opinion calling on the government to legislate on the subject;[443]

- in Germany, Deutsche Telekom, in partnership with the media group Constantin Medien AG, announced in April 2009 that it was going to launch a channel called LIGA Total!, which would offer all the Bundesliga matches.[444] The operator had thus succeeded in carrying off a project that had been planned in 2005 and had given rise to a great deal of controversy. The service will be available on an exclusive basis to subscribers to the IPTV service and to T-Mobile customers.

4.2.1.3. On-demand services from telecommunications operators

As regards on-demand audiovisual media services, access to the catalogues is clearly the main difficulty for the telecommunications operators, none of which has any historical experience of rights management. They have various possibilities open to them:

- setting up their own service by dealing with various providers, especially the American majors, to compile a catalogue. This strategy is most commonly pursued by the IPTV operators;[445]
- entering into agreements with catalogue providers whose catalogue(s) are made available with the relevant branding. This practice is more widespread in France than elsewhere in Europe. Apart from their own service, the telecoms operators also distribute services provided by TV broadcasters, such as CanalPlay (Canal+ Group), M6Vidéo, TF1 Vision or content aggregators (Glowria, Taffy, Kaze, Vodeo, i-concerts, UniversCiné, etc);
- entering into agreements with television channels to provide catch-up TV services. This strategy has been adopted by Belgacom (14 services offered), Telefónica 02 in the Czech Republic (5 services), T-Home in Germany (24 services), Orange TV in France (Rewind TV service offering the programmes of the channels of France Télévisions), Tiscali in the United Kingdom (4 services), ON Television in Greece (programmes of the main Greek channels), Fastweb in Italy (8 services), Lattelekom in Latvia (5 services), Tele2 in the Netherlands (1 service), Alibox in Norway (2 services) and telia in Sweden (2 services).

The network operators can, in addition to their IPTV VoD service, set up an additional service accessible on the Internet. This is the case, for example, in Austria with Telekom Austria with its aonWeb service, or in Germany with the Videoload service of T-Online (Deutsche Telekom).

In France, the Alice VoD service of Telecom Italia France is accessible both via IPTV and the Internet, as is Tiscali's Now Movies service in the United Kingdom. In Hungary, T-Home has launched an Internet service parallel to its IPTV service.

Some Internet access providers that are unable to offer VoD as part of an IPTV service settle for

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443 "Avis sur les exclusivités d'accès aux contenus TV par les fournisseurs d'accès à Internet", Autorité de la concurrence press release, 7 July 2009, http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=305&id_article=1168

444 "LIGA total! – Deutsche Telekom und Constantin Medien AG schließen exklusive Partnerschaft", Deutsche Telekom press release, 23 April 2009, http://www.telekom.com/dtag/cms/content/dt/de/655186

445 In Italy, FastwebTV's catalogue included more than 5,000 titles in May, whereas Telecom Italia's Alice Home TV's catalogue included more than 3,000 titles. Source: *Trade Home Entertainment*, Settembre 2009, p.48.

offering a VoD service accessible on the Internet to their subscribers only. This is the case, for example, in Germany with Ewetel or Versatel, in Spain with Ya.com and in the Netherlands with ZelandNet.

4.2.1.4. Investment in content production and video exchange platforms

The process of diversifying into channel packaging and distribution should encourage the telecommunications operators to be become involved in the content production segment too. Telefónica created a stir in 2000 when it acquired the production company Endemol for €5.5 billion but it sold it again in 2007. However, the Spanish group still has a presence in the content sector with its subsidiary Grupo Telefónica de Contenudos.

France Télécom is without doubt the operator that has gone the furthest in the diversification of its programme resources: apart from the acquisitions of sports rights for its channel Orange Sport, the operator has also created a production subsidiary (Studio 37).

4.2.1.5 Attempts to adopt the YouTube and Hulu models

The success of Hulu and YouTube in the fields of free VoD and video sharing seems to be encouraging certain telecommunications operators that are eager to offer services for the Internet as a necessary addition to their IPTV distribution and pay-VoD presence. It is interesting to note that two European telecommunications operators (Telefónica and France Télécom) have taken a lead from these models to offer advertising-funded services: TerraTV and the Orange Vallée project (see 6.5.3. below).

4.2.1.6. VoD services for mobile telephones

The mobile telephone operators are clearly in a perfect position to launch mobile VoD services. In some cases, they have already managed to set themselves up as distributors of packages of channels to mobiles (Orange, Bouygues Telecom, Vodafone) or have reached individual agreements with channels (such as the Vodafone/Sky agreement or the Movistar/La Sexta agreement relating to the broadcasting of Formula 1). On-demand mobile services are at the gestation stage and are currently limited to sports and specific programmes:

- in the United Kingdom, Vodafone, which was the first operator to provide mobile television services, in association with Sky, has been exploring the possibilities offered by mobile VoD since 2003, reaching agreements with Sony Entertainment, but it does not seem to have succeeded in giving its VoD services the prominence they need. In December 2008, it signed an agreement with the aggregator Babelgum to make its service available on Nokia mobiles and the iPhone;[446]
- in Germany, T-Mobile, a subsidiary of Deutsche Telekom, has been offering the service LIGA total!, which provides access to all the Bundesliga matches, since August 2009;[447]
- in France, Bouygues Telecom, has been exploring the possibilities of the i-mode system for connecting mobile telephones to the Internet. Subscribers can access footage from

[446] "Babelgum To Do Over-The-Air Mobile VoD; Vodafone Partners For iPhone, Nokia", *MocoNews*, 10 December 2008, http://moconews.net/article/419-babelgum-to-do-over-the-air-mobile-vod-vodafone-partners-for-iphone-nok/

[447] "LIGA total! - Unterwegs kein Spiel verpassen", Deutsche Telekom press release, 15 July 2009, http://www.telekom.com/dtag/cms/content/dt/de/716324

the television news of TF1. January 2009 saw the launch of a VoD offering called "100% Manga", in association with Gong Media International and Nemo Agency.[448] The platform offers streamed video content as free or paid downloads (from one euro per downloaded 30 minute episode). Olivier Laury, Bouygues Telecom's Director of Multimedia Content, describes this as a "freemium" business model: "This is a free advertising funded site with access to the premium part of the site".[449] In March 2009, direct access was offered to the video sharing service Dailymotion.[450] In June 2009, also in association with Nemo Agency, SFR also offered Gong TV, a VoD service consisting of a catalogue of mangas;[451]

- in the United Kingdom, Orange PLC, the British subsidiary of France Télécom, is repositioning itself on the market for mobile entertainment services: more or less simultaneously, it announced the relaunch of its online music service Orange Music Store, now DRM-free, and the launch, on the occasion of the introduction of the Toshiba TG01 (a telephone with a large-format HD screen), of a service for downloading video content (such as extracts from the channel Sky 24/7 Football).[452] In France, the Orange TV package of channels will also be available on the same telephone but no statement has been made about whether the Orange 24/24 and 24/24 HD VoD services will be available in this connection.[453]

4.2.1.7. *The search for exclusive agreements*

When they enter into agreements with the catalogue owners or television channels to make catch-up services available, the telecommunications operators seek wherever possible to obtain an exclusivity arrangement that will set them apart from their competitors. However, the catalogue owners and television channel providers are reluctant to grant this arrangement as the penetration rate of these services is still relatively low.

Exclusivity agreements are also likely to be challenged by competitors. This happened in the case of the Rewind TV agreement setting up a catch-up TV service, which was signed in 2007 between France Télécom (Orange) and the public service group France Télévisions. In October 2007, the French Association of Network Operators and Telecommunications Services (AFORST) applied to the Competition Council for a ruling that the exclusivity obtained by France Télécom was an abuse of its dominant position by the incumbent operator, an abuse of its dominant position by the public television group and a vertical agreement between the two operators. In its decision of 7 May 2008, the Competition Council (Conseil de la concurrence)

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448 "Nemo Agency lance une offre VoD de mangas sur mobile", *LeJournalduNet*, 5 January 2009.

449 "GONG et Bouygues Telecom lancent 100 % Manga : 1ère chaîne de VoD sur mobile", *iPhone Killer*, 16 January 2009, http://www.iphonekiller.fr/2009/01/gong-et-bouygues-telecom-lance-100-manga-1ere-chaine-de-vod-sur-mobile/

450 Bouygues Telecom press release, 26 March 2009, http://www.institutionnel.bouyguestelecom.fr/notre_entreprise/communiques_de_presse/(nodeID)/20931

451 SFR enrichit son offre VoD mobile avec une chaîne de mangas", JournalduNet, 2 juin 2009, http://www.journaldunet.com/ebusiness/breve/39521/sfr-enrichit-son-offre-vod-mobile-avec-une-chaine-de-mangas.shtml

452 "Orange brings the portable cinematic experience to mobile users in the UK with the exclusive launch of the Toshiba TG01", Orange PLC press release, 9 July 2009, http://newsroom.orange.co.uk/2009/07/09/orange-brings-the-portable-cinematic-experience-to-mobile-users-in-the-uk-with-the-exclusive-launch-of-the-toshiba-tg01/

453 "Orange lance le Toshiba TG01 en Europe avec une exclusivité de mise sur le marché", Orange press release, 9 July 2009, http://www.francetelecom.com/fr_FR/presse/communiques/cp090709fr.jsp

found against AFORST, holding that, as presented, the application did not provide any compelling evidence to show the anti-competitive nature of the agreement. It rejected the application on its merits as well as the request for temporary measures. In particular, it considered that the exclusivity was limited in both scope (the partnership only related to certain programmes in the 6pm to midnight slot and excluded films, news and sport, ie "premium" programmes) and duration (two years after its actual launch). It noted that all consumers (whatever their access provider) were still able to view the programmes concerned as catch-up TV on the France Télévisions website and that the exclusivity gave the partnership an economic balance that not only satisfied the parties to the agreement but also the producers, who, for the first time ever, were paid for the distribution of their programme as catch-up TV. Finally the Council held that the programmes concerned by the exclusivity arrangement were not must-carry programmes and that the competing broadband operators could vary their service by offering their customers other interactive services (such as music catalogues) or developing partnerships with other channels, or even negotiating an agreement with France Télévisions on the broadcasting as catch-up TV of programmes not covered by the partnership in question.[454]

4.2.2. The cable operators

In most countries, the cable operators have been slower off the mark than the telecommunications operators, which have succeeded in launching on-demand services before them. The process of digitising the cable networks, which began in the 1990s, has proved slow and costly for the cable operators and led to considerable consolidation. The conversion of the networks to digital appeared essential if they were to compete in the market for triple-play services (television, Internet, telephony). As in the case of the telecommunications network operators, the provision of on-demand services is an additional means of diversification and increasing customer loyalty. A considerable proportion of the cable networks are now equipped with hybrid fibre optic/coaxial cables with a return path and individualised services such as VoD. In response to the dominant trend highlighting the IP environment, the cable operators have become promoters of the concept of interactive digital television (iDTV).[455] In the long run, the cable operators investing in the DOCSIS 3.0 standard hope to convince consumers that they are more competitive by providing a faster Internet service.[456]

The fact that the number of cable operators offering on-demand services is fairly low can be partly explained by the strong concentration in the cable sector: following the concentration that has occurred all across Europe since the end of the 1990s, there is now only one major operator in most countries.

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454 Conseil de la concurrence, decision of 7 May 2008 on practices implemented by the companies France Télécom and France Télévisions in the catch-up TV sector, http://www.autoritedelaconcurrence.fr/user/avisdec.php?numero=08-D-10

455 See for example the contribution of the European Cable Communication Association (now Cable Europe) to the consultation on "Content Online in the Single Market", 24 October 2006, http://www.cableeurope.eu/uploads/Publications/documents/pub-32_en-ecca_4792_-_cablee_answers_content_online_-_final.pdf

456 DOCSIS is a specific standard that defines the communications and operation support interface requirements for a data over cable system. It permits the addition of high-speed data transfer to an existing cable TV system. It is employed by many cable television operators to provide Internet access over their existing hybrid fibre coaxial (HFC) infrastructure.

The possible choices for the cable operators are similar to those available to the telecommunications operators. They can:

- create their own service: in Belgium, Telenet offers a catch-up television service based on the programming of its Prime channel. In Spain, ONO offers a service that includes a catalogue of films, TV series, music videos, adult programmes and a free service. In the United Kingdom, Virgin Media offers its own catalogues of films, series and music. In the Netherlands, UPC has created its own catalogues of films and television programmes. Ziggo also offers its own catalogues of films and adult programmes. In Poland, Multimedia offers its own catalogue of films;
- host catalogues provided by third parties: in Belgium, Telenet hosts a VoD service provided by the production company Studio 100. In France, Numericable proposes a VoD offering made up of 12 catalogues, including the Cineplay catalogue provided by Canal+, the TF1 Vision catalogue, the ARTE catalogue, etc;
- offer catch-up television services: in Belgium, Telenet offers such services with the programmes of the public channels (RTBF, VRT), the main private channels (RTL, ClubTV Plug TV in the French Community, channels of the VTM group and the former S.B.S group). In the United Kingdom, Virgin Media offers the catch-up television services of the BBC (BBC iPlayer) and ITV (ITV Player). In the Netherlands, UPC, Zesko and Ziggo offer the Gemist service of the public service channels.

Some cable operators, such as YouSee A/S in Denmark, supplement their VoD service available on cable by one available via the Internet.

Either for technical or financial reasons, cable operators are not always able to offer on-demand services. In that case, in order to stay competitive, cable operators can:

- either upgrade an existing pay-per-view service, even if it means suggesting it is video on demand;[457]
- or offer a PVR service (especially a digital PVR service) that permits greater consumption flexibility. Such a solution has been adopted for example by UPC Telekabel in Austria.

As in the case of the other services, few data are available on the success of on-demand services:

- the Belgian cable operator Telenet claims that its on-demand services had realised 20 million transactions (which include a VoD catalogue and various catch-up television offerings) at the end of December 2008. At the end of July 2008, the number of transactions was 10 million, which means it claims to have processed 10 million transactions in 5 months;[458]
- in the United Kingdom, Virgin Media has announced that the proportion of users of its on-demand services rose from 47% of its digital subscribers in the last quarter of 2007 to

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457 Note that a number of them sometimes do this by (probably illegitimately) presenting a pay-per-view service as a VoD service. That is the case with Cablecom in Switzerland and TV Cabo in Portugal. It is obvious that as soon as a service states the times at which a film begins the service involves nVoD / pay-per-view and not genuine VoD.

458 Telenet press release, 10 December 2008, http://hugin.info/136600/R/1276641/284338.pdf

52% in the first quarter of 2008.[459] The cable operator announced total VoD views of 516 million in 2008, with a record high of 56 million in December 2008.

- in the Netherlands, the cable operator UPC announced in November 2008 that 40% of its digital subscribers made use of its VoD service at least once a month and that VoD was becoming part of its subscribers' daily routine.[460]

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459 Virgin Media press release, 25 February 2009, http://pressoffice.virginmedia.com/phoenix.zhtml?c=205406&p=irol-newsArticle&ID=1259781&highlight=

460 "UPC adds CBS-Paramount to VoD library", *Broadband TV News*, November, 2, 2008. http://www.broadbandtvnews.com/?p=10264

4.3. THE STRATEGIES OF THE OPERATORS OF SATELLITE PACKAGES

In the large European countries (France, Germany, Italy, Poland, Spain, United Kingdom) and the Nordic countries, as well as some smaller countries like Portugal and Greece, the operators of satellite packages are leaders on the pay-TV market. In most cases, they reached this position in the 1990s by being the first to use the digital technologies, which enabled them to offer comprehensive packages made up of their own channels and channels provided by third parties. This combination of the activities of provider and distributor has enabled them to build up a solid position on the pay-TV market.

The development of on-demand services poses a considerable challenge to this group of operators: as satellite broadcasting does not permit a return path, which is essential for the interactivity of on-demand services, there is a danger of losing subscribers to other distributors (telephony operators, cable operators). This danger is all the more serious as the telephony operators and cable operators are in a position to provide triple-play services. Drawing the necessary conclusions from this threat, BSkyB, the UK distributor and supplier of television channels, has not only positioned itself on the on-demand audiovisual services market but increased its range of offerings by introducing Sky Broadband, a triple-play service available since 2006. Sky is thus able to compete with Virgin Media, BT and Tiscali on three markets: the distribution of audiovisual services, telephony services and Internet access. At 31 March 2009, Sky Broadband had more than 2 million subscribers, 1.4 million of whom (15% of the subscribers to the Sky package) subscribe to all three services.[461] According to a study by Strategy Analytics, the satisfaction rate of Sky Broadband customers is higher than that of its competitors.[462]

For the other satellite platform operators, there are three possible types of strategy for responding to this challenge:

- the creation of on-demand services on the Internet;
- the use of technologies for storing programmes on digital personal video recorders (push VoD);
- the use of technologies involving a set-top box connected to the broadband network.

4.3.1. The creation of on-demand services on the Internet

In order to acquire a rapid presence on the market for on-demand services, several satellite package operators have, since 2006-2007, launched Internet services for their subscribers, thus enabling them to supplement their offering and provide the possibility of time-shifted consumption.

In the United Kingdom, before launching its “Anytime on TV” service, BSkyB introduced the “Sky by Broadband” download service in January 2006. The service was interrupted at the end of that

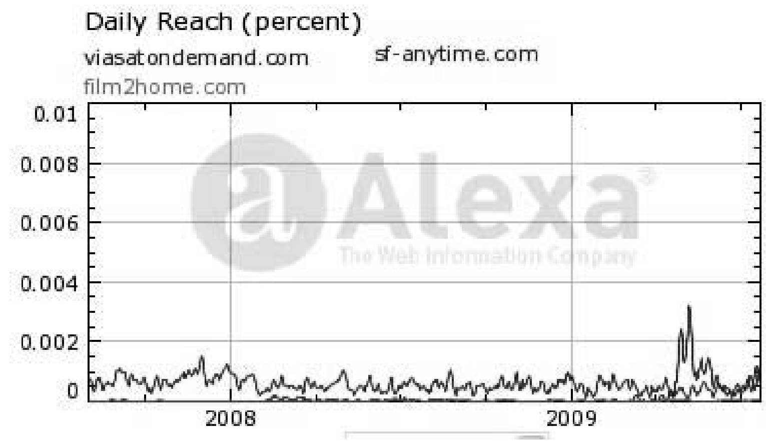
461 British Sky Broadcasting press release, Result for the nine months ended March 31, 30 April 2009, http://corporate.sky.com/documents/pdf/latest_results/Q3_09_Press_Release

462 “Sky Broadband Customers Most Satisfied, Least Likely to Defect”, *Strategy Analytics* press release, 13 January 2009, http://www.strategyanalytics.com/default.aspx?mod=PressReleaseViewer&a0=4440

year following a fault in the Microsoft DRM system and relaunched as “Sky Anytime on PC”. The service was renamed Sky Player in May 2008. Sky Player enables Sky subscribers with a broadband connection in the United Kingdom and Ireland to take out a subscription that provides them with a package of Sky channels on their PC without the need for a satellite or terrestrial aerial. Subscribers to the Sky Movies Mix mini-package can freely access 400 films. Sky Player TV has expanded the content available to include live streaming of linear channels, especially the Sky Sports channels and Sky News. Since December 2007, programmes from third-party providers, such as the Disney Channel, National Geographic and British Eurosport, have also been available. In October 2008, the service added a bridge to the BBC iPlayer catalogue to its offering. In April 2009, programmes from 31 channels of the package were available. In order to view the programmes, it is necessary to use the Sky Player, a proprietary device adapted from the Microsoft Silverlight. The system has been improved since May 2008 and permits gradual downloading (ie, the ability to start watching a programme before the download is completed). According to the *Facts and Figures* report published by BSkyB in May 2008, there had up to then been over 3 million downloads from the Sky Player since its launch in January 2006.[463]

In the Nordic countries, the two competing operators Viasat (MTG Group) and Canal Digital (Telenor Group) have launched Internet VoD services. Viasat introduced its Viasat OnDemand service in May 2007. This provides a selection of streamed films, sports events, TV series and original content from the channels provided by the operator. The system, which is accessible on a PC, is subject to geographical restrictions using the Microsoft DRM system. If the Alexa statistics are to be believed, the site did not really begin to record significant traffic until the spring of 2009, probably as a consequence of the introduction of a hybrid satellite/IPTV system in April 2009.

Graphic 39 : Daily reach of the main VoD websites in the Nordic countries (2008-2009)



Source: Alexa

In France, Canal+ Distribution, a member of the Canal+ Group, which operates the Canalsat package, launched[464] an Internet catch-up television service available to all its subscribers on

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[463] http://corporate.sky.com/documents/pdf/1ffb247d89b6490c9cd3dc7a4f24f4eb/fact_book_2008.pdf

[464] Canal+ press release, 13 November 2008, http://media.canal-plus.com/file/08/7/126087.pdf

13 November 2008. The service provides *à la carte* access to a broad selection of programmes from its thematic channels (Cinécinéma, Planète, Disney Channel, Playhouse Disney, Canal J, Filles TV, Tiji, Cartoon Network, Boomerang, TCM, Voyage, etc). The selection is updated several times a day and programmes are available up to one month after being broadcast. The service is included in the subscription at no extra charge. Initially available on a PC, it has also been accessible by satellite since June 2009 (for subscribers with a top-of-the-range Dual S or +Le Cube decoder) and via ADSL (for Free subscribers).[465]

A year after the launch of the service, the Canal+ Group provided a number of statistics on the success of the service:[466]

- 80% of the programmes broadcast are available as part of the on-demand service,
- 10 million programmes are viewed a year,
- more than one subscriber in two regularly uses the service,
- 60% of users of the service watch content on their television screen,
- 32.6% of programmes viewed are films, 23.3% series and original creations and 19.8% entertainment.

A survey conducted in October 2008 among a panel of 1,000 subscribers showed that 84% felt they benefited from the service, 91% of those who used the service intended to continue to do so and 87% thought they would miss the service if it was no longer available.

4.3.2. Push VoD via satellite

The number of on-demand services available via satellite broadcasting with a push video recording system is fairly limited. Only the following operators provide a service:

- In the United Kingdom and Ireland, the Sky Anytime on TV service of British Sky Broadcasting has been available since March 2007 to subscribers to the Sky package equipped with an HD Sky decoder or a last-generation Sky+ decoder. The Sky+ PVR automatically records the programmes during the night and uses 140GB of previously reserved disk space on Sky HD boxes. The subscriber can watch up to 40 hours of programmes, which are updated daily. Programmes offered consist of films (5 per week), TV series and programmes in HD. Subscribers have 30 days to view the programmes.

  Sky does not provide any detailed data on the success of its service. The number of subscribers with a Sky+ HD decoder rose from 38,000 in January 2008 to 779,000 at the end of December 2008. In May 2008, the following facts were provided in its *Factbook*: 1.6 million households had used the service, the Sky Anytime channel was the sixth most popular commercial channel among its users, and 32 million programmes had been viewed since the launch. The most-watched programme on Sky Anytime on TV was *Night at the Museum*, which was viewed by 135,000 households in January 2008. In a document responding to Ofcom's consultation on the pay-TV market, Sky referred to the use of Sky Anytime as "significant" and to the number of programmes watched as "increasing", but no detailed data are published.[467] A survey was carried out by Sky in April 2008 on the users of the Sky Anytime service, and the results indicate that most

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465 Canal+ Group press release, 25 June 2009, http://media.canal-plus.com/file/48/4/146484.pdf

466 Canal+ Group press release. 9 April 2009, http://media.canal-plus.com/file/93/9/144939.pdf

467 "Response by BSkyB to Ofcom's 'Pay TV Second Consultation: Access to Premium Content'". Full document, January 2009, p.18, http://corporate.sky.com/documents/pdf/press_releases/Ofcon_pay_review

users belong to the ABC1 marketing category, living in modern, well-furnished homes with flatscreen TVs with surround sound, up-to-date gadgets such as laptops, Wiis and PS3s. [468]

- In Poland, Canal+ Cyfrowy offers a catch-up television service for the programmes of the Canal+ channel. Subscribers to the HBO pay-TV channel also have access to a catch-up service. Also in Poland, subscribers to the "n" package distributed by the company ITI Neovision can access the service Premiery VoD.
- In Turkey, the Digiturk package offers the Digiturk Plus Seç İzle VoD service.

4.3.3. *The use of hybrid technologies*

In October 2008, Viasat announced the launch of a new on-demand service, TV1000 Play, for subscribers to its premium channels. The service was introduced in Sweden in October, in Denmark and Norway in November and in Finland in December. It is based on connecting the ViasatPlusHD set-top box to a broadband network. All the films broadcast by the TV1000 channel are available to subscribers at no extra cost. Other films and TV series are available at prices between SEK 19 and 49 per title. In principle, films can be watched immediately, but if the network speed is insufficient, it may be necessary to wait a while.[469] In Sweden, it is also available to subscribers to the IPTV Telia service.

Since March 2009, the service has permitted reception in HD in Sweden, Denmark and Norway. At that time, the TV1000 Play service offered 100 films and TV1000 Play HD 15 films. The catalogue also included content from the Viasat Explorer, Viasat Nature and Viasat History channels. 600 titles can also be purchased.[470]

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[468] Sky Anytime Research, http://www.skymedia.co.uk/Audience-Insight/sky-anytime.aspx

[469] Broadband TV News, 22 October 2008. http://www.broadbandtvnews.com/?p=9818

[470] Broadband TV news, 18 March 2009, http://www.broadbandtvnews.com/?p=15605

4.4. VOD IN THE CONTEXT OF DIGITAL TERRESTRIAL BROADCASTING – THE UNIQUE CASE OF TOP UP TV ANYTIME

Like satellite broadcasting, digital terrestrial television (DTT) has no return path and therefore suffers from a major handicap with regard to the development of on-demand services. Moreover, digital terrestrial pay-TV is not yet well-developed in Europe.

Only one DTT operator in Europe offers catch-up television services: Top Up TV. At its launch in March 2004, Top Up TV Ltd[471] offered a pay-TV service comprising 11 channels broadcast as DTT. As this service, which tried to occupy the place left vacant by the failure of ITV Digital in 2002, did not meet with the success expected, Top Up TV announced the launch of Top Up TV Anytime as a push VoD service on 30 August 2006. The launch took place in October 2006. In the spring of 2007, Top Up TV stopped offering subscriptions to pay-TV channels in order to focus on its Anytime service. Subscribers with a Top Up TV+ set-top box can receive as catch-up TV a selection of programmes from around twenty thematic channels (Animal Planet, Discovery Lifestyle, Nickelodeon, Paramount Comedy, MTV, Boomerang, Living, G.O.L.D., Eurosport UK, TCM, UKTV Style, Bloomberg, Cartoon Network, CN Too, Disney Channel, UKTV Food, Discovery Factual, Hallmark Channel, and Life & Times). To provide a good service, Top Up TV has had to negotiate with its competitors Sky (which acts as a packager for the channels History Channel, Nickelodeon and Paramount Comedy) and Virgin Media (Living, G.O.L.D., UKTV Style and UKTV Food).

The Top Up TV+ set-top box automatically records the programmes broadcast in encrypted form during the night and the user can watch them on demand. The software on which the system is based was developed by Top Up TV in collaboration with Nagra. Downloads use Nagra's MediaGuard SECA2 system and, according to some analysts, Nagravision. The interactive services use the MHEG5 v.1.06 standard. Thomson set-top boxes can store 160 or 250GB, depending on the model. The higher-capacity versions of boxes can support up to 500GB. Boxes used to cost between £140 and £210 but prices have been reduced to between £80 and £100.

The monthly subscription is £9.99. About 150 programmes are available to the user. In addition to this offering, the user can also access two premium services:

- the PictureBox VoD service (provided by NBC Universal), available for £5 per month to Top Up TV Anytime subscribers and £7 to non-subscribers. The service offers 7 films a week;
- the channel Setanta Sports 1, available for £10.99 per month, which shows sports events, including Barclays Premiership football matches.[472]

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471 The ownership history of Top Up TV Ltd is complex. The company was set up in 2004 by David Chance and Ian West, two former managers of BSkyB. In November 2005, the RTL Group announced it was taking a 20% stake. The company then went into liquidation. Various companies were registered in May 2006 and then in October 2007 without it being possible to understand their respective functions: Top Up TV Holdings, Ltd, Top Up TV Europe Ltd (which is mentioned in the Terms and Conditions sent to subscribers, Top Up TV 1 Ltd, Top Up TV 2 Ltd, Top Up TV 3 Ltd. There is also a company in Luxembourg: Top Up TV Europe s.a.r.l. for the marketing of Setanta Sport 1.

472 The activities of Top Up TV as a channel distributor has been the subject of a consultation carried out by Ofcom in 2007. See, "The setting of access-related conditions upon Top Up TV Limited", Ofcom, 15 February 2007, http://www.ofcom.org.uk/consult/condocs/tutv/

On 11 July 2008, Warner Bros. International Television announced a VoD service available to subscribers to Top Up TV Anytime, which includes such programmes as ER, Without a Trace, Smallville, The West Wing, Friends and Two and a Half Men. The agreement also provides for a catalogue of films to be available in the coming months on a pay-per-view basis.

Top Up TV does not publish any data on the number of subscribers. According to Ofcom (*Digital Progress Report*), the figure was 400,000 in the first quarter of 2008, 300,000 in the second quarter and once again 400,000 in the third and fourth quarters.

4.5. THE STRATEGIES OF THE FILM PRODUCERS AND DISTRIBUTORS

For the film and audiovisual producers and distributors, video on demand represents an opportunity for new sources of revenue and a means of offering consumers a legal alternative to unauthorised downloads. At the same time, VoD has from its earliest days been seen as a challenge and a risk, especially as it might ultimately endanger the home video market (DVD, Blu-ray disc). In this chapter, we will be analysing the market positions and different strategies adopted by the various types of film industry player.

4.5.1. The Hollywood majors

Like it or not, the Hollywood majors are still the dominant force and structure the various segments of the audiovisual market (theatrical exhibition, home video, television, VoD). In order to understand their strategy towards the European market, it appears necessary to place it in the context of the development of the VoD market in the United States.

4.5.1.1. Movielink as a joint project

In the United States, the majors have always been very suspicious as far as VoD is concerned. In the period 1998-2002, they did not really support the Intertainer project of Jonathan Taplin, who launched a first rental VoD service for the cable networks with the assistance of Microsoft, Intel and Sony.[473]

In November 2002, Warner, Universal, MGM and Sony Entertainment preferred to launch Movielink, their own online VoD service for the US market, for an initial investment of 150 million euros. However, the joint management of a single service by the majors proved inefficient. In 2006, the number of monthly downloads did not exceed 75,000 units. The launch of a download-to-own service on 3 April 2006 to complement its rental service did not substantially improve the success of the service.

Although the majors did not enter into exclusive contracts with Movielink, the fact that they were involved in this service immediately made the competing services suspicious. An inquiry was launched by the US Department of Justice, the authority responsible for ensuring the implementation of antitrust regulations.

In 2006, the various partners in turn announced their desire to supply their films to the competing services, especially the iTunes service of Apple, whose success with online music sales was beginning to become apparent. The potential for a download-to-own VoD market also began to be considered, and in April 2006 Movielink complemented its rental service by offering certain films on a download-to-own basis. On 1 June 2006, the service was officially put up for sale and, after initial negotiations with the cable operator Comcast and AT&T, was sold on

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473 See Bernard Guillou, *Online distribution of films*, European Audiovisual Observatory, January 2004, p.18. http://www.obs.coe.int/online_publication/reports/filmsonline_guillou.pdf.en

8 August 2007 to Blockbuster, the main DVD retail sales and rental company, for $6.6 million.[474] On 16 December 2008, the service as such disappeared and was incorporated into the Blockbuster VoD service. Movielink revenues were $1.91 million in 2006 and $1.98 million in 2007. Net losses were $11.6 million in 2006 and $10.2 million in 2007.[475]

4.5.1.2. Approaches of the European markets

In Europe, the majors could not consider launching a partnership service like Movielink. Firstly, such a service, assuming there was vertical integration, would probably not be accepted by the competition authorities; secondly, the majors still regard Europe as a group of separate markets. It is quite interesting to note on this subject that the MPA, which represents the majors' interests vis-à-vis the European Union, did not reply positively, during the "Online Content" consultation in 2008, to the European Commission's proposal of favorising the multi-territorial licence. It seems clear that the MPA does not want to see the development of a system regulated by territorial licensing and that it shares the views of the international associations (FIAPF, FIAD, IVF) of which it is a member.

Generally speaking, the majors' strategy in Europe has therefore been to supply films to the main VoD rental services and then to download-to-own VoD services on the various national European markets, thus avoiding the use of exclusive licences. The existence of competing platforms on the national markets has various advantages for the majors:

- first of all, it offers a guarantee that the markets will be covered: owing to the fragmentation of the distribution arrangements and household equipment, no platform can claim full coverage of the national market;
- the existence of competing platforms is the best guarantee of obtaining higher percentages from partners when it comes to sharing revenues;
- the fragmentation of the platforms tends to delay the emergence of players in a dominant position, as is the case in most countries with regard to pay-TV channels and platforms. It is likely that the majors do not want to be confronted too quickly by powerful service providers capable of imposing their rates, as iTunes has been able to do in the field of online music distribution.

4.5.1.3 Warner Bros.

Warner Bros. is certainly the most dynamic major in the use of new forms of digital distribution and was one of the studios involved in the creation of Movielink in 2002.

In October 2005, it set up a new group, Warner Bros. Home Entertainment Group (WBHEG), which distributes home video, online services and video games and is engaged in anti-piracy and emerging technologies operations. At the same time, a new unit was created within the group: Warner Bros. Digital Distribution (WBDD), for the international distribution of Warner products on digital platforms. Some operations in the field of VoD are also carried out by Warner Bros. TV International Distribution (WBITD), the company's international television programme

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474 "Movielink on the block", *Business Week*, 1 June 2006. http://www.businessweek.com/technology/content/may2006/tc20060531_484649.htm?campaign_id=rss_tech

475 See the Form 8-K/A report by Blockbuster Inc. to the SEC, 8 August 2007, http://b2i.api.edgar-online.com/EFX_dll/EdgarPro.dll?FetchFilingHTML1?SessionID=XDEJWIiVAyunW-9&ID=5490752

distribution unit.

In May 2006, Warner Bros. created a sensation by announcing an agreement with BitTorrent, the company behind the development of a very popular peer-to-peer (P2P) system for illegal downloads, with a view to creating the first legal VoD system using the BitTorrent platform.[476] In May 2007, BitTorrent announced the launch of the BitTorrent Entertainment Network, where other companies such as 20th Century Fox, Lions Gate, MTV Networks, Paramount Pictures and Metro-Goldwyn-Mayer Studios, Inc. (MGM) joined Warner Bros.[477] The service has been criticised since the launch because of problems caused by DRM.

In 2008, Warner Bros. Digital Distribution distributed 37 titles as VoD on a "day-and-date" basis (released on the same day as on DVD) and described itself as the only studio committed to defending such a platform. WBDD has five titles (including *I Am Legend* and *Fool's Gold*) in the ten best-selling VoD titles in the United States. It was also the first to employ "day-and-date" distribution at the international level in twelve markets. In 2008, it also distributed films and television programmes (including *Gossip Girl*) in iTunes Stores in five countries (USA, Canada, United Kingdom, New Zealand and Australia).[478]

On 30 April 2008[479], Jeff Bewkes, CEO of Time Warner, announced that Warner was going to make day-and-date VoD release generally available. Until then, the operators of VoD or pay-per-view had had to wait several weeks after the DVD release to be able to offer a film. The justification given for this was that this simultaneous release reduces the marketing and production costs of DVDs.

> *"Taking a customer and moving that person over from rental-physical to VoD day-and-date is like a 60 to 70 percent margin instead of a 20 to 30. So it's about a three-to-one trade."*

The Warner Bros. On Demand catalogue: in August 2009, Warner Bros. Digital Distribution announced that it was also going to provide the digital distribution (PPV, VoD) of catalogues from independent American producers, thus giving them access to a market of 90 million households in the United States and 195 million worldwide.[480]

Warner's support for VoD distribution does not prevent the studio from playing a decisive role in the adoption of new physical media. It is known that the choice announced in January 2008 not to publish its films on HD DVD (which was supported by Paramount) was decisive in ensuring the triumph of the Blu-ray Disc (BD). In January 2009, Warner and Paramount were the first two majors to support the distribution of films, via digital terminals, on memory cards in the system

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476 Warner Bros. press release, 9 May 2006, http://www.warnerbros.com/#/page=company-info/press_room/search/

477 BitTorrent press release, 26 February 2007, http://www.bittorrent.com/pressreleases/2007/02/26/bittorrent-inc-launches-the-bittorrent-entertainment-network/

478 Warner Bros. press release, 8 January 2009, http://www.warnerbros.com/#/page=company-info/press_room/search/

479 Saul Hansell, "Warner Brothers To Rent Movies Online Sooner", *New York Times*, 30 April 2008. http://bits.blogs.nytimes.com/2008/04/30/warner-brothers-to-rent-movies-online-sooner/?partner=rssuserland&emc=rss

480 Warner Bros. press release, 11 August 2009, "Warner Bros. Digital Distribution Expands its Digital Film Library with Critically Acclaimed Independent Films".

developed by Toshiba and MOD Systems.[481]

However, the general strategy for the distribution of its recent films and television programmes through services operated by third parties has not led Warner to outsource the exploitation of its archives. On 23 March 2009, WBHEG announced the launch of a new VoD offering, the Warner Archive Collection[482] which permits access to its archives. 150 films from the Warner archives (which include pre-1986 films produced by MGM, RKO Radio Pictures and Warner Bros. Pictures) are available either as download-to-own VoD or on DVD. 20 films are likely to be added each month. The website also enables orders to be placed for DVDs manufactured on demand (MOD). Users are invited to vote for the titles they would like to see provided in the coming months. The cost per film on DVD is $19.95 and the price of a download is $14.95.[483]

In Europe, Warner's strategy has evolved. WBITD was one of the first studio subsidiaries to sign agreements with the major providers of VoD services. Leaving out of account the pioneering contract with Yes Television (United Kingdom) (9 June 2001), the first important contracts with emerging operators go back to 2004-2005: Lyse Tele in Norway (24 November 2004); SF Anytime in Scandinavia (1 December 2004), Filmflex in the United Kingdom (9 June 2005) and T-Online in Germany (2 September 2005).

On 30 January 2006[484], the Warner Bros. Home Entertainment Group announced it was forming a joint venture with arvato mobile (a subsidiary of the Bertelsmann Group) known as In2Movies, the aim of which was to be the legal distribution of video content on a secure P2P platform. The platform was first marketed in Germany, Austria and the German-speaking part of Switzerland. In2Movies enabled films and TV series to be downloaded onto a PC, and it was planned in a second phase to extend the download possibilities to DVD recorders and portable peripherals. The GNAB platform developed by arvato used a decentralised P2P network to distribute works at lower cost but retained a centralised infrastructure to manage the copyrights and ensure compliance with the restrictions wanted by Warner and by the local partners and distributors whose videos were being offered by In2Movies. The service was discontinued on 11 June 2008. Since it was based almost entirely on a Warner catalogue, the likelihood is that it did not attract enough customers given the competition from more open services, such as T-Online's Videolad, ProSiebenSat.1 Media's Maxdome and Microsoft's Xbox Live Marketplace.

Following the failure of In2Movies, the Warner Bros. Home Entertainment Group reviewed its European strategy. Rather than offer its WBITD service directly, it extended its practice of

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481 See MOD Systems press release, 8 January 2008, http://www.modsystems.com/company/press_release.aspx?itemId=09010805-08_200901101644265000
MOD Systems and Toshiba Demonstrate Video Downloads to SD Cards at CES 2009, Reuters, 8 January 2009, http://www.reuters.com/article/pressRelease/idUS136662+08-Jan-2009+BW20090108
Initially intended for the United States, the system was introduced in Japan in March 2009 and could also be launched in Europe. Alain Appriou, Marketing Director responsible for consumer electronics at Toshiba France, confirmed to *ZDNet.fr* that a study of the feasibility of such a system for the European markets was underway. "Toshiba propose des films HD de Warner et Paramount sur carte SD", *ZDnet.fr*, 14 January 2009. http://www.zdnet.fr/actualites/informatique/0,39040745,39386589,00.htm

482 www.WarnerArchive.com

483 "Warner Bros. Home Entertainment Group Opens the World's Largest Film Vault with the Launch of 'Warner Archive Collection'", 23 March 2009, http://www.timewarner.com/corp/newsroom/pr/0,20812,1887185,00.html

484 "Warner Bros. Home Entertainment Group and Arvato Mobile to Launch Revolutionary Digital Entertainment Distribution Platform", *Business Wire*, 30 January 2006, http://www.businesswire.com/portal/site/google/index.jsp?ndmViewId=news_view&newsId=20060130005498&newsLang=en

signing agreements with established service providers, which take the Warner catalogue and enhance the brand:

- in the United Kingdom: Virgin Media and BT Vision (November 2007), Tiscali (5 June 2008)[485], Top Up TV (10 July 2008)[486],
- in France: Free,
- in Italy: Fastweb,
- in Germany: Maxdome (ProSiebenSat.1 Media), Hansenet (12 March 2007)[487],
- in the Netherlands: the cable operator Ziggo (4 May 2009).[488]

On 13 October 2008, a new stage was completed with the announcement of the signing of a multi-annual licensing agreement with ODD to create an SVOD service known as Warner TV. ODD is a joint venture between the German TMG group (the owner of Tele 5 in Germany and ATV in Austria and also involved in the CinemaxX cinema network) and the On-Demand Group, a British company specialising in VoD. ODD is tasked with promoting the service among the national operators in Germany, Austria and Switzerland. The first contracts announced have been signed with the aonTV service of Telekom Austria and T-Online in Germany.

4.5.1.4 The Walt Disney Company

The Disney group was more reluctant than Warner to go along the VoD path and, for example, was not part of Movielink. Disney is mainly concerned to protect its revenues from the home video market (DVD and Blu-ray). The importance of its catalogue of children's films encourages it to place more emphasis on sales than rentals. According to Daniel-George Levi, President of Walt Disney Studios Home Entertainment France, a Disney title on DVD is watched 30 to 40 times by children.[489] In his opinion, recorded media are easier to use and are therefore preferred by parents. He also thinks that the physical nature of the DVD or BD is more suitable for giving as a present than a download, which is difficult to offer.

These reservations do not mean that Disney completely rules out VoD. It was the first studio to announce that it would be making films and programmes from the ABC channel available to Apple's iTunes Stores. Pixar Animation, a Disney subsidiary, has played a pioneering role in making part of its animated short films available to the iTunes Stores. Programmes from the Disney Channel and Playhouse offered by the iTunes Stores (Germany, France, United Kingdom).

As far as television programmes from the ABC and Disney Channel catalogues are concerned, two parallel strategies have been adopted: their availability online financed by advertising and online sales through the iTunes Stores.

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485 Warner TV Video-on-Demand Branded Service Launches on Tiscali TV, 5 June 2008, http://www.timewarner.com/corp/newsroom/pr/0,20812,1812101,00.html

486 "Top Up TV Adds Warner TV Video-on Demand Branded Service", 10 July 2008, http://www.timewarner.com/corp/newsroom/pr/0,20812,1821640,00.html

487 "Hansenet Telekommunikation GmbH and Warner Bros. International Television Announce Multiyear Video-on-Demand Agreement to Bring Movies From Warner Bros. to German Television", 12 March 2007 http://www.timewarner.com/corp/newsroom/pr/0,20812,1598361,00.html

488 Warner Bros. press release, 4 May 2009.

489 *Ecran total* interview, 11 March 2009, p. 18. Based on forecasts produced by GfK for the French market, Daniel-George Levi estimates that total revenues for 2009 will be at least two-thirds of the VoD revenues.

Disney has pioneered free VoD financed by advertising, with its sites ABC.com and Disneychannel.com. In order to finance the service, videos are interrupted three times by commercial breaks of at least one minute each, all devoted to the same advertiser. ABC's sales president Mike Shaw has pointed out that viewers could select the type of advertisement carried. For example, it would be possible to choose between a traditional commercial and an interactive advertising game. ABC should gradually be able to target advertising to obtain a service that is more relevant for both advertisers and viewers. Between September 2006 and April 2007, 92 million episodes were downloaded from ABC.com and 91 million from Disneychannel.com.[490] One year after the launch, the number of downloads from ABC.com had reached 130 million.[491]

Some items in ABC's and the Disney Channel's catalogues of television programmes have been available on the iTunes Stores in the United States since 12 October 2005. A year after the titles from the ABC catalogue had been made available on the iTunes Stores – especially the series *Lost* – 8.5 million downloads were registered.[492] At the end of January 2007, 19 million episodes had been downloaded, representing more than a third of the video downloads from the iTunes Stores.[493] At the end of March 2007, 21 million episodes had been sold.[494] At the end of April 2007, the figure had reached 23.7 million[495] and at the end of October 2007 it had risen to 33 million.[496]

Since 12 September 2006, 75 Disney films have been available at a price of $1.99. According to statements by Disney's President and CEO, Robert Iger[497], 125,000 films were downloaded in the first week, generating revenue of $1 million. He predicted revenue of $50 million at the end of the first year, but the forecasts were revised down to 25 million a few weeks later.[498] At the end of February 2007, the number of films downloaded was 1.6 million, a figure considered "relatively modest" by Bob Iger.[499] At the end of April 2007, the figure was 2 million[500] and at the

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490 The Walt Disney Company Financial Results for Q2 FY07 - Bob Iger, President and Chief Executive Officer, and Tom Staggs, Senior Executive Vice President and Chief Financial Officer of The Walt Disney Company, 8 May 2007, http://amedia.disney.go.com/investorrelations/070508_transcript_earnings.pdf

491 Goldman Sachs Communacopia Conference - Bob Iger, President and Chief Executive Officer, The Walt Disney Company, 18 September 2007, http://amedia.disney.go.com/investorrelations/070918_transcript_iger.pdf

492 Presentation by Anne Sweeney, President ABC Television Group, 13 September 2006, http://media.disney.go.com/investorrelations/presentations/060919_transcript_iger.pdf

493 8 February 2007 The Walt Disney Company Investor Conference – The Walt Disney Company Senior Management, http://corporate.disney.go.com/media/investors/2007_irc_abctvgroup.pdf

494 A.G. Edwards 2007 Media and Entertainment Conference – Anne Sweeney, Co-Chair Disney Media Networks and President, Disney-ABC Television Group, 17 April 2007, http://amedia.disney.go.com/investorrelations/041707_transcript_sweeney.pdf

495 The Walt Disney Company, Financial Results for Q2 FY07 – Bob Iger, President and Chief Executive Officer, and Tom Staggs, Senior Executive Vice President and Chief Financial Officer of The Walt Disney Company, 8 May 2007. http://amedia.disney.go.com/investorrelations/070508_transcript_earnings.pdf

496 The Walt Disney Company, Fiscal Full Year and Q4 FY07 Financial Results – Bob Iger, President and Chief Executive Officer, and Tom Staggs, Senior Executive Vice President and Chief Financial Officer of The Walt Disney Company, 7 November 2007, http://corporate.disney.go.com/investors/quarterly_earnings/071108_transcript_earnings.pdf

497 Goldman Sachs Communacopia Conference – Bob Iger, President and Chief Executive Officer, The Walt Disney Company, 15 September 2006, http://media.disney.go.com/investorrelations/presentations/060919_transcript_iger.pdf

498 General Discussion at The Credit Suisse Media Week Conference – Tom Staggs, Senior Executive Vice President and Chief Financial Officer, The Walt Disney Company, 5 December 2006, http://amedia.disney.go.com/investorrelations/061205_transcript_staggs_cs.pdf

499 Bear Stearns' 20th Annual Media Conference – Bob Iger, President and Chief Executive Officer, 5 March 2007, http://amedia.disney.go.com/investorrelations/presentations/bear_stearns_transcript.pdf

end of July 2008 it was 5 million, which was well beyond the initial objectives.[501]

It seems that Disney has revised its revenue growth forecasts for digital sales downwards. According to Tom Staggs, Senior Executive Vice-President, the rapid rise in digital distribution is likely to lead to a rise in revenues from sales compared with advertising income, which will probably decline from 60 to 50% in favour of “direct-pay” revenues.[502] It is interesting to note that Disney has provided less information on the number of downloads from 2007, preferring to base its announcements on the increases in Blu-ray sales, but that does not mean it is abandoning VoD, the importance of which was confirmed by Bob Iger in a statement to analysts in May 2008. While recognising the industry’s conservatism, he emphasised the need to meet the requirements of young people, who are becoming more and more demanding. According to him, distribution in the form of VoD has no impact on the value of the company’s assets[503]. A few months later, Iger said that the revenues from digital distribution were “incremental” but not being present on the VoD distribution market would mean running the risk of being marginalised.[504] According to Tom Staggs, it is consumer demand that forces the studios to have a presence on the non-physical distribution market. The profitability of physical and and non-physical distribution is broadly similar, he says.[505] However, according to Bob Iger, the pressure exerted by piracy is leading to a drop in margins, not only in the case of online sales but also sales of physical media.[506]

A new milestone on the road to free VoD was reached on 31 March 2009 with the announcement of an agreement between Disney/ABC Television Group, ESPN and YouTube[507]. According to this agreement, various short-film and sports information channels will be launched by Disney at the video sharing site. The Disney Group’s channels will be able to insert their own advertisers’ commercials themselves. According to Anne Sweeney, President of the Disney/ABC Television Group, “this deal provides us with the opportunity to reach a broader online audience, to experiment with different monetisation models and to extend the reach of our advertisers”. A month later, in April 2009, Disney joined Fox and NBC Universal in the Hulu service, in which it

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500 The Walt Disney Company, Financial Results for Q2 FY07 – Bob Iger, President and Chief Executive Officer, and Tom Staggs, Senior Executive Vice President and Chief Financial Officer of The Walt Disney Company, 8 May 2007, http://amedia.disney.go.com/investorrelations/070508_transcript_earnings.pdf

501 The Walt Disney Company, Q3 FY08 Financial Results – Bob Iger, President and Chief Executive Officer, and Tom Staggs, Senior Executive Vice President and Chief Financial Officer of The Walt Disney Company, 30 July 2008, http://corporate.disney.go.com/investors/quarterly_earnings/080730_transcript_earnings.pdf

502 General Discussion hosted by Hamilton Faber of Atlantic Equities – Tom Staggs, Senior Executive Vice President and Chief Financial Officer, The Walt Disney Company, 30 October 2006, http://media.disney.go.com/investorrelations/061002_transcript_staggs.pdf

503 2008 Bernstein Strategic Decisions Conference – Bob Iger, President and Chief Executive Officer of The Walt Disney Company, 28 May 2008, http://corporate.disney.go.com/investors/presentations/080528_transcript_Bernstein.pdf

504 The Walt Disney Company, Q3 FY08 Financial Results – Bob Iger, President and Chief Executive Officer, and Tom Staggs, Senior Executive Vice President and Chief Financial Officer of The Walt Disney Company, 30 July 2008.

505 UBS 36th Annual Global Media and Communications Conference – Tom Staggs, Senior Executive Vice President and Chief Financial Officer, The Walt Disney Company, 9 December 2008, http://corporate.disney.go.com/investors/presentations/081209_transcript_UBS.pdf

506 Deutsche Bank Media & Telecom Conference – Bob Iger, President and Chief Executive Officer, The Walt Disney Company, 3 March 2009, http://corporate.disney.go.com/investors/presentations/090303_transcript_deutschebank.pdf

507 The Walt Disney Company press release, 31 March 2009, http://corporate.disney.go.com/news/corporate/2009/2009_0331_you_tube.html

acquired 27% of the capital (see 6.4.1. below).[508]

In Europe, Disney has adopted various strategies depending on the country, such as making available certain titles from the catalogues of the VoD service providers and launching a number of its own services. As is common practice with children's programmes, SVOD seems to be Disney's preferred model:

- In the United Kingdom, a "Disney Treasures" offering is available as SVOD from Tiscali;
- In France, Free and Disney/ABC International Television concluded an SVOD agreement on 20 September 2007 with the aim of offering a wide selection of Disney content to subscribers to the Free Home Video service. Despite the announcement, this agreement does not seem to have been implemented and there is no actual Disney shop on Free.

4.5.1.5. Sony Pictures

Sony Pictures (formerly Columbia Pictures) does not have such a pronounced strategy as Warner Bros. and the Walt Disney Company. The major was involved in the launch of Movielink and supplies its films to the main operators of services in the United States (CinemaNow, Blockbuster, Amazon, iTunes, PlayStation Network, Recorded Books, Sprint, Gaia, Verizon, AT&T). It evidently supports the approach of the group's Entertainment division, which launched a VoD service on the PSP in July 2008.

Sony Pictures is one of the rare majors that have not yet adopted the "day-and-date" principle for VoD releases and still operates a release date of about a month after the release on DVD.

In Europe, Sony Pictures Television International enters into licensing agreements with VoD service providers.

Apart from the agreements reached with the principal operators (the details of which are not systematically communicated by the group), there are a number of specific initiatives:

- The "Screen Gems" catalogue of films (independent or foreign films distributed by Sony), which provides a VoD channel on the UK iTunes Store and as part of the IPTV offering of Tiscali UK;
- The Spassgesellschaft channel, provided by Sony BMG as part of the offering of the German iTunes Store.

Sony Pictures is also interested in video community sites. In June 2007, it launched on Myspace.com The Minisode Network, which offers 5-minute versions of popular TV series, such as *Married with Children* and *NewsRadio.* In January 2008, The Minisode Network was also presented as a specific YouTube channel. This collaboration was strengthened in April 2009 when Sony Pictures signed an agreement with YouTube, a few days after Disney and a few weeks after the decision taken by Sony Music and Google to continue their collaboration on YouTube.

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[508] The Walt Disney Company/Hulu press release, 30 April 2009, http://corporate.disney.go.com/news/corporate/2009/2009_0430_hulu_release.html

In August 2006, Sony Pictures Entertainment bought Grouper.com. one of the first video sharing sites, for $65 million and relaunched it in July 2007 under the name Crackle[509], which competes with Hulu as a platform that provides professional and user generated content selected by Sony as well as content by young directors (see 6.5.2 below).

4.5.1.6. 20th Century Fox

The strategy of 20th Century Fox, which is part of Rupert Murdoch's News Corp., must be put in the context of the latter's strategy. With a presence in the distribution of satellite packages (DirectTV in the United States, Sky, Sky Italia and Sky Deutschland in Europe) (see 4.3 above) and in the field of broadcasting, News Corp. began to diversify from 2005 into the Internet and the community networks by creating the Fox Interactive Media division, buying such companies as IGN Entertainment Inc. or MySpace and then creating, in August 2007, the Hulu joint venture with NBC Universal (see 6.5.1 below).

In the year 2000, Fox announced the launch of Movies.com, an alliance with Disney to create a joint VoD site, but the project was abandoned in April 2002. It did not join Movielink but supplied it with films, as it did the competing project CinemaNow. Fox continued for a while to nurture the hope of running its own service: in October 2006, several catalogue films and series, such as *X-Men* or *24*, were made available as part of the Direct2Drive service offered by IGN Entertainment. The films were offered for sale at $19.99, while each episode of a series was to be available at $1.99. This initiative was short-lived and Direct2Drive subsequently focused its activities on video games.

Fox did not participate in the initial launch of films on the iTunes Stores but began to open up its catalogue to this service in December 2007. It subsequently signed agreements with Amazon, AOL and MSN.

In March 2007, NBC Universal launched the free VoD service Hulu together with Fox Entertainment (see 6.5.1. below).

In February 2009, Fox introduced a day-and-date policy for certain VoD titles.[510]

In Europe, Fox reached agreements with the main operators of pay-VoD services. The UK iTunes Stores offer a Fox catalogue.

4.5.1.7. Universal Studios (NBC Universal)

Universal Studios has played an active role in the launch of VoD in the United States. In 2002, an "experimental" agreement was entered into with the CinemaNow service. Universal was subsequently involved in the establishment of the Movielink site. It then operated a policy of supplying its films to operators of VoD services. The PPV and VoD activities were managed by a special unit, Universal Pay-per-View and Video on Demand within the Universal Television Group, which was a division of Vivendi Universal Entertainment (VUE). After the formation of the

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509 "Sony's 'New' Crackle Set to Aid Filmmakers", *Wall Street Journal*, 16 July 2007, http://online.wsj.com/article/SB118454151100667084.html?mod=googlenews_wsj

510 "Universal, Fox, Summit shut VoD-DVD window", 6 February 2009, http://www.contentagenda.com/article/CA6635448.html

NBC Universal conglomerate, they were regrouped within NBC Universal Digital Distribution, a division of NBC Universal. This division is in charge of the marketing of the group's films and programmes as VoD, as electronic-sell-through (EST)) and as interactive television, as well as the new wireless products and services (WAP, SMS, etc).

In March 2007, NBC Universal launched the free VoD service Hulu together with Fox Entertainment (see 6.5.1. below.)

In February 2009, Universal Studios announced its intention to move to a day-and-date policy for VoD.[511]

In April 2009, Universal films were available via 19 different services in the United States by cable, satellite or Internet. Some Universal titles are available on the iTunes Stores of the English-speaking countries, and on 26 February 2009 an agreement was announced with Microsoft to supply films at the Xbox Live shops.

At the same time as providing the existing services, Universal has launched its own VoD and PPV site in the United States (http://www.universalvod.net/).

In Europe, Universal has reached agreements with most of the main operators of VoD services to enable them to incorporate titles in their catalogue. The films are generally licensed directly by NBC Universal International Television Distribution. However, it also works with intermediaries. For example, in March 2006 it joined forces with LoveFilm (the DVD rental service forming part of the British Arts Alliance Media) to launch a VoD service that enables users to download a film that can be viewed on a portable device. At the same time they are supplied with a copy on DVD. The first film available for download was *King Kong*.[512]

Universal also exploits its catalogue through the PictureBox SVOD service, which is available in the United Kingdom as part of the offerings of Top Up TV (September 2006), Tiscali (since June 2007), BT Vision (April 2008) and Virgin Media (July 2009). For £5.00 a month, subscribers can access 28 titles. The service is also available in Poland as part of the "n" service of the satellite operator ITI Vision.

4.5.1.8. Paramount Pictures (Viacom Group)

Paramount Pictures was one of the last studios to make a strategic choice to offer VoD. This may be the result of the efforts of the executives of the Viacom group to protect the interests of Blockbuster, the retail sales and video rental network controlled by the group until 2004. It was necessary to wait until 2003 before Paramount signed its first VoD contract, with the In Demand service. Paramount subsequently joined the Movielink project and progressively entered into agreements with various operators of VoD services (in particular, DirecTV, Blockbuster and, since February 2008, Microsoft's Xbox Live service). It was also the first studio after Disney to announce an agreement with Apple to distribute its films on the iTunes Stores. In April 2008, at the same time as Fox, Paramount announced it would operate a day-and-date policy for releases on the iTunes Stores. It also permitted the release of *Jackass 2.5* on the iTunes Stores one week after its release on DVD.

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[511] ibid.

[512] Arts Alliance Media press release, 17 March 2006, http://www.artsalliancemedia.com/documents/LFUniDTO.pdf

With regard to HD disks, it is interesting to note that in August 2007 Paramount was, with DreamWorks, the only studio to announce its preference for the HD DVD over the Blu-ray Disc. It maintained this position until February 2008, when Toshiba announced it was discontinuing the production of its HD DVD players.

In April 2008, Paramount joined MGM and Lions Gate to announce the launch of a premium VoD service in the United States enabling customers to access the three groups' new films and series as well as older catalogue titles. This new service available via a television channel to be launched in autumn 2009 will compete with HBO and CBS's Showtime Networks, a television and subscription VoD service. The announcement made no specific mention of online distribution but did refer more generally to "the digital marketplace of the future", stating that the service would be innovative and use both traditional and new digital distribution technologies.[513]

In Europe, Paramount has signed agreements with the main operators of services but is apparently not considering a service of its own. It has also entered into contracts with such operators as UPC Nederland and Top Up TV concerning its catalogue of TV series.

4.5.2. The European film industry

Since the beginning of the decade, European film industry players have regarded developments with some mistrust while at the same time adopting a wait-and-see attitude and seeking new strategies. It is clear that the American studios' strategies in Europe are perceived as giving structure to the market, but specific European characteristics (market fragmentation; European companies' low degree of integration; the importance of the telecommunications operators, independent producers and distributors; the types of government support) entail different scenarios from those encountered by firms wanting to set up in the United States.

There are around ten relatively integrated groups in Europe with an annual turnover of more than 100 million euros: Pathé, UGC, Gaumont, Constantin Film AG, Europacorp, The Entertainment Group of Companies, Nordisk Egmont, AB Svensk Filmindustri, Bavaria. It is worth noting that only one of them, AB Svensk Filmindustri, very quickly established itself as a service provider (SF Anytime), followed in France by the MK2 group. The original initiatives came more from associations of independent producers.

4.5.2.1. SF Anytime

SF Anytime is a rental VoD service launched in Sweden in 2002 by Bonnier Entertainment, a division of the Bonnier Group. The service has continued to expand in the Nordic countries by offering different language versions in Norway (2003), Denmark (2004) and Finland (2005). The project received funding from the MEDIA Programme's Pilot Projects scheme but the reports on this support and the assessment of it have not been published. SF Anytime was initially only accessible on the Internet. The service was incorporated into the IPTV offering of Telia Digital-tv in January 2005 and subsequently into the offerings of the other Nordic providers (Canal Digital, Bredbandsbolaget, FastTV). It is also streamed to hotels, with five to ten films available on a pay-per-view basis.

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[513] Quoted in "Hollywood studios tout entertainment service--for 2009", *CNET News*, 20 April 2008. http://news.cnet.com/8301-10784_3-9924007-7.html

The launch of the service benefited from the film distribution experience gained by Bonnier Entertainment through Svensk Filmindustri. Apart from its agreement with the latter, the company has agreements with several distributors, including Warner, 20th Century Fox, Buena Vista Distribution, Regency, Scanbox and Sandrew Metronome. The agreement signed with Warner Bros. International Television Distribution in December 2004 was one of the very first reached by an American major in Europe in the field of VoD.[514] In 2008, the catalogue comprised 1,400 titles provided by 30 different companies, but those in charge of the service complained about the lack of co-operation from Paramount, Sony and Universal.[515]

SF Anytime rental prices range from 9 to 45 Swedish kronor (€0.99 and €5) for the Internet service and 9 to 53 kronor (€0.99 to €5.70) for the IPTV service.

SF Anytime also works with its sister company TV 4 AB in the context of the TV4 Anytime service. For a monthly subscription of €5, the channel's programmes are available for downloading on an SVOD basis the day after they have been broadcast.

SF Anytime does not regularly publish figures but it seems that the service had a low take-up among consumers in the first few years: after five years, 300,000 downloads had been registered.[516]

The service's lack of success (as, incidentally, in the case of film2home, its main competitor in the Nordic countries) has been largely explained by the significant number of unauthorised downloads in the Nordic countries. SF Anytime accordingly tried to obtain better legal protection by increasing the penalties for piracy. The IPRED (Intellectual Property Rights Enforcement Directive) law came into force in Sweden on 1 April 2009 and its introduction was reflected in a significant drop in broadband network traffic. At the same time, SF Anytime recorded a rise in the number of rentals, but this can be explained by the fact that the campaign to promote the service coincided with the law's entry into force.[517]

4.5.2.2. Nordisk Film: Sputnik

Nordisk Film, which is part of the Egmont Group, is one of the oldest and most important European film studios. In 2004, it entered into an association with the public (commercially financed) company TV2 to launch TV2 Sputnik, an Internet VoD product that comprises a film service and one offering television programmes. At its launch in June 2005, it offered a total of 275 films.

4.5.2.3. MK2

The French group MK2, which is involved in the production, distribution, exploitation and publication of DVDs, launched an Internet based VoD platform called MK2 VoD on 14 May

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514 Time Warner press release, 1 December 2004, http://www.timewarner.com/corp/newsroom/pr/0,20812,845389,00.html

515 "Fiasko för hyrfilm på nätet", dn-se, 7 March 2008 http://www.dn.se/ekonomi/fiasko-for-hyrfilm-pa-natet-1.603767

516 "SF Anytime växer", Prylportalen.se, 13 February 2007, http://www.prylportalen.se/artikel/sf_anytime_vaxer_070213091747-699.html

517 "Swedish anti-piracy law, two weeks on: Traffic down and sales up", Royal Pingdom, 15 April 2009, http://royal.pingdom.com/2009/04/15/swedish-anti-piracy-law-two-weeks-on-traffic-down-and-sales-up/

2007.[518] From the outset, the group, which specialises in art-house films, was keen to distinguish itself from the existing services, most of which focused on American products. In its press release, it stated: *"MK2, the first film company* in *France to launch a VoD platform, will therefore be different in two respects from the many VoD services already available: its highly diversified catalogue and the extensive editorialisation of its platform"*.

At launch, the service offered a catalogue of more than 500 titles, a figure that quickly rose to 2,000 by September 2007. All these titles come both from the MK2 catalogue and more than ten rightsholders: FTD, Studio Canal, EPI Diffusion, Family Films, etc. Apart from these films, MK2 VoD enables documentaries, cartoon films, short films, charm films etc to be downloaded.

The website is subject to an editorialisation policy under the responsibility of a "film adviser", who handles the provision of advice, the promotional activities and replies to queries and makes recommendations. In particular, he also suggests weekly themes or subjects associated with specific events. Customers can discover new works by clicking on dedicated sections: *le choix du vendeur* ("seller's choice"); *le coin des curieux* (undervalued little jewels of the cinema); *la critique qui donne envie* (where Internet users' film critiques and the latest developments in the cinema are highlighted); *3 raisons de voir ce film* ("3 reasons to watch this film" – details of the film, anecdotes, awards received, etc).

The catalogue items are available 24/7 for rental by progressive download and can be watched as often as desired over a 48-hour period. The service is simple to use and no specific media player is required to watch or download the films. Prices range from €3.99 to €4.99.

4.5.2.4. Filmax Entertainment SA

Filmax is the main Spanish film group and is involved in production, distribution and exploitation. In February 2009, it launched the VoD offering Yodecido, which includes an Internet VoD service for the provision of its catalogue of films (Videoclub), which are available for purchase or rental, and an online music sales service. Also available is a collection of trailers of the films distributed by the group and a user generated content site. In April 2009, Videoclub said it had 3,000 customers.

At the same time, Filmax has joined the company ADNstream, which offers a free, advertising funded VoD service known as ADNstreamtv.[519] A limited number of films from the Filmax catalogue are available on this platform.

4.5.2.5. The other integrated groups

Pathé, a group involved in production (in France and the United Kingdom), distribution and exploitation, has adopted a cautious approach to VoD. In its progress report for 2007, it simply establishes that "(t)he arrival of new telecom operators holds promise for the emergence of new markets, especially video on demand, a still small but rapidly growing segment". At its French website, it refers consumers to the sites of the nine French service providers with which it has reached agreements.

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518 http://vod.mk2.com/

519 http://www.adnstream.tv/canal/filmax/

UGC operates a European network comprising nearly 600 cinemas in France, Belgium, Spain and Italy and registered over 38 million admissions in 2008. It is also involved in film production and distribution and in the dissemination of French and European films in cinemas worldwide through its sales of audiovisual rights. It has no explicit strategy with regard to VoD. In mid-2008 rumours circulated in the press that there might be an agreement with CDiscount to launch a free Internet VoD service but nothing came of this.

The **Gaumont** CEO Nicolas Seydoux has never been a real supporter of adapting the film market to the Internet, which is in his opinion one of the reasons for the depressed state of the French film industry. At the end of 2006, he even declared that a well-stocked video-on-demand service could hurt the main financier of this industry, namely the encrypted channel Canal+. He puts into perspective the importance of this type of distribution, which he believes is less profitable for producers.

> *"For the rightsholders, the Internet is clearly a new territory to conquer. However, the development of this new method of distribution must not take place to the detriment of what has been achieved. Let us take the example of "Palais Royal", a successful film produced by Gaumont. It has chalked up 2.4 million cinema admissions, 240,000 DVD sales and recorded 24,000 downloads from the Internet. In addition, the producer Gaumont receives more from a cinema ticket than from a DVD and more from a DVD than a download."*[520]

However, the Gaumont group made progress by signing agreements with Orange (its 24/24 Vidéo service) in 2007 and with CanalPlay for rental VoD. The agreement with CanalPlay concerns a selection of recent and older films belonging to this French production company. Since September 2008, CanalPlay has offered all the films produced by Gaumont on a download-to-own basis. Gaumont films are sold in a non-physical format at €9.99 for the older films and €14.99 for the new releases. Download to own enables users to watch their film on any reading platforms, including Sony's PSP, with no limitation whatsoever.[521]

The **Europacorp** group is involved in production and distribution. It does not offer a VoD service in the true sense but its founder, Luc Besson, said he was convinced of the importance of this form of distribution and anticipated sales of 0.5 million euros in this segment for the 2007/2008 financial year.[522] In October 2006, EuropaCorp signed an agreement with Orange for the distribution of its films in the catalogue of the 24/24 Vidéo service. In September 2007[523], Glowria announced an agreement with EuropaCorp that enabled it to offer all the group's catalogue items – about sixty feature-length films – for sale or rental through its VoD service and associated IPTV services (FNAC.com, Dartybox). In February 2008, EuropaCorp concluded an agreement with Microsoft for the distribution of some of its titles as part of the Xbox Live service.

The German company **Constantin Film AG** is one of the principal European film groups and is

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520 Interview with Nicolas Seydoux, *Les Echos*, 28 November 2006, http://archives.lesechos.fr/archives/2006/PremiumComelec/11/28/300118928.htm.

521 Canal+ Group press release, 29 August 2008, http://media.canal-plus.com/file/94/3/116943.pdf *PC Inpact*, 1 September 2008, http://www.pcinpact.com/actu/news/45659-CanalPlay-films-gaumont-telechargement-defin.htm

522 Interview with Luc Besson, Boursier.com, 28 June 2007, http://www.boursier.com/vals/fr/luc-besson-president-du-directoire-d-europa-corp-interview-1705.htm

523 Glowria press release, 24 September 2007, http://public.glowria.fr/press/europacorp_glowria_vod.pdf

involved in production, distribution and licence trading. It has not set up an actual service but, as part of its licence trading activities, prefers to reach agreements with service providers in Germany. In 2003, it signed an agreement with the T-Home service of Deutsche Telekom. In October 2007, it announced an important agreement with Glowria GmbH[524], the service subsequently being incorporated into Video Buster. The agreement was reinforced in March 2008 and enabled Video Buster to include the group's entire 2008 production in its catalogue.[525] Some films have also been made available to the German service of Microsoft's Xbox Live.

4.5.3. The independent producers

Access to the VoD market is not easy for the independent producers. The still uncertain character of the market, its lack of transparency and the risk of seeing their films marginalised in catalogues dominated by the major distributors have led many independent producers to adopt a wait-and-see attitude, with the result that they are their holding on to their VoD rights. At the same time, the broadcasters and distributors are tending to ask them to make these rights available in exchange for agreeing to finance a film.

Various initiatives proposing the sharing of responsibility for the creation of platforms specialising in independent production and art-house films:

4.5.3.1. Le meilleur du cinéma français: UniversCiné

UniversCiné was established in 2001 as an association of 34 independent French producers who had joined forces to form the company Le meilleur du cinéma français ("The best of French cinema" – LMCF) with the aim of combining their VoD rights under one roof. In 2003, the association developed for the French Foreign Ministry a service for the digital distribution of films for the French cultural centres abroad and the Alliance française offices worldwide. The producers carried out an inventory and compiled the catalogue between 2004 and 2005. The UniversCiné VoD service was developed in 2006 using its own funds with assistance from the CNC and the French film producers' collecting rights society Procirep. The service was launched in a test version on 23 October 2006 and offered 126 French films. The commercial launch of the rental service using the Internet was in February 2007 and comprised a total of 300 films, 200 of them on an exclusive basis.

In order to respond to the challenges of the VoD market, UniversCiné is structured around three activities:

- Aggregator:
    - commissioned to distribute films owned by its shareholder distributors / producers as VoD,
    - commissioned to commercialise as VoD catalogues of films placed in its charge by partner producers and distributors.
- VoD distributor:

524 Glowria press release, 10 October 2007, http://www.openpr.de/pdf/163449/Die-glowria-GmbH-erwirbt-umfassendes-Video-on-Demand-Filmpaket-von-der-Constantin-Film.pdf

525 Video Buster press release, 10 March 2008, http://www.videobuster-holding.de/index.php?option=com_content&view=article&id=69:video-buster-erwirbt-alle-vod-starts-2008-von-constantin-film&catid=18:pressemitteilungen-2007&Itemid=46

distribution of the exploitation rights in the UniversCiné collection to the main distributors/VoD operators (ISPs, e-commerce and media portals, etc) with an exclusive, high-quality supply of films as well as editorial and promotional material (interviews, making-of, etc.);

- VoD website operator:
  - operator of the VoD website www.universcine.com, with the aim of developing an advanced editorial approach and innovative technology,
  - VoD websites for specific clients (Foreign Ministry, libraries, educational establishments, etc).

UniversCiné is thus establishing itself both as a direct operator of a diverse, high-quality Internet based VoD service and as a partner of generalist platforms with a different, high value-added offering of films and associated editorial content. There is no intention to develop the service at the pan-European level but partnerships are being sought with similar projects in Europe. The catalogue of the service has gradually been enlarged to include European art-house films and grants were received in 2007, 2008 and 2009 from the European Commission's MEDIA Programme.

The declared objective is to have a 2% share of the French VoD market by 2010. According to project director Jean-Yves Bloch, *"Our project starts from the premise that revenues of 350 million euros for film rentals in France will migrate to the Internet".* In order to achieve its aim of selling two million downloads in three years, UniversCiné is first of all pinning its hopes on distribution through IPTV services, to which end it is looking for partnerships with IPTV service providers. A channel named *Toutes les nouveautés d'Universciné* ("All the new UniversCiné releases") is part of the service offered by the SFR Neufbox. In August 2008, UniversCiné also announced an agreement with VirginMega. The entire UniversCiné catalogue (500 titles) accompanied by editorial content has become available as part of the VirginMega online service, under its own label. This partnership also enables UniversCiné to include the *Mes vidéos à la carte* VoD catalogue of the IPTV service of Alice TV (taken over by Telecom Italia from Free in 2007).

The company Le meilleur du cinéma had a turnover in 2007 of €348,000 but made a loss of €365,000. At the beginning of 2008 a recapitalisation by its shareholders of €1 million was planned within 18 to 24 months.[526]

4.5.3.2. The Filmmakers' Independent Digital Distribution: Movieurope

The Filmmakers' Independent Digital Distribution is a Danish co-operative founded in 2006 in which well-known Scandinavian directors and producers hold 50% of the capital. The company operates a pay film channel specialising in Nordic films and has created, with funding from the MEDIA programme, a VoD service for the Nordic countries. The aim is the digitisation, management and supply of films as VoD in the Scandinavian and Baltic countries. The objective initially announced was to become the European distribution leader by offering a catalogue of 50,000 European films in 27 languages by 2013 but this aim was subsequently scaled down and it is now only proposed to serve the Nordic countries. An English version initially offered 200 films and should comprise about a hundred more at the end of 2009 whereas the Danish version

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[526] *Journal du net*, 25 January 2008, http://www.journaldunet.com/ebusiness/Internet/actualite/0801/080125-universcine.shtml

offers 630 films. The site hopes to reach 10,000 subscribers a month at the end of 2009 and 100,000 at the end of 2010. The SVOD is considered less expensive than managing the pay-TV channel also operated by FIDD.

4.5.4. The independent distributors

There is a string of small independent distribution companies in Europe that specialise in the distribution of art-house and European films.[527] For these (structurally weak) distributors, the development of VoD poses a significant risk: since the producers can exploit the VoD rights themselves, a market segment might well slip away from their grasp. However, as illustrated by the analysis[528] by Philippe Leconte of the French Pyramide Distribution, the VoD market (which is not limited to Internet services) is becoming so complex that it requires real specialisation in rights management. By acquiring this specialisation, the independent distributors should be able to renew their role as intermediaries between the producers and the market. The association Europa Distribution, which groups together various independent European distributors, is contributing to the discussion on a strategic definition by organising workshops on VoD and the prospects that it offers this type of player.

A number of independent distributors have already positioned themselves on the market by creating their own service, while other prefer to negotiate with the service operators to find novel solutions originales for enabling European films to access the VoD market.

4.5.4.1. Filmladen

The Austrian distribution company Filmladen, which is the country's art-house film market leader and also operates *arthouse* cinemas, has set up a VoD website that offers more than 400 films, most of them Austrian. They can be downloaded from all European countries at prices between €5.90 and €7.90.[529]

4.5.4.2. Cinemalink

Under the ABC Distribution label, the sister companies Amsterdam Brussel Cinemien Distribution (Belgium) and Cinemien Film & Video Distributie (Netherlands) are one of the main players on the independent distribution market of the three Benelux countries. They have launched the Internet rental VoD service Cinemalink[530], which offered 112 films in the spring of 2009.

4.5.4.3. Belanski

Belanski LLC is a young Hungarian distribution and international sales company that specialises in distribution via the Internet and digital platforms. It has a catalogue of around 100 titles (full-

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527 See A. Lange and S. Newman-Baudais, *Film Distribution Companies in Europe*, European Audiovisual Observatory, Strasbourg, 2007.

528 P. Leconte, "A Practical Insight into VoD", presentation to the Europa Distribution workshop, Paris, 17 July 2009, http://www.vod-news.net/article-33672915.html

529 http://download.filmladen.at.

530 http://www.cinemalink.nl/

length and short films and documentaries). At the beginning of 2009, it launched a rental VoD website.[531]

4.5.4.4. *Wild Bunch*

Initially set up as an international sales company, Wild Bunch has become firmly established among the major European production and distribution companies and become a key interlocutor for the independent producers. A top player in the context of international sales and building on a catalogue of over 1,150 films, it is developing a pan-European distribution network and distributes films directly to cinemas and as video in France (Wild Bunch Distribution and Wild Side Vidéo respectively), Italy (BIM Distribuzione), Germany (Central Film/Senator) and Benelux (Wild Bunch Benelux). In October 2008, it launched FilmoTV, a VoD service with a catalogue of 500 films. The films are available for rental but the originality of the service mainly lies in its subscription VoD model (50 films for €9.90 a month). Another characteristic is the very distinctive editorialisation: films grouped according to subject, presentation of films by specialised journalists, etc, which enables the service to establish its own position in relation to the pay channels for cinema enthusiasts. According to its President Bruno Delecour, who is President of FilmoTV and former President of the Canal+ group and its subsidiary CanalSatellite, “most of the video-on-demand services are available as a bulk offering and without a guide, apart from the blockbusters displayed on the home page, and charge high prices of €4 to €5 a film, so it is important to editorialise and structure the service”. When the project was launched, the directors of FilmoTV expected it to break even after two years of operation.

4.5.4.5. *Filmklik*

In 2008, the Hungarian distribution company Budapest Film launched Filmklik, an Internet VoD service offering European films for rental. The rollout of the project to other Central European countries (Czech Republic, Slovakia, etc) is currently being negotiated.

4.5.4.6. *Curzon Artificial Eye*

Rather than create their own service, some independent distributors prefer to pursue an offensive VoD promotion strategy when positioning themselves in relation to the major operators.

For example, in the United Kingdom Curzon Artificial Eye is testing the simultaneous release as VoD and in cinemas as part of a collaboration with Sky. The first films to be released in this way were Fatih Akin’s *The Edge of Heaven* and Eric Zonca’s *Julia*. Released in cinemas at the beginning of 2008, *The Edge of Heaven* was simultaneously available for 14 days on Sky’s VoD and pay-per-view service at more or less the same price (£9.99, compared with £10 at the cinema). In this context, the film benefits from the marketing impact made by the broadcaster. According to Ross Fitzsimons, Director of Group Strategy & Business Development at Curzon, *“(t)he figures are confidential but I can tell you that the financial result was five times higher than Sky’s forecast, which has 9 million subscribers”.* Curzon believes that this VoD trial boosted cinema admissions for the film. *“I emphasise the fact that these are not multiple platform releases, but releases on two distinct media. We realised that certain films were receiving*

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[531] http://www.belanski.com

extravagant reviews in the media – both print and audiovisual – but audiences couldn't go see them as they weren't being screened at local cinemas. We feel we should be able to give them that opportunity, and help them to avoid having to wait four months for the film to come out on DVD."[532] The number of cinemas in which the films were released was slightly lower than would be normal in the light of their exploitation potential. Some operators refused to take the films but in those cinemas in which they were shown the number of admissions was not considered to be any lower than what would be normal in view of the exploitation potential.

4.5.4.7. Manga

Manga is a Spanish distribution company set up in 1993 and has a strong position as an independent distributor on the Spanish market.[533] It is involved in the Vertice 360 group with Notro Films, a production company specialising in *arthouse* cinema, popular cinema and horror films. Not all the films in the Manga catalogue are available for commercialisation as VoD since pre-2002 contracts have to be renegotiated with some producers. Manga has chosen not to create its own platform but to work with the various services available in Spain (Imagenio, Orange, Jazztel, ONO, Digital+, ADNStream, PixBox, TerraTV, Filmotech). At the end of 2008, it also held negotiations with the platforms of games manufacturers and is the only independent Spanish distributor to supply films for Microsoft's Xbox 360 service.

Manga mainly enters into non-exclusive rental VoD contracts since the download-to-own and SVOD markets are not yet well-developed in Spain. The VoD rights were initially sold at the same time as the PPV rights, sometimes in a package with the pay-TV and PPV rights, but the market has developed towards the shortening of the VoD window, which is becoming similar to the period for releases on DVD. The films are licensed as VoD for four to six months and catalogues for six to twelve months. The remuneration arrangements in Spain are tending more and more towards revenue-sharing with the service provider but guaranteed minimums are also common.

Manga's VoD revenues mainly come from contracts relating to films that have been big cinema successes and may bring in up to 50,000 euros per title. The catalogue titles account for less than 20% of VoD sales and Internet VoD sales and services make up less than 5% of VoD revenues.

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532 Interview in Europa Cinemas Network Review, November 2008, http://www.europa-cinemas.org/en/communication/Documents/EuropaCinemasNewsletter_Nov2008.pdf, and contribution at workshop held by Europa Distribution in Paris on 17 July 2009.

533 According to Ania Jones (Manga) at the VoD workshop held by Europa Distribution in Paris on 17 July 2009.

4.5.5. The video publishers

A number of video publishers have also set up their own Internet VoD service and offer a catalogue of films for rental or purchase:[534]

Table 26 : VoD services proposed by video publishers

Country	Name of service	Catalogue publisher	Network	Territory limitation	Accessibility	Type of service
BE	Film Huis	European International Communication	Internet	X	Open/national	Rental VoD
BE	FilmClub	European International Communication	Internet	X	Open/national	Rental VoD
CH	Artfilm.ch	Artfilm.ch S.A.	Internet		Open/global	Download-to-own VoD
DE	Absolut on Demand	Absolut Medien GmbH	Internet	X	Open/national	Download-to-own VoD
FI	Pixoff	Provisual oy	Internet	X	Open/national	Rental VoD
FR	Dissidenz	Blaq out	Internet	X	Open/national	Rental VoD
FR	Editions Montparnasse	Editions Montparnasse	Internet	X	Open/national	Rental VoD

Source: European Audiovisual Observatory

4.5.6. Retail businesses

Retailers specialising in cultural products very quickly realised the need to gain a foothold on the VoD market. This applies in particular to rental companies as well as sales outlets. For DVD rental companies, the aim is clearly to become established using a rental model that constitutes a direct threat to the operations of video clubs.

4.5.6.1. American examples: Netflix, Amazon, Blockbuster

In the United States, three retailers have rolled out pay-VoD services and are serving more and more as models for the European groups.

- Netflix is the company that invented the online rental of DVDs. It generated sales of $1.36 billion in 2008 and had 10.6 million subscribers to its rental service at the end of June 2009. From 2004, it planned to launch a VoD service in collaboration with TiVo but had to wait until January 2007 for this. It says that online DVD and Blu-ray rentals are still its core business. Its DVD catalogue comprises 100,000 titles, whereas its VoD catalogue only offers 12,000. The VoD service is also available on subscription and is the subject of bundled contracts with the DVD/Blu-ray rental service. The company therefore

[534] Mention might also be made of the specific case of the British video publisher Medici Arts Ltd, whose VoD website Medici TV offers classical music programmes with rental or subscription options.

does not publish a breakdown of its revenues between physical rentals and its VoD service. Owing to the interest in the Blu-ray, it believes the physical rentals market will remain its principal source of revenue for several years to come but foresees the moment when VoD will become its main source.[535] In mid-2009, some analysts were predicting that Netflix could be taken over by Amazon or Microsoft.

- Amazon Inc., the market leader for online sales of cultural goods with revenues of $19.2 billion in 2008, also launched a VoD service on 7 December 2006.[536] Initially called Amazon Unbox, it was renamed Amazon on Demand in December 2008. Films and television programmes are offered for sale or rental. In August 2009, the Amazon on Demand VoD catalogue contained over 31,000 titles, including more than 27,000 films.[537] In March 2009, Amazon on Demand also offered 500 films in HD quality.[538] Since September 2008, the Internet Movie Data Base (imdb) website, which is a subsidiary of Amazon Inc. and is one of the most visited websites in the world, has also offered a catalogue of 6,000 titles (films and television programmes), which are available free of charge in the United States.[539]
- Blockbuster Inc., the main international video club network, also launched its own VoD service in November 2008. Called Blockbuster on Demand, it incorporates the former Movielink service, which was taken over in 2007.

The three services were launched on the Internet but have become sought-after partners for television set, console and set-top box manufacturers for the promotion of their solutions and broadband enabled devices. They have also become key partners for the studios and television channels since they provide important pay-VoD outlets as an alternative to the Apple iTunes Stores.

4.5.6.2. European companies

Since the beginning of the decade, European retailers have been competing with Amazon by developing their own online activities. Several have also set up an online music service, with a smaller number also launching a VoD service. However, it seems clear that, owing to the fragmentation of the markets, the European companies are not large enough to compile catalogues with such a wide variety of content as Amazon on Demand or Netflix and it s not appear very likely that they will be able to play the same role as sought-after aggregators as their American counterparts. There is a distinct possibility that Amazon will enter the European VoD market, especially since the American group's acquisition of a stake in Lovefilm International.

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535 Netflix, 2008Annual Report, http://files.shareholder.com/downloads/NFLX/701134303x0xS1193125-09-37430/1065280/filing.pdf

536 Amazon press release, 7 September 2006, http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-newsArticle&ID=903243&highlight=

537 Amazon on Demand catalogue, consulted on 11 August 2009. http://www.amazon.com/s/qid=1250098311/ref=sr_hi?ie=UTF8&rs=16386761&bbn=16261631&rh=n%3A16261631&page=1

538 Amazon press release, 21 April 2009, http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-newsArticle&ID=1278973&highlight=video

539 Amazon press release, 15 September 2008, http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-newsArticle&ID=1197359&highlight=

Table 27 : Entertainment goods retailers and DVD rental companies in Europe (2005-2008) – Operating income (EUR thousands)

Retailer	Country	Shops	Video club	Online rentals	Online sales	Online music	VoD	2006	2007	2008	2008/2007
Media Markt Saturn (cons.)	DE	X			X	X	X (Italie)	15 156 000	17 122 000	19 000 000	11,00%
FNAC (cons.)	FR	X			X	X	X	4 266 900	4 583 000	4 587 000	0,10%
Woolworth Group PLC (1) (2)	GB	X			X			4 160 990	4 021 125	n.c.	n.c.
Amazon EU	LU				X			1 810	3 555 340	n.c.	n.c.
HMV Group	GB	X			X	X		2 777 485	2 372 945	2 185 242	-7,9%
Smiths News Trading Ltd (WHSmith)	GB	X			X			1 797 690	1 816 363	1 539 825	-15,20%
Zavvi Retail Ltd (2)	GB	X			X			501 303	n.c.	n.c.	n.c.
Blockbuster Entertainment Ltd	GB	X	X	X	X			358 946	412 352	n.c.	n.c.
France Loisirs	FR	X			X			389 497	379 699	359 940	-5,20%
Librerie Feltrinelli (cons;)	IT	X			X			313 825	329 164	n.c.	n.c.
Borders (UK) Ltd	GB	X			X			333 431	n.c.	n.c.	n.c.
Free Record Shop Holding B.V. (3)	NL	X			X	X	X	323 205	325 402	332 695	2,20%
Welbild Plus Medienvertrieb (est.)	DE	X			X			280 000	280 000	n.c.	n.c.
Virgin Stores	FR	X			X	X	X	367 638	376 841	258 145	-31,5%
Bol.com B.V.	NL				X			107 087	171 369	225 287	31,50%
Empik SP Z.O.O.	PL	X			X			160 071	213 307	n.c.	n.c.
Domo Retail S.A.	RO	X			X			128 248	182 248	n.c.	n.c.
Xtra-Vision (Blockbuster Group) (5)	IE	X	X		X			141 197	158 564	n.c.	n.c.
Blockbuster Italia S.P.A.	IT	X	X		X			131 788	138 769	n.c.	n.c.
Amazon.co.UK Ltd	GB				X			115 828	110 279	98 795	-10,40%
ECI Voor Boeken en Platen	NL	X			X			119 227	109 417	n.c.	n.c.
Ex Libris	CH	X			X	X		100 203	107 554	n.c.	n.c.
CDON AB	SE				X	X	X	78 620	94 436	n.c.	n.c.
Video rental companies	**Country**	**Shops**	**Video club**	**Online rentals**	**Online sales**	**Online music**	**VoD**	**2006**	**2007**	**2008**	**2008/2007**
Lovefilm International Ltd	GB			X			X	61 785	67 028	76 544	14,20%
Videobuster Entertainment GmbH	DE			X			X	n.c.	n.c.	25 000	n.c.
Lovefilm UK (4)	GB			X			X	_	_	17 323	_
Glow Entertainment Group	FR			X			X	4 297	5 944	5 640	-5,10%
Lovefilm Sverige	SE			X			X	2 334	5 800	n.c.	n.c.
Lovefilm Norge AS	NO			X			X	2 133	2192	n.c.	n.c.

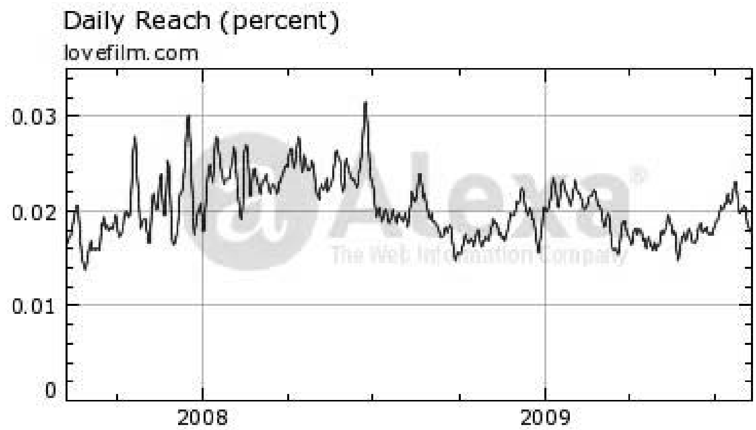
(1) 2006 over 18 months.
(2) Insolvent in December 2008.
(3) Online sales services (music and VOD) discontinued in June 2009.
(4) 2000 over 8 months.
(5) Sold by Blockbuster in August 2009.

Source: European Audiovisual Observatory

4.5.6.3. *Lovefilm*

Lovefilm International Ltd launched its VoD service in April 2006. The company claims it has the country's biggest catalogue of films. In February 2008, it acquired the DVD rentals operation of Amazon UK and Amazon Deutschland.[540] On that occasion, Amazon Europe injected capital into Lovefilm International and became the company's main shareholder. The service has retained its autonomy and does not appear on Amazon's British portal. Lovefilm says it has more than 900,000 customers, mainly in the United Kingdom and Germany but also in the Nordic countries, where it operates through its subsidiaries Lovefilm Sverige and Lovefilm Norge.[541] In October 2008, it was ranked second by turnover growth among the British technology companies listed in the Sunday Times Microsoft Tech Track 100. Its turnover rose by 239% in one year; the figures for its VoD operations are not published. As regards DVD rentals, it says these total 3 million a month out of a catalogue of 70,000 titles.[542]

Graphic 40 : Daily reach of Lovefilm.com (2008-2009)



Source: Alexa

4.5.6.4. *Glow Entertainment Group*

In France, the main VoD rental company is Glow Entertainment Group (Glowria), which was taken over by the manufacturer Netgem in 2008 (see 4.1.8 above).

4.5.6.5. *Video Buster Entertainment GmbH*

In Germany, the online DVD rental service Video Buster is operated by Video Buster Entertainment GmbH, which has succeeded in grouping together various companies, including Netleih GmbH (which launched the first service in 2002) and, in January 2008, the German

540 Amazon.co.uk press release, 4 February 2008, http://www.amazon.co.uk/gp/press/pr/20080204/ref=amb_link_55701565_13?pf_rd_m=A3P5ROKL5A1OLE&pf_rd_s=center-2&pf_rd_r=0KM8YHKH9K9XT3P94GTX&pf_rd_t=2701&pf_rd_p=464942953&pf_rd_i=home-2008

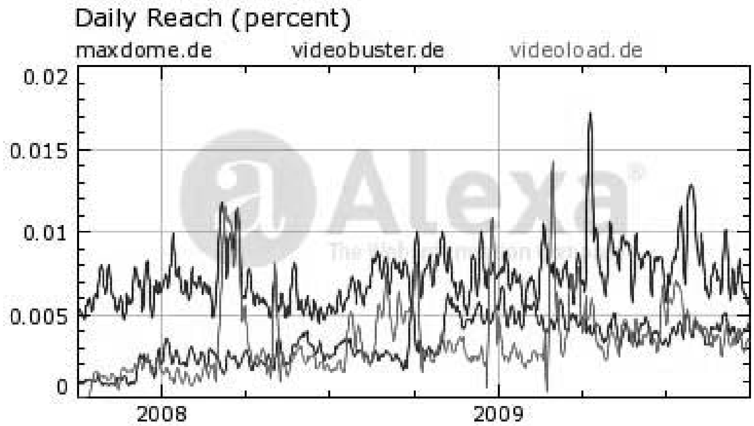
541 Lovefilm press release, 4 February 2008, http://www.lovefilm.com/corporate/news_item.html?full=Y&item=5753

542 Lovefilm press release, 1 October 2008, http://www.lovefilm.com/corporate/news_item.html?item=8032

subsidiary of the French group Glowria.[543] Video Buster also launched a VoD service offering streamed content and downloads in December 2007. An agreement reached in March 2008 with the producer/distributor Constantin Film AG enabled it to expand its VoD catalogue from 400 to 4,000 titles.[544] In 2008, it had a turnover of €25 million, a third of which was generated by its online DVD service. It predicts that the DVD/BD online rental service will account for half of its revenues in 2013.[545]

Faced with competition from the Maxdome service, which is available both online and via IPTV, Video Buster has set up partnerships that enable it to provide access to its service on television sets: in March 2008 with Microsoft to permit access via the Xbox 360 and in March 2009 with the German manufacturer Medion AG, which has developed a dedicated set-top box.[546]

Graphic 41 : Daily reach (%) of the Maxdome, Video Buster and Videoload websites (2008-2009)



Source: Alexa

4.5.6.6. Cultural goods retailers

In Europe, only some cultural goods retailers offer a VoD service:

- in France: FNAC, which sources items from the Glowria catalogue on a white label basis, and Virgin Megastores (Lagardère Group),
- in the Nordic countries: the Swedish company CDON (part of the MTG group),
- in Italy, Media World (a subsidiary of Germany's Media-Saturn Group) launched the service Net-Movie in December 2007.

543 "Konzentrationsprozess im Verleihmarkt schreitet voran. Video Buster übernimmt Online Verleih von Glowria", Video Buster press release, 14 January 2008, http://www.videobuster-holding.de/

544 "Video Buster erwirbt alle VoD-Starts 2008 von Constantin Film", Video Buster Entertainment AG press release, 10 March 2008, http://www.videobuster.de/presse.php?prdate=2008_03_10

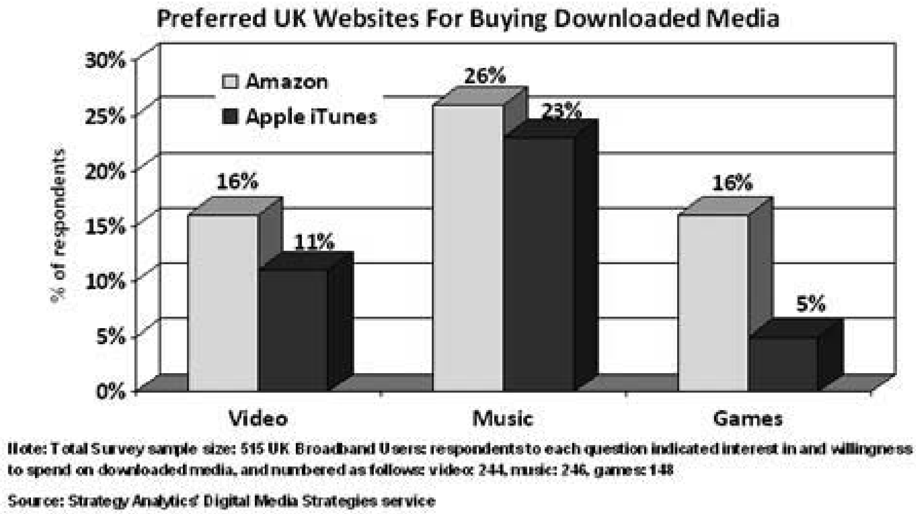
545 "Für den Filmverleiher Video Buster wird das Geschäft im Internet immer wichtiger - Konkurrenten übernommen", *Goslarsche Zeitung*, 6 December 2008, http://www.videobuster.de/presse.php?prdate=2008_12_06

546 Video Buster Entertainment Group AG ist Partner der Medion AG", *OpenPR*, 6 March 2009, http://www.videobuster.de/presse.php?prdate=2009_03_09

4.5.6.7. Amazon soon to launch VoD services in Europe?

On 3 December 2008, Amazon UK launched Amazon M3, an online music service that competes with Apple's iTunes Store and could soon announce that it is branching out into VoD and will offer a service similar to Amazon on Demand in the United States.[547] Amazon seems to be benefiting from a brand effect in relation to Apple on the e-commerce market for entertainment goods. Even though Amazon.com UK does not provide video and games download services and its online music service was only recently introduced, a survey conducted by Strategy Analytics among 515 web users shows that Amazon is the most preferred brand.[548]

Graphic 42 : Preferred UK websites for buying download media



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547 Amazon.co.uk press release, 3 December 2008, http://www.amazon.co.uk/gp/press/pr/20080312/ref=amb_link_55701565_3?pf_rd_m=A3P5ROKL5A1OLE&pf_rd_s=center-2&pf_rd_r=0REJV1B486WRDV9GDABG&pf_rd_t=2701&pf_rd_p=464942953&pf_rd_i=home-2008

548 "Amazon Beats Apple's iTunes As Preferred Digital Media Provider", *Strategy Analytics* press release, 24 February 2009, http://www.strategyanalytics.com/default.aspx?mod=PressReleaseViewer&a0=4556

PART 5:

THE STRATEGIES OF THE TELEVISION CHANNEL PROVIDERS

The development of on-demand audiovisual services is a major challenge for the providers of television channels. The opportunity for viewers to put together their own programme is a significant break with the traditional practices of television consumption. Often described as a threat to broadcasters, "television on demand" in fact turns out to be a means for them to complement and improve their services. Televison channel providers have various advantages when it comes to investing in this new market:

- their brand image,
- their knowledge of the rights market,
- their expertise with regard to technical systems,
- their knowledge of their audiences,
- their investment capabilities, which are unable to match those of the telecommunications operators but are nonetheless greater than those of the producers and distributors.

Television broadcasters have been able to develop both VoD services and catch-up TV models. In order to provide material for these two types of service, they possess a catalogue of rights in programmes produced by third parties (TV series, films, broadcasts) – rights they generally hold themselves for the exploitation of items on the video market and which they are able to extend to on-demand video services as such. Finally, they have been able to put together offerings consisting of archive programmes

5.1. PAY-VOD SERVICES OFFERED BY TELEVISION CHANNEL PROVIDERS

5.1.1. Internet services

Since 2006, we have witnessed the emergence of rental VoD websites provided by operators of private television channels, whether they be channels financed by advertising or pay channels. In France and the United Kingdom, public broadcasters, such as Channel 4, France Télévisions or Arte have also launched pay-VoD services. At the end of 2008, around television twenty groups were offering these services (table 28).

Although no precise data are available, the national market leaders would appear to be such services as CanalPlay (provided by Canal+) and TF1Vision (provided by TF1) in France, Maxdome in Germany (provided by Maxdome GmbH, a joint venture between SevenOne Media, a subsidiary of the ProSiebenSat.1 Media AG Group and 1&1 Internet AG, which belongs to the United Internet Group[549]), and Rivideo[550] in Italy (provided by Mediaset).

Some of these services are also available on cable networks or as part of IPTV offerings.

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549 The Maxdome service used to be operated by SevenOne Media GmbH, a subsidiary of ProSiebenSat.1 Media AG. When the joint venture was set up in June 2008, the assets of the service were valued at 9 million euros.

550 In Italy, Rivideo is competing on the Internet pay-VoD market with the services of Film is Now (which states that it recorded 80,000 monthly visits and 1,500 purchases a month at the end of 2008), Net Movies (Media World distribution group) and Play4film.com.

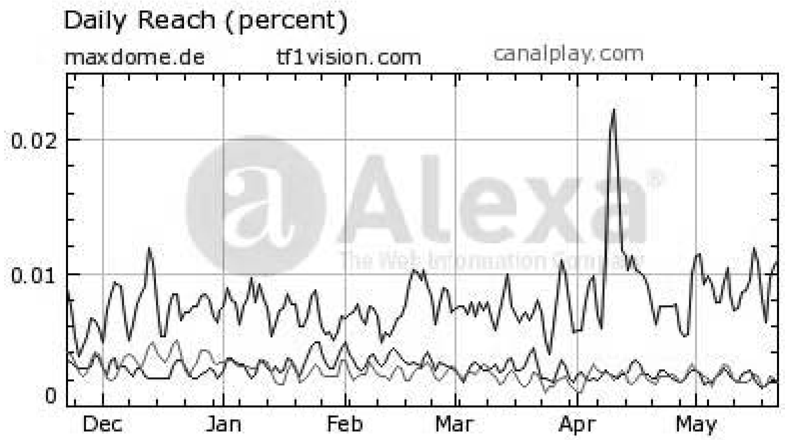
Table 28 : Pay VoD services provided by television groups

Country	Service name	Catalogue publisher	Distributors (Cable, IPTV, DTT, satellite platform) or website operator	Network	Accessibility	Service type	Economic model
AT	Premiere Internet TV	Premiere Fernsehen GmbH & Co. KG	Premiere Fernsehen GmbH (Austrian subsidiary of Premiere AG)	Internet	Ouvert / plusieurs territoires	VoD locative	Péage à l'unité
BE	iWatch	Vlaamse Media Maatschappij	Vlaamse Media Maatschappij	Internet	Ouvert / national	VoD locative	Péage à l'unité
DE	Anixe HD	ANIXE HD TELEVISION GmbH & Co. KG	ANIXE HD TELEVISION GmbH & Co. KG	Internet	Ouvert / national	VoD locative / VoD définitive	Péage à l'unité
DE	Giga Videos	Giga Digital Television GmbH	Giga Digital Television GmbH	Internet	Ouvert / national	VoD locative	Péage à l'unité
DE	Maxdome	Maxdome GmbH (ProSiebenSat1.Media AG Group)	Maxdome GmbH (ProSiebenSat1.Media AG Group)	Internet	Ouvert / national	VoD locative	Péage à l'unité / abonnement
DE	Maxdome über 1&1	Maxdome GmbH ((ProSiebenSat1.Media AG Group)	1&1 Internet AG / Maxdome GmbH	Internet	Ouvert / national	VoD locative	Péage à l'unité / abonnement
DE	Premiere Internet TV	Premiere Fernsehen GmbH & Co. KG	Premiere Fernsehen GmbH & Co. KG	Internet	Ouvert / plusieurs territoires	VoD locative	Péage à l'unité
DK	C:More (Dansk Bredbaand)	C More Entertainment AB	Dansk Bredbaand A/S	IPTV	Abonnés IPTV / National	VoD locative	Péage à l'unité
DK	Canal+ WebTV	C More Entertainment AB	C MORE Entertainment AB	Internet	Ouvert / plusieurs territoires	VoD locative	Péage à l'unité
EE	ETV pluss	ERR - Eesti Rahvursinghääling	ERR - Eesti Rahvursinghääling	Internet	Ouvert / national	VoD locative	Péage à l'unité
FI	Canal+ Web TV	C More Entertainment AB	C MORE Entertainment AB	Internet	Ouvert / national	VoD locative	Péage à l'unité
FI	Silver on Demand	NonStop AB/Film2Home (Bonver Entertainment)	NonStop AB/Film2Home (Bonver Entertainment)	Internet	Ouvert / national	VoD locative	Péage à l'unité
FR	Arte VoD	ARTE France	ARTE France	Internet	Ouvert / Mondial avec filtre par programme	VoD locative / VoD définitive	Péage à l'unité
FR	Arte VoD (Dartybox)	ARTE France	Etablissements Darty	IPTV	Abonnés IPTV / National	VoD locative	Péage à l'unité
FR	Arte VoD sur Numéricable	ARTE France	Numéricable S.A.	Cable/Fibre optic	Abonnés câble / National	VoD locative	Péage à l'unité
FR	CanalPlay	Canal+ Active (Canal+ Group)	Canal+ Active (Canal+ Group)	Internet	Ouvert / national	VoD locative / VoD définitive / Gravage DVD	Péage à l'unité
FR	CanalPlay (Free)	Canal+ Active (Canal+ Group)	Free S.A.S.	IPTV	Abonnés IPTV / National	VoD locative	Péage à l'unité
FR	CanalPlay (Go! View)	Canal+ Active (Canal+ Group)	Canal+ Active (Canal+ Group)	Internet	Détenteur d'un lecteur spécifique / national	VoD locative	Péage à l'unité / Packs
FR	Cineplay	Canal+ Active (Canal+ Group)	Etablissements Darty	IPTV	Abonnés IPTV / National	VoD locative	Péage à l'unité
FR	Cineplay (Numéricable)	Canal+ Active (Canal+Group)	Numéricable S.A.	Cable/Fibre optic	Abonnés câble / National	VoD locative	Péage à l'unité

…/…

5.1.2. Examples of pay-VoD offered by television channels

Graphic 43 : Daily reach of the three VoD portals operated by television groups (December 2008-May 2009)



Source: Alexa

5.1.2.1. Maxdome

The Maxdome service was launched by the ProSiebenSat.1 Media AG group on 27 July 2006. It is available on the Internet but users with a dedicated set-top box can also view it on a television screen.

The service offers films, television series and sports programmes and has been able to expand its offering by opening it up to catalogues of other broadcasters, such as ZDF, MTV, Discovery Channel, The History Channel, National Geographic, Cartoon, Jetix, Nick and Boomerang, with the result that more than 20,000 videos are available. The business model was initially based on per-item video rentals but has developed in the direction of subscription models with thematic packages. The film and series packages are offered at €9.99 a month, while children's and comedy packages cost €4.99 a month and the package of adult programmes €12.99 a month. A package also offers sports programmes (Italian football championship, NBA, rugby, etc). A "premium" multi-choice package comprising all the other packages is available at €19.99 a month.

No data on the success of the service are published but SevenOne has 200,000 regular customers and announced in May 2008 that it handled 2.5 million transactions a month.[551] The statistics published by IVW indicate that the number of visits per month to the Maxdome site rose from 1.5 million in May 2007 to 8.7 million in May 2009. In the same period, the number of pages viewed went up from 12.6 million to 26.4 million.

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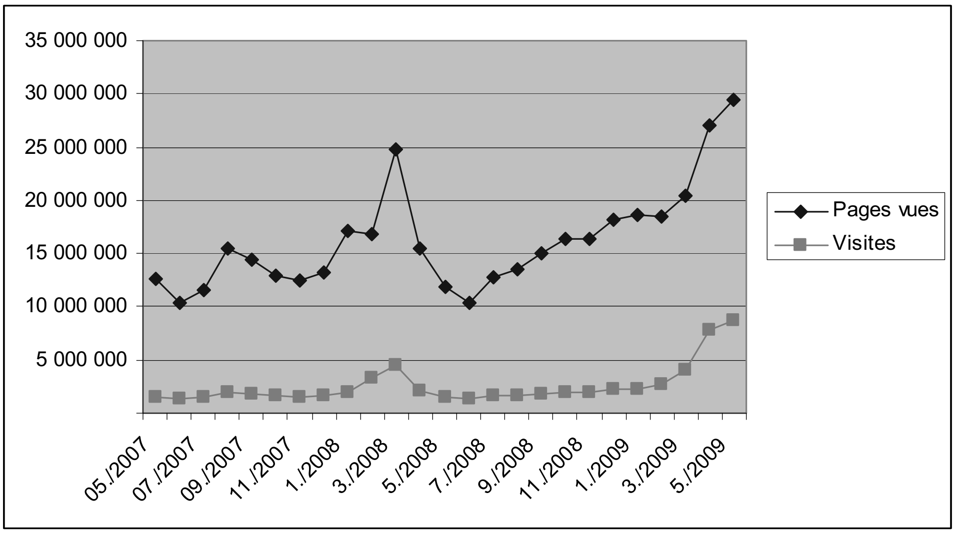
[551] M. Kühn, "Contracting for VoD Rights", Presentation at the European Audiovisual Observatory workshop, Cannes, 18 May 2008, http://www.obs.coe.int/online_publication/expert/mif2008_vod_kuehn.pdf

Graphic 44 : Number of visits to the Maxdome site and pages viewed (May 2007-May 2009)



Source: IVW

5.1.2.2. CanalPlay

Launched on 12 October 2005[552], the VoD portal CanalPlay initially offered films nine months after their cinema release. At the beginning, it signed contracts with Pathé, Europa, Studiocanal, Sony-Columbia, Spyglass, Nickelodeon, Jetix and many of the independent French producers grouped together under the "Best of French cinema ("Le meilleur du cinéma français") label, which subsequently launched their own VoD service UniversCiné. From late 2005, it also offered television series.

On 20 December 2005, CanalPlay launched its "Kids" service, offering children's programmes from Nickelodeon and Jetix, with 100 episodes available at €1.49 each, for viewing at will over a period 30 days.[553] In July 2009, the "Kids" catalogue comprised a total of 250 episodes.

In January 2007, the CanalPlay catalogue comprised over 2,000 videos, nearly 1,300 of them feature films.[554] In January 2008, it contained more than 3,500, including nearly 2,000 feature films.[555] In June 2008, over 4,000 programmes, including 2,500 films, were available.[556] In June 2009, the service announced that it had a catalogue of 6,000 titles, including 3,000 films.[557] In January 2007, the viewing time was extended to 48 hours and the service introduced download-to-own. In February 2007, an HD offering was launched.[558]

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[552] Canal+ Group press release and press brief, 12 October 2005, http://media.canal-plus.com/file/00/1/25001.pdf; http://media.canal-plus.com/file/00/0/25000.pdf

[553] Canal+ Group press release and press brief, 20 December 2005, http://media.canal-plus.com/file/04/4/31044.pdf

[554] Canal+ Group press release and press brief, 24 January 2007, http://media.canal-plus.com/file/65/6/60656.pdf

[555] Canal+ Group press release and press brief, 14 January 2008, http://media.canal-plus.com/file/60/5/92605.pdf

[556] Canal+ Group/Sony Computer Entertainment, 11 June 2008, http://media.canal-plus.com/file/24/9/109249.pdf

[557] Canal+ Group/Microsoft press release and press brief, 29 June 2009. http://media.canal-plus.com/file/78/8/146788.pdf

[558] Canal+ Group press release and press brief, 24 January 2007, http://media.canal-plus.com/file/65/6/60656.pdf

The Canal+ Group supplies very little information on the success of the service. The figures made available do not provide a breakdown of incomes according to the different distribution methods (Internet, IPTV, PSP, Xbox). In January 2008 the group announced that nearly 6 million purchases had been recorded since the launch 27 months earlier.[559] In June 2008, the service reported that it had received over 7 million orders in two years.[560] The Canal+ Group's progress report for 2008 showed that nearly 10 million downloads had been recorded since the launch of the service in October 2005.[561] If account is taken of the speed of development of pay-VoD in France, it can be estimated on this basis that the number of downloads recorded by the CanalPlay service in 2008 was in the order of 5 million, or about 36% of the 13.9 million transactions recorded by all the French pay-VoD services together in 2008, as estimated by the NPA-GfK barometer.[562]

5.1.2.3. TF1 Vision

In October 2005, the TF1 group also launched a pay-VoD service, TF1 Vision, which is managed by its subsidiary TF1 Video. The catalogue, like that of CanalPlay, comprises films and TV series but differs by also offering comedy programmes. In July 2006, TF1 Vision was the first French website to offer download-to-own films in association with Universal Pictures. Billed at prices from €9.99 to €19.99 compared with about €3.99 for a rented film, these downloads-to-own also enable the customer to transfer their film to a portable video player (with the Microsoft MTP) and receive a DVD by post, which serves as a back-up copy. TF1 Video does not publish any figures on the success of the service

5.1.2.4. Rivideo

In Italy, Mediaset's Rivideo service was launched in April 2007. It enables customers to download films, American or Italian TV series both for sale and rent. This paid offering is supplemented by a free streamed service (financed by advertising) and live sports events. In March 2008, music programmes were added following an agreement signed with the Italian channel Music Box.[563] Six months after its launch, the service had already recorded 30 million downloads by 300,000 visitors.[564]

5.1.2.5. Pay-VoD services offered by the public broadcasters

Some public service television stations (in France, France Télévisions and Arte, in the United Kingdom Channel 4, in Switzerland SRG-SSR Idée Suisse) have also launched pay-VoD services, which have only met with qualified success. For example, Channel 4's pay service, 4oD, only recorded around 1,000 orders a day following its launch in 2006, and SRG's experimental service, which has offered Swiss films since August 2007 at a rental price of between 1 and 6 Swiss francs (€0.66 and €3.98) had recorded less than 800 downloads, or an average or less than two a day, more than a year after its launch. It is planned to abandon the project, which cannot expect to receive any additional investment.[565]

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559 Canal+ Group press release and press brief, 14 January 2008, http://media.canal-plus.com/file/60/5/92605.pdf

560 Canal+ Group/Sony Computer Entertainment press release and press brief, 11 June 2008, http://media.canal-plus.com/file/24/9/109249.pdf

561 http://actionnaires.canalplus.fr/pdf/ra08_canal+_version_mise_en_ligne.pdf.

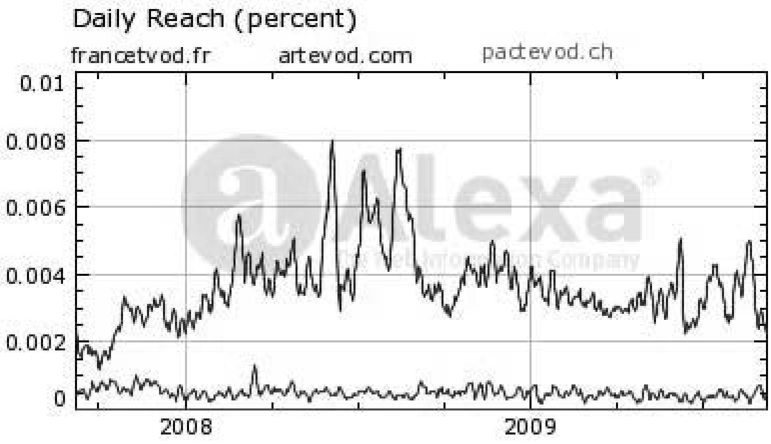
562 Quoted in *Bilan 2008*, CNC, p. 117.

563 Mediaset press releases of 12 July 2007 and 27 March 2008.

564 Figures quoted in *ACT TV Monitor*, October 2007. http://www.acte.be/EPUB/easnet.dll/GetDoc?APPL=1&DAT_IM=026200.

565 "SRG considers terminating VoD", *Rapidtvnews,* 21 June 2009.

Graphic 45 : Daily Reach of the VoD services of France Télévisions, Arte and SSR SRG Idée Suisse (2008-2009)



Source: Alexa

The group France Télévisions first of all offered such series as *Les Rois maudits* (France 2) and *Plus belle la vie* (France 3) on its channels' website from spring 2006 onwards. In September 2006, it opened a specific website (http://www.francetvod.fr) offering both pay-VoD and free catch-up TV. The portal groups together all the videos available at the sites of France 2, France 3, France 4 and France 5 – an offering that ranges from television news and certain broadcasts such as *Stade 2* to fiction, TV series, documentaries and youth programmes.

At its launch, the site offered 600 free and 350 pay videos, the aim being to provide 1,200 programmes by the end of the year. The pay videos are available from €0.99 per view. Programmes can be rented for unlimited viewing within 24 hours or purchased to own. In September 2009, the site offered more than 90 series (at a rental price ranging from €1.99 to €2.99 and a purchase price from €3.99 to €6.99), 61 films (at a rental price of €2.99 and a purchase price varying from €6.99 to €8.99), more than 200 documentaries and forty or so youth titles.

France Télévisions had held negotiations with IPTV service providers with the aim of having them incorporate its service into their offering but, apart from the exclusive catch-up TV agreement with Orange, the public group has not yet managed to interest these operators. The group does not publish any figures for VoD sales but its revenues increased by 60% between 2007 and 2008. 60% came from the episodes of *Plus belle la vie*.[566]

The content of the Arte VoD service (managed by Arte France and not by ARTE GEIE), is dependent on agreements that the channel is able to make with the rightsholders, especially with regard to the territories covered. A geolocation system automatically verifies whether the user is connected to the website from one of the authorised territories. At the end of 2008, the majority of programmes in the catalogue were mainly available in the French-speaking countries in Europe but more than 400 are already available worldwide.[567]

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[566] Statement by Laurent Souloumiac at the EBG Media conference, quoted in *La correspondance de la presse*, 29 January 2009.

[567] Number of titles available in the French version out of a catalogue of 1,366 programmes presented at the website in French: 1,204 in Belgium, 1,207 in Switzerland, 417 worldwide.

Number of titles available in the German version out of a catalogue of 174 programmes presented at the website in German: 173 in Belgium, 174 in Switzerland, 97 worldwide.

5.2. STRATEGIC ISSUES FOR TELEVISION CHANNEL PROVIDERS

5.2.1. *The issue of access to television screens*

The services created by the television channel providers are usually offered via the Internet for viewing on a PC screen. The paradox for these providers is that, like the other service providers, they have to resolve this strategic issue of getting the content back to the television screen, where the take-up of on-demand services is greater.

Owing to their negotiating capacity, it is theoratically easier for the television groups than for independent providers to also provide their services as part of the offerings of the IPTV operators, which will increase their success. For instance, the CanalPlay service of Canal+, which was launched on the Internet on 12 October 2005, has been available as part of the Freebox service since 12 December 2005.[568] It was subsequently made available via the Darty service and has been available on the Bouygues Telecom Bbox since 24 June 2009. Although Canal+ makes no official statement on this point, it is generally held that the IPTV version of CanalPlay accounts for 85 to 90% of the revenues of the service. The Canal+ catalogue is also the basis for the Cineplay service of Numéricable.

The TF1 Vision service is to be found in the offering of most French IPTV operators (Bbox, Dartybox, Freebox and the SFR Neufbox). In the Nordic countries, the C More on Demand service provided by C More Entertainment AB is to be found in the offerings of most cable and IPTV operators.

In Germany, the success of Maxdome can probably be explained by the weak competition encountered by VoD services on the IPTV platforms (especially T-Home), which are still relatively marginal. Taking account of the greater attraction of VoD on a television screen, Maxdome also offers the possibility of purchasing a set-top box (at a price of 99.99 euros) that enables programmes to be viewed on a television set instead of a computer.

Owing to the rapid growth of catch-up television, it seems these services are only viable in their Internet version if they comprise a catalogue of films rather than only television programmes. Thus, the M6 Vidéo Internet service has been suspended and is now only available on Numéricable and via IPTV services.

5.2.2. *Relations between the television groups and manufacturers*

Another way of developing the VoD services run by the broadcasters is to operate them as part of the services offered by the manufacturers. The Canal+ Group's CanalPlay service paved the way by making its catalogue available to the Archos platforms in March 2006: it was possible to download films onto a computer and then transfer them to an Archos player to watch them at any time and any place.[569] This service never really took off and is no longer available. In April 2006, Microsoft and Canal+ announced that the CanalPlay catalogue was becoming available for viewing on the Xbox 360.[570] In this case too, the

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[568] Free/Canal+,Group press release 12 December 2005, http://www.canalplusgroup.com/pid164.htm#
In May 2006, the CanalPlay Kids service was also made available on Free. Episodes of series are offered as pay-per-view but the service also offers unlimited "season ticket" arrangements with 30 episodes renewed every month. Each season ticket is billed at 4.99 euros a month and permits the unlimited viewing of episodes.

[569] Archos/CanalPlay press release, 15 March 2006, http://www.archos.com/corporate/press/press_releases/20060315-CANALPLAY_fr.pdf.

[570] Microsoft press release, 14 April 2006, http://www.microsoft.com/france/cp/2006/4/2006140401_a114.mspx.

announcement was not really followed up by action. In June 2009, a new agreement was announced: the CanalPlay, Canal + à la demande and Foot+ services are now available via the Xbox 360.[571] Microsoft's aim was to respond to the competition posed by Sony because the CanalPlay service of Canal+ has been available for consumption on Sony's PSP since 18 June 2008.[572]

In 2008, Apple spoke to a number of television channel providers and offered them the possibility of creating their own catalogue under the umbrella of the iTunes Stores. That approach presupposed the holding of rights for download-to-own VoD rather than only for the rented television model generally operated by the broadcasters in connection with the aforementioned services. The catalogues are accordingly more limited and do not contain films but only television programmes.

If the statement by Pierre Lechevallier, Director of TF1 Vision, is to be believed, the results obtained by this type of distribution are very satisfactory: *"I cannot provide any figures but we have been very pleasantly surprised by the welcomed received on iTunes. Revenues have increased sixfold since the post-launch period. The service is attracting a lot of attention. Apple's customers are very special in that they are extremely loyal to its platform. Their relationship with the products and services goes beyond the mere possession element and they have a very strong bond with the brand. An attempt is being made to respond to this through the programmes offered on iTunes. The big discovery is that there are so many diverse users. Contrary to what you might think, there is no social barrier in the use of iTunes and the possession of an iPod. These products are very popular with grassroots consumers. This is a characteristic that we're trying to reproduce through a choice of programmes for sale, and each of them has found its takers."* [573]

Table 29 : Catalogues of television channels offered on the iTunes Stores (December 2008)

DE	Sat.1	Sat.1 Satelliten Fernsehen GmbH
DE	Spiegel TV	Spiegel TV GmbH
DE	ZDF Enterprises	ZDF Enterprises
FR	Arte	Arte France
FR	BBC	BBC Worldwide
FR	France 2	France Télévisions Distribution
FR	France 3	France Télévisions Distribution
FR	France 5	France Télévisions Distribution
FR	TF1 Vision	TF1 Video (TF1 Group)
GB	BBC Worldwide	BBC Worldwide
GB	Channel 4	Channel 4
GB	E4	4 Ventures Limited
GB	ITV	ITV plc

Source: European Audiovisual Observatory

571 Canal+ Group/Microsoft press release, 29 June 2009, http://media.canal-plus.com/file/78/8/146788.pdf

572 Canal+ Group/Sony Computer Entertainment press release, 11 June 2008, http://media.canal-plus.com/file/24/9/109249.pdf

573 Interview in *MacGeneration*, 3 December 2008, http://www.macgeneration.com/news/voir/132873/interview-les-six-mois-de-tf1-vision-sur-itunes.

5.3. CATCH-UP TV

5.3.1. Introduction: The spread of catch-up TV

Today, the majority of the major European television channels, whether private or public, provide a catch-up TV service. We have identified 241 such services that were operational at the end of December 2008, making up more than a third of all on-demand services in Europe.

The catch-up offering is different from catalogue-based pay-VoD services since it is conceived as an extension of broadcast TV and therefore involves a strong time element.

It is possible to distinguish between different types of catch-up TV service:

- services with free and universal access made up of flow programmes:
  this is the most common model and usually offers news and information programmes;
- services with free and universal access that include national fiction:
  this model is employed by a number of public channels and a few private channels that are able to include in their offering national fiction that they have either produced or commissioned;
- services with free access that include fiction and programmes from American catalogues:
  this type of service is still relatively rare (in France M6 Replay and TF1 Vision) since it presupposes significant advertising revenues to cover the costs of acquiring programmes.
- services included in the subscription to one or more pay-TV channels:
  this model is employed by a number of broadcasters of pay-TV channels (in France Canal+ and Canalsat, in the United Kingdom and Ireland Discovery Channel and The History Channel, in the Nordic countries C More Entertainment);
- services included in a subscription to a distribution platform (cable, IPTV, satellite, pay-DTT platform):
- a number of distributors such as Telenet in Belgium (cable), Tiscali (IPTV) in the United Kingdom and, until the end of 2008, in Italy. In the United Kingdom, Top Up TV Anytime (DTT) and BSkyB (satellite/Internet), offer catch-up TV services provided by private or public channels as part of a subscription to their package (or micro-package).

For broadcasters, the provision of catch-up television has a number of advantages, which explains its strong growth. The main advantages are:

- C*ustomer retention*, despite delinearisation: catch-up television makes it possible to guide viewers in the controlled delinearisation of content and TV channel programme schedules. By creating a second viewing window, it enables the size of audience to be increased and new viewers who have not watched the channel before or did not see the programme at the time it was broadcast to be won over. This possibility is reinforced when the broadcaster can capitalise on the major popular series in its catch-up programming schedule.
- *Anticipated receipts*: this type of service enables advertisers to be offered new and attractive windows at low initial cost. Advertisers who are still a little reluctant should be able to assess their return on their investment better thanks to the new and specially tailored audience measuring techniques based on programme

watermarking.[574] These new measuring tools improve content traceability and enable the appropriate audiences to be identified.

- *Broadcasting rights*: the costs of acquisition are reduced to a minimum for news and programmes produced, co-produced or purchased in advance by the channels.
- *Content format*: news programmes are adapted to the thematic fragmentation, thus permitting indexed research that has already been carried out internally for archiving purposes. These micro-programmes meet the demand for short formats to be viewed as catch-up TV.
- *Prominence*: the catch-up TV service reinforces the presence of a channel in the audiovisual landscape.

Whereas the first services offered hardly any news broadcasts or weather forecasts, they have now been expanded in terms of programme genres. Whatever the case may be, all programmes available as part of a catch-up TV service were originally broadcast on air and accordingly include news programmes, magazines, fiction and entertainment.

5.3.1.1. Definition of "catch-up television"

It seems that consumer demand has a significant influence on how long items are made available. The boundaries between "catch-up television" and "archiving" are not yet well-defined, and practices vary both with regard to when and how long content is made available.

Audiovisual content is usually put online the day after it has been aired, and sometimes the same day, as in the case of TV2 Webcast in Hungary, or one hour later, as announced on M6 Replay. Users have to be able to find the programme they want as quickly as possible so that the desire sparked by the TV broadcast is kept alive.

Some services only offer programmes for a limited time and others are close to providing free-of-charge VoD as a result of their extensive archives. The availability to the public is for a limited period of 48 hours to 30 days, depending on the service and channel. In this area, the European average seems to have flattened out at 7 days for content offered by free-to-air channels. For example, Arte enables programmes to be watched for 7 days after they have been broadcast, as in the case of the offerings of TVE and the BBC, among others. M6 offers all its programmes for 15 days after their first airing. Canal+ à la demande enables programmes to be watched throughout the streaming period of the pay-TV package, i.e. 30 days. However, this offer differs in that it is only available to Canal+ subscribers (so that it will be referred to as a semi-pay service).

The availability period may vary according to the nature of the programmes. For example, the BBC announced in August 2008 that its iPlayer service would henceforth be offering "series stacking", by which it meant giving access to all the episodes of a series since the beginning of the current season. Accordingly, when the last episode of a series has been broadcast the entire season of which it is part will be made available on the iPlayer.[575]

On many of the service platforms operated by European broadcasters (Mediaset, RAI, ProSieben, etc) some flow programmes produced by the broadcasters are available for up to one year after being aired. Some series are available from the broadcaster's archives, such as Rai's *Un posto al sole* or TVE's *Señora*, although they are in the minority. This is more like

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[574] http://www.mediametrie.fr/contenu.php?rubrique=tv&rubrique_id=427&menu_id=427.

[575] BBC Press Office press release, 23 August 2008, http://www.bbc.co.uk/pressoffice/pressreleases/stories/2008/08_august/23/iplayer.shtml

the archiving of content than an offer of catch-up TV. Although archiving meets a need for the conservation and development of the audiovisual heritage, its status is different from that of catch-up TV, especially from the point of view of its social usefulness and economic aspects. In the United Kingdom, the problem that excessively long availability times might pose for other forms of exploitation, especially video, was the focus of discussions on the BBC iPlayer.

The term “catch-up TV” has not yet been fully defined and there are considerable differences in the way content is made available by channels. Some catch-up services are offered at a dedicated website, while others are directly integrated into a channel’s website.

It often happens that broadcasters provide two separate on-demand services: a pay-VoD service offering programmes from catalogues and a free-of-charge catch-up television service. However, the physical distinction between the two services is not always made. For example, in Germany, the RTL service RTL NOW (http://rtl-now.rtl.de) is particularly atypical. It includes in its offering of free VoD – which can be regarded as the equivalent of a catch-up service since the programmes available originate from the channel and can be viewed as early as the day after they have been aired – a pay-VoD service that enables episodes of the American series *CSI* to be downloaded.

5.3.1.2. Similarity with services offered

The majority of European catch-up services are fairly similar with regard to the programmes they offer:

- most are flow programmes;
- stock programmes are less common: with the exception of the catch-up services offered by some pay-TV channels, no cinema films are available owing to the difficulties in reaching agreements with rightsholders. American television fiction is only available from a few services, but national fiction in generally available free of charge, often even outside the country of origin.

5.3.1.3. Territorial limitation

Whereas most channels that provide catch-up television are channels of a national character, many online services provided by the European players studied do not limit access to the content of certain programmes or only limit access to part of it. Territorial limitation is only applied when the service includes American programmes (as in the case of M6) or when it offers a large number of national works likely to be commercialised on foreign markets (as in the case of the BBC iPlayer).

5.3.1.4. Contractual relations with rightsholders still inadequately defined

In many European markets, producers must explicitly agree to the additional use of their works as part of a catch-up service. This means it is necessary to specifically negotiate these rights. For example, for the documentaries available on Arte+7, the Franco-German channel redistributes to producers 1% of the amount they have invested in the programme.

The present uncertainty concerning the nature of a catch-up service is acting as a brake on the availability of content and dividing the producers/distributors, who want a new payment for this new distribution window, from the channels, which see catch-up television as being no more than an extension of the airing of a programme.

In the absence of properly structured practices, catch-up television services generally do not allow access to content other than that financed entirely by the broadcasters or, indeed, products by a subsidiary of the same media group, hence the predominance of flow programmes. This can also be explained by the fact that the producers prefer their stock content to be made available as part of pay-VoD services, which are more profitable and the consumption of which can be more easily identified.

The American producers, who have been used to this distribution model for longer, find it easier to integrate catch-up services into an offering financed by advertising. For example, it is possible to access all the American series of M6 via its catch-up service, with the channel bearing the cost of running these series on this window.

However, the cost to the TV distributors of including American films in their catch-up service is too high compared with the low revenue generated by these services. For example, Canal+, a traditional partner of the cinema, is the only French television channel to offer American films as part of its catch-up service, which can especially be put down to the channel's considerable investment in this areas and the fact that the films are streamed on the pay-TV channels of the package for 30 days. Most of the other European catch-up services do not offer cinema films either.

In France, following agreements concluded between the television channels and the distributors/producers[576], the 7-day window could become the benchmark duration for the free distribution of catch-up programmes. Nothing is set in stone for the moment, especially between the French film studios and the TV channels. As no agreement has been reached, French films are at the moment not included in catch-up televisions services.

5.3.1.5. Advertising as a principal source of revenue

With free access and no subscription required, the business model emerging from the free television channels' catch-up services is funding by advertising. Since they are linked to the reference medium, the advertising spaces available on the catch-up services are often sold in combination with the TV channel transmission. The advertiser is then visible on both viewing devices.

At the moment, there are two types of advertising on the various services provided by the free channels in Europe:

- the insertion of an advertising banner into the programme's viewing page: this is the choice currently preferred by advertisers;
- the presence of a commercial at the beginning and/or the end of the video: still marginal, this type of advertising is to be found in the case of the catch-up service of RAI, for example, where it is also coupled with an advertising banner.

The development of catch-up television services funded by advertising poses the problem of the definition of recognised audience measuring standards, since potential advertisers are looking for indicators that will enable them to obtain a return on their investment.

[576] The channels negotiate on this with the French audiovisual producers' association USPA, For example, Arte concluded an agreement with USPA to make documentaries available as part of Arte+7.

5.3.2. The British market

The British market is undoubtedly the one where catch-up television is the most highly developed. All the major broadcasters and most of the thematic channels offer catch-up models. This is also the market for which regular information is available on the use of catch-up TV and VoD, although this information is limited to a few services.

5.3.2.1. The BBC iPlayer

After two experimental launches in October 2005 and then in November 2006 and the launch of a beta version on 27 July 2007, the BBC's catch-up TV service was officially launched on 25 December 2007. It was initially a download service based on peer-to-peer technology and required the use of a proprietary media player – the iPlayer or the Windows Media Player 10 or 11. It could therefore only be used on Windows XP. Programmes could be downloaded within seven days of being broadcast. This initial service has gradually been extended with the addition of other methods of transmission:

- on 13 December 2007 a streaming service was launched using the Adobe Flash Player, suitable for use in Mac and Linux environments;
- on 7 March 2008, the BBC iPlayer became accessible on the Apple iPhone, which made it necessary to create 516Kbps streams;[577]
- since 9 April 2008, it has been possible to view streamed content from the BBC iPlayer catalogue on Wii consoles via the Internet Channel. A week later, an unauthorised hack enabled items to be viewed on the PlayStation 3. Since December 2008, an official development by the BBC's laboratories has enabled the BBC iPlayer catalogue to be viewed on the PlayStation 3 at the official website;
- on 30 April 2008, the service became accessible as part of the on-demand service of the cable operator Virgin Media. It is accessible directly on a television screen using the remote control; According to the report *Digital Britain*, 52% of Virgin households watch BBC iPlayer programmes. These subscribers make up about a quarter of the users of the service;[578]
- since June 2008, the service BT Vision has offered a selection of BBC iPlayer programmes at a price of £3 a month;[579]
- on 13 October 2008 the BBC announced that the BBC iPlayer was accessible on certain types of mobile telephone, such as the Nokia N96;[580]
- on 20 October 2008, the BBC announced that the BBC iPlayer service was now available via the Sky Player service;[581]
- on 19 December 2008, the BBC introduced the iPlayer Desktop for Mac and Linux;[582]

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577 A. Rose, "BBC iPlayer On iPhone: Behind The Scenes", *BBC Internet Blog*, 7 March 2008, http://www.bbc.co.uk/blogs/bbcInternet/2008/03/bbc_iplayer_on_iphone_behind_t.html

578 *Digital Britain*, Final report, DCMS, June 2009, p.126, http://www.culture.gov.uk/images/publications/digitalbritain-finalreport-jun09.pdf

579 BBC News, 6 June 2008, http://news.bbc.co.uk/2/hi/entertainment/7439652.stm.

580 BBC Press Office press release, 13 October 2008, http://www.bbc.co.uk/pressoffice/pressreleases/stories/2008/10_october/13/mobile.shtml.

581 BBC Press Office press release, 20 October 2008, http://www.bbc.co.uk/pressoffice/pressreleases/stories/2008/10_october/20/iplayer.shtml.

582 BBC News, 18 December 2008, http://news.bbc.co.uk/2/hi/technology/7787335.stm.

- on 26 February 2009, the BBC Trust launched a consultation on the possibility of distributing BBC services, especially the iPlayer, in IPTV mode, which would enable the service to be viewed on television screens;[583]
- on 20 April 2009, the BBC began distributing (in the form of streaming or downloads) certain programmes in HD quality.[584] Since 1 May 2009, some programmes in HD have also been available in the version broadcast by Virgin Media[585]. Distribution in HD to the Play Station 3 has been announced but no date has been mentioned.

The BBC iPlayer service comprises some 400 hours of new programmes a week. It has gradually been extended to the BBC's various thematic channels. Although the service consists of nearly 40% of the programmes of Cbeebies, the channel for children six years of age and under, a new autonomous service, CBeebies iPlayer, was launched on 8 May 2009 to avoid children having access to all the programmes.[586]

The funding of the service is the subject of a political debate. Before it was launched, the service was subjected to a detailed examination by the UK regulator (Ofcom).[587] The service project provided an opportunity for the BBC Trust to launch the first "public value test", which was introduced into the new BBC regulations and led the BBC Trust to ask the BBC management to review certain aspects of the project.[588] The service is entirely funded from the licence fee but this poses a problem: the service can in fact be accessed without paying for the licence because only live viewing is considered to be broadcasting and therefore subject to the payment of the licence fee (this includes viewing the service on a computer). In May 2009, Erik Huggers, Group Controller BBC Future Media & Technology, created a stir when he said that, in his opinion, BBC iPlayer users should have to pay the licence fee.[589]

The success of the BBC iPlayer has been such that since its launch a debate has been conducted on the place occupied by the service in the networks. The iPlayer is accessible at different Internet speeds (500 Kbps, 800 Kbps, 1.5 Mbps and, for HD quality, 3.2 Mbps). A fierce debate is also taking place between British Telecom (BT) subscribers and the BBC: some BT broadband subscribers using the BBC service complain that BT is reducing at peak periods the speed available to subscribers to the basic package, thus limiting their access to the BBC iPlayer service (as well as YouTube) to a speed of 500 Kbps. In its reply, BT says that it manages bandwidth in order to "optimise the experience for all customers" and that it believes there is a problem that needs to be discussed with content owners.[590]

The BBC provides regular audience data on its iPlayer service, which has seen the number of users grow steadily since its launch at the end of December 2007. In 2008, the number of programmes requested was 11.2 million in January, rising to 14 million in February and

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583 BBC Trust press release, 26 February 2009, http://www.bbc.co.uk/bbctrust/news/press_releases/2009/project_canvas.html.

584 BBC Press Office press release, 20 April 2009, http://www.bbc.co.uk/pressoffice/pressreleases/stories/2009/04_april/20/hd.shtml.

585 BBC Press Office press release, 1 May 2009, http://www.bbc.co.uk/pressoffice/pressreleases/stories/2009/05_may/01/hd.shtml.

586 BBC Press Office press release, 8 May 2009, http://www.bbc.co.uk/pressoffice/pressreleases/stories/2009/05_may/08/cbeebies.shtml.

587 Ofcom, BBC new on-demand proposals. Market Impact Assessment. 23 January 2006, http://www.ofcom.org.uk/research/tv/bbcmias/ondemand/bbc_ondemand/bbc_ondemand.pdf.

588 Trust decision on on-demand services, 25 April 2007, http://www.bbc.co.uk/bbctrust/consult/closed_consultations/ondemand.html.

589 http://news.zdnet.co.uk/Internet/0,1000000097,39654931,00.html.

590 BBC News, 1st June 2009. http://news.bbc.co.uk/2/hi/technology/8077839.stm.

17.2 million in March.[591] In mid-May 2008, 75 million programmes had been viewed since the launch of the platform, which at the end of April 2008 was recording 700,000 requests a day, or double the figures posted at the end of January that year. At the end of June 2008, the BBC announced that the 100 million programme mark called for since the launch had been exceeded.[592] In April 2009, it announced that 387 million requests (for streamed content or downloads[593]) had been made since the Christmas 2007 launch. At the beginning of May 2009, it announced that 414 million transactions had been effected since the launch.[594]

The figures published by the BBC underline three major trends:

- the 20 most viewed programmes account for less than 75% of consumption, which suggests the existence of a "long tail" that favours the least watched programmes, all the more so as six of the twenty most viewed programmes in April originated from BBC Three, one of the public group's smallest channels;
- certain programmes can increase their TV audience by nearly a third via their online exploitation (as in the case of the comedy series *Gavin and Stacey*);
- catch-up TV attracts all population targets, especially the younger generations since 16-34-year-olds make up 37% of iPlayer users (see graph below).

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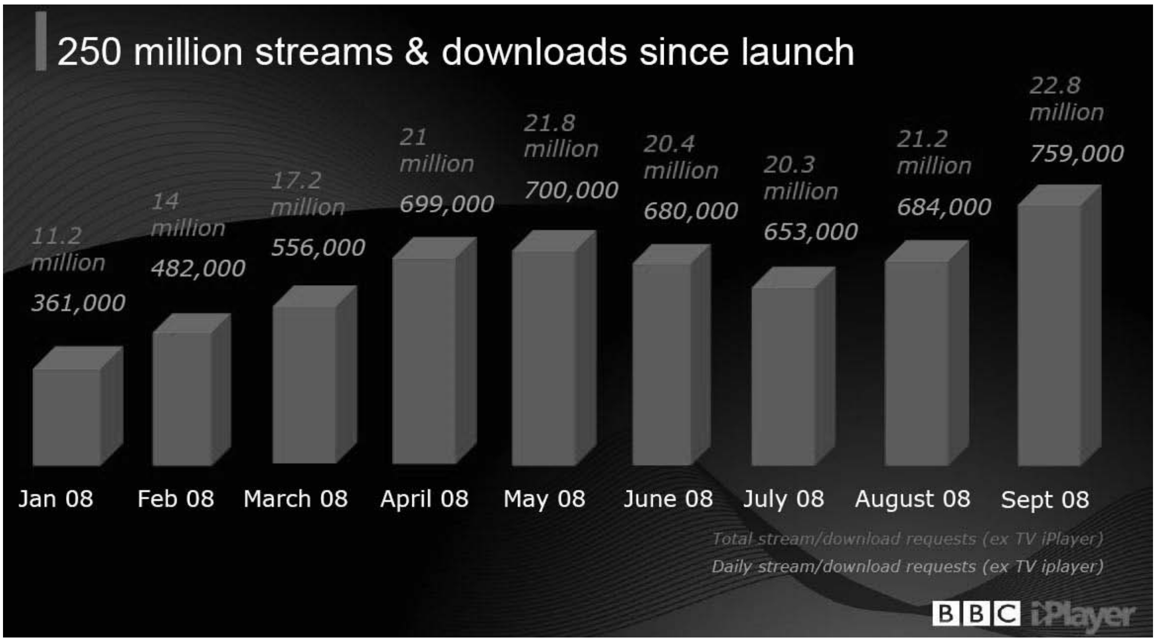
[591] BBC Press Office press release, 9 April 2008, http://www.bbc.co.uk/pressoffice/pressreleases/stories/2008/04_april/09/iplayer.shtm.

[592] BBC Press Office press release, 25 June 2008, http://www.bbc.co.uk/pressoffice/pressreleases/stories/2008/06_june/25/iplayer.shtm.

[593] According to *Screen Digest* (January 2009, p.26) Windows users have indicated a marked preference for streaming over downloading.

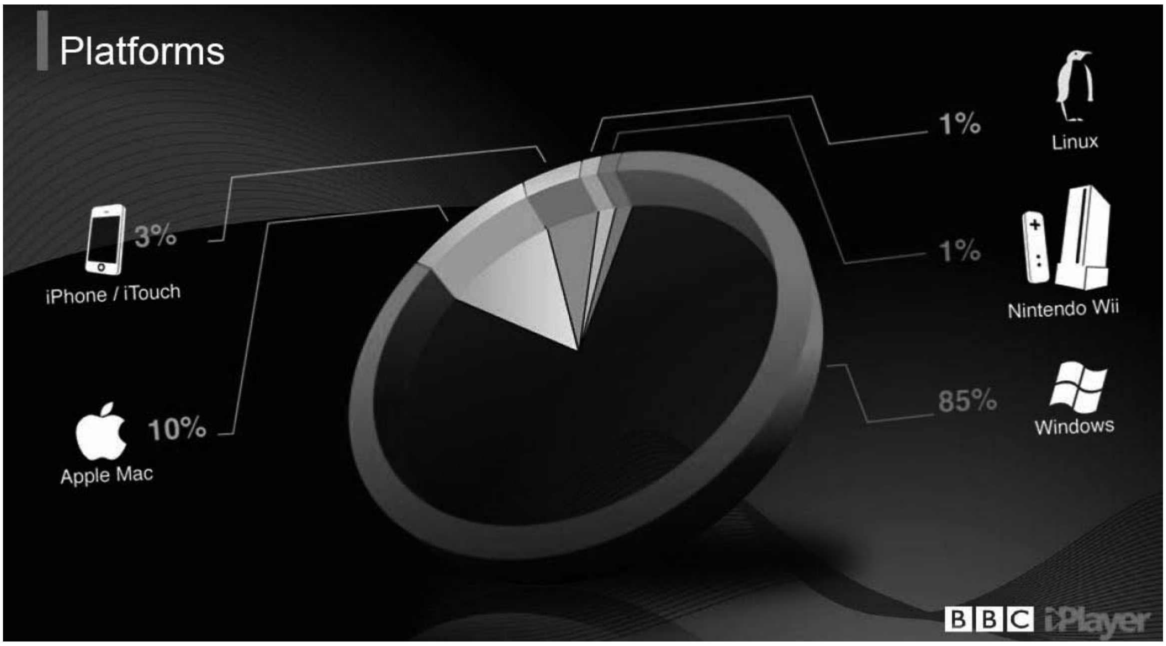
[594] BBC Press Office press release, 8 May 2009, http://www.bbc.co.uk/pressoffice/pressreleases/stories/2009/05_may/08/cbeebies.shtml.

Graphic 46 : Number of BBC iPlayer requests (January-September 2008)[595]



Source : BBC

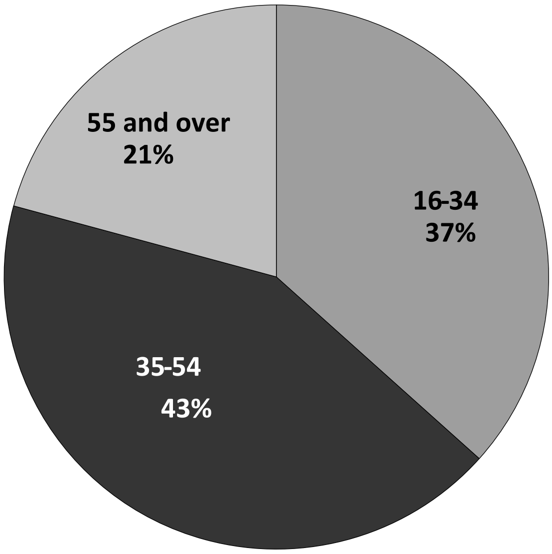
Graphic 47 : Use of the BBC iPlayer service by type of platform (2008)



Source: BBC

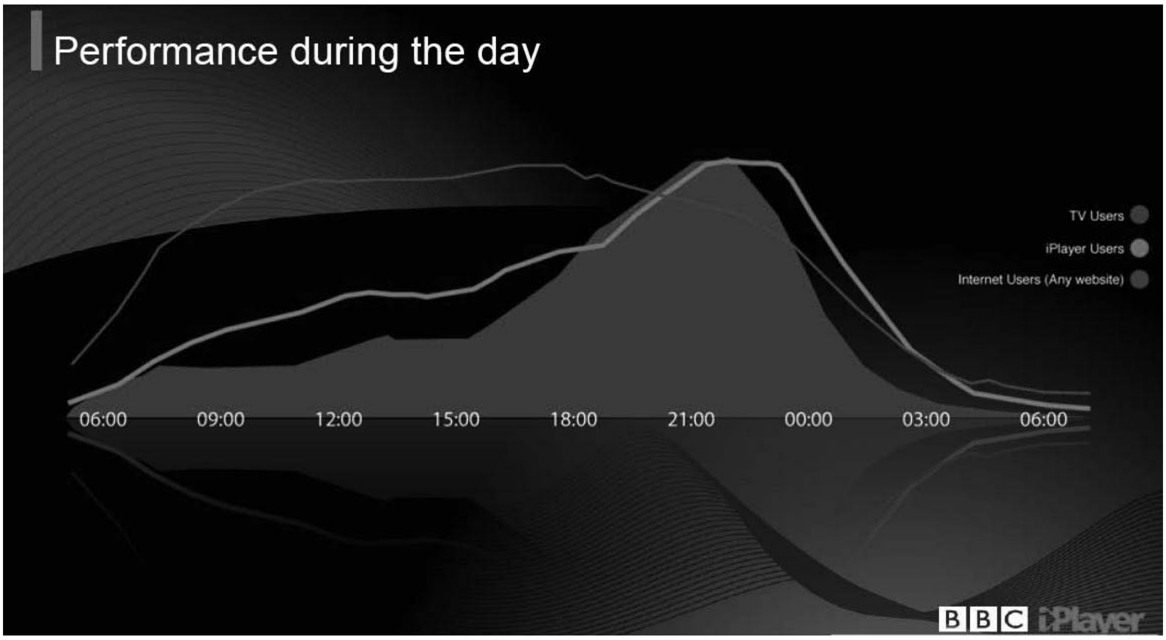
595 The graphs have been taken from the presentation of the BBC iPlayer made by the BBC's Matteo Maggiore at the seminar entitled "The development of non-linear television services in Europe" organised by the Swiss chairmanship of the European Audiovisual Observatory in Glion, 6 November 2008, http://www.obs.coe.int/about/oea/agenda2008.html#11

Graphic 48 : Breakdown of iPlayer users by age group (2008)



Source: BBC

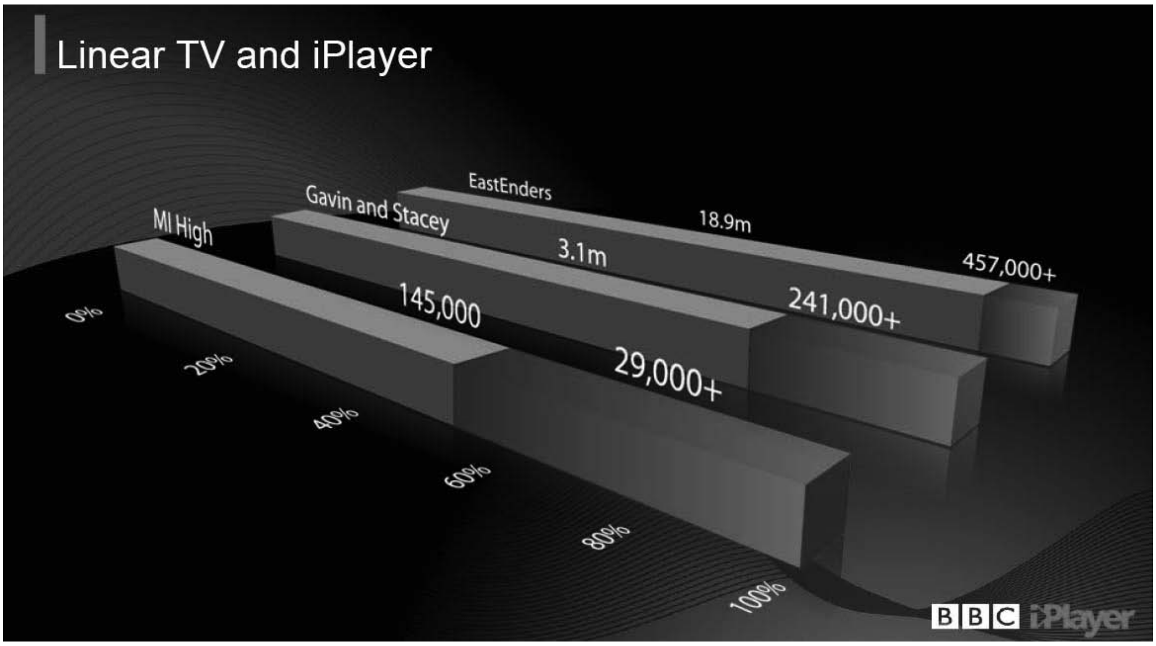
Graphic 49 : Daytime consumption of television, Internet and the BBC iPlayer service (2008)



Source: BBC

The data on daytime audiences published by the BBC suggest that the peak audience times for the BBC iPlayer do not fully correspond to the television audience. The iPlayer audience is proportionately higher between 7 in the morning and 6 in the evening. As in the case of television, consumption is greater from 7pm but the audience is sustained until late in the evening (midnight).

Graphic 50 : Comparison of real-time and time-shifted audiences for three television series (2008)



Source: BBC

A comparison of real-time and time-shifted audiences for three television series reveals significant differences. For a classical series aimed at a relatively old audience, such as *EastEnders,* the time-shifted audience is relatively small (2.4% of the real-time audience) whereas for a series like *MI High*, which targets a younger age group, the figure for the time-shifted audience amounts to 20% of the real-time audience.

5.3.2.2. ITV Player

In June 2007, ITV launched a catch-up TV service accessible via its web portal ITV.com. The service was renamed ITV Player in December 2008. The programmes, which originate from the channels ITV1, ITV2, ITV3 and ITV4, are available within a period of 30 days after being first aired. The service provides all the programmes of the ITV plc group's production studios but not the sports programmes, news or programmes bought from independent producers. It provides an average of 620 hours of catch-up content, 340 hours of archive material and 50 hours of short clips.[596]

According to ITV, the average number of programmes downloaded a month doubled between the end of the first quarter 2008 and the end of 2008. The most requested programmes are: *The X Factor*, a music talent show first aired in 2004, and the two soap operas *Coronation Street* and *Emmerdale,* which have been broadcast since 1960 and 1972 respectively.

The service is also available as part of the offerings of BT Vision (since December 2008) and Virgin Media (since January 2009).[597]

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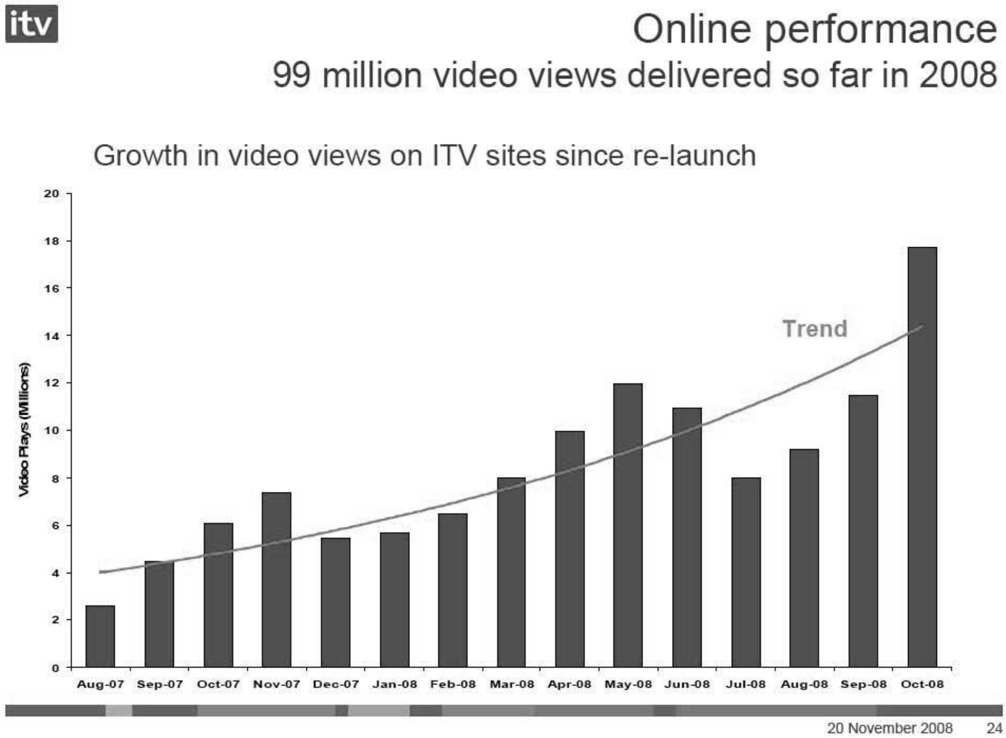
596 ITV press release, 5 December 2008, http://www.itv.com/PressCentre/Pressreleases/Corporatepressreleases/NamechangeforITVsonlinevideoplayer/default.html.

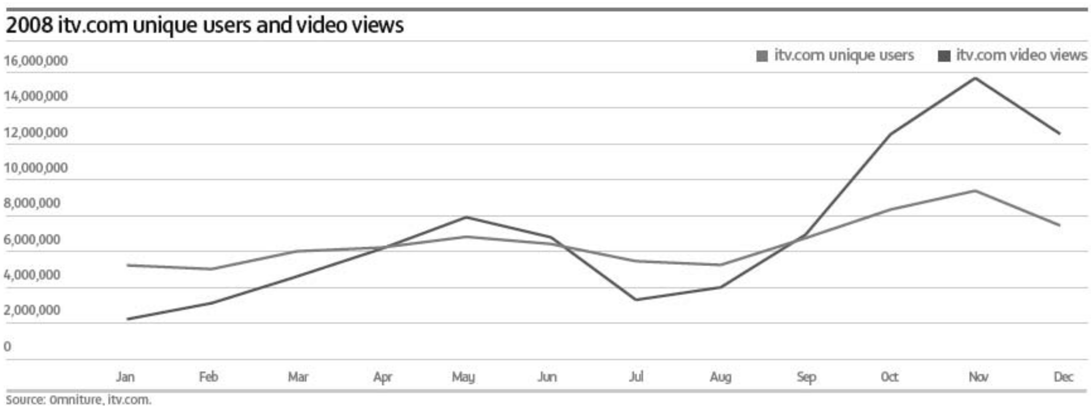
597 Virgin Media press release, 8 January 2009, http://pressoffice.virginmedia.com/phoenix.zhtml?c=205406&p=irol-newsArticle&ID=1241606&highlight=.

Graphic 51 : ITV player – Number of videos viewed (August 2007-October 2008)



Source: ITV

Graphic 52 : ITV Player – Number of unique visitors and videos viewed (2008)



Source: ITV

The service is financed by advertising. The entire ITV.com service posted a deficit in 2007 (£12 million) and 2008 (£20 million) despite the significant increase in traffic. The average number of visitors to the site per month is 6.5 million, an increase of 30% over 2007. In November 2008, the number of unique visitors reached 9.4 million, which enabled the website to be classified by comScore as the 5th most popular in the United Kingdom. 86 million videos were downloaded that year. According to ITV, the cost per thousand of advertising included in online video is still higher than other forms of online advertising.[598]

[598] ITV Annual report 2008, p.21. http://2008.itv.ar.ry.com/?id=26100.

5.3.2.3. 4oD

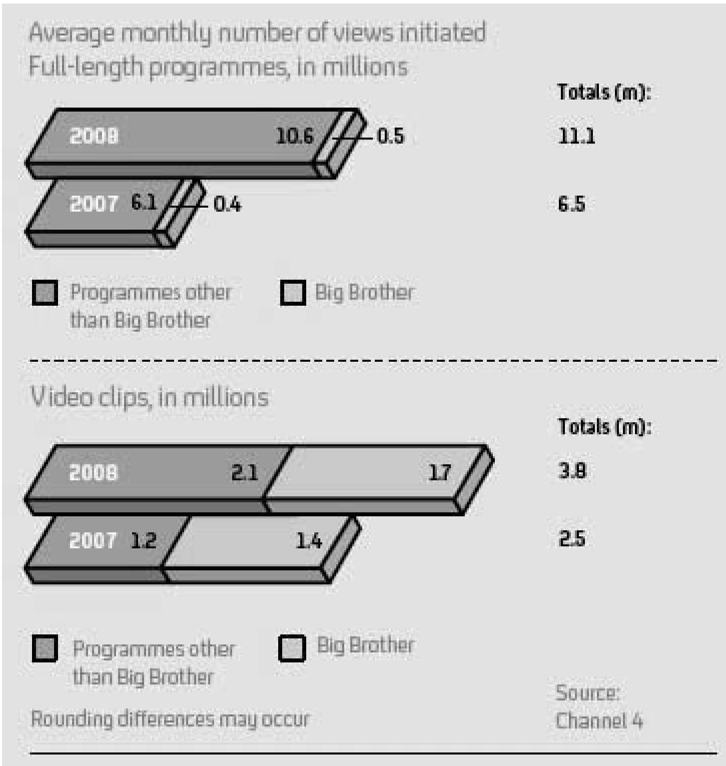
Channel Four launched 4oD, its own VoD and Internet catch-up TV service, in 2006. 4oD offers a mixture of pay-VoD and free catch-up TV financed by advertising. More than a thousand TV programmes are available free of charge for a period of 30 days after being first aired. Other TV programmes are offered at a rental price of £0.99. Films are available for rental at £1.99. In order to view programmes downloaded onto a PC, it is necessary to obtain the 4oD proprietary media player. The service is also available as part of the offerings of BT Vision, Tiscali TV and Virgin Media.

In 2008, 133 million full-length programmes were downloaded on 4oD, amounting to an increase of 72% over 2007.[599] The average demand for short programmes in 2008 was 4 million, or an increase of 51% over 2007.

At the beginning of June 2009, Channel 4 announced it was expanding its online catalogue to include archive programmes: about 10,000 titles, amounting to 4,000 hours of programmes, have been added in July 2009 and are available free of charge.[600]

With 5 million programmes viewed a month, the version 4oD TV, which is available on television screens, is much more popular than the version 4oD Catch-Up (2 million programmes viewed a month).[601]

Graphic 53 : Audience for programmes on demand on 4oD



Source: Channel 4

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[599] Channel 4 annual Report 2008, p.62.

[600] *The Guardian*, 7 June 2009.

[601] *Digital Britain*, DCMS, June 2009, p.126. http://www.culture.gov.uk/images/publications/digitalbritain-finalreport-jun09.pdf

5.3.2.4. *Demand Five*

After providing an initial service called Five Download, the channel Five (RTL Group) relaunched its VoD service (including Five Download) in July 2008 under the name Demand Five. The Internet service offers catch-up programmes of the channels Five, Five US and Fiver as well as several hundred archive programmes. Access to the catch-up programmes, delivered either via download or streaming, is free of charge within a period of 30 days. Most of the archive programmes are also available free, with the exception of certain American programmes, such as *CSI* or *Grey's Anatomy*, which are available for rental at £0.99. Some programmes are also available before they appear on TV at a price of £1.99.

Since October 2008, the service has also been available as part of the BT Vision service. Initially launched using the Windows Media Player, the service has been accessible since January 2009 using the Flash media player and is therefore available on a Mac.

In June 2009, Five announced that, in collaboration with the online video platform Brightcove, it would be introducing a Demand Five syndication system from the second half of 2009. Users can embed some Demand Five content (especially television series) into their own website, agreeing in return to accept advertising remaining visible in this content. In this way, Five will be able to increase the number of views of the content it acquires from the American distributors and provide advertisers with a better cost per thousand (CPM) rate.[602]

5.3.2.5. *Sky Player*

See 4.3.

5.3.2.6. *Other catch-up television services provided by British broadcasters*

A large number of British providers of thematic channels that do not have their own platform have reached agreements with distributors, such as BSkyB, Tiscali TV, BT Vision and Top Up Anytime to offer their catch-up services as part of these operators' packages (see 4.3.).

5.3.2.7. *Project Kangaroo*

In November 2007, BBC Worldwide, ITV and Channel 4 announced a project – codenamed Project Kangaroo – to launch a joint archive-based online service in the form of a joint venture called UKTVOD. By combining their three catalogues, the three companies thought they would be able to make more than 50,000 hours of programmes available. The project was examined by the Competition Commission, which held up its launch and finally announced in February 2009 that it was refusing to allow it to go ahead.

On 30 June 2008, the Office of Fair Trading (OFT) notified the Competition Commission of the joint venture and asked it to investigate and report pursuant to section 33(1) of the Enterprise Act 2002.[603] Section 33(1) empowers the OFT to refer to the Competition Commission completed or proposed mergers that create or enhance a 25 per cent share of supply in the United Kingdom (or a substantial part thereof) or where the UK turnover associated with the company being acquired is over £70 million.

The Competition Commission pointed out that the participants in this project "control(led) most of the content". In December 2008, it published its provisional conclusions indicating

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602 Five press release, 16 June 2009, http://about.five.tv/press/press-releases/syndicated-player

603 http://www.opsi.gov.uk/Acts/acts2002/ukpga_20020040_en_4#pt3-ch1-pb2-l1g33

the remedies that would enable any “substantial lessening of competition” on the market concerned to be avoided. The principal remedies proposed are as follows: controlling the way that content would be offered to other providers; making material modifications to the terms of the joint venture; and removing the joint venture’s ability to wholesale content “combined with measures to prevent the exchange of commercially sensitive information”.

In its ruling of 4 February 2009 on the competition aspect of the project, the Competition Commission declared: “After detailed and careful consideration, we have decided that this joint venture would be too much of a threat to competition in this developing market and has to be stopped”.[604]

It is interesting to note that the Competition Commission put forward the view in its ruling that catch-up TV and archives constitute a single market rather than two separate markets. It acknowledged that it did not have detailed data at its disposal on the VoD services considered in its report (that is to say, only the services offering TV programmes) but it estimated that this market did not exceed £70 million in 2007.

The Competition Commission’s decision evidently led to many comments in the United Kingdom. It is particularly worth noting the criticism expressed by *Screen Digest*: according to the British firm, the Competition Commission did not take account in its market analysis either of the position of the Apple iTunes Store, which already dominates the online pay-VoD market, or of the development of the market for free online VoD funded by advertising. According to *Screen Digest*, Project Kangaroo, which was aimed at the online VoD market, would only have had a limited impact on the on-demand services market as a whole, of which the main focus in the United Kingdom was on services targeting games consoles and cable subscribers, through the Virgin Media service.[605]

On 23 July 2009, the broadcast transmission provider Arqiva announced that it was going to acquire the assets of Project Kangaroo and would be launching a VoD service in the next few months.[606] According to *The Guardian*, Orange had also been interested in a takeover and Arqiv paid in the region of £8 million for the assets.[607] Thanks to acquisition, Arqiva has become the first broadcast transmission provider in Europe to gain a foothold on the market for on-demand services.

5.3.2.8. Project Canvas

The BBC and ITV, in collaboration with BT, are exploring another avenue of co-operation on on-demand services: Project Canvas, details of which were provided at MIPCOM in October 2008. It aims to provide access to on-demand services in IPTV mode, i.e. enabling content to be received on television screens. The service is defined by Erik Huggers as “platform-neutral publishing”.[608] It would presuppose viewers acquiring a set-top box costing between £100 and £200.

In January 2009, in its reply to the consultation launched by Ofcom on the review of public service broadcasting, the BBC Trust proposed making the BBC iPlayer available to other

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604 Competition Commission Report, 4 February 2009;
http://www.competition-commission.org.uk/rep_pub/reports/2009/fulltext/543.pdf.
Summary in *IRIS 2009, 4:12/16*.

605 *Screen Digest*, March 2008, p.86.

606 Arqiva press release, 23 July 2009, http://www.arqiva.com/press-office/press-releases/press-releases-2009/arqiva-to-acquire-project-kangaroo-platform-assets

607 “Arqiva understood to have paid about £8m for Project Kangaroo assets”, *The Guardian*, 24 July 2009

608 Quoted in *Informitv*, 14 October 2008, http://informitv.com/articles/2008/10/14/bbcopenscanvas/.

public broadcasters (i.e., ITV, Channel 4 and Five) and creating a common IPTV platform.[609]

In February 2009, the BBC Trust launched a consultation on the project. The project drew immediate opposition from various players, such as BSkyB, Virgin Media, Sony and Google, which argued that it would distort the market and breach competition rules. Some critics also argue that a project like this would permit access to broadcasters' archives and thus reduce their value on the market. In response to the opposition of BSkyB, ITV published a press release on 14 May 2009 arguing that such a platform providing a free on-demand service could have the same dynamic effect as Freeview and Freesat had had on the digital television market and that the platform would also be open to any third party, including Sky.[610] In early June 2009, the BBC Trust asked the BBC Executive to provide more information.[611] The report Digital Britain, published in June 2009 by the Department for Media, Culture and Sport (DCMS) also mentions the need for careful vigilance by the BBC Trust.[612]

5.3.3. The French market

5.3.3.1. The public service channels

In France, it was the public channels that were the first to offer catch-up TV services. The initiative of France Télévisions to enter into an exclusive contract with France Télécom, the provider of the Orange IPTV service, even led to a significant distinction being drawn between the catch-up TV market and the VoD market.

In July 2007, the companies France Télécom and France Télévisions concluded a three-year agreement under which the electronic communications operator is able to distribute some programmes of the public channels France 2, France 3, France 4, France 5 and France Ô on an exclusive basis to the subscribers to the television service of its multi-services and mobile offerings in the form of a catch-up service. 24/24 TV, which was launched in the first quarter of 2008, offers new programmes, with the exception of films and sports, broadcast on those channels between 6pm and midnight.

The announcement of this agreement led to a complaint by other IPTV service providers to the Competition Council, which allowed a distinction to be drawn between video on demand proper and catch-up television.

According to two CSA experts, Laurent Letailleur and Grégoire Weigel[613], *"like video on demand, the on-demand television service belongs to the category of non-linear services. However, it differs from it in several ways:*

- *Its link to the television service provider: unlike video on demand, the attractiveness of the programme made available to the public through a catch-up television service depends largely on its initial broadcast on the channel from which it has originated. It thus derives its value from the initial link with the provider. At the moment when it is*

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[609] BBC Trust, 13 January 2009, http://www.bbc.co.uk/thefuture/pdf/phase2/psb_response.pdf.

[610] ITV press release, 12 May 2009, http://www.itv.com/PressCentre/Pressreleases/Corporatepressreleases/StatementfromtheCanvasPartners/default.html.

[611] http://www.bbc.co.uk/bbctrust/news/press_releases/2009/canvas_assessment.html.

[612] *Digital Britain*, June 2009, p. 19, http://www.culture.gov.uk/images/publications/digitalbritain-finalreport-jun09.pdf

[613] L. Letailleur and G. Weigel, "Télévision de rattrapage et vidéo à la demande : deux marchés distincts", Observatoire des médias, INA, 12 December 2008, http://www.ina.fr/observatoire-medias/dossiers/avenir-av-web/article-4-encadre-1.html.

broadcast, the channel is able to promote the programme, which will be made available after its linear distribution in the form of catch-up television. Moreover, among all the non-linear services offered to the consumer, the close link maintained with the channel provider (identity, logo, colour, etc) is an element that makes it attractive and distinctive and provides a guarantee of the quality of the programme itself;

- *Its method of commercialisation: catch-up television services are mainly free of charge, unlike video on demand, which is usually available against payment;*
- *The always limited duration of the availability of the content, which is closely linked to the broadcast;*
- *The distinction drawn in the commercialisation of the intellectual property rights between video on demand on the one hand and catch-up television on the other."*

On the basis of this finding, the CSA stated in its opinion of 15 January 2008 to the Competition Council that video on demand and catch-up television services differed from one another to the extent that it could not be ruled out that they belonged to separate markets.[614]

In its decision 08-D-10 of 7 May 2008 concerning this agreement between France Télécom and France Télévisions, the Competition Council also voiced its opinion on the exclusive arrangement, stressing that, as long as it was limited in time (in this case, three years), it permitted the emergence of the innovative catch-up television service.[615]

The strategy of entering into an exclusive agreement pursued by France Télévisions and France Télécom continued to be the subject of political discussions. Some Deputies proposed prohibiting exclusive agreements entered into by the public service broadcaster.[616] During the debates on the Law on audiovisual communication and the new public service television (5 March 2009), an amendment tabled by Senator Catherine Morin-Desailly on behalf of the Cultural Affairs Committee and passed by the Senate stated that France Télévisions should introduce *"on-demand audiovisual media services that enable all the programmes it broadcasts to be made available to the public free of charge, with the exception of films and, as the case may be, sports programmes*".[617] If it had been adopted, this obligation would have been fully applicable from the analogue switchoff planned for 30 November 2011. However, the amendment was not passed by the National Assembly.

Apart from the programmes provided exclusively to Orange, the channels of France Télévisions offer a number of freely available programmes at their website.

5.3.3.2. Arte

The Franco-German channel Arte launched the service Arte+7 on 1 October 2007. It is available free of charge on the Internet via live streaming, and the videos are in the Flash or Windows Media formats. It is possible to simply create a list of one's preferred programmes. Navigation is via an alphabetical list, date and genre (short films, documentaries, magazines, etc). Owing to rights issues, no films are offered by this service. In France only, some items

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614 CSA's opinion, submitted to the Competition Council, of 15 January 2008 on the demand made by Aforst for interim measures to be ordered concerning the practices implemented by the companies France Télécom and France Télévisions, http://www.csa.fr/upload/dossier/avis_tvr_15_January_08_a.pdf

615 Decision no. 08-D-10 of 7 May 2008, http://www.conseil-concurrence.fr/pdf/avis/08d10.pdf.

616 "Télévision de rattrapage : Christine Lagarde promet un débat législatif sur l'exclusivité France Télévisions-Orange", *Les Echos*, 7 July 2008, http://www.lesechos.fr/info/comm/300278539.htm

617 Report no. 150 (2008-2009) by Catherine Morin-Desaiilly and Michel Thiollière, drawn up on behalf of the Cultural Affairs Committee, submitted on 6 January 2009. http://www.senat.fr/rap/l08-150/l08-15018.html

are available as part of the channel's pay-VoD service. Arte+7 recorded 140,000 requests in its first week of operation and has now won over a new audience: the 25-34-year-olds.

5.3.3.3. Canal+ à la demande

In March 2008, the pay-TV channel Canal+ launched its on-demand service Canal+ à la demande, which enables its subscribers to access premium content during the streaming period, i.e. normally up to a month after the initial broadcast.[618] Canal+ à la demande is available on the Internet by installing a proprietary media player. Since 13 May 2008, it has also been possible for the service to be accessed by Canal+ subscribers, who receive the channels as part of the IPTV service provided by Free.[619] Since 9 September 2008, subscribers with a latest generation satellite device (DUAL-S), an ADSL connection and an external hard drive have also been able to view programmes on a television screen.[620]

On 11 July 2008, the professional organisations of the film industry signed a three-year catch-up TV agreement with Canal+[621], under which Canal+ can offer its subscribers the opportunity to view the film of their choice on the Canal+ à la demande service, subject to a limit of 3 viewings during the period in which it is aired on the channel. The agreement provides for Canal+ to make payments, but not a lump sum as in the case of traditional broadcasting rights but proportionate to the use of the service. The additional remuneration is, for example, fixed at 7% of the acquisition price multiplied by the usage rate.[622]

5.3.3.4. M6 Replay

The catch-up television market has mainly been given a boost by the channel M6. While TF1 and Canal+ offered pay-VoD sites with a large catalogue of films from 2005 onwards, M6 had to settle for a service predominantly consisting of American series at its M6 Vidéo site. In April 2008, M6 revised its offering by launching the service M6 Replay, which enables viewers to watch the main programmes broadcast by the channel, excluding films and sports, for 7 days after they have been aired.

A year after the launch of M6 Replay, the channel painted a positive picture and proclaimed itself the catch-up television market leader in France.

It stated in a press release:[623] *"With a beta factor[624] of 29.3%, M6 Replay is becoming the media carrier that offers the best memorisation with regard to advertising messages on the Internet and is in second place behind the cinema when all media are taken together. Measured by Aegis Media Expert between 4 November 2008 and 20 February 2009, Morgensztern's "beta factor", or the memorisation of the details of an advertisement on M6 Replay, is 29.3%: out of 100 people exposed just once to a campaign run on the service, 29 remember the advertising message. That is 2.6 times more than all the Internet formats (beta factor of 11.3%) and 1.7 times more than television commercials (beta factor of 17.2%).[625]*

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618 Canal+ Group press release, 10 March 2008, http://media.canal-plus.com/file/79/3/98793.pdf

619 Canal+ Group/Free-Iliad press release, 13 May 2008, http://media.canal-plus.com/file/75/4/106754.pdf

620 Canal+ Group press release, 9 September 2008, http://media.canal-plus.com/file/11/8/118118.pdf

621 Canal+ Group press release, 11 July 2008, http://media.canal-plus.com/file/23/5/113235.pdf

622 The text of the agreement is available at: http://ddata.over-blog.com/xxxyyy/2/21/17/06/Accord-cach-up-TV---Canal--23072008.pdf.

623 M6 Group press release, 6 April 2009, http://www.groupm6.fr/index.php/m6/Presse/Communication-Groupe/M6-Replay-meilleur-support-publicitaire-sur-Internet.

624 Morgensztern's "beta factor", which corresponds to the percentage of people who, having been exposed to an advertising message, memorise the brand or at least one of the visual elements of the message.

625 Source quoted by M6: Aegis Media Expert, television (2003): 17.2% and Internet (2005): 11.3%.

One year after its launch, M6 Group's catch-up TV service is a success with audiences, with a total of 80 million videos watched to date and 1.7 million unique visitors[626] *on average each month. Internet users of M6 Replay are very loyal to the service, with 58 per cent stating that they use it several times a week. Only 2% say they no longer only watch certain programmes on M6 Replay.*[627] *It is also a commercial success, with growth in the number of advertisers on the service.*

M6 Replay offers advertising inserts on the Internet, until now unknown in France, with a clickable video spot (from 10" to 70") on programme screens. The richness of the video format, the quality and power of the context as well as the interactivity of the service help to create a unique advertising medium. In this way, the rate of clicks on advertising spots is 10 to 30 times higher than those observed in the case of the classical Internet formats.

In view of this success, it was necessary to quantify the effectiveness offered by M6 Replay in terms of the memorisation of advertising messages. The high score obtained by the service can be explained by the combination of the interactive and individual aspect of the use of the Internet, the richness and impact of the video format and a target group that pays attention to very short items inserted before or during a desired programme."

M6 subsequently added force to this press release by announcing that 10 million programmes had been viewed in March 2009 and that it had 1.5 million unique visitors a month. The programmes that have proved popular with Internet users include: *La Nouvelle Star* and *Un dîner presque parfait*, which were the most viewed items, with 1.7 million and 1.4 million screenings respectively in March.[628] M6 Replay also posted a new monthly record in April with 11 million screenings and 1.8 million unique visitors. The symbolic threshold of 100 million programmes viewed was reached at the beginning of May 2009.[629]

5.3.3.5. TF1: free catch-up TV from its web portal

The TF1 group, whose channel TF1 remains the leader despite the regular loss of market share, first explored the pay catch-up television market. In May 2007, it announced the signing of an agreement with the Walt Disney Group to make series available to Internet users, such as *Grey's Anatomy* (season 3), *Lost* (season 3), *Ugly Betty* (season 1), *Ghost Whisperer* (season 2) or *In Justice* (season 1). Immediately after they have been broadcast on TF1, the episodes are simultaneously offered for viewing on a PC via the website www.tf1vision.com, the TV services of Neuf TV HD, Freebox TV and the Club Video TV service of Club Internet. In contrast to broadcast TV, which is financed by advertising, downloads from the Internet are billed to the consumer from €1.99 per episode. Fans can choose between the French and the original language version with French subtitles and between streaming and temporary download, where the file is accessible for 48 hours. In 2008, over a billion videos are said to have been viewed.[630]

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626 Source quoted by M6: Source Médiamétrie/NetRatings, Internet France panel, September 2008 – February 2009, all connection locations.

627 Source quoted by M6: IPSOS / M6 Publicité study produced in July 2008.

628 M6 Group press release, 17 April 2009, http://www.groupm6.fr/index.php/m6/Presse/Communication-Groupe/M6-REPLAY-LEADER-DE-LA-CATCH-UP-TV-EN-FRANCE.

629 M6 Group press release, 12 May 2009, http://www.groupm6.fr/index.php/m6/Presse/Communication-Groupe/M6-replay-Deja-plus-de-100-millions-de-programmes-visionnes.

630 Source: *Challenge.fr*, 16 April 2009, http://bourse.challenges.fr/news.hts?menu=news_actualites&urlAction=news.hts%3Fmenu%3Dnews_actualites&idnews=FPS090416_20328723&numligne=1&date=090416

Confronted with the success of the free M6 Replay service provided by its direct competitor, TF1 did not launch its free service until 19 April 2009, which it did as part of the reform of its portal. This service enables most of the content broadcast over the airwaves to be watched again free of charge within a period of seven days. In contrast to M6, which has put its money into a dedicated website and brand in the form of M6 Replay, TF1 has integrated its entire video offering into its new portal, which it claims is simpler to use, more welcoming and more interactive. Catch-up television will enable it to provide about 60% of the schedule between 6pm and midnight (the service excludes films, sport and some successful American series offered as pay-VoD). In all, tf1.fr offers an on-demand service with more than 50 hours of catch-up videos a week. Internet users will also be offered 16,500 short-format library videos from the programmes of TF1 since 1980.

On 29 April, the TF1 group launched a catch-up television service for its thematic channels Histoire, Odyssée and Ushuaïa TV. It is available via a web portal but it has also been possible to access it on CanalSat and the CanalSat package of Orange TV since the first quarter of 2009. The catch-up service of the news channel LCI was launched during the second quarter of 2009 and it has also been available to Numéricable's TV customers since mid-2009.

Its stated goal is to increase both the general traffic generated by its website and the time spent by Internet users consulting it. According to the TF1's CEO Nonce Paolini at the press presentation of the new tf1.fr website, *"(t)his is a time for synergies and no longer a time for new media to battle it out with TV"*. At the same time, the group adopted a new audience measuring system provided by Médiamétrie, the aim of which is to produce a precise calculation of the time spent by each Internet user on a video so as to exploit it to the best advantage as far as advertising is concerned.

On 27 July 2009, TF1, through TF1 Vision, launched an application for the iPhone 3GS. The service provided includes the broadcasting of the channel live and of items of catch-up television (news bulletins, series, entertainment, etc). The application costs €3.99 and quickly became one of the ten best-selling items in the French App Store.

5.3.3.6. The catch-up TV indicator

In France, people are so enthusiastic about catch-up TV that, in April 2009, Editions SBDS Active launched the website www.tvarevoir.fr, which offers a systematic catalogue of the catch-up television offered by the seven traditional French channels, comprising a total of over 13,000 programmes.

On the occasion of the launch of this website, www.tvarevoir.fr and NPA Conseil published their first catch-up TV indicator, which measured the proportion of the schedule volumes broadcast between Sunday 15 March and Saturday 21 March 2009 in the 5pm-midnight time slot and made available to Internet users free of charge by the national conventionally transmitted channels.[631] This indicator shows that the seven channels analysed offered more than half their schedule volume at the peak viewing times. The flow programmes (entertainment, news, magazines) made up the bulk of programmes available free of charge online. As a consequence, the prime-time programmes, most of which consist of this type of broadcast, are the main source of catch-up TV. Prime-time films and series are usually offered as part of paid services (with the exception of those offered by M6).

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[631] Excluded therefore are programmes available as part of subscription catch-up television services (Orange, Canal+). Press release of 7 April 2009, http://www.npaconseil.com/bo_medias/6/090407_Communiqu%C3%A9_tvarevoir.pdf.

Table 30 : Proportion of the schedule volumes, ¼ hour by ¼ hour, broadcast between 5pm and midnight from 15 to 21 March 2009 and available as catch-up TV

France 5	75%
Canal+ (unscrambled)	71%
M6	67%
France 3	53%
Arte	42%
France 2	41%
TF1	33%
Total	**53%**

Source: tvarevoir.fr

5.3.4. The German market

According to the annual studies on the consumption of online services carried out by ARD and ZDF, there has been a steady increase in the consumption of videos online. According to a study carried out in 1997, Germany had 4.11 million users of online services, 19% of whom (760,000) downloaded video programmes. According to the 2007 study, the number of users of online services had risen to 38.6 million, of whom 24% (9.3 million) watched video either as downloads or via streaming. According to the 2009 study, 43.5 million Germans use online services and 62% (27 million) watch video online.[632]

In this context of the growth of online video consumption, catch-up television has been the subject of a lively regulatory debate in Germany.

5.3.4.1. The private channels

As already mentioned, the two major German television groups (RTL and ProSiebenSat.1 Media AG) have based their development strategy on websites (RTL Now and Maxdome) that offer a mixture of pay-VoD and free-of-charge video.[633]

As far as television programmes are concerned, the RTL Now offering is available on subscription, by packages or as pay-per-view (usually at a price of 1 euro). Those in charge of the service would ultimately like to be able to put 100% of their programming online but think that prices demanded by some rightsholders are still too high.[634]

The channels of the ProSiebenSat.1 group have included catch-up programmes at their respective websites. In July 2009, Prosieben.tv signed an agreement with Warner Bros. International Television Distribution to broadcast the series *Gossip Girl* as catch-up, although

632 "ARD/ZDF-Onlinestudie 2009: Nachfrage nach Videos und Audios im Internet steigt weiter. 67 Prozent der Deutschen sind online", ARD/ZDF press release, 27 May 2009, http://www.ard-zdf-onlinestudie.de.

633 The following curious fact might be mentioned: the ProSiebenSat.1 Media AG group purchased the Romanian company MyVideo Broadband Srl, whose main activity is the hosting of various UGC services aimed at Romania, as well as Germany, Switzerland, Austria, the Netherlands, Belgium's French Community, Hungary and Turkey. The service destined for Germany also offers a catalogue of 6,000 music videos and around a hundred films via free-of-charge streaming. However this catalogue contains films (most of them American) that are also available from the Maxdome pay-VoD catalogue. As the DWDL.de newsletter points out, the ProSebenSat.1 Media AG group is thus competing with itself! ("ProSiebenSat.1 macht sich selbst Konkurrenz", DWDL.de, 5. May 2009). http://www.dwdl.de/story/20830/prosiebensat1_macht_sich_selbst_konkurrenz/)

634 "RTL will 100 Prozent des Programms online stellen", DWDL.de, 4 March 2009, http://www.dwdl.de/story/19993/rtl_will_100_prozent_des_programms_online_stellen/

it is available as a preview screening on Maxdome.[635]

5.3.4.2. ZDF-Mediathek

ZDF began online video distribution in 1996. In 2001, it launched its first Mediathek ("media library") service in the context of its news website heute.de. It then also launched the Mediathek service at its portal zdf.de. The autonomous ZDF-Mediathek site was launched on 1 June 2005, when the public broadcaster's various multimedia services were grouped together. These services provide videos, photo galleries and interactive programmes. The bandwidth and technical quality have been improved. It is now possible to download content to Nokia mobile telephones. ZDF is also studying the possibility of delivering programmes to TV screens through the Windows Media Centre and a set-top box. In December 2005, there were 900,000 downloads. In December 2006, the number of downloads had risen to 4.6 million. In 2006, the most popular programme was a news sequence on the windstorm Kyrill, which was downloaded 356,000 times.[636]

The ZDF-Mediathek service was overhauled in 2007. The upgrading concerned the technical quality, higher download speeds, a better layout and improved content, which represents about 50% of the channel's programmes. The upgrade has enabled the ZDF-Mediathek to enjoy even more success. The average number of monthly downloads rose from 7 million in September 2007 to 8.5/9 million in the spring of 2008.[637] The service has obtained various awards (Grimme Online Award, Eyes and Ears Award, Deutscher IPTV Award). In 2008, the most popular programmes were the episodes of the documentary series *Die Deutschen*, the Danish police series *Kommissarin Lund*, programmes on the American presidential election and sports events.[638] The series *Die Deutschen* was the subject of a special website and the first episode had been downloaded 475,000 times at the end of November 2008, thus making it the most successful ZDF-Mediathek title.[639]

In May 2009, a new upgrade of the ZDF website enabled the video service to be further improved: thanks to the functions of the embedded player, the user can access the videos directly without having to open the ZDF-Mediathek page, thus enabling them to save time and gain an overview of what is available.[640] The number of monthly downloads reached 14.5 million in the first quarter of 2009.[641]

According to an article in the *EPD Medien* newsletter, in application of section 11d (5) of the 12th Amendment to the Inter-State Broadcasting Agreement (*12. Rundfunkänderungsstaats-vertrag*), which was ratified on 18 December 2008 and came into force on 1 June 2009, the amount of content at the portal zdf.de and ZDF-Mediathek must be considerably reduced.[642]

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635 Warner Bros. press release, 1 July 2009, http://www.timewarner.com/corp/newsroom/pr/0,20812,1908145,00.html.

636 Tina Kutschert, *Fernsehen auf Abruf*, ZDF presentation, 2007, http://www.ard-zdf-onlinestudie.de/fileadmin/Fachtagung/Kutscher.pdf.

637 ZDF Pressestelle (press office), Mainz, 8 May 2008.

638 ZDF Pressestelle, 12 December 2008.

639 ZDF Pressestelle, Mainz, 16 November 2008.

640 ZDF Pressestelle, Mainz, 8 May 2009

641 ARD/ZDF press release, 27 May 2009, http://unternehmen.zdf.de/uploads/media/ARD-ZDF-Onlinestudio_2009_-_2705.pdf

642 According to the new agreement, in the case of the so-called telemedia services (*Telemedien*) the three-step test must be systematically applied. Entertainment offerings are also authorised, whether or not the telemedia are linked to transmissions. The period of 7 days, at the end of which the commercial exploitation of the offerings will be possible (but not their distribution free of charge), will be nonetheless generally applied. Apart from "films and series bought in", sports transmissions are also excluded. On the other hand, the possibility of viewing them on demand is limited to 24 hours if they are events mentioned in the list contained

The general philosophy behind this new agreement is that public service broadcasters must not provide services that would constitute unfair competition vis-à-vis commercial services. At end of 2009, the content available at the site is likely to be reduced by 80%. The ZDF-Mediathek will probably withdraw 4,000 videos (about 8.5% of the current offering), especially television series likely to be commercialised, such as the British series *Inspector Morse* and *Inspector Barnaby*. Programmes cannot be kept available for more than 12 months after being aired. Some programmes, especially sports events, cannot be made available for more than 24 hours.[643]

5.3.4.3. ARD

ARD took longer than ZDF to offer a catch-up television service. The ARD-Mediathek, in its beta version, was not introduced until the Berlin Broadcasting Fair *(Funkausstellung)* in 2007. The service itself was launched on 30 April 2008 at http://www.ardmediathek.de. This delay can be explained by the federal structure of Germany's main public broadcaster. Most of the various regional stations have introduced their own service. From the ard.mediathek.de website, it is possible to access the media library of the first channel (http://mediathek.daserste.de), that of the nine regional stations and that of the international channel Deutsche Welle. The launch of the service led to disappointment and criticism: not all the programmes available at the websites of the regional channels of ARD-III could be accessed centrally via the ARD-Mediathek service, and full-screen viewing was not possible, etc.[644]

ARD's Internet offerings are also subject to the 12th Amendment to the Inter-State Broadcasting Agreement, the implications of which (especially the "three-step test") for the services of ARD and its members stations was the subject of a critical statement made by the regional regulatory authorities at the Conference of Land Media Authority Directors and published on 25 May 2009.[645] This statement follows the implementation by the executive of NDR of the "three-step" procedure for its own NDR-Mediathek service, a procedure that has proved long and costly.[646]

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in section 4 of the *Rundfunkstaatsvertrag*.

All the telemedia offerings of the public service television channels existing at 30 April 2009, including the media libraries, will thus have to undergo the three-step test (or by 31 December 2010 at the latest). The test will take place on the basis of concepts specific to the telemedia and according to the rules of procedure laid down for conducting it. There is also provision for specific quorums to be met by the institutions' internal bodies when the test is applied so that its validity can be recognised by the authority responsible for legal supervision. The subject of the relationship that public-law institutions, as commissioners of productions, have with manufacturers, scriptwriters and directors is mentioned in a minuted note, and it is pointed out that the issue involved here is the establishment of fair rules when drawing up provisions concerning rights to the (digital) exploitation of works.

See *IRIS 10:9/13*, http://merlin.obs.coe.int/iris/2008/10/article13.fr.html.
The text of the new agreement can be found at:
http://www1.ndr.de/unternehmen/organisation/rundfunkrat/zwoelfterstaatsvertragzuraenderung100.pdf.

643 "ZDF reduziert Internetangebot drastisch. 80 Prozent bis Jahresende gelöscht - Teils Folge neuer Rechtslage", EPD Medien, 27 Mai 2009, http://www.epd.de/medien/medien_index_65477.html.

644 ARD-Mediathek: "Noch nicht in End-Ausbaustufe", DWDL.de, 21 May 2008, http://www.dwdl.de/story/15931/ardmediathek_noch_nicht_in_endausbaustufe/.

645 http://www.alm.de/fileadmin/Download/Drei-Stufen-Test_Positionspapier_der_LMA.pdf

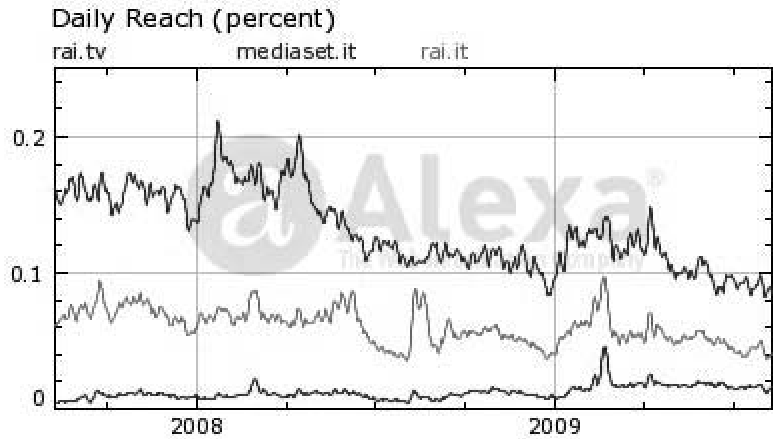
646 "NDR: Erster Drei-Stufen-Test abgeschlossen", DWDL.de, 27 March 2009, http://www.dwdl.de/story/20335/ndr_erster_dreistufentest_abgeschlossen/

5.3.5. The Italian market

In Italy, RAI's catch-up television operations are managed by its subsidiary RaiNet, which launched two parallel projects in 2005: the Internet portals Rai.tv and Rai Click. Rai Click was closed down in December 2008. Rai.tv enables programmes produced or commissioned by RAI to be watched. Initially, the software used was the Windows Media Player but it was replaced by the Microsoft Silverlight in February 2009. In June 2009, 15 million videos were viewed, which was a rise of 257% over the previous year.

RAI has also created a branded channel on YouTube, which offered 1,318 videos in June 2009. RAI has enjoyed considerable success: whereas 10.7 million of its videos were viewed in January 2009, the figure for June 2009 alone was 36 million. The average age of Rai.tv users is 30 but that of the users of the YouTube branded channel is estimated at just 20.[647]

Graphic 54 : Comparison of the rai.tv website with rai.it and mediaset.it (including Rivideo) (2008-2009)



Source: Alexa

5.3.6. The Swedish market

In Sweden, the public service broadcaster SVT launched SVT Play, a free catch-up TV service, in December 2007. It offers more than 2,000 hours of programmes, most of them from SVT's own catalogue. They are available for 30 days after being aired. In summer 2008, SVT Play also offered the German series *KDD*. The service also includes three "channels": Play Bolibompa (children's programmes), Play Rapport (news) and Play Prima (series in HD). SVT has launched a channel on YouTube and made SVT Play programmes available on Joost. The site enjoyed quick success after its launch, with 170 million downloads recorded in 2007 and 204 million in 2008.[648]

The site was relaunched in January 2009, which enabled it to improve its audience by 41% in

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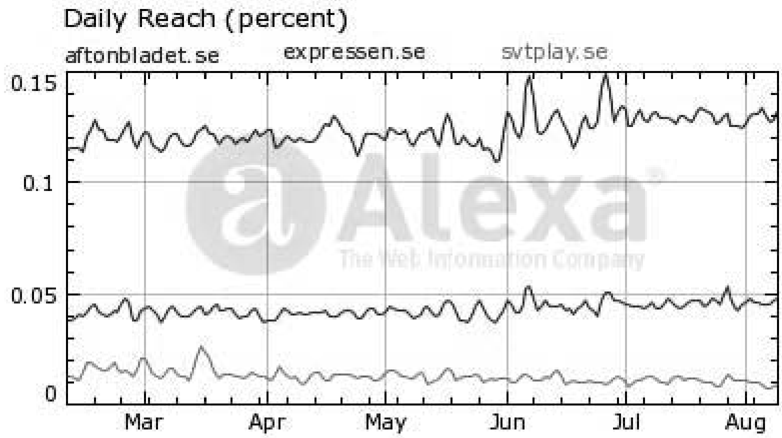
[647] Key4biz, 9 July 2009, http://www.key4biz.it/News/2009/07/09/e-Society/rainet_Piero_Gaffuri_raitv_videosharing_YouTube.html

[648] "Swedish SVT basks in catch-up success", *Broadband TV News*, 31 March 2009, http://www.broadbandtvnews.com/2009/03/31/swedish-svy-does-well-with-catch-up-tv-site/

two months. the number of unique visitors reaching 2 million in the first week of March 2009. According to SVT, the site is now in second place in the ranking of Swedish websites, ahead of the *Expressen* newspaper and only place behind *Aftonbladet.se*, the site of the daily newspaper, which also offers video.[649] However, this ranking is not confirmed by Alexa data. In June 2009, an agreement with the satellite package operator Viasat enabled subscribers equipped with a Pace ViasatPlusHD decoder to receive IPTV transmissions on their television screen.[650]

Graphic 55 : Daily reach of the SVTplay and Swedish press websites (February-August 2009)



Source: Alexa

5.3.7. Archives

There is a third category of on-demand service available to broadcasters, namely archive services. The aim is no longer to commercialise popular programmes for which the public is prepared to pay or to make a catch-up offering available for a few days. Rather, the main thinking behind the provision of the contents of archives is the publication of heritage material and offering everyone access to catalogues of predominantly historical interest that have become difficult to exploit commercially.

5.3.7.1. Regulatory obstacles

It is mainly public service bodies that make archives accessible online. We have already mentioned the difficulties encountered by the BBC in setting up Project Kangaroo, which aimed to establish a common archive platform for the British free-to-air broadcasters, and Channel 4's recent announcement that it was putting a large proportion of its archives online. In Germany, as we have also pointed out, the new legislation reduces the possibilities available for the public service broadcasters to make their archives available. However, the number of genuine TV archive services remains limited.

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649 "Major growth for SVT Play", *Broadband TV News*, 20 March 2009, http://www.broadbandtvnews.com/2009/03/20/success-for-svt-play/

650 Viasat puts on SVT Play, *Broadband TV News*, 12 June 2009, http://www.broadbandtvnews.com/2009/06/12/viasat-puts-on-svt-play/

5.3.7.2. Teche RAI

The oldest service was launched in Italy in 1999, when Teche, the archive service of RAI, began to put its archive catalogue online via the RAI Teche website (http://www.teche.rai.it). This site was revamped in January 2003 in order to offer around a thousand items of historical footage. In 2006, 6,000 documents were available.

5.3.7.3. The INA service "Archives pour tous"

The most sophisticated service in Europe is probably "Archives pour tous" operated by the French National Audiovisual Institute INA (http://www.ina.fr/archivespourtous/). Since 27 April 2006, the general public has had direct access to more than 100,000 television and radio programmes for viewing/listening to or downloading (48-hour rental or download-to-own) or in the form of on-demand DVDs. The website mainly provides access by keywords, dates, genres and subjects. At the end of 2008, the catalogue contained more than 22,000 hours of programmes, representing an increase of 26% over 2007. More than 15 million programmes have been watched.[651] Some programmes can be purchased (at varying prices depending on the nature and length of the programme). Since 1 September 2008, users have also been able to order DVDs corresponding to the programmes they have purchased as downloads. The price of the DVD depends on the cost of the downloaded video (from €1 to €6 each) plus €5 burning fee. Each DVD contains up to 90 minutes of programmes or 29 videos.[652] In June 2009, the site was given a remake, with a larger screen and content in the Flash format and exportable. Navigation has been simplified, a more powerful search engine has been provided and thematic channels (sports, fiction, entertainment, art and culture, advertising, etc) have been created. When the revamped site opened on 25 June 2009, ina.fr was the most visited French video site, with 1.16 million pages viewed a day and 560,000 videos consulted, i.e. 7 times more than the average for the site (80,000 videos viewed a day in 2009).[653]

5.3.7.4. The VRT service "Ooit Gemist"

In Belgium, the public television service of the Flemish Community broadcaster VRT includes archive material in its Ooit Gemist service, which is available on the Telenet cable networks.

5.3.7.5. The Video Active project

Various projects (Birth, then Video Active[654]) set out to organise co-operation between the broadcasters' archive departments with the aim of putting their archives online. Video Active is a consortium comprising 13 archive centres and various bodies specialising in archive management).[655] The project, which is sponsored by the European Union's eContent Programme, is co-ordinated by the television historian Professor Sonja de Leeuw of the University of Utrecht and by the *Netherlands Institute for Sound and Vision*. The portal was launched in September 2008. In June 2009, more than 3,700 items were available.

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651 INA press release, 9 April 2009, http://www.ina-entreprise.com/sites/ina/medias/script/presse/464.pdf

652 INA press release, 26 November 2008, http://www.ina-entreprise.com/sites/ina/medias/script/presse/429.pdf

653 INA press releases, 22 June 2009 and 26 June 2009, http://www.ina-entreprise.com/sites/ina/medias/script/presse/498.pdf ; http://www.ina-entreprise.com/sites/ina/medias/script/presse/501.pdf

654 http://www.videoactive.eu. See also the blog of the project: http://videoactive.wordpress.com/

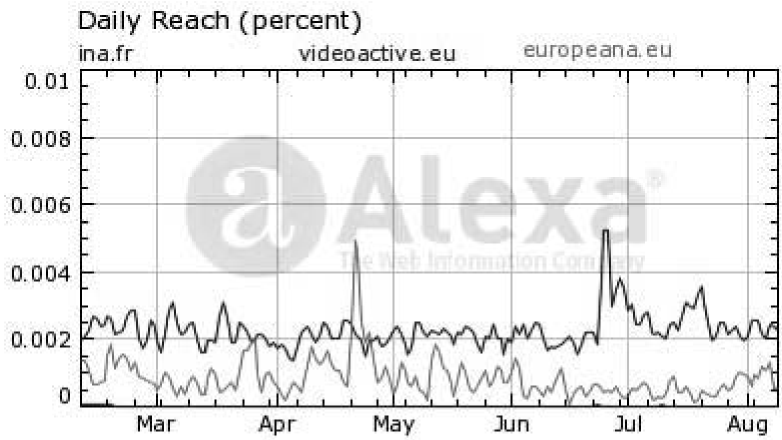
655 BBC (GB), DR (DK), DW (DE), ORF (AT), RTBF (BE), TVC (ES), INA (FR), VRT (BE), National Archives (SE), SV (NL), NTUA (GR), Istituto Luce (IT), NeumannKht (HU).

The main aim of Video Active is to create access to television archives across Europe. The unlocking of these (largely) closed archives will make their content available for educational and academic purposes.[656]

The project will achieve this by selecting 10,000 items of television archive content, which reflects the cultural and historical similarities and differences of television from across the European Union, and by complementing this archive content with well-defined contextual metadata. Video Active offers its users an enormous resource for exploring both the representation of cultural and historical events within and across nations and the development of the medium itself at a cross-cultural level. Ten languages will be supported: English, French, German, Italian, Dutch, Greek, Hungarian, Catalan, Danish and Swedish. As a result, Video Active will focus on understanding the shared histories and interrelationships that have shaped collective European memory and identity while at the same time celebrating the multicultural dimensions that have also shaped European citizenship.

Video Active is a member of the European Digital Library Thematic Partner Network of Europeana, the European online library whose website was launched on 20 November 2008.[657] The videos made available on Video Active can also be accessed via the Europeana search facility.

Graphic 56 : Daily reach of the INA, Europeana and Video Active websites (2009)



Source: Alexa

656 See http://www.videoactive.eu/VideoActive/About.do?menu_page=menu-about.

657 http://www.europeana.eu

PART 6:

THE RAPID DEVELOPMENT OF VIDEO SHARING SITES AND THEIR IMPACT ON THE STRATEGY OF THE TRADITIONAL PLAYERS

6.1. GENERAL CHARACTERISTICS OF VIDEO-SHARING SITES

6.1.1. Definitions: user generated content sites or video-sharing sites?

The term “user generated content” (UGC), which refers to Internet users’ offerings of content on the web, emerged in 2005. In the field of video, it denotes sites such as YouTube[658], Dailymotion[659], tuduo[660], MyVideo[661] etc, the content of which was initially made up exclusively of programmes uploaded[662] by users. We prefer the term “video sharing sites”.

Most video sharing sites do not have an editorial policy (they can host all types of content). All formats are possible on these platforms but the average duration of the videos is generally less that 10 minutes. The majority of programmes longer than 10 minutes consist of professional content. For practical reasons, they may also be split into several videos of shorter duration. The statistics available highlight the volatility of the audiences that view a large amount of very short content (according to comScore, an average of 2 minutes on the American market in March 2008).

Videos are streamed and do not require a dedicated player. They are often sent from surfers to one another in the form of links.

The content offered by these sites is of three types:

- *official content* (or professional content): this is uploaded either by users (and is thus illegal) or by broadcasters or producers (via a partnership with producers, TV channels, advertisers, etc (see next part).
- *semi-professional content*, this is the case with the French platform Dailymotion, which offers the creative content of images, the rights to which have been released by their producer.
- *original content*: this involves amateur videos that are provided by users and are rights-free pursuant to the general terms and conditions of use laid down by these platforms.

The rapid development of these sites has been brought about by a number of factors that have come together: the spread of broadband networks and the rapid popularisation of the Internet, the rapid development of compression and streaming technologies and the general availability of basis devices (digital camcorders, camera phones, editing software, etc), all of which have lowered the price of producing and uploading audiovisual content.

If we accept the technical definition of video on demand proposed by the ITU, then these sites meet its terms. By contrast, the Audiovisual Media Services Directive tends to exclude this type of site from its scope of application. Recital 16 excludes from the scope of the directive “activities which are primarily non-economic and which are not in competition with television broadcasting, such as private websites and services consisting of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest”.

We believe the term “user generated content sites” should be called into question for at least

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658 http://www.YouTube.com (site established in the United States)

659 http://www.dailymotion.com (site established in the France)

660 http://www.tudeo.com (site established in the People’s Republic of China)

661 http://www.myvideo.com (site established in Romania)

662 Or posted, the two terms being used interchangeably in this context.

three reasons:

1. The idea of “user generated content” is fairly general in nature and may apply to sites that either do not offer or only marginally offer audiovisual material, for example Wikipedia or e-Bay, to mention only the best known.

2. Although the operators of these sites deny it, it seems clear that a considerable volume of the content is only “generated by users” to the extent that users have uploaded this content without being the authors of rights holders. Some observers have even suggested that it would be more logical to describe these sites as “user-uploaded content” sites.

3. In addition, as we shall see, several of the operators of these sites have signed agreements with traditional audiovisual industry players (distributors, broadcasters, collecting rights societies) or with institutions to enable them to create channels on their site.

Finally, the idea in Recital 16 of the directive that user generated content sites are primarily non-economic in nature appears very naive as far as video sharing sites is concerned.[663] How is it possible to imagine the investments carried out by Google Inc. (in YouTube), News Corp. (MySpace), ProSiebenSat.1 Media AG (MyVideo) are “primarily non-economic”? The business model of these sites usually involves funding by means of advertising.[664] Like any other advertising-funded means of mass communication, the operators’ principal objective is to build an audience in order to sell advertising space. The operators of these sites are consequently in competition with the advertising-funded means of mass communication: the press, radio and, of course, television. The big innovation is that this audience can be built by outsourcing virtually all the content production.

In Community law, the hosting activities of video sharing sites do not fall within the scope of the Audiovisual Media Services Directive but the E-Commerce Directive, Article 14 of which refers to the activities of the hosting service.[665] According to this article, hosting is an information society service that consists in storing information provided by a recipient of the service. The service is not liable for the information stored by the user in condition that:

- “the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent”;

or

- “the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information”.

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663 The definition that Google Inc. provides of its YouTube service in its *Annual Report 2008* is interesting from this point of view. The advertising function is not mentioned until the end. “*YouTube is an online community that lets users worldwide upload, share, watch, rate, and comment on videos, from user generated, niche professional, to premium videos. YouTube is also a video platform providing general purpose video resources to the web community. YouTube videos are embedded in blogs, social networks and web applications, and YouTube programming interfaces are utilized by many registered developers to create third-party products and services. In addition, YouTube offers a range of video and interactive formats for advertisers to reach their intended audience.”*

664 Other funding models for video sharing sites are possible. For example, the model of the American Vimeo site (http://www.vimeo) is based on the principle of payment for the upload. This arrangement is appreciated by users who do not want their video accompanied by advertising or have the site’s logo embedded in it. Vimeo was launched on 15 December 2004. In June 2009, it was ranked in 4527th position in the global website traffic ranking produced by Alexa.

665 For a detailed discussion of this question, see F. J. Cabrera Blázquez, *User-Generated Content Services and Copyright*, IRIS Plus, European Audiovisual Observatory, 2008. http://www.obs.coe.int/oea_publ/iris/iris_plus/iplus5_2008.pdf.en

The question of editorial responsibility (especially as regards breaches of intellectual property rights) has been the subject of several lawsuits. Although there have been cases of contradictory case law, the majority of cases recognise that the hosts have no editorial responsibility. This view supports the interpretation that these sites do not belong to the category of audiovisual media services since the definition of the latter as provided by the AVMSD presupposes that there is editorial responsibility.

Whatever the case may be, we prefer the term "video sharing sites" over the expression "user generated content sites" as this seems closer to reality and more appropriate with regard to specifically audiovisual content. However, it is necessary to avoid confusing the video sharing sites with the file sharing sites (music or video), which usually employ the peer-to-peer technology. The video sharing sites normally employ streaming technology:[666] users view programmes stored on the service host without having to download the file onto their computer's hard drive. Accessing video sharing sites is much easier than accessing peer-to-peer sites, which requires a minimum of technical skill.

6.1.2. The socio-economic characteristics of video sharing sites

6.1.2.1. The club effect

The online sharing platforms function according to the principle of a network economy based on recommendation, which generates a club effect that enables certain content to be disseminated quickly and on a large scale. The ease of distribution leads to increased competition between the programme offerings and the need for the consumer to make choices. The free sites and their community functionalities thus fulfil an intermediary role between the content producers and the consumers by enabling the various communities to generate opinions. The club effect is based on the principle that users will tend more to watch what the majority of their peers have already looked at.

These sites are characterised by the very strong concentration of the consumption of content, with a few items viewed by large numbers of people and all the many other items enjoying very little success. For example, 20% of the videos watched on Dailymotion (France) account for 80% of total consumption.

6.1.2.2. Dedicated spaces

The sharing sites that generate a very large number of videos have to editorialise their service in order to enable consumers to find their way about. In order to increase the size of the audience, these sites structure their service by highlighting some of the videos regarded as comprising premium content.

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[666] Other forms of video sharing are possible, especially in connection with IPTV services, outside the Internet. For example, since 2007 the French IPTV operator Free has offered its subscribers the service "TV Perso": from the set-top box or a DVD player, a subscriber equipped with a Freebox HD can broadcast a programme broadcast as part of the operator's service and available to other subscribers on demand either live or time-shifted. Subscriberd can make their videos available to all the subscribers to the services or limit access to them to groups or, by means of a password, individuals, ftp://ftp.free.fr/pub/assistance/guideTVperso092008.pdf
When this service was launched, it led to the broadcasting of a considerable number of adult films, which in turn resulted in the intervention of the regulatory body CSA, which does not intervene at the moment in matters relating to the Internet.
See "La TV Perso de Free dans le collimateur de Canal+ et du CSA", *Le Journal du Net*, 16 July 2007, http://www.journaldunet.com/ebusiness/telecoms-fai/actualite/0707/070716-canal-plus-tvpero-free-csa.shtml.
However, this type of service is still marginal at the moment compared with the success encountered by the Internet video sharing sites.

The home pages of these sites offer the most-viewed videos that have been given the best ratings by web users, plus theme-based sections (humour, sport, music, etc) that enable a video to be selected according to different search options.

There is a certain uniformity with regard to the interfaces, the construction and the editorialisation of these sites, and the same structure is adopted for sites from one country to another.

All the content sharing sites offer theme-based channels with a space dedicated to professional content. These channels provide a larger visibility space than the rest of the site.

The challenge for the traditional players is to differentiate their offering on these platforms. The use of a dedicated channel enables them to optimise their visibility and, therefore, the uploading onto the Internet by users.

6.1.2.3. The business model: difficulty in selling the advertising space

The business model of the content sharing sites is mainly based on funding by advertising. However, not all the videos can be turned to commercial account by means of advertising (especially amateur content). In all, 50% of videos are available for advertisers' promotional purposes (either video itself or the channel where it is to be found). Advertising takes the form of spots (for the most-viewed videos) and banners or promotional inserts but are not integrated into the videos. In all cases, the advertising space is owned by the platform, which collects the revenue.

For example, on YouTube.pl, on the page for a Marylin Manson music clip, there is an advertising banner occupied by the advertiser Universal Music (a record company).

YouTube.pl

6.1.2.4. Audience monitoring

There is little advertising on content sharing sites at the moment but this is likely to change in the medium term. Two combined parameters will probably make it easier to monetise content with advertising: specific themes and the creation of communities. For example, music (30%), humour (19%) and sport (12.5%) are the three content categories that generate the most traffic. In addition, web users who frequent these sites are a group targeted by advertisers: in France, 50% of the audience is made up of the over 35s and one-third of regular visitors have an annual income exceeding €36,000.

In order to help this advertising market to take off, the platforms should put audience measuring tools in place. These will provide advertisers with the indicators that are essential for capitalising on the content available, and this will provide an opportunity for the professional players who make their content available on the video sharing platforms to monitor their audience on this distribution channel and maximise its advertising potential. In the longer term, these tools could serve as leverage for the producers in negotiating the possible sharing of advertising revenue with the platforms.

We shall analyse in more detail in part 7 the development of audience measurement techniques and the position of video sharing sites in the general audience of on-demand audiovisual services.

6.2. YOUTUBE

6.2.1. *The business model of YouTube*

YouTube was set up in February 2005 by three former PayPal employees. The initial idea was to find a user-friendly system for exchanging video files, which are too heavy to be sent as email attachments. The site became popular very quickly, especially thanks to a dispute with NBC after a user had uploaded an excerpt from the programme *Saturday Night Live.*[667] From the spring of 2006, YouTube, together with MySpace and Atom Entertainment, appeared to be one of the most promising Web 2.0 start-ups[668], and on 16 October 2006 the founders sold their company, which was recording 100 million video viewings a day, to Google for $1.65 billion. Before buying YouTube, Google had already had an Internet video presence through its search tool Google Video, which was launched in 2005 and makes it possible to identify the videos present on a large number of hosting sites.

YouTube's success is illustrated by the statistics on the volume of videos uploaded by users: in mid-2007, 6 hours of videos were posted every minute. In January 2009, that volume was 5 hours a minute. According to YouTube, this represents an hourly volume with a daily equivalent of 86,000 feature length films. In April 2009, the per-minute volume had reached 20 hours.[669]

YouTube's business model is identical to that of television channels funded by advertising: the aim is to create as large an audience as possible in order to be able to commercialise advertising space. The big difference lies in minimising production costs of programmes, which are to a large extent outsourced since it is initially left up to the users to supply the programmes. However, it quickly became obvious that this model had its limits: first of all, a substantial proportion of programmes were uploaded by users without complying with copyrights, which led to the service being described as a parasite and confronted with a number of lawsuits; secondly, the quality of the programmes posted by users varies a lot and is thus an obstacle to advertising investment.

In order to remedy this weakness, YouTube introduced three parallel strategies:

- a strategy aimed at reducing the risk of intellectual property disputes,
- a strategy aimed at improving its services to advertisers,
- a strategy aimed at reaching agreements with the traditional audiovisual industry to offer programmes of professional quality, by complying with property rights and offering rights holders a share of advertising revenues.

6.2.2. *Reducing the risk of disputes*

The problem of the presence of copyright protected material on YouTube has existed since the inception of the service, when NBC demanded the withdrawal of excerpts from the programme *Saturday Night Live.*[670] Although Google proposed rules prohibiting YouTube

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[667] "SNL cult hit yanked from video-sharing site", *CNET News*, 17 February 2006. http://news.cnet.com/SNL-cult-hit-yanked-from-video-sharing-site/2100-1026_3-6041031.html

[668] "YouTube: The Talk of Tinseltown", *CNET News*, 30 March 2006. http://news.cnet.com/YouTube-The-talk-of-Tinseltown/2100-1025_3-6056079.html

[669] "Zoinks! 20 Hours of Video Uploaded Every Minute!", YouTube blog, 16 April 2009.

[670] "Does video has a Napster problem?", *CNET News*, 13 March 2006, http://news.cnet.com/Does-video-have-a-Napster-problem/2100-1026_3-6048650.html

users from publishing copyright protected material, it is clear that a large number of users are flouting them. Google has consequently faced or is facing a large number of complaints:

- the first complaint made is that of Robert Tur, a helicopter pilot and journalist whose video shot in 1992 during the Los Angeles riots appeared on YouTube without his authorisation;[671]
- complaint filed by Viacom: on 13 March 2007, the Viacom group filed a complaint against Google and YouTube for a copyright infringement, claiming a billion dollars in damages, estimating that more than 160,000 clips on the site were unauthorised excerpts of protected material and that they had been viewed more than 1.5 billion times.[672] The case is still pending but Viacom achieved a first legal victory on 1 July 2008 by being given permission to obtain the lists of works viewed.[673] YouTube informed users that it would not pass on the IP addresses but only the information on the videos themselves.[674] In response to Viacom's complaint, YouTube took down 100,000 videos from its server, including in some cases videos from users claiming not to have used any protected material;[675]
- complaint filed by the Football Association Premier League and Bourne Company on 4 May 2007[676], quickly supported by the launch of a class action that also involves Cherry Lane Music Publishing, the French tennis federation Federation française de tennis and the French professional football league Ligue de football professionnel[677], plus other sports associations and the National Music Publishers' Association.[678] A second complaint was filed by the 15 plaintiff organisations on 26 November 2008;[679]
- in June 2007, a complaint by Universal Music concerning the use in a user's family video of Prince song "Let's Go Crazy";[680]
- in July 2008, a complaint by the Spanish broadcaster Gestevisión Telecinco (a subsidiary of the Mediaset group), which said it had identified on 10 June 2008 4,634 copied versions of its programmes, totalling 325 hours of material and representing a loss of 315,700 viewing days. Mediaset demanded the award of damages amounting

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671 "YouTube sued for copyright infringement", *CNET News*, 18 July 2006, http://news.cnet.com/YouTube-sued-over-copyright-infringement/2100-1030_3-6095736.html

"YouTube dances the copyright tango", *CNET News*, 24 July 2006, http://news.cnet.com/YouTube-dances-the-copyright-tango/2100-1025_3-6097365.html

672 Viacom press release, 13 March 2007, http://www.viacom.com/news/Pages/newstext.aspx?RID=1009865
The text of the complaint is available at:
http://online.wsj.com/public/resources/documents/ViacomYouTubeComplaint3-12-07.pdf
For an analysis of the case, see F. J. Cabrera Blázquez, *User-Generated Content Services and Copyright*, IRIS Plus, European Audiovisual Observatory, 2008.

673 "Viacom vs. YouTube: Beyond Privacy", *Business Week*, July 3, 2008, http://www.businessweek.com/technology/content/jul2008/tc2008073_435740.htm

674 YouTube blog, 4 July 2008, 14 July 2008, http://www.YouTube.com/blog?month=7&year=2008

675 "Images: YouTube tales", *CNET News*, February 15, 2007, http://news.cnet.com/2300-1026_3-6159580-1.html

676 Press release, 4 May 2007, http://www.YouTubeclassaction.com/2007-05-04YTPressRelease.pdf.
See also: http://www.YouTubeclassaction.com/

677 Press release, 6 June 2007, http://www.YouTubeclassaction.com/2007.06.06FrenchPressRelease.pdf; http://www.YouTubeclassaction.com/2007.06.06CherryFFTLFPSupportPressRelease.pdf

678 Press release 6 August 2007, http://www.YouTubeclassaction.com/2007.08.06PremierLeague&BourneSupport-PressRelease.pdf

679 http://www.YouTubeclassaction.com/courtdox/2008-11-26-RedactSecAmenCmplt.pdf

680 This case ended in the user's favour, the judge acknowledging that the *fair-use* claim was well-founded. See "Judge: Copyright Owners Must Consider 'Fair Use'", *PCMag*, 21 August 2008, http://www.pcmag.com/article2/0,2817,2328578,00.asp

to at least €500 million ($779 million).[681] According to Reuters, YouTube replied that it respected copyrights and that it was not necessary to file costly lawsuits.[682] On 24 July 2008, a judge ordered YouTube to take down the videos corresponding to the Telecinco programmes.[683] Telecinco executives said they would file a second action to obtain damages.[684]

- In December 2008, the magazine *Le Point* revealed that TF1 was suing YouTube and Dailymotion and demanding €100 million in damages from Google and €38.97 million from Dailymotion.[685]

In order to respond to its critics, Google highlighted its ability to filter YouTube. The system concerned was announced to the NAB in April 2007 by Google CEO Eric Schmidt[686] and was the subject of press speculation[687] that led to a review on 14 June 2007 by Steve Chen, one of YouTube's founders[688], who provided explanations on the systems used but acknowledged that they could not be infallible with regard to the protection of copyrights. Doubt was quickly cast on the effectiveness of this system by various rights holders. In June 2007, the National Legal and Policy Center published a study showing that at least 125 films were available in an unauthorised version via the Google Video search tool.[689] In September 2007, the singer Prince announced his intention to sue YouTube, as well as eBay and The Pirate Bay, for failure to respect his rights and denounced the fact that the filtering system does not work.[690] In September 2008, Michael Grade, the CEO of ITV, called YouTube a "parasite"[691], and a few months later he stated that the amounts offered in compensation by YouTube were derisory.[692]

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681 "Italian media company sues YouTube", *CNET News*, 30 July 2008, http://news.cnet.com/8301-1023_3-10002413-93.html

682 "YouTube rejects need for Mediaset legal case", *Reuters*, 30 July 2008, http://www.reuters.com/article/idUSWLA722820080730

683 "Un juez obliga a YouTube a retirar vídeos de Tele 5 », *El País*, 24 July 2008, http://www.elpais.com/articulo/Pantallas/juez/obliga/YouTube/retirar/videos/Tele/elpepirtv/20080724elpepirtv_1/Tes

684 "Telecinco exigirá una indemnización a YouTube", *El País*, 24.7.2008, http://www.elpais.com/articulo/Internet/Telecinco/exigira/indemnizacion/YouTube/elpepirtv/20080724elpepunet_3/Tes

685 "TF1 va attaquer Dailymotion et YouTube", *Le Point*, 13 December 2009, http://www.lepoint.fr/actualites-medias/2007-12-13/justice-exclusif-lepoint-fr-tf1-va-attaquer-dailymotion-et-YouTube/1253/0/214671

"TF1 versus Dailymotion et YouTube", *Le Point*, 20 December 2009, http://www.lepoint.fr/actualites-medias/2007-12-20/lu-vu-entendu/1253/0/215565

686 "Schmidt says YouTube 'very close' to filtering system", *CNET News*, 16 April 2007. http://news.cnet.com/2100-1026_3-6176601.html

687 "YouTube to Test Software To Ease Licensing Fights", *New York Times*, 12 June 2007, http://online.wsj.com/article/SB118161295626932114.html; "YouTube to test video ID with Time Warner, Disney", *Reuters*, 12 June 2007, http://www.reuters.com/article/wtMostRead/idUSWEN871820070612

688 "The state of our Video ID tool", The Official Google blog, 16 June 2007, http://googleblog.blogspot.com/2007/06/state-of-our-video-id-tools.html

689 "Hollywood's YouTube frustration grows", *CNET News*, 11 June 2007, http://news.cnet.com/Hollywoods-YouTube-frustration-grows/2100-1030_3-6189853.html

690 "Prince lashes out at YouTube, eBay and The Pirate Bay", *CNET News*, 13 September 2007, http://news.cnet.com/8301-10784_3-9778087-7.html

691 "ITV Chief: YouTube is a "parasite", Wired, 16 September 2008.

692 "ITV's grade: 'YouTube's Boyle Offer Was Derisory", *PaidContent*, 13 July 2009.

The Video Identification system was launched on 15 October 2007[693] and includes the following elements and tools:

- a strict repeat-infringer policy, which terminates accounts of repeat infringers,
- memorisation by the system of videos that have been taken down so as to prevent their being uploaded again,
- limitation of videos to 10 minutes, which prevents long programmes from being uploaded,
- content owners provided with an electronic notification and takedown tool in order to create a co-operation procedure for the withdrawal of programmes,
- information for users on copyright rules at the moment of upload.

In September 2008, Nexicon announced that it had reached an agreement with YouTube for the introduction of the Youscout system, which enables copyrighted programmes present on YouTube to be identified. Once a programme has been identified, the owner can have it taken down, decide to keep it in place to ensure its promotion or reach an agreement with YouTube and Youscout to share the advertising revenues generated.[694]

In December 2008, the French National Audiovisual Institute (Institut national de l'audiovisuel – INA), which had already filed a complaint a few months earlier, filed a second complaint arguing that the filtering procedures set up by Google were not effective.[695] INA, which wanted YouTube to use Signature, its own filtering system, had its case dismissed[696], the judge declaring himself incompetent to deal with it. However, INA expects to renew its demand by linking it to another case: it has filed a counterfeit suit against YouTube and is demanding a payment into court of €100,000 plus damages and interest, which could amount to several million euros.[697] The question of the effectiveness of the filtering systems used by Google for its Google Video and YouTube services was raised again when the Pirate Bay administrators said after their conviction by a Swedish court that their site was no different in nature from those provided by Google Video.[698]

On 10 July 2009, the French group Bayard Presse obtained a ruling in its favour from the Paris Regional Court against YouTube for a copyright infringement. Considering that YouTube had not acted sufficiently "promptly" to take down the pictures from the children's series *Le Petit Ours brun*, the court ordered it to pay €40,000 €in damages plus €10,000 for

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693 David King, YouTube Product Manager, "Latest content video ID Tool", Google blog, 15 October 2007, http://googleblog.blogspot.com/2007/10/latest-content-id-tool-for-YouTube.html, "YouTube finally launches Video ID tool", *NewTeeVee*, 15 October 2007, http://newteevee.com/2007/10/15/YouTube-finally-launches-video-id-tool/

694 Nexicom press release, 11 September 2008, http://www.nexiconinc.com/media/nexicon-and-YouTubetm-form-partnership
"Youscout", http://www.nexiconinc.com/products/youscout

695 "L'INA attaque en justice YouTube pour avoir diffusé ses archives" , *Les Echos*, 22 December 2008, http://archives.lesechos.fr/archives/2008/LesEchos/20326-97-ECH.htm?texte=YouTube

696 "L'INA débouté de son procès avec YouTube", *Les Echos*, 3 July 2009, http://www.lesechos.fr/info/comm/4882778-l-ina-deboute-de-son-proces-contre-YouTube.htm

"YouTube ne signera pas avec l'INA", *Libération*, 6 July 2009. http://www.ecrans.fr/YouTube-ne-signera-pas-avec-l-Ina,7660.html

697 "L'INA renouvelle sa plainte à l'encontre de YouTube", *Les Echos*, 6 July 2009, http://www.lesechos.fr/info/comm/02054703193-l-ina-renouvelle-sa-plainte-a-l-encontre-de-YouTube.htm

698 It should be noted that the question of the legal liability of users who watch videos posted on YouTube in breach of intellectual property rights has not been the subject of such an intense debate in the case of the peer-to-peer sites (which entails users participating in the reproduction of copyrighted material), but it has been asked in the American professional press. See for example "Legal liability for YouTube viewers", *CNET News*, 14 May 2008, http://news.cnet.com/8301-13739_3-9936833-46.html

copying the Petit Ours brun trademark and €10,000 in legal fees.[699]

At the end of 2007, MIT Free Culture, an association of MIT students, developed YouTomb, a system that enables videos taken down by YouTube to be identified, following intervention by rights holders concerning breaches of their intellectual property rights, failure to comply with the general rules of the site or errors made by the YouTube detection tool. The site youtomb.com provides a database of all the takedowns identified. At the end of June 2009, YouTube had identified 14,377 videos taken down for a breach of intellectual property rights and 72,398 taken down for other reasons. A statistical study conducted by one of the website's facilitators for the Warner Music Group showed that 1,440 videos were taken down at the group's request in 2008 and 3,707 in the first quarter of 2009 alone, which indicates that there is growing vigilance, which clearly needs to be put into the context of the rapid development of the service.[700] The other groups that have had a large number of items taken down include Viacom International (738), TV Tokyo Corporation (698), NBC Universal (358), World Wrestling Entertainment Inc. (302), Dattebayo Fansubs LLC (277) and BBC Worldwide Ltd (255).

6.2.3. The need for fresh commercial impetus: Project Spaghetti

In mid-2008, the low advertising revenues in the first six months and the unimpressive forecasts for the year as a whole (under $200 million in 2008 according to *The Wall Street Journal*[701], compared with an estimated 15 million in 2006) suggested to Google executives the need to redirect their strategy for co-operating with the incumbent audiovisual groups. That seemed all the more necessary as the success of Hulu, the free advertising funded VoD site launched by NBC Universal and News Corp., meant that a dangerous competitor had emerged and the press reported in September 2008 on Universal Music's project to set up its own music video site, at a time when the Universal channel on YouTube was the most watched and generated 2.6 billion views in one year.[702]

Google advertising executives have identified 105 different problems in the operation of Tube and in March 2008 launched "Project Spaghetti" to improve the site's advertising revenues. This development appears all the more important as the growth rate of advertising revenues in the case of its main activity (search engine) was declining (31% the first three months of 2008 against 49% in the same period in 2007).

Against this background, Google has announced various commercial innovations concerning advertising on YouTube:

- introduction of the concept of *promoted videos* under the *search advertising program:* based on the same principle as Google's promotional (sponsored) links, these videos enable advertisers to draw the attention of the site's user to their product;[703]
- more flexibility with regard to the discounts offered advertisers;
- the possibility for programme producers to sell advertising at the beginning and end of programmes (*pre-roll* and *post-roll*) and share the revenues;

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699 "Quand Petit Ours brun fait condamner YouTube", *01net.com*, 17 July 2009, http://www.01net.com/editorial/504414/quand-petit-ours-brun-fait-condamner-youtube/

700 "Statistics on Warner Music Group Takedowns", YouTomb blog, 8 March 2009.

701 "Google Push to Sell Ads On YouTube Hit Snags", *The Wall Street Journal*, 9 July 2008, http://online.wsj.com/article/SB121557163349038289.html

702 "Source: Universal Music Group plans 'Hulu-like' site", *CNET News*, 25 September 2008, http://news.cnet.com/8301-1023_3-10051246-93.html

703 "A Few Name Changes on the Site", YouTube blog, 13 March 2009.

- introduction (announced on 30 July 2008) of the "Click-to-Buy" system: users who view programmes from the catalogues of the major producers are invited to click on links that take them to opportunities for making purchases on the Apple iTunes Stores or Amazon.com.[704]

In June 2009, YouTube announced it was testing a system that enables users to choose between watching a commercial at the beginning of a clip, before the programme, and watching the programme with four 15-second interruptions.[705]

Google has also developed its advertising activities by offering, in association with the company Spotmixer, the Google TV ads system, which makes it easy to buy advertising space on the American television channels.[706] The system, which was launched on an experimental basis in September 2008, was rolled out more generally in January 2009 and supplemented by an online video advertising offering in April 2009.[707] It is mainly aimed at small and medium-sized companies.

6.2.4. Improvement in the quality of the service to users

YouTube is also trying to improve the quality of the services it provides its users:

- greater flexibility for users with regard to accessing the language versions of their choice;[708]
- introduction of images in HD quality;[709]
- introduction of theme-based sections (News, Music, Movies);[710]
- developments that enable YouTube to be received on television sets. YouTube has offered manufacturers YouTube API applications, which enable interfaces to be established with the television set. In June 2007, Apple TV was the first set-top box that made it possible to view the service on a television screen. In May 2008, Sony announced the availability of these applications on its Sony Bravia. Compatible set-top boxes have also been launched by HP, Panasonic, Samsung, Tivo and Verismo.[711] YouTube has reached agreements with the main television and set-top box manufacturers whose new models have an interface that enables the site to be viewed on a television screen. The TV Website is available in 22 territories and in 12 different languages.[712]

In February 2009, YouTube announced it was testing the possibility of enabling users to legally download certain programmes, either free of charge or against payment. According to Product Manager Thai Tran, this meets the wish of many creators to see their work distributed provided they get the proper credit. The first providers to trial this approach were an educational organisation (Khan Academy), a training site (Household Hacker) and an

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704 "Like What You See? Then click-to-Buy on YouTube", YouTube blog, 30 July 2008.

705 "YouTube Tests Choose-Your-Own Ads", Forbes.com, 15 June 2009.

706 SpotMixer press release, 15 January 2009, http://www.spotmixer.com/create_video/aboutus_press. See also "Google TV Ads", http://www.google.com/adwords/tvads/

707 "Reach TV viewers through more than one screen", Google TV Ads blog, 16 April 2009, http://google-tmads.blogspot.com/2009/04/reach-tv-viewers-through-more-than-one.html

708 "A More Customized Local Experience on YouTube", YouTube blog, 14 July 2008.

709 "HD on YouTube", YouTube blog, 5 December 2008.

710 "New Video Landing Pages", *YouTube blog,* 5 December 2008.

711 "YouTube in Your Living Room", YouTube blog, 15 May 2008.

712 "Coming Up Next… YouTube on Your TV", YouTube blog, 14 January 2009.

entertainment portal (Pogobat).[713]

6.2.5. *A policy of reaching agreements with the main programme producers*

While advertisers acknowledge that advertising has a good penetration rate among users, one of the main problems to be solved is the lack of programmes for which it is worthwhile offering advertising opportunities. Finding attractive content thus became a challenge.

Since it was set up, YouTube has tried to reach agreements with the audiovisual industry incumbents. Since August 2006, YouTube has offered its brand channel model, which enables a company or an institution to enter into an agreement with it and customise a special page, with its own style, logo, etc in order to promote its videos. The first to sign up for a brand channel was the singer Paris Hilton in connection with the promotion of her new album by the Warner Music Group.[714] The Warner Music Group was thus the first to try out the new marketing approaches offered by YouTube, but on 20 December 2008, the *Financial Times* announced that the group had pulled out of its agreements, apparently owing to the low revenues generated.[715]

In order to persuade industry producers and, incidentally, the institutions likely to provide political legitimation[716], YouTube has nonetheless systematised the brand channel option. The commercial principles have not been disclosed, but according to industry professionals[717] there are two possible approaches:

- the partnership approach: the partners are selected by YouTube according to their ability to provide quality content with a number of views significant enough for YouTube to be able to sell advertising. Revenues are shared between YouTube and the partner;
- the sponsorship approach: in this case, the sponsor pays to create its channel and obtains the right to withdraw an equivalent amount from an AdWords account, which enables advertisements to be placed on YouTube and the Google Content Network (excluding the site google.com). The advertisements placed can only include a link to the page of the brand channel.

In October 2006, YouTube signed an agreement with the CBS Corporation for the daily distribution on the Internet of short videos, news, sports and entertainment from the group's varous channels (CBS, Showtime, etc).[718] After a month, the CBS Brand Channel had become one of the most popular and nearly 30 million videos had been viewed.[719]

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713 "YouTube trials video download service", *Mediaweek*, 13 February 2009. This move by YouTube probably meets a need to provide a service similar to those offered by competing platforms. For example, the Vimeo service offers its users the option of authorising the download. It may also be a response to de facto situation: a lot of software enables videos on YouTube to be downloaded easily without any authorisation.

714 "YouTube Unveils New Advertising Concepts", YouTube press release, 22 August 2006. http://www.YouTube.com/press_room_entry?entry=RZs9p25QDCY

715 "Warner Music pulls out of YouTube licensing deal", *Financial Times*, 20 December 2008, http://www.ft.com/cms/s/0/7086561a-ceae-11dd-8b30-000077b07658.html

716 Among the institutions that have opened a channel on YouTube, mention might be made of the White House, the British Royal Family, the European Commission, the Holy See, etc.

717 See in particular the remarks on the page of Stephen Davies' blog headed "List of YouTube brand channels", http://www.prblogger.com/2008/03/list-of-YouTube-brand-channels/

718 CBS Corporation/YouTube press release, 9 October 2008, http://www.youtube.com/press_room_entry?entry=iXG7e1g-BWI

719 CBS Corporation/YouTube press release, 22 November 2006, http://www.youtube.com/press_room_entry=oJpEXVevcKg

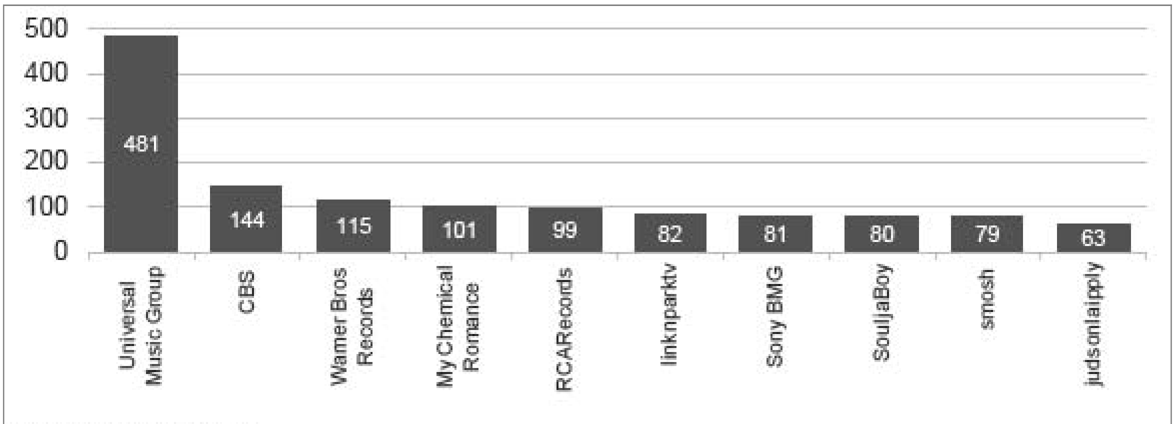
In March 2007, YouTube announced an agreement with the BBC[720]. Three YouTube channels are devoted to short excerpts from BBC channels:

- BBC: public service proposition, with no advertising, containing trailers and sort features. In this case, the BBC's objective is to popularise current programming and drive traffic back to its own website;
- BBC Worldwide: archive clips from entertainment programmes, three to six minutes long, at a site containing advertising (banners, pre-roll advertisements);
- BBC News: about thirty news clips a day. This service is financed by advertising but is only accessible from within the United Kingdom.

In October 2007, YouTube somewhat discretely offered programme producers a new model: in the vent of their programmes being present on YouTube on the initiative of its users, the owners of the programmes can either have then taken down or reach an agreement with YouTube to share advertising revenues. Time Warner and Walt Disney are said to have been among the first groups to test this model and, according to Google CEO Eric Schmidt, 90% of producers accepted the partnership deal.[721]

In November 2007, YouTube and Harpo Productions announced an agreement for the creation of a channel devoted to the actress Oprah Winfrey, whose talkshow has been the most popular in the United States for 21 consecutive seasons.[722] On 25 February 2008, the pay-TV channel HBO signed a brand channel agreement to promote its new series.[723]

Graphic 57 : The most watched YouTube channels in millions of accumulated views, 2 November 2007



Source: YouTube.com

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720 "BBC strikes Google-YouTube deal", *BBC News*, 2 March 2007 http://news.bbc.co.uk/2/hi/business/6411017.stm

721 Not much was said about this proposal at the time but it was confirmed in July 2008 on the occasion of the signing of an agreement with Lionsgate. See "Lionsgate to allow more of its clips on YouTube", *Los Angeles Times*, 17 July 2008. http://articles.latimes.com/2008/jul/17/business/fi-YouTube17

722 YouTube press release, 2 November 2007.

723 "It's Not TV; It's HBO…on YouTube; HBO Launches Official YouTube Channel", Home Box Office (HBO) Inc./YouTube press release, 25 February 2008. http://www.youtube.com/press_room_entry?entry=tVJDkkQT37w

However, it was mainly in connection with the commercial relaunch of the service, undertaken in the spring of 2008, that YouTube systematised its negotiations with the major audiovisual groups. From then on, it signed one agreement with producers and the incumbent broadcasters after another:

- On 16 July 2008, Google announced it had signed an agreement with Lionsgate. The studio agreed to allow its films to be viewed on YouTube in exchange for advertising revenues associated with the viewing of its material. This agreement was the first to be made public since the experimental launch of the partnership programme in October 2008.[724]
- In October 2008, YouTube signed an agreement of advertising sharing with the American channel CBS for the distribution of television series.[725]
- In November 2008, YouTube and Metro Goldwyn Mayer (MGM) announced the signing of an agreement permitting the distribution free of charge of films and television series in their entirety on the video sharing site. The films can be freely accessed but are interrupted by advertising.[726]
- In February 2009, YouTube concluded a new agreement with Sony Music Entertainment that will enable it to broadcast videos of artists under contract with the music publishing group. According to a source close to the projects of Sony Music, the group considers that a partnership with YouTube has chances of creating value owing to the site's large number of users. By contrast, the Warner Music Group decided in December 2008 not to go along the same path with the video sharing site. According to a source close to the Sony Music projects, the group believes that a partnership with YouTube has chances of creating value owing to the large number of users of the video sharing site.[727]
- In March 2009, YouTube and Disney/ABC announced an agreement permitting the video sharing site to broadcast via specific channels various types of short video produced under the Disney/ABC Television Group brands (including ABC Entertainment, ABC News, ABC Family, SOAPnet and ESPN).[728]
- In April 2009, YouTube and Universal Music announced they had joined forces to launch a site specialising in music video clips.[729] Called Vevo, it will enable YouTube to attract advertisers and normalise its relations with the world's number one music publisher. The Universal Music Group will share the advertising revenue with YouTube. It is planned to launch the site in 2009 but no further details have been provided. The two groups stated that *"Vevo will be a premium online music hub built for consumers, advertisers and content owners that will blend UMG'S broad catalogue of top artists and content with YouTube's leading edge video technology and user community. We believe that at launch, Vevo will already have more traffic than any other music video site in the United States … and will be uniquely positioned*

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724 "Lionsgate to allow more of its clips on YouTube", *Los Angeles Times*, 17 July 2008. http://articles.latimes.com/2008/jul/17/business/fi-YouTube17

725 "YouTube Goes Legit, Begins Streaming Approved CBS Content", *Wired*, 10 October 2008, http://www.wired.com/epicenter/2008/10/youtube-goes-le/

726 MGM Worldwide Digital Media (MGM)/YouTube, press release, 10 November 2008, http://www.youtube.com/press_room_entry?entry=MW8YnmlDy-8

727 "YouTube renews music video deal with Sony Music: sources", *Reuters*, 12 February 2009, http://www.reuters.com/article/industryNews/idUSTRE51C0NR20090213

728 "Disney/ABC and ESPN Will Launch Short-Form Content on YouTube", YouTube blog, 25 March 2009; Disney Media Networks/YouTube press release, 30 March 2009, http://www.youtube.com/press_room_entry?entry=Ir-31H4pFCQ

729 YouTube Press release, 9 April 2009, http://www.youtube.com/press_room_entry?entry=Ae9WmtO6LF4;"Google, Universal Music partners on a new music video website", *CNET News*, 9 April 2009, http://news.cnet.com/8301-1023_3-10216172-93.html

to monetise this opportunity". Any user looking for a music video on YouTube will be redirected to this new site. The Universal Music Group is already the distributor with the most-watched content on YouTube, with more than 3.5 billion pages viewed. In December 2008, a Universal Music executive acknowledged for the first time that YouTube was generating "tens of millions of dollars" for his group and that the site had become the most productive of the online sites with which Universal Music had agreements. Universal's revenues from the online distribution of music videos were estimated at $100 million in 2008.[730] Under the agreement, Universal is said to have acquired a share in the capital of YouTube.[731] In June 2009, Sony Music Entertainment announced that it was joining the Vevo project.[732]

- In April 2009, YouTube and Sony were in discussions concerning an agreement that would allow YouTube to broadcast feature length films. Given Hulu's growing success in the online distribution of these films, YouTube and Sony actually benefit from getting along with one another. Sony's Crackers website is not well enough known and its association with YouTube would enable it to benefit from the video sharing site's mass audience. However, Sony would only make limited (15 films) available and call for YouTube users to be forced to user its own media player to view the films.[733]
- In June 2009, Google invited news publishers to enter into partnership agreements under which they could publish their news videos YouTube in exchange for a share of revenues, a viewership analysis and access to a wider audience.[734] This call from Google came after the integration of videos into Google News[735] and against a background in which press editors are showing their displeasure at the position taken up by Google News.[736]
- On 9 April 2009, YouTube was able to announce the launch of thematic sections devoted to television programmes and an improved part devoted to films.[737] Access to the programmes provided by the industry partners (Crackle/Sony, CBS, MGM, Lionsgate, Starz) is territory-based and these programmes are consequently not available in Europe.
- The increase, since April 2009, in the distribution of films and television programmes in partnership with the traditional players seems destined to lead to companies resorting to pay-VoD. On 3 September 2009, the *New York Times* announced that YouTube was in discussions with Lions Gate Entertainment Corp., Sony Corp., Metro-Goldwyn-Mayer Inc. and Warner Bros. to offer films as pay-VoD.[738] The price would be $4 for recent films. The arrangements for sharing revenues with the studios are under discussion, it being assumed that the studios would receive 70%, with a

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730 "Universal Music seeing 'tens of millions' from YouTube", *CNET News*, 18 December 2008, http://news.cnet.com/8301-1023_3-10126439-93.html

731 "YouTube: A Money-Maker For Music Labels, But What About Google?", *Forbes.com*, 18 December 2008.

732 Sony Music Entertainment press release, 4 June 2009, http://press.sonymusic.com/2009/06/04/vevo-and-sony-music-entertainment-join-forces-for-world-class-premium-online-music-video-service/

733 "YouTube, Sony Pictures in talks over feature films", *CNET News*, 6 April 2009. http://news.cnet.com/8301-1023_3-10212585-93.html

734 Olivia Ma (YouTube News Manager), "A Call to News Publishers", *Google News blog*, 29 June 2009, http://googlenewsblog.blogspot.com/2009/06/call-to-news-publishers-how-to-share.html

735 "Google News gets a Makeover", *Google News Blog*, 14 May 2009, http://googlenewsblog.blogspot.com/2009/05/google-news-gets-makeover.html

736 "Updated: Google Wants Newspapers To Post Their Videos To YouTube", PaidContent, 29 June 2009, http://paidcontent.org/article/419-google-wants-newspapers-to-post-their-videos-to-YouTube.

737 "Watch Shows and Movies on YouTube", YouTube blog, 9 April 2009.

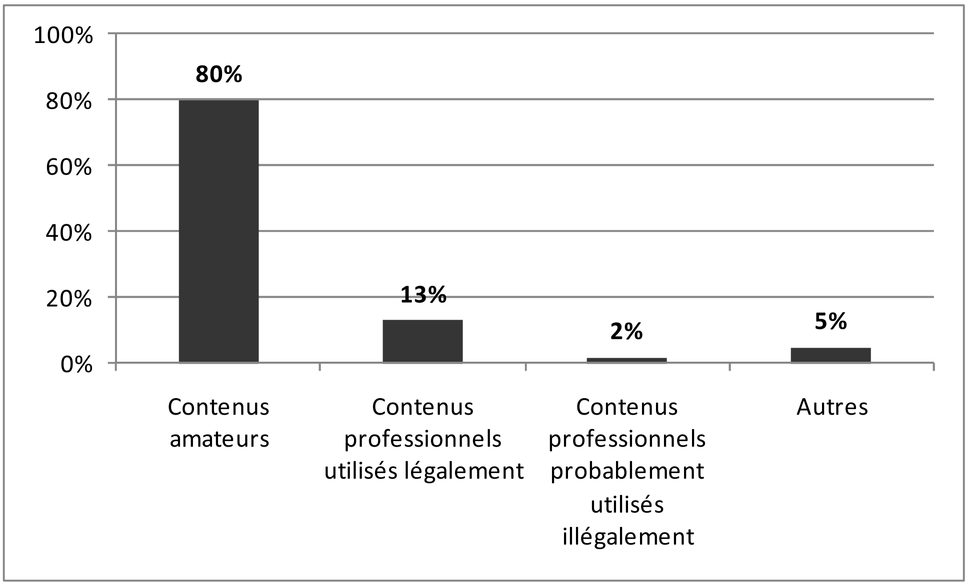
738 "Movie Studios Discuss Ways to Rent Films Over YouTube", *New York Times*, 3 September 2009, http://online.wsj.com/article/SB125192241524880801.html?mod=djemalertNEWS

guaranteed minimum of $3. YouTube would thus be setting itself up as a competitor to the other pay-VoD services, especially the iTunes Store.[739]

6.2.6. *The opportunity given to independent producers to monetise their works*

Parallel to these various agreements reached with the major audiovisual groups, YouTube has developed its relations with the programme providers: in December 2007, it launched the YouTube Partner Programme, which enables individual content providers to monetise their works: anyone residing in the United States or Canada is eligible to take part in this programme and will receive a percentage of the advertising revenue from their videos. The providers of programmes viewed more than a million times could earn several thousand dollars a month.[740] The programme was subsequently extended to the United Kingdom, Ireland, Australia and Japan.

Graphic 58 : Content available on YouTube (8 March 2008)



Source: Kansas State University

6.2.7. *Difficult negotiations with collecting rights societies*

In addition to the agreements signed with producers and broadcasters, it was essential for YouTube to avoid any potential conflicts with the representatives of rights holders, authors and composers.

An initial step in this regard was taken in February 2007, when users were offered a system enabling them to illustrate their videos with music clips for which YouTube had negotiated the rights (in actual fact, a catalogue of third-choice songs that it is not possible to edit in connection with the sequences of the clip). In December 2008, YouTube signed an

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739 "YouTube Inches Closer To Renting Movies But Nothing Imminent", *PaidContent.org*, 2 September 2009, http://paidcontent.org/article/419-youtube-inches-closer-to-renting-movies-but-nothing-imminent/

740 "YouTube Partner Program invites Video Makers to Earn Money; Marketers Take Note", YouTube press release, 10 December 2007, http://www.youtube.com/press_room_entry?entry=2vouE850_ql

agreement with the agency Rumblefish with the aim of giving users access to a catalogue of 25,000 songs.[741]

However, collecting rights societies still have YouTube in their sights, especially in Europe.

On 21 January 2009, Patrick Walker, YouTube's director of video partnerships, announced in a message published on the site's blog[742] that it was difficult to renew the licensing agreement with the UK's Performing Rights Society for Music (PRS Music) owing to the prohibitive licensing fees demanded by the society. On 9 March 2009, YouTube announced unilaterally that it was blocking the broadcasting of certain music clips at its UK website pending the end of the negotiations. "This was a painful decision, and we know the significant disappointment it will cause within the UK", Patrick Walker said. YouTube also criticises PRS for wanting to imposer an agreement that would not give details of the clips concerned. "That's like asking a consumer to buy an unmarked CD without knowing what musicians are on it."

PRS Music's reaction was not long in coming, the society saying it was "outraged on behalf of consumers and songwriters" by YouTube's decision, calling on the site "to reconsider their decision as a matter of urgency" in a press release published on the Internet. PRS Music, which says it handles the rights of 60,000 members, stated that YouTube had asked to pay "significantly less" for the videos, "despite the massive increase in YouTube viewing".[743] On 8 April 2009, British artists launched a campaign to denounce the insufficient level of remuneration offered by YouTube.[744] The conflict was resolved with the signing of a new agreement on 3 September 2009.[745]

YouTube has pursued a similar strategy in Germany. It announced on 1 April 2009 that it was blocking the broadcasting of music clips on its German website after failing to reach agreement with the German collecting rights society GEMA, which represents 60,000 artists. YouTube refuses to renew the agreement that was signed in November 2007 and expired on 31 March 2009. This agreement, according to GEMA, provided for "lump-sum remuneration without any detailed information on the use of the music clips and the number of videos viewed".[746] It is precisely on this item in the contract that GEMA wanted changes, calling on YouTube to pay it according to the size of the audiences listening to the clips. On the YouTube blog, Patrick Walker, said that GEMA was demanding a rate "fifty times higher" than that demanded by the collecting rights society solution and that he was seeking a "acceptable and lasting" solution for the two parties. In après release, GEMA strongly criticised cynicism of Google, which, in its opinion, is trying to set users off against authors. Following the cancellation of this agreement, the musician and producer Frank Peterson began legal action against Google and YouTube for non-payment of royalties he believes are owed to him.[747] The German Music Publishers' Association (Deutscher Musikverleger-Verband – DMV) as well as the European Composer & Songwriter Alliance (ECSA) and the

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741 "YouTube, Rumblefish sign Music Licensing Deal", *PCMag.com*, 5 December 2008; "Add Music to Your Videos Using AudioSwap and Rumblefish", YouTube blog, 19 December 2008.

742 "YouTube, the UK and the Performing Rights Society for Music", YouTube blog, 21 January 2009.

743 PRS press release, 9 March 2009, http://www.prsformusic.com/aboutus/press/latestpressreleases/Pages/PRSforMusicStatementGoogleYouTube.aspx

744 PRS press release, 8 April 2009, http://www.prsformusic.com/aboutus/press/latestpressreleases/Pages/SongwriterscallthetunebysteppingupthecampaignagainstGoogleYouTube.aspx

745 PRS press release, 3 September 2009, http://www.prsformusic.com/aboutus/press/Pages/PRSforMusicandYouTubeSignaNewLicensingDeal.aspx

746 GEMA press release, 31 March 2009, http://www.gema.de/en/press/press-releases/press-release/browse/5/?tx_ttnews%5Btt_news%5D=809&tx_ttnews%5BbackPid%5D=73&cHash=74018f8195

747 GEMA press release, 7 April 2009, http://www.gema.de/en/press/press-releases/press-release/browse/5/?tx_ttnews%5Btt_news%5D=812&tx_ttnews%5BbackPid%5D=73&cHash=94025cb4ba

International Council of Creators of Music (CIAM) have lent their support to PRS and GEMA.[748] On 12 May 2009, on the occasion of the European Council of Ministers of Culture, Bernd Neumann, the German government's minister responsible for culture and the media called for the solidarity of his European colleagues in dealing with Google.[749]

In France, YouTube opened negotiations with the collecting society Société des auteurs compositeurs et éditeurs de musique (SACEM) in 2007 but no agreement has been reached to date. The day after the split between Google and GEMA became known, Catherine Kerr-Vignale, SACEM's Deputy Director, said that the collecting society might take severe steps if the video sharing platform did not sign an agreement on the payment of royalties for musical works within two months.[750] "We are establishing the facts to show that our repertoire is being used by YouTube", she said, the aim being to take legal action in the event of the collapse of the negotiations and the failure to take down the works concerned. "SACEM is calling for a small percentage of the site's total advertising revenues in order to pay the authors whose works are broadcast on YouTube". SACEM has signed an agreement of this type with Dailymotion, YouTube's main French competitor, and Deezer, which provides a streamed music service. YouTube is accused by Catherine Kerr-Vignale of employing "delaying tactics" to slow down the negotiations. An agreement with the Google platform would enable SACEM to obtain royalties from the moment the site was launched, i.e. February 2005. "The contracts we sign are always retroactive – we do not make people gifts by not claiming royalties they owe us from the past", the Deputy Director pointed out.

In June 2009, YouTube and SACEM said they were still in talks. YouTube agrees with the principle of remuneration but only wants it to apply to the legal content broadcast on the site and not all the content. If no common ground were to be found, SACEM would only have one alternative: to force YouTube to withdraw all the content that includes music that falls within SACEM's remit or take legal action.[751]

6.2.8. YouTube's profitability in doubt

YouTube's success on the market for video sharing sites is such that many of its competitors (including Guba, Revver, Sony and, more recently, Microsoft) have either thrown in the towel or lowered their sights.[752] However, YouTube's profitability is being debated by analysts. The viability of the model has been called into doubt since the inception of the service, i.e. even

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748 GEMA press release 7 April 2009, http://www.gema.de/en/press/press-releases/press-release/browse/5/?tx_ttnews%5Btt_news%5D=813&tx_ttnews%5BbackPid%5D=73&cHash=d8449acd52, 9 April 2009, http://www.gema.de/en/press/press-releases/press-release/browse/4/?tx_ttnews%5Btt_news%5D=814&tx_ttnews%5BbackPid%5D=73&cHash=8d3a3a03ec

749 Federal Government's Press and Information Office, press release , 13 May 2009, http://www.bundesregierung.de/nn_774/Content/DE/Pressemitteilungen/BPA/2009/05/2009-05-13-bkm-google-aktivitaeten.html

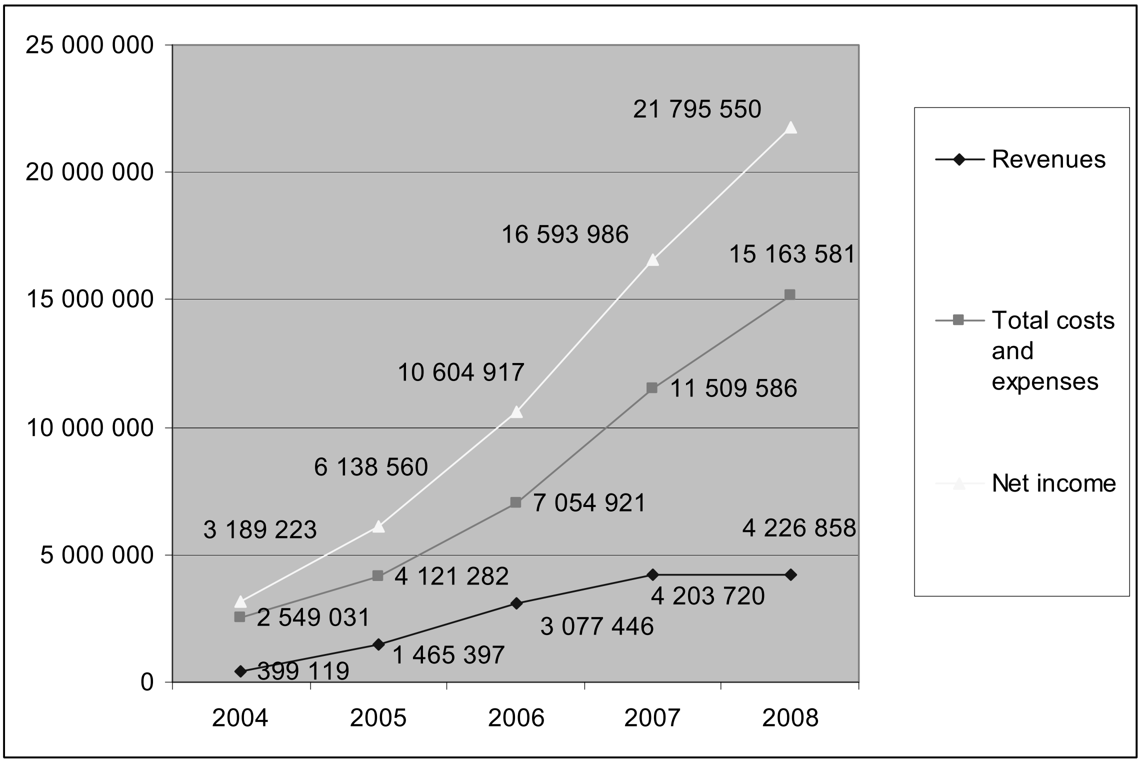
750 "La SACEM lance un ultimatum à YouTube", *E24 !*, 2 April 2009, http://www.e24.fr/hightech/mediapub/article76878.ece/La-Sacem-lance-un-ultimatum-a-YouTube.html

751 *Les Echos*, 23 June 2009, http://www.lesechos.fr/info/comm/4878623-la-sacem-continue-de-negocier-avec-YouTube.htm

752 "Executive shakeup at video site Revver", *CNET News*, 20 December 2006;
"Guba CEO steps down, says more execs may follow", *CNET News*, 28 December 2006;
"YouTube rivals look for answers", *CNET News*, 10 January 2007;
"Sony veers away from video sharing", *CNET News*, 15 July 2007, http://news.cnet.com/8301-10784_3-9744781-7.html;
"Microsoft To Scale Back Its YouTube-Rival Soapbox", *Forbes.com*, 16 June 2009;
"Microsoft gives up YouTube chase", *CNET News*, 18 June 2009, http://news.cnet.com/8301-13860_3-10265858-56.html;
"Soapbox, Microsoft's YouTube, dies on August 31, 2009", *Ars Technica,* 21 July 2009, http://arstechnica.com/microsoft/news/2009/07/soapbox-microsofts-youtube-dies-on-august-31-2009.ars

before it was taken over by Google.[753] Google does not publish any detailed data on the service. Google executives identified the development of YouTube as one of the priorities for 2008 but ever since July 2008 the *Wall Street Journal* has examined the profitability of the service, concluding that its annual revenues would not exceed $200 million.[754] There was no end of articles in the press on the impasse in which the service finds itself.[755]

Graphic 59 : Revenues, expenses and consolidated net income of Google Inc. (2004-2008) ($000s)



Source: Google

In April 2009, when the results for the first quarter of 2009 were published, Google executives acknowledged that YouTube had not yet reached break-even point.

6.2.8.1. Varying estimates on the service's advertising revenue

According to Screen Digest analyst Arash Amel, YouTube's advertising revenues in the United States in 2008 were $100 million and Hulu's were $70 million. Neither YouTube's nor Hulu's advertising revenues in 2009 are likely to exceed $180 million.[756] YouTube's US revenues only represent half the total for the service, which are estimated at around $200 million in 2008 and $360 million in 2009.

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753 "Bright lights on YouTube get hot", *CNET News*, 26 June 2006, http://news.cnet.com/8301-10784_3-6098815-7.html

754 Google Push to Sell Ads On YouTube Hits Snags", *Wall Street Journal*, 9 July 2008, http://online.wsj.com/article/SB121557163349038289.html

755 A coming age for YouTube", *CNET News*, 17 November 2008, http://news.cnet.com/a-coming-of-age-for-YouTube/

756 Quoted in "Rival forecast to catch YouTube", *Financial Times*, 16 November 2008, http://www.ft.com/cms/s/0/74ab11da-b415-11dd-8e35-0000779fd18c.html.

According to estimated published by Piper Jaffray and Companies (PJC), YouTube net revenues should double from 2008 to 2009, rising from $95.2 million to $191.3 million, especially after the inclusion of pre-roll ads.[757]

Table 31 : Estimate of YouTube revenues (2008-2009)

YouTube Revenue			
	FY2008	FY2009	Y/Y Growth
Total Streams (b)	145,018	216,468	49%
Total Advertising (m)	$ 111.7	$ 323.1	189%
Total Sponsorships (m)	$ 50.5	$ 62.1	23%
Gross Revenue	$ 162.2	$ 385.1	137%
Net Revenue	$ 95.2	$ 191.3	101%

Source: PJC

According to a Crédit Suisse report, YouTube's revenues in 2009 are likely to be in the order of $341 million. Total costs were estimated at $71.3 million and YouTube would make an operational loss of $470.6 million in 2009.[758]

According to Youssef Squali, an analyst at Jefferies & Company, YouTube's advertising revenues in 2009 are likely to reach $500 million, or 3% of Google's net revenue.[759]

As analyst Benjamin Wayne points out, YouTube's basic problem is that the volume of videos posted by users that cannot be monetised (their own creations or illegal uploads) is growing more quickly than that of videos that can. He says that Google has already reached the limit for the publication of material that can be monetised.[760] Some people argue that the inclusion in the new iPhone 3GS of an application that enables the user to upload their video directly onto YouTube can only increase the volume of content that has no great value and cannot be monetised, while at the same time resulting in additional network costs.[761]

The Crédit Suisse report published on 3 April 2009 received extensive press coverage and sowed the seeds of confusion among observers and analysts. However, the Swiss bank's estimates were considered incorrect by a Google spokesman questioned by the New York Times.[762]

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757 "YouTube's Profitability Comes Under Mounting Scrutiny", *Seeking Alpha*, 16 September 2008, http://seekingalpha.com/article/95784-YouTube-s-profitability-comes-under-mounting-scrutiny

758 S. Wang and K. Sena, "Deep Dive Into YouTube; 1Q09 Preview", *Credit Suisse Equity Research*, 3 April 2009.

759 Quoted in "Google Dealt Blow by Departure", *Wall Street Journal*, 17 March 2009.

760 "Would Google ever get rid of YouTube?", *CNET News*, 17 June 2009. http://news.cnet.com/8301-17852_3-10266587-71.html

761 "Is iPhone video recording bad news for YouTube?", *CNET News*, 9 June 2009, http://reviews.cnet.com/8301-18438_7-10260538-82.html

762 "Deal Brings TV Shows and Movies to YouTube", *New York Times*, 16 April 2009, http://www.nytimes.com/2009/04/17/business/media/17youtube.html

6.2.8.2. *Assessment of the conomic benefits of Google owning YouTube*

The figures mentioned by the Crédit Suisse analysts were criticised by the analysts of RampRate, a company that specialises in IT networks.[763] According to these analysts, Google was much more efficient in monetising YouTube than most analysts think. They say the Crédit Suisse analysts overestimated Google's network costs or, to be more precise, they overestimated the reductions that Google can obtain owing to it market position. In particular, they point out, Google possesses its own fibre optic networks, locates its servers in less expensive geographical centres (Iowa, Finland) and, above all, uses peering agreements rather than pay for the bandwidth for upwards of 73% of its traffic. The costs of the service are thus $414.9 million and not the $711.3 million estimated by the Crédit Suisse analysts. In addition, the YouTube volume enables Google to obtain better rates from its suppliers and thus lower the costs of its other services. According to the RampRate analysts, the reason why Google is not responding to Crédit Suisse is its interest in maintaining the image of a service in deficit so as not to have to deal with the very considerable demands made by rights holders.

Table 32 : Comparison of the analysis of the costs of YouTube by Crédit Suisse and RampRate (2009)

YouTube Cost ($M)	Credit Suisse	RampRate
Content & Overhead	$331.8	$331.8
Bandwidth	$360.4	$48.7
Peering	Not Analyzed	$26.3
Hardware: Storage	$12.7	$3.3
Data Center & Software	$6.4	$4.9
Total Annual Cost ($M)	**$711.3**	**$414.9**
Operating Loss ($M)	**-$470.6**	**-$174.2**

Source: RampRate

When questioned about this report, a YouTube spokesman failed to be specific but he did say that Google had little incentive in magnifying its losses so as not to jeopardise the actions of its partners.[764]

On the occasion of the publication of the first quarter 2009 financial report, Google executives said they were confident that YouTube would be profitable in the not-too-distant future.[765] According to Patrick Pichette, Chief Financial Officer of Google Inc., YouTube's business model is very credible. The volume of advertising sales is on the increase, and the monetisation of the views of its partners' pages has tripled in a year. Advertisers have shown considerable interest in the insertion of advertising into the short-form videos acquired by YouTube from such partners as the Walt Disney Co. YouTube is planning to extend the model for feature-length films.

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763 T. Greenberg, A. Veytsel, L. Boatwright and S. Lerner, "YouTube: Google's Phantom Loss Leader", 17 June 2009. http://ramprate.wordpress.com/2009/06/17/YouTube-google%E2%80%99s-phantom-loss-leader/

764 Quoted on Ohio.com, 22 June 2009.

765 "Google CFO Sees Profitable YouTube In Not-Too-Distant Future", *The Wall Street Journal*, 16 July 2009, http://online.wsj.com/article/BT-CO-20090716-719052.html

6.2.9. *The competition between YouTube and Hulu*

The respective chances of YouTube and Hulu have been debated by analysts since the summer of 2008.

According to Screen Digest analyst Arash Amel, Hulu has a better chance of winning because of its ability to attract premium advertisers, who prefer to place their advertisements in or close to quality programmes. However, others, like Rory Maher of PaidContent.org, think YouTube will be a much bigger business once it can make it clear that it also distributes professional programmes. Not only is YouTube's audience larger but its revenues are more diversified (banner advertising, in-roll ads, sales by means of a "buy this" button).[766] Other analysts stress the speculative nature of the estimates made both as regards YouTube and Hulu.[767]

According to a Nielsen Online press release[768], YouTube succeeded in achieving its target of becoming the most popular site in the United States for advertisers. In the first quarter of 2009, Nielsen says it made $637.7 million from display ads for consumer products (increasing by 572% year on year) and has a 24% market share of all advertising in this genre.

Table 33 : The top 10 entertainment sites by number of ad impressions (1st quarter 2009)

Table 2: Top 10 Entertainment Sites Advertised on by Consumer Goods Companies for Q1 2009 (U.S.)

Site	Q1 '08 Image-Based Ad Impressions (000)	Q1 '09 Image-Based Ad Impressions (000)	Year-over-Year % Percent Growth
YouTube	94,939	637,727	572
AOL.com	115,746	323,142	179
Oprah.com	129,027	202,815	57
IMDb	516,138	162,598	-68
Yahoo!	93,850	161,809	72
Perezhilton.com	N/A	132,862	N/A
NBC	229,551	116,000	-49
ABC	73,426	96,145	31
People.com	110,967	74,851	-33
MSN	161,890	69,866	-57

Source: Nielsen AdRelevance

However, as far as the broadcasting of television series is concerned, there is no evidence that YouTube is managing to catch up Hulu. According to analyses carried out by TubeMogol, the 175 promotional clips posted by Hulu (mainly excerpts from Family Guy and The Simpsons) were viewed more than the 3,215 full-length television programmes available on YouTube.[769]

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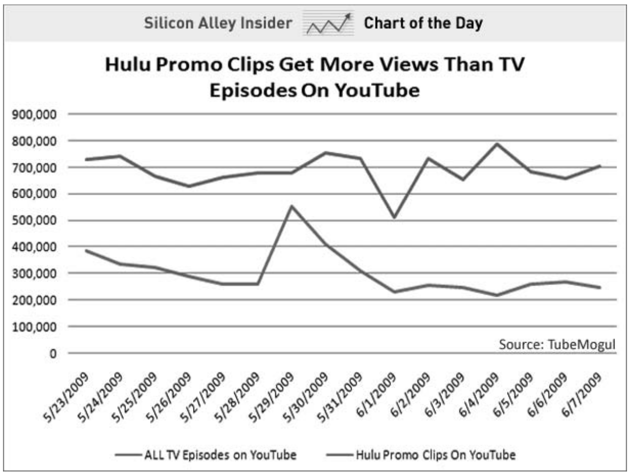
[766] "Hulu A Better Business Than YouTube? Not So Fast", *Forbes.com*, 24 February 2009.

[767] T. Kee, "Analyst Says Hulu To Match YouTube's U.S. Revenue in 2009: We Say Maybe Not", *Forbes.com*, 17 November 2008.

[768] Nielsen Online News release, 19 June 2009, http://www.nielsen-online.com/pr/pr_090617.pdf

[769] "CHART OF THE DAY: YouTube's Hulu-Killer Not Coming Close", *The Business Insider*, 24 June 2009, http://www.businessinsider.com/chart-of-the-day-YouTube-vs-hulu-2009-6

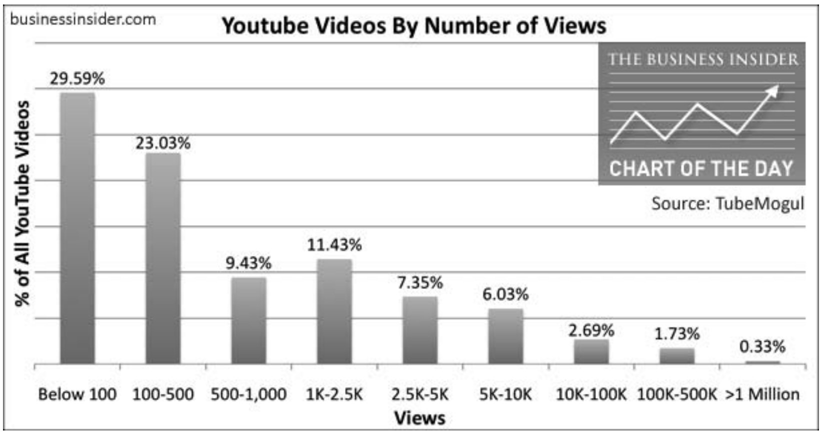
Graphic 60 : Hulu promotional clips have a bigger audience than television series episodes on YouTube



Source: TubeMogul / Silicon Alley Insider

The TubeMogol measurements also cast on the success of videos posted by amateur users. 63% of videos have fewer than 500 views. About 30% are viewed less than 100 times. Just 0.33% have more than one million views.[770]

Graphic 61 : Breakdown of the number of videos on YouTube by number of views



Source: Business Insider

[770] "CHART OF THE DAY: Half Of YouTube Videos Get Fewer Than 500 Views (GOOG)", *The Business Insider*, 20 May 2009, http://www.businessinsider.com/chart-of-the-day-YouTube-videos-by-views-2009-5

6.3. THE DEVELOPMENT OF THE EUROPEAN VIDEO SHARING SITES

6.3.1. Territorial limitation and national versions

Although the video sharing sites are not subject to the territoriality principle (they are accessible from any country), they have developed national variants. These national sites (in the country's language) increase the proximity not only to the web users in the country concerned but also to the local channels and producers that might provide content. The national versions also enable advertisers to be offered specific audiences.

For example, beginning in June 2007 YouTube launched national variants in Australia, Brazil, Canada, Hong Kong, Israel, India, Japan, Mexico, New Zealand and Taiwan. In Europe, local versions exist in the Czech Republic, France, Germany, Ireland, Italy, the Netherlands, Poland, Russia, Spain, Sweden and the United Kingdom.

A number of European companies have tried to establish an international presence but are a long way behind Google's service:

- the French company Dailymotion has created versions of its site for the United States, Canada, various European countries (Austria, Germany, Spain, Portugal, Italy, Denmark, Poland, Russia, Sweden and Turkey), Brazil, Mexico and India;
- the Romanian company MyVideo (part of the ProSiebenSat.1 Media AG group) provides versions for Romania, Austria, the Netherlands, Belgium's Flemish Community, Hungary and Turkey;
- the Belgian company Netlog provides a service available in 30 different languages.[771]

6.3.2. Partnerships with traditional players

Since 2008, the video sharing platforms have been signing partnership agreements with the producers and traditional content distributors to ensure they have quality programmes available that will enable them to put their business model on an even keel. This is, for example, the case with Dailymotion, which reached an agreement with SCAM, SACD and ADGAP in France[772] in 2008.

For rights holders facing the risk of seeing web users exchange and view their works illegally, this type of partnership provides an opportunity to curb piracy. Partnerships also enable players in the media field to make the public a little more aware of their brand or programmes.

Programmes can be put on video sharing sites in any of three ways:

- programme variation: adapted TV formats that make it possible to create an audience for the TV programme (teasers, trailers, bonus shorts, excerpts);
- the uploading of a programme in its entirety (often split into sequences);
- a dedicated channel.

Many partnerships have been developed with European content providers, for instance the BBC in the United Kingdom, France 4 in France and Antena 3 and Cuatro TV in Spain, which

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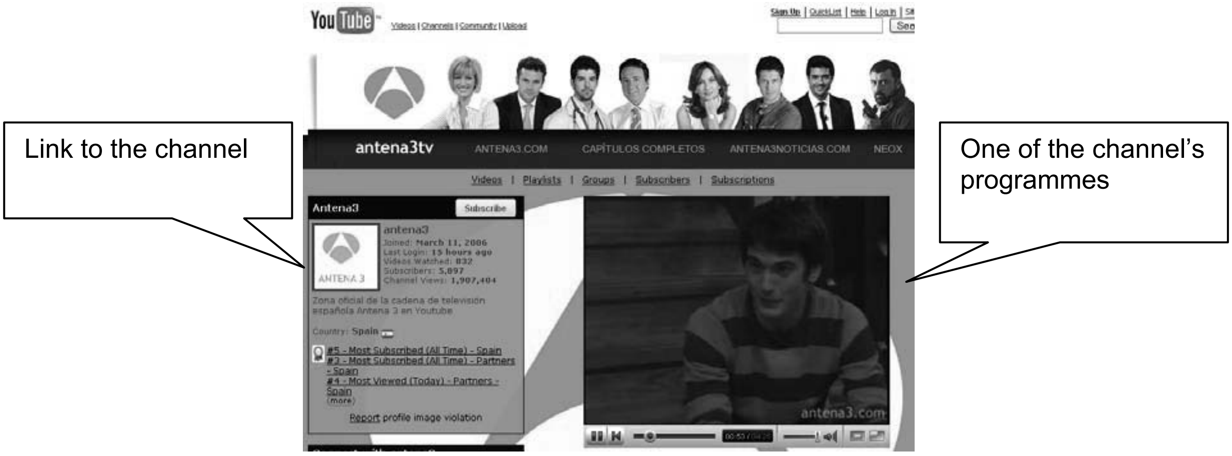
771 http://www.netlog.com/?all=1

772 http://www.dailymotion.com/press/CP_Dailymotion_societes_dauteurs.pdf

offer excerpts from their programmes on the national versions of YouTube.

Spain’s Antena 3, for example, offers programme excerpts and directs users to the channel’s official site.



In France, the channel Filles TV offers flow programmes taken from its broadcast service so as to be closer to its core target group, the 15-24-year-olds. Here, the main objective is to raise the channel’s profile and make its brand known to its potential audience, especially by uploading videos after they have been aired (mainly magazines) and trying to relate them to the current situation in order to create news items.

6.3.3. What content is offered?

The content offered consists of programmes in which the channels possess the rights. They are either items produced by the channel itself (magazines, TV news, etc) or programmes made by companies belonging to the same media group (e.g., RTL/Fremantle). Most are flow programmes, especially reality TV.

If the partnership is to be effective, the content needs to be already well-known (and of a kind to provide video content) in order to attract web users and direct them to the initial medium.

In France, the audiovisual producer JLA has entered into a partnership with YouTube by making available some of its television films and series (such as *Les liaisons dangereuses*). Other players have partnerships with sharing sites, such as press bodies or personalities (comedians, musicians, etc).

These partnerships are based on an arrangement that is free of charge at the moment since the audience has not yet been monetised. However, while the producers are in favour of these arrangements, which provide them with an audience and strengthen the reputation of their brand, there is the question of payment for the other holders of rights in this content: the presenters and technical crews receive no additional remuneration for these broadcasts.

6.4. DAILYMOTION

In 2005, the French company Dailymotion launched a video sharing site that succeeded in positioning itself as the most prominent international YouTube challenger, even if its audience is on an altogether different scale from that of the American site. In many respects, its strategy is reminiscent of YouTube's, the most significant difference being that Dailymotion was concerned earlier than YouTube to find common ground with the representatives of the traditional elements of the audiovisual industry.

In December 2006, Dailymotion concluded an agreement with SPFF, a collecting society that represents French producers of audiovisual programmes. This was a one-year experimental agreement under which the producers received a proportion of the advertising revenues from the distribution of their clips at the site. It provided for the implementation of technical solutions designed to prevent the illicit use of content in which the rights are owned by the clip producers.[773] Shortly afterwards, a similar agreement was announced with the Warner Music Group, which enables users to incorporate music from the Warner Music catalogue into the works they upload to the site and lets Dailymotion access content provided by Warner Music.[774] Dailymotion subsequently signed agreements with the Universal Music Group and V2 Music.

6.4.1. The adoption of solutions for identifying and filtering works

Since it was set up, Dailymotion has endeavoured to implement effective and comprehensive arrangements for combating breaches of copyright, first of all by adopting a system for blocking videos already rejected (*hashing*). In July 2007, it announced that it had chosen the Audible Magic content identification service to install solutions for identifying and filtering protected content.[775] The identification is automatic: as soon as a video is offered by a user, a fingerprint is created and sent to a fingerprint database provided by the rights holders. If the match is positive, the video is not uploaded, and if there is an agreement with a rights holder Dailymotion will offer the user to replace the video by the work provided by the rights holder. In October 2007, it adopted INA's Signature video fingerprinting technology[776], which became fully operational in February 2008[777], and signed a co-operation agreement with Canal+ on the detection of protected content.[778]

In October 2007, Dailymotion was a co-signatory with some of the major American groups (CBS Corporation, Disney, Fox, Microsoft, MySpace, NBC Universal, Viacom and Veoh) of the Principles for User Generated Content Services, the aim of which is to clarify the arrangements for complying with copyright and encourage co-operation in this area.[779]

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773 Dailymotion/SPPF press release, 21 December 2006.

774 Warner Music Group/Dailymotion press release, 22 January 2007.

775 Dailymotion/Audible Magic press release, 13 July 2007.

776 Dailymotion/INA, press release, 8 October 2007

777 Dailymotion press release, 25 February 2008.

778 Dailymotion/Canal+ press release, 18 October 2007.

779 "Internet and Media Industry Leaders Unveil Principles to Foster Online Innovation While Protecting Copyrights", 18 October 2007. The text of the Principles is available at http://www.ugcprinciples.com

6.4.2. *Systematising agreements with the producers, providers of thematic channels and collecting societies*

6.4.2.1. *Agreements with the producers*

Drawing on its filtering and copyright protection system, Dailymotion has been able to systematise the agreements with producers and broadcasters. In October 2007, the site concluded an agreement with USPA, the organisation that represents 110 French producers of audiovisual programmes. Under the terms of this agreement, each USPA member is offered a contract that, in particular, provides for the sharing of advertising revenues accruing from the dissemination of their works.[780]

In November 2008, Dailymotion announced the beginning of the transmission of three series specially conceived for the site *(Les Lascars, Putain de Série !* and *Les Aventuriers de 8h22).*[781] In March 2009, it signed an outline agreement with the French series producer Tetra Media Studios.[782]

6.4.2.2. *Agreements with providers of thematic channels*

Dailymotion has also signed agreements with the providers of various thematic channels. These enable it to offer programmes originating from these channels, which in turn find a means of creating a catch-up television service by benefiting from a platform with a significant audience. Agreements have for example been concluded with the Turner Broadcasting System Europe group (CNN, Adult Swim, Nuts TV)[783], MTV Networks (MTV, Nickelodeon, Game One, Comedy Central)[784], BFM TV and BFM Radio[785], Public Sénat[786], the local Toulouse channel TLT[787], LCP Assemblée nationale[788], the Catholic television channel KTO[789], the European news channel Euronews[790], the German international channel Deutsche Welle[791] and Ma Chaîne Sport (MCS).[792]

Dailymotion was also involved in the launch of AfrikTV, the first Internet television channel devoted to Africa.[793]

6.4.2.3. *Agreements with collecting societies*

In September 2008, Dailymotion signed an agreement, described as historical, with three of the main French collecting societies: SCAD (which represents audiovisual authors), SCAM

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780 Dailymotion/USPA press release, 29 October 2007.

781 Dailymotion press release, 27 November 2008.

782 Dailymotion/Tetra Media Studios press release, 18 March 2009

783 Dailymotion/Turner press release, 15 October 2007, and Dailymotion press releases of 3 June 2008, 26 June 2008 and 18 July 2008.

784 MTV Networks France/Dailymotion press release, 8 January 2008; Dailymotion press release, 8 January 2008.

785 BFM/Dailymotion press release, 16 January 2008.

786 Dailymotion press release, 29 May 2008.

787 TLT/Dailymotion press release, 9 July 2008.

788 LCP Assemblée nationale/Dailymotion press release, 9 September 2009.

789 KTO/Dailymotion press release, 11 September 2008.

790 Euronews/Dailymotion press release, 4 February 2009

791 Deutsche Welle/Dailymotion press release, 28 April 2009

792 Dailymotion/Ma Chaîne Sport press release, 15 May 2009

793 Afrilk.com/Dailymotion press release, 17 January 2008.

(which represents authors of documentaries) and ADAGP (which represents graphic artists). Under this agreement, which applies worldwide, the societies will collect royalties for works in their respective repertoires disseminated from the site – in this case, films and audiovisual works, documentaries and fiction, including recordings of live shows (at the “Official Users” part of the site) and works of art (at the entire site).

In December 2008, Dailymotion signed a similar agreement with SACEM, which represents songwriters and composers. The novel aspect of this agreement is that it covers the use of the repertoire in the three parts of the site (Official Content, Creative Content and UGC – videos posted by users).[794]

In January 2009, Dailymotion also signed an agreement with SAIF, a collecting society whose members are creators in the visual arts field (architects, designers, comic strip artists and writers, graphic artists, illustrators, visual artists, painters, photographers, sculptors). SAIF will collect royalties from Dailymotion for the works in its repertoire offered at the site.[795]

6.4.2.4. Interest in sports events

In order symbolically to mark its presence on the French audiovisual scene, Dailymotion has applied to distribute League 1 football matches as VoD.[796]

6.4.2.5. The recognition of the host’s limited responsibility

Dailymotion’s efforts to avoid conflicts with right holders have not prevented a lawsuit brought by TF1, which claimed 38.97 million euros in damages and called for the site to take down the videos in issue on pain of a fine of 10,000 euros per infringement established from the moment judgment was given.[797] The case was still pending in July 2009.[798]

While taking care to reach agreements with the rights holders, Dailymotion defends the principle that the host bears no editorial responsibility for the content published by users, a principle enshrined in the “Law on Confidence in the Digital Economy” (Loi pour la confiance dans l’économie numérique – LCEN) of 21 June 2004. In a legal dispute with the producers of the film *Joyeux Noël*, the Paris Court of Appeal ruled in the site’s favour, setting aside the decision of the Paris Regional Court of 13 July 2007 making Dailymotion liable for the posting of the content in issue because it had been aware of its illicit character from the outset. The Court of Appeal stated that the 2007 decision *“fails to recognise the scheme of the LCEN by imposing on the host, as a result of the very nature of its function, a general obligation to monitor and check stored information, an obligation from which the legislature intended to exempt it”.*[799]

However, in a more recent judgment the Paris Regional Court said the host could not be completely cleared of infringements of intellectual property rights: in its decision of 10 April 2009, it ordered Dailymotion to pay authors and producers 80,000 euros for an infringement

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794 SACEM/Dailymotion press release, 3 December 2008, http://www.dailymotion.com/press/Sacem2.pdf

795 SAIF/Dailymotion press release, 7 January 2009, http://www.dailymotion.com/press/CP_Dailymotion_SAIF.pdf

796 Dailymotion press release, 23 January 2008.

797 “TF1 va attaquer Dailymotion et YouTube”, *Le Point*, 13 December 2007, http://www.lepoint.fr/actualites-medias/2007-12-13/justice-exclusif-lepoint-fr-tf1-va-attaquer-dailymotion-et-youtube/1253/0/214671

798 *Les Echos*, 30 July 2009.

799 Dailymotion press release, 11 May 2009. See also A. Blocman, “Decision of the Paris Court of Appeal on the Liability of Video-sharing Platforms”, *IRIS 2009-6:11/18*, European Audiovisual Observatory, http://merlin.obs.coe.int/iris/2009/6/article18.en.html

after its unauthorised distribution of documentaries produced by the company Zadig Productions. The videos had been shown at the site in 2006 and 2007 without the rights holders' consent. After these unauthorised broadcasts, the producer had called on Dailymotion to take down the content and stop disseminating it. Dailymotion had immediately complied and taken down the videos, but the producer established that they were once again being distributed on Dailymotion a few months later and brought an action against Dailymotion before the Paris Regional Court to obtain redress for the damage suffered and prohibit the company from broadcasting the videos again.[800]

6.4.3. International rollout

Dailymotion quickly seized the opportunities that presented themselves for its international rollout. The company opened offices in the United States in July 2007[801], followed by the United Kingdom, Germany and Spain. In 2008, it set up local versions in India, Poland and the Netherlands.[802] It is systematically making national versions of its catalogue available with the aim of enabling users who speak a different language to consult it, thus capitalising on the national content in the countries concerned and seeking agreements with professional organisations similar to those with their French counterparts.[803] It is also looking to sign agreements with local communication groups, such as the one concluded in December 2008 with the Polish group Agora.[804] In Turkey, it joined forces in March 2009 with MCD Digital, one of the country's main online service providers.[805]

In April 2009, Dailymotion was available in 18 different national versions.[806]

In the United States, Dailymotion clearly faces competition from YouTube. In March 2009, it joined forces with Hulu, YouTube's main competitor: under a strategic agreement with the Fox/NBC Universal portal, the American version of Dailymotion can access Hulu's 40,000 premium programmes.[807]

6.4.4. Encouraging user participation

With a view to raising the site's profile and increasing its traffic, Dailymotion has launched the MotionMaker project in France to bring together the 4,000 users considered the most creative. In the United States, it regularly runs competitions (such as The Ultimate Star Wars Fanboy contest, which was held in July 2007 in partnership with The Weinstein Company[808]). It has also invited eBay users to post promotional videos on the site[809], assisted its most creative users by showing their works at a large Paris cinema[810] and invited personalities

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800 V. DUFIEF, « La plate-forme Dailymotion condamnée: l'hébergeur responsable », Libération, 15 avril 2009, http://loi.blogs.liberation.fr/dufief/2009/04/dailymotion-condamn%C3%A9e-une-responsabilisation-des-h%C3%A9bergeurs.html

801 Dailymotion press release, 10 July 2007.

802 Dailymotion press release, 15 September 2008.

803 Dailymotion press release, 6 November 2007.

804 Dailymotion press release, 2 December 2008.

805 MCD Digital/ Dailymotion press release, 14 April 2009.

806 Dailymotion press release, 289 April 2009.

807 Dailymotion press release, 2 March 2009.

808 Dailymotion press release, 25 July 2007.

809 Dailymotion press release, 19 September 2007.

810 Dailymotion press release, 31 October 2007

(such as the director Mathieu Kassovitz) to liven up its home page by selecting their favourite videos.[811]

6.4.5. *Children's version*

In December 2008, Dailymotion launched DM Kids in France. This is a portal specially designed for children and is completely autonomous from the main portal. Since it was opened, it has distributed 300 hours of premium video free of charge selected by its teams. Dailymotion has expanded its partnerships and now works with over 40 companies operating in the field of youth programmes: broadcasters (Cartoon Network, Boomerang, CANAL J, Gulli, TiJi, Nickelodeon), distributors (Mediatoon – especially the catalogues of Dupuis Audiovisuel and Ellipsanime –, Zooloo Kids), publishers (Play Bac, CommeAuCinema.com, Trois Couleurs), institutional providers (CNES, CEA, La Cité des Sciences, Le Futuroscope), music labels (M6 Clips, Heben Music, Scorpio Music), producers (Planet Nemo, TV Animaux, Mega Films, Millimages), schools (Groupe Esra, Esma). The site also includes videos from the MotionMaker programme and a daily news bulletin.[812]

Drawing on the success of its French version, Dailymotion launched a similar portal in the United States in February 2009, offering programmes from such providers as Warner Bros., Nickelodeon, Universal Music Group, Hulu, ON Networks and Next New Networks.[813]

6.4.6. *International audience success*

Dailymotion has enjoyed very rapid growth. In January 2007, it stated that, with over 1.6 million visits a day, 28 million pages viewed and more than 15,000 videos available, it was the world's second biggest video sharing site and among the world's 100 most visited websites.[814] In May 2007, the site had received near 37.4 million unique visitors and recorded 1.2 billion pages viewed. 15,000 videos were posted on the network as a whole every day.[815] In June 2007, a comScore study highlighted the fact that Dailymotion had become the second biggest video sharing site in the United States and was significantly ahead of Metacafe.com, Break.com, Heavy Networks, Rewer.com and Veoh.com.[816]

The audience figures published by Dailymotion are sometimes contradictory. In July 2007, the site claimed it was among the world's 60 most visited websites in the Alexa ranking, in August among the top 50[817] and in November among the top 40.[818] In January 2008, the site received nearly 40 million unique visitors worldwide and recorded 700 million videos viewed.[819]

In a press release in April 2008[820], Dailymotion published slightly less favourable figures: according to comScore, the site had been among the world's 50 most visited sites since

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[811] Dailymotion press release, 14 February 2008.

[812] Dailymotion press release, 15 December 2008.

[813] Dailymotion press release, 17 February 2009.

[814] Warner Music Group/Dailymotion press release, 22 January 2007.

[815] Dailymotion/Audible Magic press release, 13 July 2007.

[816] "Video-Sharing Sites Jockey for Position in U.S.", comScore press release, 25 June 2007, http://www.comscore.com/Press_Events/Press_Releases/2007/06/Top_US_Online_Video_Sites

[817] Dailymotion press release, 31 August 2007.

[818] Dailymotion press release, 19 December 2007

[819] Dailymotion press release, 19 February 2008.

[820] Dailymotion press release, 4 April 2008.

November 2007 and had 34.7 million unique visitors in February 2008. According to XiTi, 1.5 billion pages are viewed a month, while Dailymotion says its figure is 796 million. According to comScore, it had 51.9 million unique visitors in April 2008, and according to XiTi 1.5 billion pages were viewed.[821] In June 2008, traffic had fallen back to 38.8 million unique users but the number of videos viewed had risen to 855 million[822]. In September 2008, traffic dropped to 33 million but rose again in October by 11.6% to 38.363 million, with 859 million videos viewed.[823] In December 2008, the audience increased to 41.9 million visitors, with 900 million videos viewed.[824] In January 2009, it reached 44.2 million with 914 million videos viewed.[825] In July 2009, Dailymotion announced that it had 60 million unique visitors a month for one billion videos viewed.[826]

In April 2009, Dailymotion announced that its international audience in March had reached 55 million visitors, equivalent to growth of 52.1% over the previous year. The audience had increased on all continents, with growth of 49.6% in Europe and 30% in the United States. A visitor spends an average of 31 minutes at the site.[827] In April 2009, the audience grew to 59 million unique visitors, with 975 million videos viewed.[828]

In order to show how much its audience has grown, Dailymotion refers to the figures published by comScore, which carry a great deal of weight in the profession. It should, however, be pointed out that the figures published by Alexa indicate a decline in Dailymotion's daily share since the second half of 2008, the French operator's sites having been overtaken by those of Hong Kong based Megavision (see graphic 79).

6.4.7. Search for solutions to make the service available on mobiles

Anxious to extend the access to its website to devices other than PCs, Dailymotion is developing solutions that permit access on mobiles. The first solution, which has been available since August 2007, enables SFR's 3G subscribers to receive the Dailymotion mobile service on an exclusive basis.[829] Apart from viewing content, SFR customers are able with a few clicks to instantly post and share the videos taken from their 3G SFR mobile.

A second solution, which was announced in November 2007[830], concerns access on the Apple iPhone. While YouTube is partially accessible on the iPhone via a default app on the first page of the device, Dailymotion preferred a solution that enables it to avoid having to negotiate with Apple: all the content of the site is available on a specific platform[831], where the videos are QuickTime encrypted. Access is possible through the iPhone Safari browser and a simplified interface facilitates viewing.

In February 2009, Dailymotion joined the Nokia Media Network, which enables advertisers to reach millions of mobile surfers through publisher and operator mobile web pages, as well as

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821 Dailymotion press release, 3 June 2008.
822 Dailymotion press release, 15 September 2008.
823 Dailymotion press release, 26 November 2008.
824 Dailymotion/Nokia press release, 3 February 2009
825 Dailymotion press release, 4 March 2009
826 *Les Echos*, 30 July 2009.
827 Dailymotion press release, 28 April 2009.
828 Dailymotion press release, 26 May 2009.
829 Dailymotion press release, 19 December 2007
830 Dailymotion press release, 30 November 2007.
831 http://iphone.dailymotion.com

Nokia properties.[832]

In March 2009, an agreement was reached with the French mobile telephone company Bouygues Telecom to make the service available at the operator's mobile Internet portal.[833]

6.4.8. *Switch to HD quality*

In February 2008, Dailymotion announced that it would be gradually switching to HD quality. In the first instance, the posting of videos in HD has been reserved for members of the MotionMaker project, which brings together the most creative users.[834]

6.4.9. *Distribution on television screens*

In February 2008, Dailymotion signed its first distribution contract in connection with an IPTV offering, namely that of Neuf Cegetel. Subscribers to the Neuf TV HD service can have access on their television screens to the 30,000 videos in the MotionMaker programme, which have been specially encrypted for the purpose.[835]

6.4.10. *Funding by advertising*

The company is entirely funded by advertising, and an advertising department in Paris manages the contracts for the whole of Europe.[836] It has developed a complete range of advertising formats, some of them not employed in Europe so far. Apart from the classical formats, such as the 300x250 display, the home page presentation or thematic channels, the range of advertising solutions includes:

- a buzz/virality package for branded content,
- a call for uploads and co-creation,
- in-stream advertisements*:*
  - pre-roll: insertion of advertising before the beginning of the video, or post-roll: insertion of advertising after the video,
  - "toaster ads": the advertisement appears as an embedded flash overlay at the bottom portion of a video 10 seconds after the start and disappears after 10 seconds,
  - Home Theatre ads: when the video begins to play the advertising skin becomes superimposed over the video and divides into two across the screen like a theatre curtain,
  - companion logo ads: the advertiser's dynamic logo, in 3D and clickable, appears 10 seconds after the start of the video and disappears after 10 seconds.

These models, which were first made available in Europe, were also adopted on the American platform in January 2008.[837]

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[832] Dailymotion/Nokia press release; 3 February 2009, http://www.dailymotion.com/press/DM-NokiaMediaNetworkVdefFev09.pdf

[833] Dailymotion/Bouygues Telecom press release, 26 March 2009.

[834] Dailymotion press release, 19 February 2008.

[835] Neuf Cegetel/Dailymotion press release, 20 February 2008.

[836] Dailymotion press release, 19 December 2007

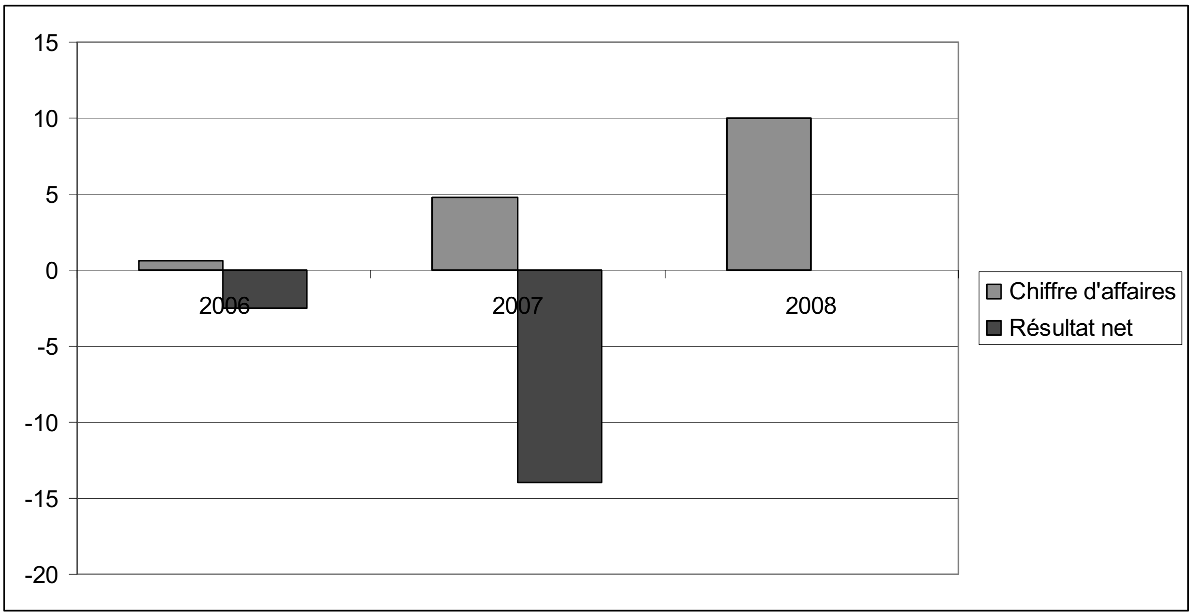
[837] Dailymotion press release, 4 January 2008.

6.4.11. *Financial situation*

Dailymotion's financial situation is not the subject of as many analyses as YouTube's. In May 2008, the board announced that the company would become profitable in early 2009.[838] However, when this report went to press (October 2009), the company had not yet published its 2008 accounts. Its revenues have risen very rapidly, reaching €10 million in 2008, but this figure is well below the 20 million that the commercial services had set themselves.[839] The company seems to have been affected by the crisis on the advertising market in the first half of 2009 and predicts that it will lack liquidity at the end of 2009. It was trying to raise a further €10 million to finance its development and announced that it would be laying off 10% of its French staff.[840]

Initially supported by the venture capital firms Atlas Venture and Partech International, Dailymotion raised money in August 2007 in a second round of financing, adding AGF Private Equity, Advent Venture Partners and CIC Capital Privé to its financial backers.[841]

Graphic 62 : Dailymotion's revenues and net earnings (2006-2008) – in millions of euros



Source: Dailymotion

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[838] *L'Expansion*, 20 May 2008, http://www.lexpansion.com/economie/actualite-high-tech/dailymotion-sera-rentable-d-ici-la-fin-de-l-annee_153460.html

[839] "Dailymotion affiche un chiffre d'affaires de plus de 10 millions d'euros pour 2008", *Les Echos*, 19 December 2008.

[840] "Dailymotion va se séparer de 10 % de ses effectifs en France", *Les Echos*, 30 July 2009.

[841] Dailymotion press release, 31 August 2007.

6.5. THE REAPPROPRIATION OF FREE MODELS BY THE TRADITIONAL PLAYERS

In the light of the changes in use and consumption patterns, the traditional players are seeking to go along with the public with regard to its delinearised consumption. The presence of a programme on different media makes it possible to prolong its life cycle and promote it, thus making it easier to direct the audience to the initial medium (in the case of an audiovisual programme), facilitating the buzz and strengthening the brand.

The video sharing sites that have concluded a partnership with a channel generate an audience and refer it to the TV media (minimum of 5% additional viewers). For example, in the United States CBS has set up the Letterman channel on YouTube where excerpts from the David Letterman shows are made available. The network has observed a “YouTube effect”: the programme has gained a 7% audience share. These new viewers have been recruited on the video sharing site, which has become of promoter of the programme.

6.5.1. Hulu

Hulu was set up in March 2007 on the initiative of NBC Universal and News Corp. as a free VoD service in the United States. The two partners announced at the very beginning that the catalogues of the service already contained thousands of hours of programmes, with partnerships having been signed with such major Internet players as AOL, MSN, Myspace and Yahoo![842] The project is also supported by Microsoft. At a time when most of the majors were finally envisaging entering the pay-VoD market given the initiatives launched by Apple, and with YouTube starting to win over its audience with its video sharing system, the two groups were swimming against the tide and, on the strength of their large catalogues full of premium programmes, putting their money on the Internet becoming an excellent advertising medium that would complement the television market. The beta version of the site was launched in October 2007[843] and the public version on 12 March 2008.[844] The press release announced that there were more than 50 programme providers and that there was a long list of programmes available from the launch date and in the coming days. From July that year, Nielsen’s VideoCensus announced that Hulu was already in 7th position among the most visited sites. In September Hulu announced that its catalogue now contained 900 tiles of films and series from more than 100 different providers. One year after the launch of the beta version, the site was being showered with praise by the press (*Time*, Associated Press, etc). The number of advertisers had grown tenfold, rising from 10 to 100.

In April 2009, the Disney studios joined Universal Studios and News Corp. as Hulu shareholders and provided access to the Disney and ABC catalogues.[845] Disney’s entry was reflected not only in the delivery from July onwards of series with a very large audience but also in rumours that Disney was pushing for the introduction of pay models.[846]

Hulu’s rapid success needs to be assessed on the basis of the financial data, which are not

[842] NBC Universal and NewsCorp press release, 22 March 2007, http://www.hulu.com/press/new_video_venture.html

[843] Hulu press release, 29 October 2007, http://www.hulu.com/press/private_beta.html

[844] Hulu press release, 12 March 2008, http://www.hulu.com/press/private_beta.html

[845] Hulu and Walt Disney Corporation press release, 30 April 2009, http://www.hulu.com/press/disney_press_release.html

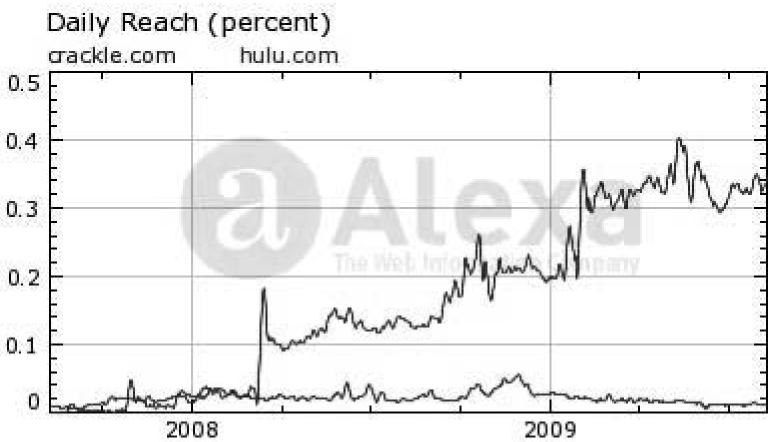
[846] “Disney CEO: Hulu Could Charge for Content”, Forbes, 22 July 2009, http://www.forbes.com/feeds/ap/2009/07/22/ap6689020.html

published. If a new partner such as Disney can afford the luxury of calling the business model into question just after its arrival, is it not the case that this model either does not work or does not work as well as anticipated at the moment when the recession impacts on the advertising market? On 9 September 2009, Chase Carey, Chief Operating Officer of News. Corp said it was desirable for Hulu to develop towards a mixed system of free and paid programmes.[847]

6.5.2. Crackle

In August 2006, Sony Pictures Entertainment bought Grouper.com. one of the first video sharing sites, for $65 million and relaunched it in July 2007 under the name Crackle[848], which competes with Hulu as a platform that provides professional and user generated content selected by Sony as well as content by young directors. The site is aimed at young men between 18 and 34.[849] It offers mini-comedies (*The Jace Hall Show, The Purple Onion*)[850], music series (*Take-Away Show*) or drama series conceived specifically for the Internet (*Mr. Deity, Quarterlife*), and sometimes launches episodes before their release on DVD (*Angel of Death*).[851] Crackle has also tried out international syndication models, offering other sites the opportunity to take its content sponsored my major advertisers (Pepsi, Honda, Epson, etc).[852] If the Alexa figures are to be believed, Crackle has lost the battle with Hulu since the first quarter of 2008. In contrast to Hulu, the site has not been geolocated from the outset but only since early 2009. Since spring 2009, Sony has tried to beat off the competition by expanding the range of original programmes and offering stocks of old films in the catalogue,

Graphic 63 : Comparison of the daily reach of Hulu and Crackle (2008-2009)



Source: Alexa

[847] "Hulu Needs Mix of 'Pay And Free' Web Video Content", *Bloomberg.com*, 9 September 2009, http://www.bloomberg.com/apps/news?pid=newsarchive&sid=avs_NrBHM18E

[848] "Sony's 'New' Crackle Set to Aid Filmmakers", *Wall Street Journal*, 16 July 2007, http://online.wsj.com/article/SB118454151100667084.html?mod=googlenews_wsj

[849] "Sony's Crackle expands movie lineup", *CNET News*, 29 April 2009, http://news.cnet.com/8301-1023_3-10229876-93.html

[850] The first episodes of this series were downloaded by 500,000 visitors in two days. Crackle press release, 9 June 2008, http://crackle.com/about/

[851] "Sony Series Will Start on Web, Go to DVD", *The Wall Street Journal*, 16 June 2008, http://online.wsj.com/article/SB121357528674575987.html?mod=hps_us_whats_news

[852] Crackle press release, 15 November 2007, http://crackle.com/about

6.5.3. *The launch of video sharing sites by the traditional European players*

In order to gain a foothold on the free video market and promote their programmes, several channels and producers have launched or taken over their own video sharing sites that mix amateur and professional content. The primary objective of these sites is not only to promote the group's programmes but also to combat piracy and then perhaps use some amateur content for broadcasting on TV.

The integrated players are ideally placed to construct this type of strategy. The promotion of audiovisual programmes can come up against the problem of paying their producers. In the case of vertically integrated groups, the costs are potentially internalised, thus making it easier to use the programme. For example, the RTL group operates the Clipfish.de platform, which promotes programmes broadcast on the RTL group's channels, and some of these programmes are produced by subsidiaries of the group. Similarly, the Polish platform Plejada, which is owned by TVN, highlights some content produced and put out by the broadcaster.

No stock programmes (series, television films, documentaries) not produced by the channels are to be found on these sites as the channels mainly prefer to feature their own content.

The channels that have created their own platform also adopt a defensive strategy with respect to the other platforms. For example, TF1 has attacked Dailymotion, calling on it to take down all the illegal content belonging to it. Similarly, the Polish channel has filed a complaint against YouTube and other video sharing sites (Wrzuta.pl and Smog.pl) and demanded the withdrawal of its programmes, in advance of the launch of its own video sharing platform Plejada.pl.

Table 34 : Examples of sites belonging to the traditional players

Country	Channel	Platform	Content
France	TF1	Wattv	Provides content originating from the channel as well as amateur content, some of which is aired on TF1.
Poland	TVN	Plejada	Site devoted to show business available on the Internet, mobiles and the N pay-TV package, which particularly features a flagship series of the channel Magda M.
Germany	RTL	Clipfish	Special section with programmes produced by RTL, but there are also programmes made by an RTL owned production company: Fremantle (the German version of Nouvelle Star).
Germany	ProSieben	MyVideo	Excerpt from programmes aired on the group's channels (*Popstars*, *Die Comedy-Falle*).
France	Endemol	Endemol.fr	The flow programme producer Endemol has also launched its own video sharing site, which only offers excerpts of programmes made by the group. It was set up in partnership with MSN and the advertising revenue generated is shared with the host MSN.

Source: NPA Conseil

6.5.4. TerraTV

6.5.4.1. A hybrid service offering both professional and amateur content

In 2007, Telefónica launched the video sharing portal Terra TV. It was introduced as web TV in two versions: Terra TV Spain and Terra TV Peru. Terra TV is currently received in 17 Latin American countries and a version aimed at the Hispanic market in the United States was launched in May 2009.[853]

Terra TV is an extension of the portal of the Terra channels (Terra.es) and includes considerable scope for interactivity with its users. In this project, Telefónica wanted to highlight its advanced position with regard to the new technologies by presenting an image of quality TV. The business model is based on funding by advertising (banners and commercials inserted at the beginning of the video).

Simple to use (streamed content, with no download software to be installed, Terra TV is aimed at a select target group: the 16-36-year-olds, who are likely to attract advertisers. The content offered is theme-based: sport, music, comedy, series, adult. Use can draw up play lists, vote, exchange comments, etc.

6.5.4.2. A business model similar to Hulu's

Terra TV's business model is based on funding by advertising. Commercials are inserted into each video (per-roll, in-roll, post-roll). With a specific offering targeting a specific audience, Terra TV offers advertisers a niche space. Based on the Hulu model rather than the YouTube model, Terra TV's priority in terms of its offering is nonetheless to provide professional content in order to differentiate itself from the video sharing platforms that mainly offer amateur content (taking account of the fact that advertisers do not want to be associated with this type of content).

As the sharing sites currently have little advertising revenue, the partnerships are mainly based on an exchange without remuneration. The fact is that it is strategically unwise for channels to pay for rights in order to broadcast content free of charge if they are not assured of an income from this. This is why the offering is principally made up of flow programmes produced by the channels. In addition, belonging to a vertically integrated group facilitates the distribution of content (the rights in which remain with the producers).

6.5.4.3. Programmes

The content produced by Terra TV, such as the series *Chica busca chica* (sixteen 10-minute episodes), is particularly featured on the platform and very popular among users (it is among the most-watched items).

This new type of offering enables Terra TV both to generate an audience (and therefore advertising revenue) and to avoid the problem of exclusivity (its own content is by definition exclusive).

Telefónica is constantly strengthening its agreements with the major providers in order to make the service more attractive: in August 2008, an agreement was signed with the Walt

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[853] "Terra Transforms the Digital World with the Relaunch of Terra TV in the United States and Latin America", *Sys-Con Media*, 14 May 2009, http://search.sys-con.com/node/963791

Disney Company Latin America for the distribution of content to Latin American;[854] in January 2009, it announced its intention to enhance the site with programmes provided by an American distributor, ATC Extreme Sports.[855] In July 2009, it announced the signing of agreements with A&E, Fox, Sony and Universal Music and the coverage of the 2010 Winter Olympics in Vancouver.[856] In Latin America, Terra TV has been accessible via an iPhone application since February 2009.[857]

6.5.4.4. Protection and remuneration of rights holders

The content the rights in which it has acquired is only accessible in the countries targeted by the channel. These programmes are protected by Microsoft DRM. The material was initially local content, which met a strong demand by the Spanish public and facilitated the negotiations with the rights holders. Terra TV has accordingly concluded agreements with studios that produce Spanish series (catalogues of Paramount Comedy, Filmax and Manga Films). In the first instance, the programmes were not offered on an exclusive basis (the producers refusing to limit themselves to a single platform) but it is the operator's wish and strategy to move towards exclusive arrangements.

Rights holders are paid on the basis of revenue-sharing. The rights holder receives a guaranteed fixed minimum (which has been decided via an agreement with the Spanish collecting society Sociedad General de Autores y Editores) and a proportion of the advertising revenue calculated according to the number of clicks.

6.5.4.5. Success of the service

According to Telefónica, the service experienced considerable growth in Spain in 2008 and reached 827,000 unique visitors a month. In May 2009, it claimed to have had 8 million unique visitors worldwide. However, the statistics compiled by Alexa indicate disaffection with the service since the second half of 2008 and there is no evidence that the service benefited from the broadcasting of the Beijing Olympics on an exclusive basis on the Internet and mobiles for the United States and South America.[858]

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[854] "Terra y Disney amplían acuerdo por contenidos", *todotvnews*, 24 August 2008, http://www.todotvnews.com/scripts/templates/estilo_nota.asp?nota=nuevo/NewMedia/Web%20TV/2008/10_octubre/27_acuerdo_Terra_Disney_contenidos

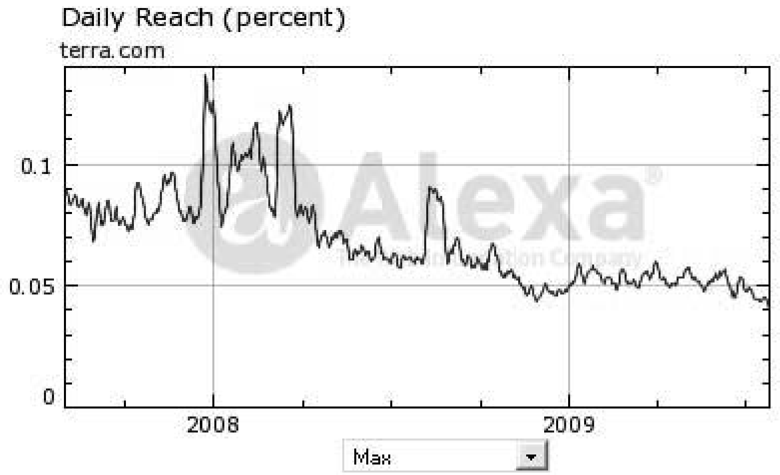
[855] "Leading Spanish speaking video portal, Telefónica's Terra TV has selected AllTheContent.com to enrich its supply of extreme sports and adventure videos.", All the Content, 1 January 2009, http://www.allthecontent.com/news/atc-extreme-sports-video-for-telefonicas-terra.tv.html

[856] "Terra TV se asegura contenidos de Fox, A&E, Sony Music y Universal", *todotvnews*, 17 July 2009, http://www.todotvnews.com/scripts/templates/estilo_nota.asp?nota=nuevo/NewMedia/Web%20TV/2009/07_julio/15_terra_tv_anuncios_en_sao_paulo_en_orbita

[857] "Terra se apoya en iPhone para expandirse a TV móvil", todotvnews, 11 February 2009, http://www.todotvnews.com/scripts/templates/estilo_nota.asp?nota=nuevo/NewMedia/MobileTV/2009/02_febrero/12_Terra_se_apoya_en_iPhone_para_expandirse_a_TV_m%F3vil

[858] "Terra transmitirá los Juegos Olímpicos en exclusiva para América", *todotvnews*, 7 July 2008.

Graphic 64 : Daily reach (in%) of Terra TV (2008-2009)



Source: Alexa

6.5.5 Orange Vallée

In France, the Orange group launched in 2007 Mazonevidéo, a site that enabled web users to post content, but its audience remained limited. In June 2009, Orange Vallée, an Orange group subsidiary, announced the launch of a new service that would be a mixture of YouTube, Dailymotion and Hulu. It would offer videos posed by users, broadcasts, television series and films. The aim was to have 500,000 content items available at launch. Orange Vallée has begun negotiating the purchase of rights to compile its catalogue. More than 1,000 films and series have already been acquired by the group's Orange Cinéma Séries package of television channels but separate rights have to be negotiated for Internet distribution. The new service should differ from the other sites by offering web users the possibility of programming the broadcasting of series during certain hours of the day and offering others the opportunity to join them for online discussions and exchange of views.[859]

According to *Les Echos*, "the France Télécom subsidiary has begun negotiating the purchase of rights to compile its catalogue of works broadcast on the web, but is saying little on the subject. It has already handed over a cheque for €337 million to acquire nearly 1,000 films and series (mainly from Warner and HBO) for its television channels Orange Cinéma Séries. However, the operator now has to buy the Internet broadcasting rights and is apparently holding discussions with all the studios".

[859] "Orange va lancer son site de vidéos pour concurrencer YouTube", *Les Echos*, 18 June 2009.

6.6. FREE VOD ON THE PAY PLATFORMS

The pay-VoD platforms sometimes offer certain programmes free of charge (see part 1). For them this is a marketing tool that is supposed to gather together a wide audience. In this case, the platforms can accordingly acquire the VoD rights to these programmes in the same way as they can for programmes available against payment. These are targeted operations for specific situations. For example, the German VoD platform Maxdome offers on a preview basis the first two episodes of the series *Damages* in order to promote the rest of the series. The platforms can also offer free of charge content in which they hold the rights (e.g., the series *Mystère* offered on TF1 Vision and produce Alma, a subsidiary of the group).

Most of the time, when programmes are offered free of charge this is for a specific and fairly short period, sometimes as a preview before they are broadcast on TV. Their distribution is then funded by advertising (commercials are inserted into the video). This uploading of content available free of charge has to be accepted by the rights holder. For example, M6video.fr offered all the episodes of season 4 of *Nip Tuck* as free VoD after they had been aired on TV. These episodes, which were available for one month, were used for a promotional purpose to generate a big audience on the M6video.fr site and attract new users.

The use of free content is still fairly limited in the context of pay-VoD services as it does not bring in much revenue (and only does so indirectly).Only very attractive programmes (films or recent series, for example) constitute genuine added commercial value for the platform that offers them free of charge. However, in this case the rights holders are somewhat reluctant to make any of their premium content available fee, firstly because this practice may devalue the premium dimension of the content and secondly because they prefer to make it available to a pay service that provides them with revenue.

6.7. THE FAILURE OF THE INDEPENDENT AGGREGATORS

Before the rapid development of the video sharing sites and their strategy of approaching the incumbent players, a number of companies, such as Joost (launched in 2006 by Niklas Zennström and Janus Friis, the founders of Skype and Kazaa) and Babelgum (launched in 2005 by Silvio Scalgia, one of the founders of FastWeb), had attracted media attention by launching platforms based on the principle of aggregating professional content and funding by advertising. The basic idea was that independent companies were in a better position to play the role of free, advertising funded VoD platforms than platforms managed by the television channels themselves. Joost distinguished itself in particular by theorising about the death of linear television.

Offering a non-geolocated international site, the Dutch company N.V. achieved an initial success in February 2007 when it signed an agreement with Viacom, followed a few months later by agreements with Ministry of Sound TV, Aardman Animation, Warner Music, Endemol, Fremantle Media, RDF Media, Diversion Media, CBS, etc.

Despite the initially favourable press comments, Joost has never met with the desired success in audience terms as it has been unable to compare itself to Hulu or even Crackle. In June 2009, its directors acknowledged the failure, closed the company's European office and withdrew to the United States.[860] According to ex-CEO Mark Volpi, Joost's failure is due to the fact that the television channels have created their own Internet offerings, thus preventing aggregators from obtaining premium content.[861]

The Irish company Babelgum has experienced the same disappointments since 2008, its directors have departed and it is seeking to reposition itself as a site specialising in documentaries.[862]

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[860] "Joost Says It Has No Future As Portal, Enters White-Label Market; Volpi Out As CEO", *paidContent*, 30 June 2009, http://paidcontent.org/article/419-joost-admits-no-future-as-portal-volpi-out-as-ceo-staff-cuts-white-labe/

[861] "Interview: Mike Volpi: Broadcasters' Own VoD Plans Killed Joost", *paidContent*, 6 July 2009, http://paidcontent.co.uk/article/419-interview-mike-volpi-broadcasters-own-vod-plans-killed-joost/

[862] "Babelgum Shakeup Continues As COO Leaves", *paidContent*, 3 November 2008, http://paidcontent.org/article/419-babelgum-coo-quits-in-latest-high-level-shakeup/

PART 7:

AUDIENCE MEASUREMENT IN THE CONTEXT OF ON-DEMAND AUDIOVISUAL SERVICES

7.1. BACKGROUND AND CHALLENGES

An international discussion is taking place on the development of audience measurement against the backdrop of media diversification. This question should not be confused with the measurement of Internet audiences alone. The problem of measuring the audiences of on-demand services concerns the various types of media and involves various technologies. It is necessary to establish an indicator that will enable the various uses to be measured and compared in the light of the increasing diversity of consumption patterns.

Audience measurement in the context of on-demand audiovisual services is crucial for many different players:

- For the service providers, it is clearly essential to enable them to establish their strategy, develop their business, convince their advertisers and negotiate with them;
- For the producers and distributors, who are anxious to enhance the value of their content of their works that is being made available, it is important for assessing how the service provider will monetised their works;
- For the rightsholders (or collecting societies that represent them), it is important for establishing the rates of remuneration;
- For the advertisers and advertising agencies, it is a factor that determines their choice of investment.

In mid-2009, organisations such as EGTA[863], which groups together the advertising departments of most European television channels, recognised that reliable and comparable tools for measuring the size of Internet video audiences and, more generally, the audiences of videos available on the new networks were not yet available, so this is an important task to be undertaken in the years to come.

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[863] http://www.egta.com
Statement by Michel Grégoire, EGTA Director General, to the Advisory Committee of the European Audiovisual Observatory, 4 June 2009.

7.2. MEASURING CHANGES IN CONSUMPTION PATTERNS

Before discussing the technical issues involved in measuring the audience of a particular on-demand audiovisual service, it is worth mentioning the recent studies that set out to assess the changes in consumer habits in the light of the different types of service now available, especially changes in the consumption of video in the form of what we will call "electronic audiovisual content".[864]

7.2.1. *United States*

Nielsen, the US market leader in the field of TV audience analysis, has published so-called "Three Screen" reports since 2008. These studies attempt to measure the changes taking place in the consumption of television, the Internet and services to mobiles by combining the data that have been obtained by various studies.[865]

Table 35 : Number of users of television, the Internet and mobile telephones in the United States (2007-2009)

Overall usage number of users 2+ (in 000s) – monthly reach	3Q 2007	1Q 2008	2Q 2008	3 Q 2008	4Q 2008	1Q 2009	1 Q 2009/ 2008
Watching TV in the Home (1)	277,916	281,106	281,746	282,289	285,313	284,574	1.2%
Using a Mobile Phone (2)		219,619	222,514	224,495	228,920	230,436	4.9%
Using the Internet (3)	153,572	158,002	159,903	160,069	161,525	163,110	3.2%
Watching Video on Internet		115,970	119,179	120,708	123,195	131,102	13.0%
Watching Timeshifted TV	50,313	57,934	62,240	67,656	73,934	79,533	37.3%
Watching Video on a Mobile Phone (4)		8,817	9,004	10,260	11,198	13,419	52.2%

Source: The Nielsen Company

1. Includes those viewing at least one minute within the measurement period. This includes live viewing plus any playback within seven days (DVR, DVD Recorder, Start Over)
2. For 2008, the data are based on the Nielsen Mobile study and the CTIA projections on the number of wireless subscribers.
3. Internet at home and the workplace.
4. Based on an analysis of the last 30 days during the period. Includes subscription mobile Internet services, downloads and applications. Projections based on users aged 13 and over.

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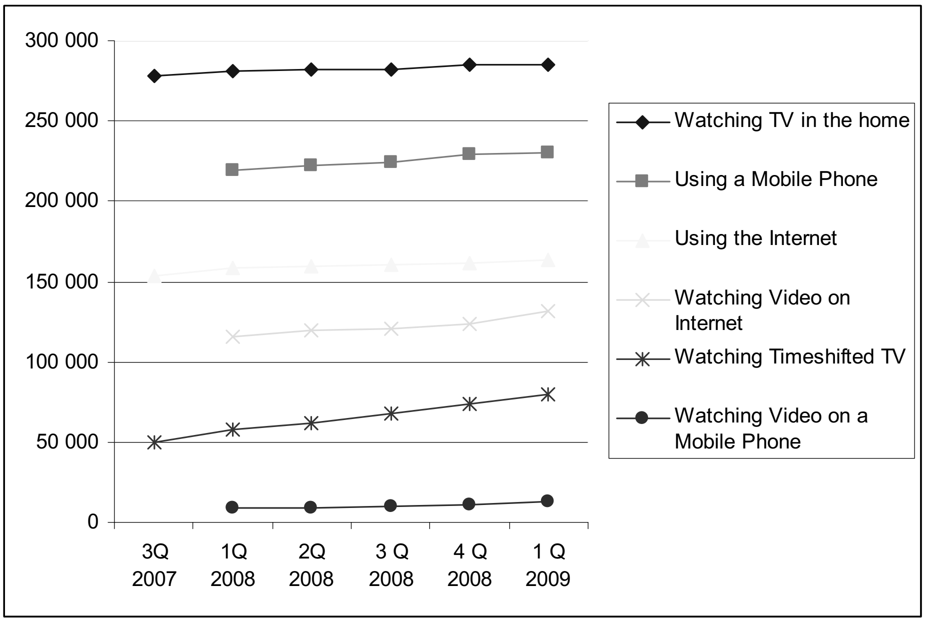
[864] Our term "electronic audiovisual content" refers to what the American studies call *video* (which includes television, Internet video and mobile video) and should be distinguished from *home video* (VHS, DVD, Blu-ray).

[865] Nielsen, "Television, Internet and Mobile Usage in the U.S., A2/M2 Screen Report", 2nd Quarter 2008, http://en-us.nielsen.com/etc/medialib/nielsen_dotcom/en_us/documents/pdf/white_papers.Par.97457.File.dat/3_Screen_Report_May08_FINAL.pdf,
3rd Quarter 2008, http://en-us.nielsen.com/etc/medialib/nielsen_dotcom/en_us/documents/pdf/white_papers.Par.63219.File.dat/3_Screens_3Q08_final11-24.pdf
4th Quarter 2008, http://www.nielsen-online.com/downloads/3_Screens_4Q08_final.pdf
1st Quarter 2009, http://blog.nielsen.com/nielsenwire/wp-content/uploads/2009/05/nielsen_threescreenreport_q109.pdf

Graphic 65 : Number of television viewers and Internet and mobile phone users in the United States (2007-2009)



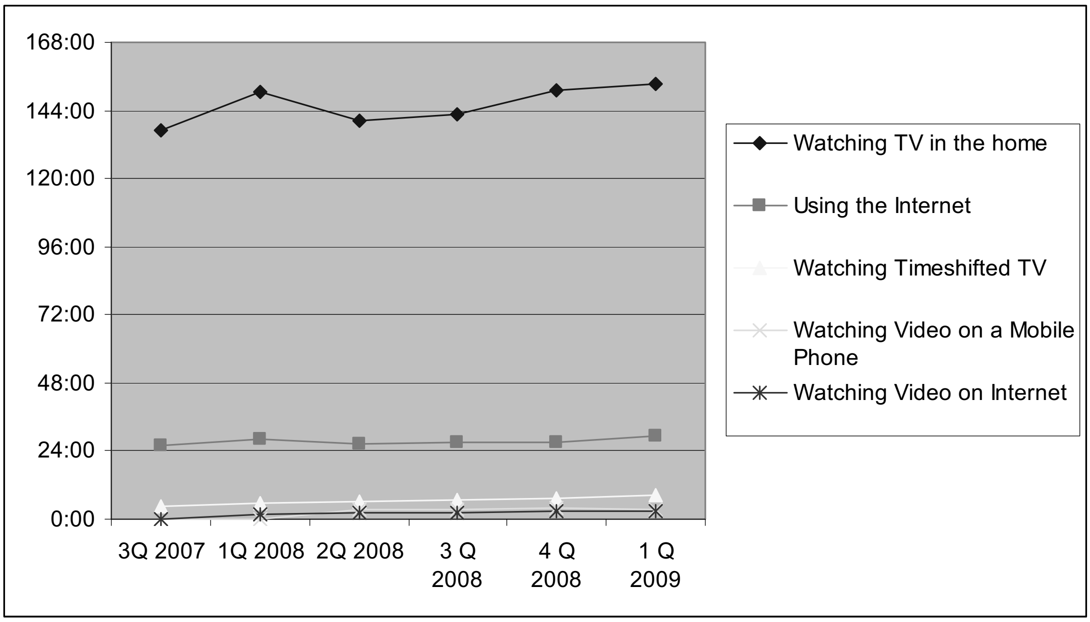
Source: The Nielsen Company

Table 36 : Average monthly television, Internet, Internet video or mobile consumption in the United States in 2007-2009 (in hours and minutes, 2 years and over)

	3Q 2007	1Q 2008	2Q 2008	3Q 2008	4Q 2008	1Q 2009	1Q 2009/2008
Watching TV in the Home	136:54	150:38	140:39	142:29	151:03	153:27	1.9%
Using the Internet	25:49	27:57	26:32	27:18	27:04	29:15	4.7%
Watching Timeshifted TV	4:17	5:52	6:10	6:32	7:11	8:13	40.1%
Watching Video on a Mobile Phone	n/a	n/a	3:15	3:37	3:42	3:37	n/a
Watching Video on Internet	n/a	1:57	2:12	2:31	2:53	3:00	53.8%

Source: The Nielsen Company

Graphic 66 : Average monthly television, Internet, Internet video or mobile consumption in the United States (2007-2009) – **in hours and minutes**



Source: The Nielsen Company

Table 37 : Average time spent on audiovisual services in the United States (2008-2009) – **in hours and minutes and %**

	2Q 2008	3Q 2008	4Q 2008	1Q 2009	2Q 2008	3Q 2008	4Q 2008	1Q 2009
Watching live TV	134:29	135:57	143:52	145:14	92.0%	91.5%	91.3%	90.7%
Watching Timeshifted TV	6:10	6:32	7:11	8:13	4.2%	4.4%	4.6%	5.1%
Watching Video on a Mobile Phone	3:15	3:37	3:42	3:37	2.2%	2.4%	2.3%	2.3%
Watching Video on Internet	2:12	2:31	2:53	3:00	1.5%	1.7%	1.8%	1.9%
Total watching video	**146:06**	**148:37**	**157:38**	**160:04**	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Source: European Audiovisual Observatory based on data from The Nielsen Company

Taking the Nielsen data as a basis, we can establish that the relative proportion of linear consumption (live TV) fell between the second quarter of 2008 and the first quarter of 2009 from 92% to 90.7%, benefiting time-shifted consumption (+0.9%), the consumption of Internet video (+0.4%) and the consumption of television on a mobile (+0.1%). However, it needs to be taken into account that television consumption itself increased over the same period. It will be necessary to wait for longer ranges of values to become available in order to assess the scale of the seasonal consumption factors.

Table 38 : Monthly time spent watching TV, Internet and video on Internet and on mobile in the USA (1 quarter 2009)

Monthly Time Spent in Hours:Minutes 1Q 2009								
	K2-11	T12-17	A18-24	A25-34	A35-44	A45-54	A55-64	A65+
On Traditional TV*	108:45	104:24	116:47	144:09	151:52	175:42	195:01	210:52
Watching Timeshifted TV*	5:50	5:06	5:47	12:12	11:19	9:40	9:14	4:28
Using the Internet**	5:21	11:32	14:19	31:37	42:35	39:27	35:49	28:34
Watching Video on Internet**	1:45	2:50	5:07	4:32	3:29	2:45	1:44	1:22
Mobile Subscribers Watching Video on a Mobile Phone^	n/a^^	6:30^^	2:53	3:37	3:15	3:15	2:10	n/a°°
Source: The Nielsen Company								

The study also shows that the 18-24 and 25-34 age groups are those that consume the most videos on the Internet.

Table 39 : Video audience composition by age in the USA (1 quarter 2009)

Video Audience Composition – Age 1Q 2009								
	K2-11	T12-17	A18-24	A25-34	A35-44	A45-54	A55-64	A65+
On TV*	10%	6%	7%	13%	14%	17%	15%	18%
On the Internet**	8%	8%	7%	15%	18%	22%	15%	7%
On Mobile Phones^	n/a^^	18%^^	10%	34%	20%	11%	6%	1%
Source: The Nielsen Company								

The 45-54 age group accounts for 17% of the total television audience and is also the age group who watch the largest proportion (22%) of video on the Internet. By contrast, the 25-34 year olds are the largest group with regard to the consumption of video on mobile telephones (34%).

Table 40 : Video audience composition by genre in the USA (1 quarter 2009)

Video Audience Composition – Gender 1Q 2009		
	F2+	M2+
On TV*	54%	46%
On the Internet**	53%	47%
On Mobile Phones^^	41%	59%
Source: The Nielsen Company		

Finally, the Nielsen study shows that more females than males watch television and video on the Internet, whereas the consumption of video on mobile telephones is much more clearly male-dominated.

Another Nielsen study on the modes of consumption of American teenagers shows that television remains their preferred medium. In the fourth quarter of 2008, 92% of the time spent watching video images was devoted to live television viewing, 5% to time-shifted viewing on a digital video recorder and 3% to online (streamed) video.[866]

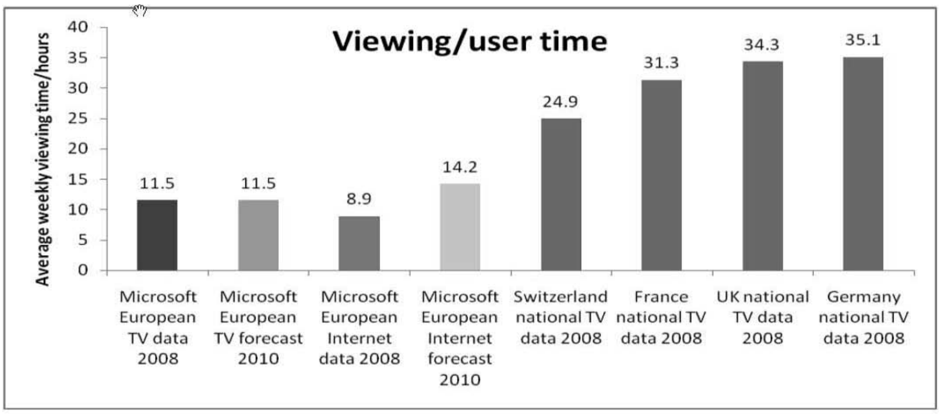
7.2.2. Europe

7.2.2.1. Lack of a general survey

Owing to the fragmentation of audience measurement by national territory and the fact that "three screen" audience measurement is usually carried out by different companies, no studies similar to those conducted by Nielsen in the United States are available.

In April 2009, Microsoft published a study entitled "Europe Logs On", which argues that in 2010 the Internet will have overtaken television as the most consumed form of media.[867] The study was immediately criticised by the trade association EGTA (European Group of Television Advertising), which said that it significantly underestimated the television viewing time in various European countries.[868] The study is based on declaratory data from a panel and not on the audience measurement normally used in the field of advertising and considered more reliable. Whereas Microsoft believes that the weekly per capita television consumption was 11.5 hours in 2008, it does it fact vary, according to EGTA's calculations based on traditional audience measurement sources, from 24.9 hours a week in Switzerland to 35.1 in Germany.

Graphic 67 : Comparison of weekly TV viewing time according to the Microsoft study and classic national sources (hour:week)



Source: EGTA

Moreover, an analysis of the changes in the average individual viewing time (IVT) in the European countries does not reveal a uniform trend. Of the 29 markets for which constant parameters are available for 2004-2008, it would appear that the average IVT for that period

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866 Nielsen, "How Teens use Media. A Nielsen report on the myths and realities of teen media trends", Nielsen, June 2009, http://blog.nielsen.com/nielsenwire/reports/nielsen_howteensusemedia_june09.pdf

867 Microsoft, "Europe Logs On", Microsoft, April 2009. http://advertising.microsoft.com/deutschland/WWDocs/User/de-de/NewsAndEvents/PressReleases/Europe%20Logs%20On%20-%20Zusammenfassung%20englisch.pdf

868 "Microsoft's research fundamentally flawed; TV viewing figures underestimated", EGTA press release, Brussels, 30 April 2009. http://www.egta.com/documents/press_release_microsoft_research_fundamentally_flawed.pdf

rose in 15 countries, went down in 13 and remained stable in just one (France).[869] It is therefore hard to claim unequivocally that the Internet is "cannibalising" the television audience. According to the calculations of Eurodata-TV, the average global IVT in 2008 was 188 minutes, which is one minute more than in 2007.[870]

Table 41 : Average per capita television audience in Europe (1993-2008) – Minutes per day

Country		Target group (age)	2004	2005	2006	2007	2008	Annual average growth 2008/2004
RO	IVT	4+	230	243	242	234	257	2.81%
CY	IVT	4+	162	161	171	175	177	2.24%
SE	IVT	3+	151	147	154	157	160	1.46%
BG	IVT	4+	199	198	217	217	210	1.35%
IE	IVT	4+	177	180	182	181	186	1.25%
EE		4+	224	222	231	232	234	1.10%
ES	IVT	4+	218	217	217	223	227	1.02%
CH (It.)	IVT	3+	178	175	180	173	185	0.97%
DK	IVT	3+	161	153	151	148	167	0.92%
SI	IVT	4+	173	172	177	182	179	0.86%
GR	IVT	4+	244	245	252	248	252	0.81%
LV	n/a	4+	210	204	206	202	213	0.36%
GB	IVT	4+	222	219	216	218	225	0.34%
TR	IVT	5+	223	216	216	216	226	0.33%
PT	IVT	4+	214	212	210	210	215	0.12%
FR	IVT	4+	204	206	204	207	204	0.00%
RU	IVT	4+	223	227	234	228	222	-0.11%
DE	IVT	3+	210	211	212	208	207	-0.36%
PL	IVT	4+	236	241	240	241	232	-0.43%
IT	IVT	4+	240	237	239	230	234	-0.63%
CH (Fch.)	IVT	3+	173	171	170	163	167	-0.88%
BE (VLG)	IVT	4+	170	178	166	170	164	-0.89%
HU	n/a	4+	271	265	263	259	260	-1.03%
NL	IVT	6+	192	195	197	186	184	-1.06%
LT	IVT	4+	213	199	192	202	203	-1.19%
CH (Ger.)	IVT	3+	148	147	146	139	141	-1.20%
AT	IVT	3+	156	157	154	149	148	-1.31%
CZ	IVT	4+	205	206	196	184	188	-2.14%
BE (CFR)	IVT	4+	216	224	205	199	197	-2.28%

Source: Eurodata TV Worldwide and network of international partners / OBS

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869 Calculations produced by the European Audiovisual Observatory on the basis of IVT data provided by Médiamétrie/Eurodata-TV and the partner network.

870 "2008 – Television is still doing well!", Médiamétrie/ Eurodata-TV, *One Television Year in the World*, 2009, and J. Braun, "The Growth of TV Consumption", presentation at the Audience Measurement 4.0 forum, Advertising Research Foundation, 23 June 2008.

In several European countries, the audience measurement institutes are establishing “cross media” measurement tools to help advertisers roll out their campaigns over several media, including the Internet and mobile services, but to our knowledge none of them has yet provided a “three screen” review along the lines of the one published by Nielsen in the United States. Some interesting results have also been provided by the regulatory authorities and through the research initiatives of the public service broadcasters.

7.2.2.2. Germany

In Germany, the main study on the comparative use of the media is the ARD/ZDF-Onlinestudie, which has been produced every year since 2001 on the initiative of the two public service broadcasters.[871] Among the many results produced by this study, mention might be made in particular of the comparative analysis of the rises and falls in the time spent on the Internet compared with the average time listening to the radio or watching television.

Table 42 : Average per capita time devoted per day to television, radio and Internet in Germany (1997-2008)

Durchschnittliche Nutzungsdauer von Fernsehen, Radio und Internet 1997 bis 2008
Angaben in Minuten (jeweils Montag bis Sonntag)

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Fernsehen (1)	196	201	198	203	209	214	221	230	231	235	225	225
Hörfunk (2)	175	179	209	205	204	199	195	196	193	186	185	186
Internet (3)	2	4	8	17	26	35	45	43	46	48	54	58

Basis: Onlinenutzer ab 14 Jahre in Deutschland (2008: n= 1186, 2007: n=1142, 2006: n=1084, 2005: n= 1075, 2004: n=1002, 2003: n=1046, 2002: n=1011, 2001: n=1001, 2000: n=1005, 1999: n=1002, 1998: n=1006, 1997: n=1003)

Quellen:
(1) AGF/GfK, jeweils 1. Halbjahr
(2) MA 98/I, MA 99, MA 2000, MA 2001/I, MA 2002/I, MA 2003/I, MA 2004/I, MA 2005/I, MA 2005/II, MA 2006/II, MA 2007/II, MA 2008/I
(3) ARD-Onlinestudie 1997, ARD/ZDF-Onlinestudie 1998 - 2008

Source: see under “Quellen” in the table.

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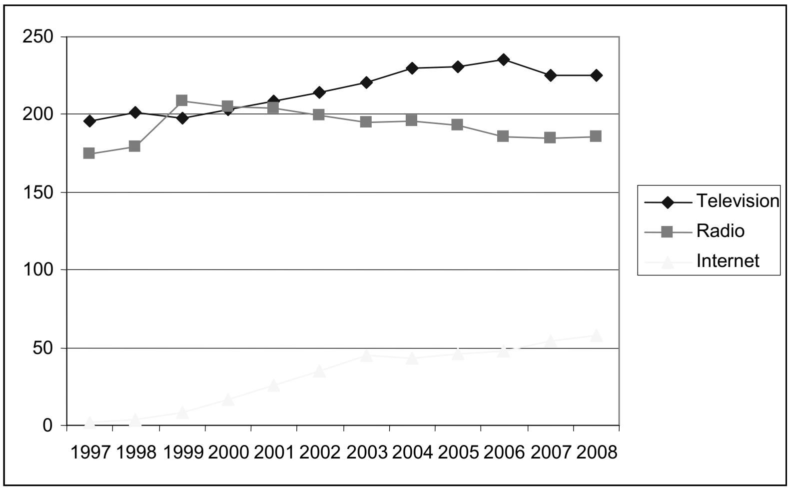
871 See http://www.ard-zdf-onlinestudie.de/ The collection of these studies can be found at the *Media Perspektiven* website: http://www.media-perspektiven.de/2444.html. The magazine *Media Perspektiven* regularly publishes in-depth analyses based on the ARD/ZDF-Onlinestudie. See http://www.media-perspektiven.de/fachzeitschrift.html.
See in particular the July 2008 issue, http://www.media-perspektiven.de/2649.html#c6765 and the article by B. van Eimeren and B. Frees, “Internetverbreitung: Größ ter Zuwachs bei Silver-Surfern”, *Media Perspektiven* 7/2008, http://www.media-perspektiven.de/uploads/tx_mppublications/Eimeren_I.pdf

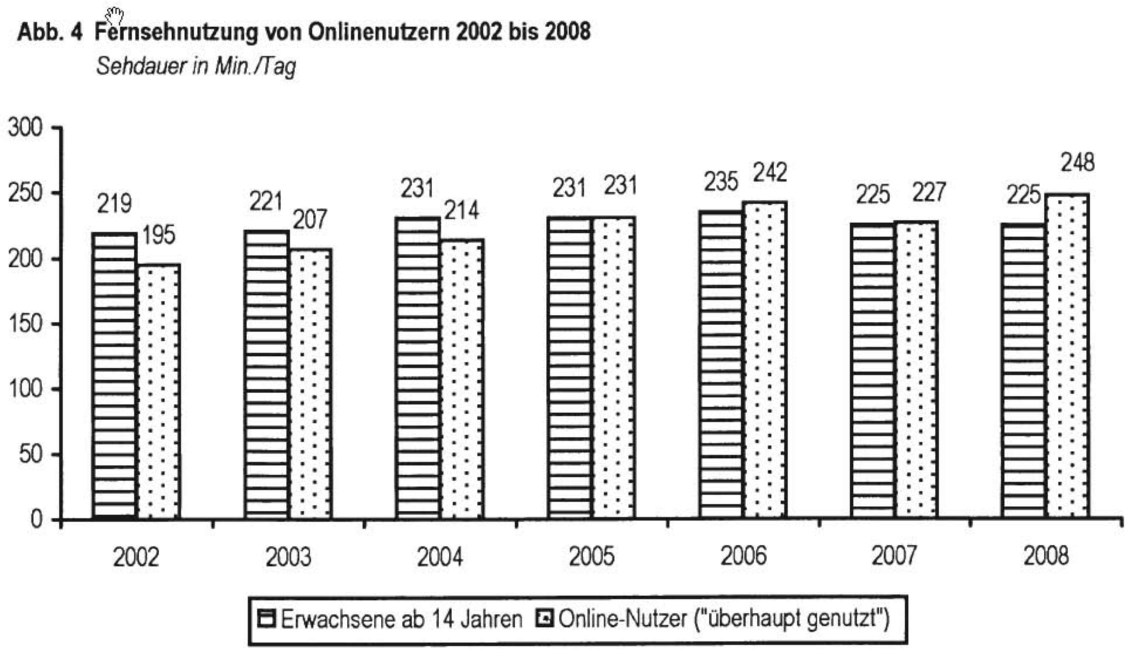
Graphic 68 : Daily average time spent for TV, radio and Internet in Germany (1997-2008)



Source: ARD/ZDF-Onlinestudie

Another interesting result is that the average daily television viewing time is not necessarily lower among Internet users. What was true in 2002-2004 has no longer applied since 2005 (the year when the IVT of Internet users was similar to that for the entire population over 14 years of age) and the figure was higher from 2006. In 2008, the IVT was even 23 minutes higher than that for the population as a whole.

Graphic 69 : Graphic 69: Germany – Comparison of the average television viewing time of Internet users with that of all viewers over 14 years of age (2002-2008) - **in minutes per day**



Source: see under "Quelle" in the graphic.

The study reveals that the differences in Internet audiovisual consumption practices are still relatively insignificant: only 5% of Internet users say they watched video or time-shifted television programmes during the week concerned, 3% watched live television on the Internet and 2% watched video podcasts. These video consumption habits are more marked among men than women (7% compared with 3% for videos and time-shifted TV programmes). This gender difference in viewing habits is even more pronounced in the 14-29 age group: 16% of young men watched videos in the week concerned compared with just 5% in the case of young women; 10% watched live television on the Internet compared with just 4% of young women.

Although the consumption of online video is not the most common use of the Internet it is enjoying strong growth. Whereas in 2005 only 25% of Internet users said they had watched video online, the proportion rose to 55% in 2008. This big increase mainly seems to be due to the video portals.[872] The proportion of web users who had visited catch-up TV sites rose from 9 to 14%, while the proportion who had watched live television went up from 7 to 12%. 7% of Internet users said they had viewed video podcasts. The percentages are considerably higher in the 14-19 age group: in 2008, 92% said they had watched video on the Internet in some form or another and 90% had done so through specialised portals.

Table 43 : Percentage of Internet users having viewed video on the Internet in Germany (2005-2008)

⑪ Abruf von Videodateien im Internet 2005 bis 2008
zumindest gelegentlich, in %

	2005	2006	2007	2008
Video (netto) gesamt	25	28	45	55
davon:				
Videoportale	–	–	34	51
Fernsehsendungen/ Videos zeitversetzt	9	10	10	14
Live fernsehen im Internet	7	7	8	12
Videopodcasts	–	3	4	7

Basis: Onlinenutzer ab 14 Jahren in Deutschland (2008: n=1186; 2007: n=1142; 2006: n=1 084; 2005: n=1 075).

Quelle: ARD/ZDF-Onlinestudien 2005–2008.

⑫ Abruf von Videodateien im Internet 2005 bis 2008 bei 14- bis 19-Jährigen
zumindest gelegentlich, in %

	2005	2006	2007	2008
Video (netto) 14–19 J.	35	51	80	92
davon:				
Videoportale	–	–	69	90
Fernsehsendungen/ Videos zeitversetzt	9	12	22	32
Live fernsehen im Internet	12	9	14	18
Videopodcasts	–	9	11	14

Basis: Onlinenutzer ab 14 Jahren in Deutschland (2008: n=1186; 2007: n=1142; 2006: n=1 084; 2005: n=1 075).

Quelle: ARD/ZDF-Onlinestudien 2005–2008.

[872] We assume that this category includes video sharing sites, such as YouTube, and VoD portals, such as Maxdome.

7.2.2.3. *France*

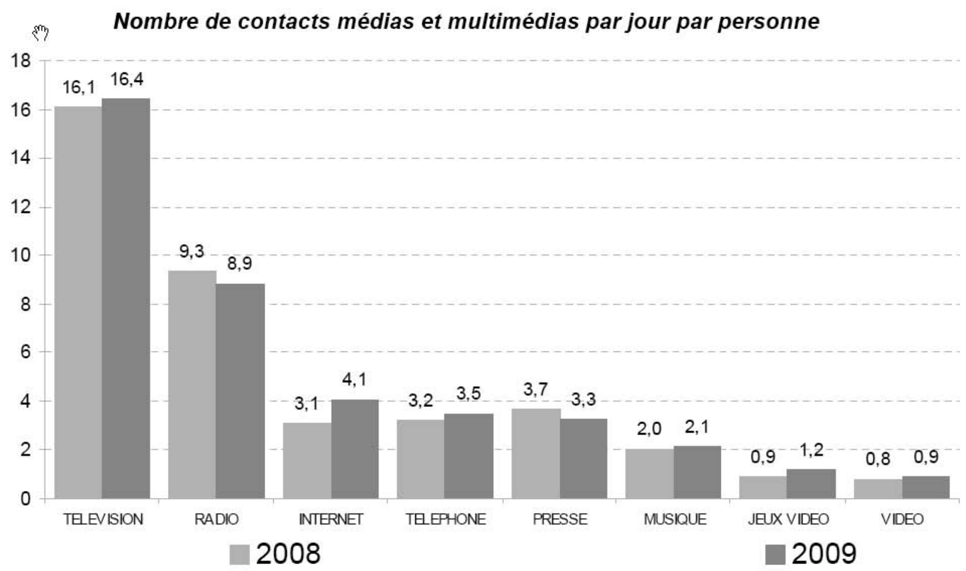
In France, the audience measurement company Médiamétrie has announced some innovations for the 2009 Cross Media study.[873] This study, by Affimétrie, Audipresse and Médiamétrie, provides the media and their management with a better understanding of the performance of their brands through the channels they employ: websites, television channels, radio stations, the press, etc. In a converging environment, it also enables advertisers and media agencies to optimise their multi-media advertising investment strategies.

The study brings together on the basis of a hub survey the major media audience reference studies currently carried out in France:

- reference studies on the media TV, radio and the Internet produced by Médiamétrie,
- reference studies on the press (magazines and daily newspapers) available by courtesy of Audipresse,
- reference studies on outdoor advertising by courtesy of Affimétrie.

Médiamétrie also publishes comparative figures on the degree of exposure to the various media.[874]

Graphic 70 : Number of media and multimedia contacts per day and by individual (2008-2009)



Source: Médiamétrie

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873 "Des nouveautés pour la sortie des results de l'Etude Cross Medias 2009", Médiamétrie press release, 6 July 2009, http://www.mediametrie.fr/comportements/communiques/des-nouveautes-pour-la-sortie-des-resultats-de-l-etude-cross-medias-2009.php?id=100

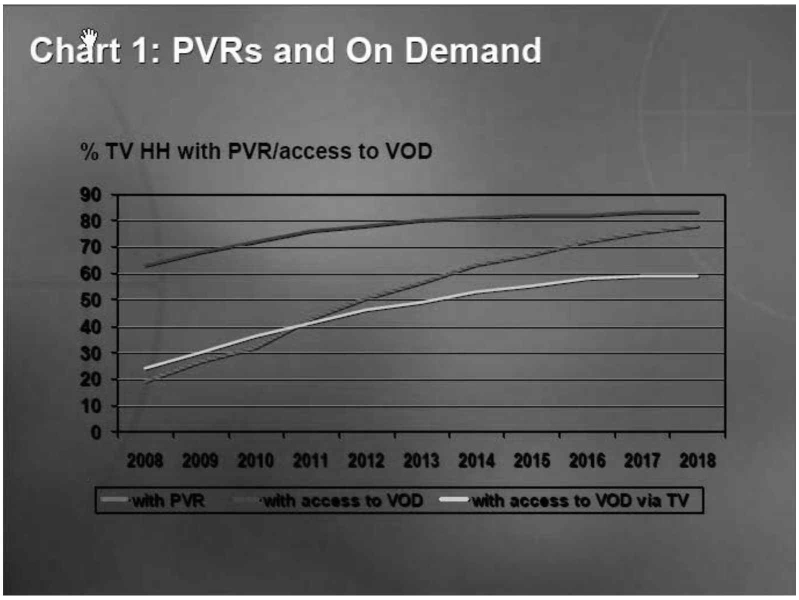
874 "La conso des médias au cours d'une journée", Médiamétrie press release, 24 June 2009, http://www.mediametrie.fr/comportements/communiques/la-conso-des-medias-au-cours-d-une-journee.php?id=86

7.2.2.4. United Kingdom

In the United Kingdom, the communications regulator Ofcom published an annual report on the population's ability to access the new media (digital television, Internet, mobile) but this study does not provide any comparative figures on consumer habits.[875] In 2006, the Broadcasters' Audience Research Board (BARB), which is the body responsible for the publication of official audience measurements, launched the "UK Television Outlook – A View Into The Future" project, the aim of which is to analyse and predict the development of consumption habits. Regular updates are published.[876]

The BARB report mainly stresses the increases in the use of PVRs. In 2008, only 20% of households were equipped with a PVR, which, according to BARB, suggests there is plenty of potential for future growth, especially in the context of the development of digital terrestrial television and the analogue switchoff. The report also foresees the significant development of VoD in general but the somewhat slower development of VoD watched on a television screen.

Graphic 71 : Forecasts for the rise in the number of PVRs and the development of VoD and VoD via TV (as a percentage of TV households) (2008-2018)



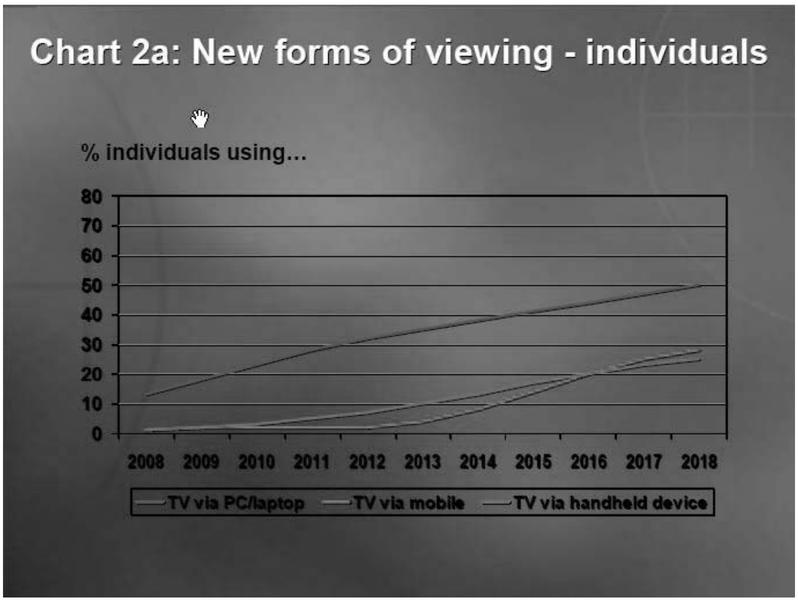
Source: BARB – January 2009.

The report also forecasts an increase in the consumption of television via a PC/laptop and, to a lesser extent, via a mobile telephone or handheld device.

875 Ofcom, *The Consumer Experience*, Report 2008, Ofcom, London, November 2008, http://www.ofcom.org.uk/research/tce/ce08/research.pdf.

876 The last was published in January 2009. The reports and updates can be found at http://www.barb.co.uk/index/futureIntoView?_s=3.

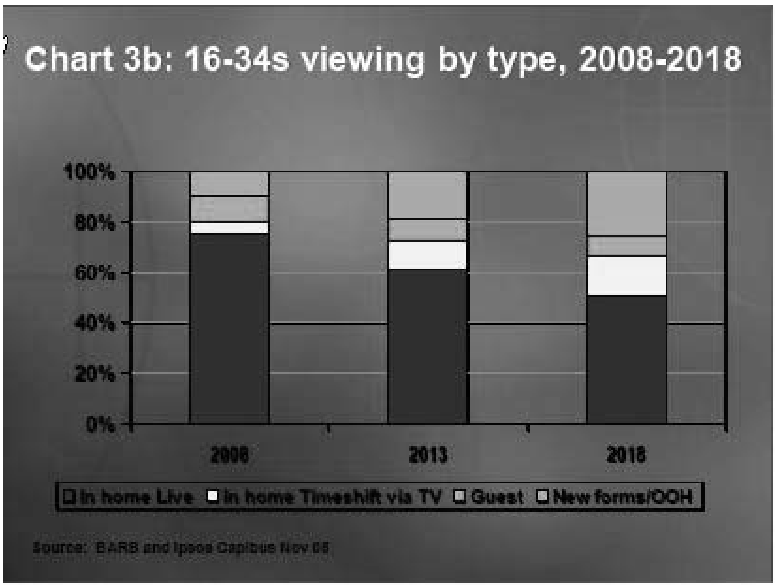
Graphic 72 : **New forms of television consumption (percentage of individuals watching television on a PC/laptop, a mobile telephone or a handheld device) (2008-2018)**



Source: BARB – January 2008

On the basis of the development of these modes of reception, the report predicts significant rises and falls in the various consumption methods: the percentage of people who watch TV live at home is likely to drop from 85% in 2008 to 66% in 2018; the proportion of individuals who watch time-shifted TV at home (via a PVR or as catch-up TV) will probably rise from 4% to 14% and the proportion of people who have adopted the new methods of consumption and view outside the home is likely to increase from 6% to 15%. This last category cannot be measured using the present audience measuring equipment and it will be all the more important for this to be done with new tools as the significance of this category increases among the 16-34 year olds (10% in 2008, 26% in 2018).

Graphic 73 : **Forms of viewing by the 16-34 age group in the United Kingdom (2008-2018)**



Source: BARB – January 2009.

7.3. THE ROLLOUT OF NEW SPECIFIC TOOLS FOR THE NEW PLATFORMS AND USAGES

Parallel to the rise in the number of studies on consumer behaviour at a time when distribution is taking place on various platforms, we are witnessing the expansion in the use of more specific tools aimed at identifying the audience who employ a particular method of reception.

Our concern here will not be to draw up a complete overview of the solutions adopted but to describe some of the more important systems, most of them specific to the characteristics of the equipment of the households in which they have been installed. Our focus will be on the type of measurement relating to on-demand audiovisual services or time-shifted consumption.

7.3.1. Measuring time-shifted audiences

Measuring the consumption of time-shifted audiences is not specific to the rise in the number of on-demand services. In fact, it goes back to the time when television programmes began to be watched on video cassettes and then on digital video recorders (PVRs).

In the United Kingdom, BARB has been measuring time-shifted audiences since 1991. The data on the time-shifted audience (on the basis of a gap of no more than 7 days after a programme has been aired) are consolidated in the TV audience data. In 2006, the incorporation of data on the audience of the Sky+ DTR (digital television recorder) was introduced on the same basis. Since 2006, an investment of half a million pounds by AGB Nielsen Media Research (the company that carries out the audience measurement for BARB) has enabled data to be included on other DTRs, which has in turn made it possible to include the wide variety of devices connected to a television set – an important factor in the United Kingdom, where, according to Ofcom, 9 million households had a digital video recorder or PVR at the end of March 2009.

7.3.2. Measuring audiences in the case of on-demand services on digital cable networks

The measurement of audiences in the case of on-demand services on networks also used for the transmission or retransmission of television channels (IPTV, cable, digital terrestrial television, mobile telephones) is part of the more general problem of taking account of these new methods of distribution and (in the case of IPTV, cable and DTT) of the ability to carry out the measurement at the level of peripheral set-top boxes.

Drawing on their experience with peripheral recording devices (DTRs), BARB and AGB Nielsen Media Research were able to announce in December 2008 the launch of a new service that enables catch-up TV audiences to be measured on digital cable networks.[877] The consumption of catch-up TV on these networks is incorporated into the BARB reports if the item viewed is programme that has been broadcast. This is made possible by the

[877] "BARB Takes Steps Forward in Reporting On-Demand Content via Digital Cable", BARB press release, 16 December 2008, http://www.barb.co.uk/news/item/id/186/?source=primary

introduction of UNITAM audience metering systems by AGB Nielsen Media Research.[878] Only those audiences that view a programme broadcast in the preceding seven days as part of a channel's schedule are taken into account. In December 2008, 55% of the households belonging to the BARB panel were already equipped with a UNITAM meter and it was announced that additional meters would gradually be installed in the coming months.

7.3.3. Measuring audiences in the case of on-demand services on broadband networks as part of IPTV offerings

In France, which is the European country with the most subscriptions to services provided by IPTV operators, some companies, especially Free, provide real-time figures on the traffic on the channels they offer but do not include on-demand services. Médiamétrie, the incumbent audience measurement player in France, has gradually approached the IPTV operators in order to produce a solution that would enable data to be provided on the viewing habits of the subscribers to one or other of the various services available. In March 2009, it launched a new service in partnership with the company Jungo to monitor in real time the behaviour of Internet users through their ADSL box. The solution is based on Jungo's OpenRG and HomeSense software and should enable Médiamétrie to collect data on the entire digital traffic flow being carried on all the household devices linked to the set-top box: Internet navigation, network games, IP telephony and broadband television. The data gathered come from a broad-based panel of users of the boxes installed. Médiamétrie correlates and analyses these data and thus provides a precise and structured measurement of the use of the media linked to the box and in a form that can be used by the access providers and operators. This development is an important step towards the optimum analysis of the behaviour and preferences of digital households – to enable the Internet access providers to adapt their content offerings and services to each subscriber's preferences and offer advertisers new advertising formats to appeal to consumers. According to Laurent Battais, Médiamétrie's Director of Performance and Cross Media, "the technology developed by Jungo is particularly innovative and relevant as it is located at the crossroads between the network and the household. It permits a more detailed measurement of the habits and tastes in the digital home".[879]

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[878] The UNITAM data metering system enables the audience using the various set-top boxes connected to a television set to be measured but its capacity has also been extended to gathering data on mobile telephone audiences. On UNITAM, see http://www.unitam.tv and http://www.agbnielsen.net/products/unitam.asp

[879] "Médiamétrie et Jungo proposent la mesure du foyer numérique à travers ses usages 'triple play'", Médiamétrie press release, 16 March 2009, http://www.mediametrie.fr/comportements/communiques/mediametrie-et-jungo-proposent-la-mesure-du-foyer-numerique-a-travers-ses-usages-triple-play.php?id=44.

7.4. MEASURING INTERNET AUDIENCES, ESPECIALLY IN CONNECTION WITH ON-DEMAND SERVICES (VOD AND INTERNET CATCH-UP TELEVISION, INTERNET VIDEO SHARING)

The problem of measuring Internet audiences has taken on a considerable significance in the last few years and involves various types of measure.

The *comparative measurement of the traffic on the various websites* seeks to identify the most popular sites and determine the market shares of the various services or groups of providers (or domains).

The *comparative measurement of the audience who use a particular website* is aimed at obtaining a better knowledge of a site's specific characteristics (demographic details of its visitors, consumption habits, etc).

The *measurement of audiences who watch videos available at the various websites* (video metrics) is a booming discipline that specialises in analysing websites that offer video, especially the video sharing sites such as YouTube.

The *measurement of audiences who access websites on mobile telephones* is also a booming discipline and has been made necessary by the growing importance of Internet consumption and, to a lesser extent, of television channels watched on mobiles and PDAs.

7.4.1. *Internet audience measurement: the point of view of the Internet Advertising Bureau*[880]

A. Why measure the Internet audience?

Measuring Internet audiences meets several very precise needs.

Needs associated with the management of the website
The audience data make it possible to describe and/or quantify the traffic on a website and to identify not only where the main audiences are but also the low traffic areas and, as a consequence, adjust the editorial policy.

Commercial needs
Skilled audience measurement makes it possible to assess the Internet user population reached at a website on the basis of visitor numbers and profiles.
The Internet audience figures are a decision-making tool for advertisers, who in the context of their online campaign, select the sites with the audience criteria that best correspond to their communication objectives.

B. How can an Internet audience be measured?

The Internet is a rapidly expanding environment with an exponential penetration rate among the general public. It is a specific medium: it is interactive and electronic, which means that navigating the web leaves traces behind.

It is also a medium where technology is evolving all the time, both with regard to advertising forms and editorial content. Finally, it is a medium with an extremely fragmented offering (an infinite number of websites).

Given these particular features, audience measurement not only seeks to establish figures (measurement of the website traffic) but also to describe the audience. It therefore leads to two different approaches: measuring the number of visits to sites and assessing the behaviour of Internet users.

Two complementary methodologies have accordingly been established to handle these two approaches:

- the *site-centric* method, which measures the website traffic, and
- the *user-centric* method, which makes it possible to describe the website audiences.

For the record, mention might also be made here of the *network-centric* approach, which enables the two methods to be employed via the browser. However, this is strongly criticised in the United States on privacy grounds because the technology is very powerful and extremely precise in its ability to track web users (NebuAd, Google Chrome).

B.1 Measurement of website traffic (the site-centric approach)

<u>Site-centric</u>

All the devices connected to the Internet in the world are measured directly by site-centric tools:

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880 Fact sheets of IAB France, La mesure d'audience sur Internet, http://www.iabfrance.com/?go=edito&eid=17

Operation of the technologies by means of a tag (E-stat, Xiti, Weborama, Omniture, WebTrends, internal software, etc)

1. Each page of a website is marked by a tag.
2. The site-centric measurement tool gathers the information transmitted thanks to the tag and the cookie. The cookie is installed automatically on equipment connected to the Internet on the first visit to the site.
3. As each cookie is different from one device connected to the Internet to another, it enables these pieces of equipment and, therefore, the web navigators to be distinguished from one another.

Operation of the technologies without a tag (1024 Degrés):

1. A dedicated intelligent agent is placed on each site.
2. The site-centric measurement and analysis tool gathers all the information transmitted (i.e., not only statistical data) thanks to the intelligent agent, which identifies the devices connected to the Internet on the first visit to the site.
3. As the identification differs from one device connected to the Internet to another, it enables these devices – and therefore web navigators – to be distinguished from each other, since the different behaviour of each user is shown by their navigation of the web.
4. Full details of the visitors, their profiles and their behaviour can be automatically transmitted to the company's CRM/eMarketing database.

What does this measure? An audience via the pages downloaded.
What does this measurement take into account? All the Internet devices connected to the website(s) as well as all the users of these devices for the technology based on the intelligent agent.
Methodology employed: Counting of connections to a website using tags present on the pages of the site, and identification and monitoring of individual users for the technology based on the intelligent agent.
How is the user identified? By cookies or perhaps by means of the IP/User Agent combination and by a unique identifier allocated by the intelligent agent coupled with dynamic pivots for the technology based on the intelligent agent.
Scope:
All places connected (France, abroad, universities, cybercafés, etc)
All pages with and without advertising.
Data made available: in real time (day by day, refreshed every 30 seconds for the technology based on the intelligent agent).

The site-centric method measures all the connections to the website: global audience.
It also precisely measures the number of pages viewed, as well as the number of visitors for the technology based on the intelligent agent.

The limits to the site-centric method

The site-centric method does not enable the audience to be identified: with the exception of the technology based on the intelligent agent, which distinguishes between one visitor and another and thus counts the number of unique visitors, it does not make it possible to establish who is behind the device connected to the Internet. A second, user-centric approach accordingly complements the site-centric method and enables the nature of the audience to be determined.

B.2. Audience measurement (the user-centric approach)

User-centric

The user-centric method is based on the panel principle. The panel's surfing activities are measured and a parallel outline survey is carried out in order to extrapolate their surfing activities to the Internet population studied.

Operating principles

1. The panellists (who must be representative of the Internet user population) are recruited by telephone or online.
2. Metering software is installed and/or downloaded onto the PCs included in the panels (Home & Work).
3. Panellists then identify themselves individually (each with their own login) or via algorithm recognition when the connection is made to the PC.
4. The data transmission (surfing data) then takes place via the meter installed on the PC.

What does this measure? An audience via le panel.
What does this measurement take into account? The surfing activities of the panellists taking part in the study.
Methodology employed: monitoring of the Internet consumption of a panel of individuals who are representative of the population with Internet access.
How are the users identified? They are identified personally each time they use the web via their login and/or by an identification algorithm.
Scope:
Home and/or workplace or all places with a web connection.
All the pages viewed or only those with advertising.
Data made available: the data are gathered every month by extrapolation.

There are currently two separate panel research companies in France, each with its own approach:
- comScore: the recruitment of panellists online with recognition of the panellists by algorithm.
- Nielsen NetRatings: the recruitment of panellists by telephone and/or online with individual recognition or by algorithm.

Since April 2008, Médiamétrie has been reconciling the user-centric database (Nielsen NetRatings panel) and the site-centric database (e-stat and other site-centric tools).

C. Audience indicators and ratios

Indicators

USER-CENTRIC

- **The Internet population:** population with Internet access
- **Unique visitors (UVs)**: number of different individuals who have visited part of a website, a website, a series of websites, the Internet in general or using an application during a given month.
- **Unique visitors per day:** average number of individuals who have visited in the course of a day part of a website, a series of websites, the Internet in general or using an application during a given month.
- **Duplication of unique visitors:** number of visitors common to several web sites during a given month.
- **Time spent:** the total number of minutes spent by visitors on part of a website, a website, a series of websites, the Internet in general or using an application during a given month.
- **Time spent per unique visitor:** average number of minutes spent by the visitor at part of a website, a website, a series of websites, the Internet in general or using an application during a given month.
- **Visit:** Viewing of at least one page of a website during a given month. If no new web pages are viewed from the same device connected in a period exceeding 30 minutes, this is usually considered the end of the visit.

SITE-CENTRIC

Only via the intelligent agent

- Unique visitors (UVs).
- Unique visitors per day.
- Duplication of unique visitors.
- Centres of interest with regard to the direct reading of content, by product, brand or universe.
- Time spent.
- Time spent per unique visitor.
- Complete details of the visit path and any action taken.

Via the tag technologies

- Web user: the individual who views one or more pages of a website is first and foremost identified by a cookie, and when this is not possible the IP/User Agent combination is used.
- Cookie: a text file placed on the browser’s hard disk during a visit by the website server or a third party authorised by the site.
- IP/User Agent combination: the IP is the server’s address and the user agent is the type and version of a browser (Internet Explorer, Firefox, etc).
- Number of pages viewed: a page viewed is one that has been downloaded in its entirety onto part of a website, a website, a series of websites or the Internet generally during a given month.

NB: An estimate of the pages viewed is also available with user-centric tools.

Ratios:

- Coverage (or penetration): out of a given Internet user target group, this is the percentage of that group reached by my site.
- Affinity: this is the percentage of the target group who have a strong liking for my site out of its total audience. The affinity can be calculated on the basis of unique visitors, pages viewed, minutes spent (...) as long as the data remain available.

7.4.2. Initiatives for setting out the methodological frameworks and the credibility of the Internet audience measurement

The fast growth of the Internet throughout the world has led to the rapid development of various audience measurement initiatives, which have in turn quickly led to arguments about the methodologies employed and the reliability of the results, which is crucial for advertisers. Various initiatives have emerged with the aim of creating a transparent environment regarding the methodologies and assessing the quality of the results obtained.

7.4.2.1. The IAB's role

In the United States, the Internet Advertising Bureau (IAB), which is concerned to ensure the credibility of the Internet as an advertising medium, is playing a role in this debate.

In 2007, the competition on the measurement of audiences of video sharing sites turned into a conflict between comScore and Nielsen NetRatings. The results published by the two institutes differed so much from one another that the advertising world cast doubt on the quality of the two services. The IAB intervened and asked for an audit of the services.[881] At a summit organised by the IAB, the two companies provided details of their respective methodologies and undertook to ensure more transparency. The participants agreed on the principle of "convergent validity", which recognises that the combination of different data drawn up in a correct manner using separate methodologies can contribute to strengthening the credibility of measurements and, therefore, to the development of the online advertising market.[882] The two companies finally agreed to an audit.[883] In November 2007 and then in December 2008, the IAB organised the IAB Audience Measurement Leadership Forum, which brought together the main players in the fields of audience and online media measurement.[884]

The IAB also operates in Europe through its IAB Europe European office[885] and 23 national offices. It represents around 4,500 members and publishes statistical data on online advertising.[886] In November 2008, it launched together with the European Interactive Advertising Association (EIAA) the Measurement of Interactive Audience (MIA) project, the aim of which is to gain a better understanding of practises and needs with regard to measuring the Internet audience in Europe and ensure the greater credibility of Internet advertising services. The project should result in the development of European audience measurement standards.[887]

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881 "The Interactive Advertising Bureau Challenges comScore and Nielsen//NetRatings in Open Letter", IAB press release, 20 April 2007, http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/5140

882 "IAB Hosts Historic Summit on Interactive Audience Measurement", IAB press release, 22 May 2007, http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/5160

883 "IAB Applauds comScore as Audience Measurement Firm Enters Audit Process », IAB press release, 27 September 2007, http://www.iab.net/insights_research/530468/iab_news/iab_news_article/18142 ; comScore press release, 28 September 2007, http://www.comscore.com/Press_Events/Press_Releases/2007/node_1285/MRC_Audit

884 http://www.iab.net/events_training/audience/overview. R. Rauthenberg, CEO de l'IAB, "Interactive Audience Research & The Quest for Truth", 29 November 2007, http://www.iab.net/iablog/2007/11/interactive-audience-research.html

885 http://www.iabeurope.eu/

886 "IAB Europe releases its online advertising expenditure research 2008", IAB press release, 10 June 2009, http://www.iabeurope.eu/news/iab-europe-releases-its-online-advertising-expenditure-research-2008.aspx

887 The MIA (Measurement of Interactive Audience) Project, http://www.iabeurope.eu/research-and-benchmarking/mia---the-measurement-of-Internet-audiences-project.aspx
See also the MIA website, http://www.miaproject.org/

The MIA's first achievement was the production of a dictionary that enables the terms used by the different audience measurement companies to be compared. It compares the definitions employed by nine of the main specialised companies in Europe.[888]

The results of the first study were published in May 2009[889] and a new electronic survey was conducted in mid-2009.[890] Nearly 800 executives completed the first survey, and only 29% were satisfied with the measurement methods available, with just 23% satisfied with the consistency of the results. 63% of the respondents thought the lack of consistency from one country to another and one region of the world to another was a major problem. Only 23% were of the opinion that the present quality of the data met acceptable professional standards. 85% of the respondents believed it was important for the measurement system to be independently verified, with just under a third (31%) thinking that this actually occurs.

Some national members of IAB Europe are trying to set up their own measurement system and establish it as the benchmark. This is the case in the United Kingdom, where the IAB has set up the company UKOM in partnership with the Association of Online Publishers. The IPA and Microsoft could rejoin this initiative, the three-year funding of which is said to cost £15 million.[891] The service should be launched in 2010.[892]

7.4.2.2. The certification bodies

Some certification bodies specialising in the auditing of press circulation have begun to show an interest in measuring Internet audiences. The International Federation of Audit Bureaux of Circulation has established a number of standards for the certification of Internet audience measurement tools.[893]

In Europe, several certification bodies are already involved, to varying degrees, in Internet audience measurement certification and, indeed, the publication of data. This is the case in particular:

- in the United Kingdom, where ABC has set up the ABC Electronic section to certify the measurement of digital media audiences;[894]
- in France, where OJD has set up OJD Internet: the Bureau Internet Multimédia certifies website traffic employing as criteria the number of visits and unique visits. In advance of its certification, a website will have installed audience measurement software with the OJD seal of approval that will enable it to produce a daily traffic statement (DTS).[895] In mid-2009, 11 measurement tools had been approved. At its

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888 MIA, Directory of Audience Measurement Terms by Supplier, IAB / EIAA, July 2008, http://www.miaproject.org/images/stories/files/miaprojectdirectorydefinitions1iii.pdf

889 MIA press release, 15 May 2009, http://www.miaproject.org/index.php?option=com_content&view=article&id=50:mia-project-publishes-initial-results-from-first-global-interactive-audience-measurement-survey-&catid=1:latest-news&Itemid=2

890 http://www.redshiftresearch.co.uk/MIA

891 "JICIMS relaunches as UKOM to move forward with industry-approved online planning system*",* IAB UK press release, 9 December 2008, http://www.iabuk.net/en/1/pressreleasejicimsrelaunchesasukomtomoveforwardwithindustryapprovedonlineplanningsystem.html

"Boost for online currency body UKOM", *Mediaweek*,16 June 2009, http://www.mediaweek.co.uk/news/913513/Boost-online-currency-body-UKOM/

892 "UKOM in final stages of consultation", IAB UK press release, 19 May 2009, http://www.iabuk.net/en/1/ukominfinalstagesofconsultation290509.mxs

893 http://www.auditbureau.org.au/ifabctest/pages/webmeasurement/webmeasurement.html

894 http://www.abce.org.uk

895 http://www.ojd.com/engine/bureaux/bur_bim.php

meeting on 22 April, OJD's Internet Committee decided, in the context of a project approved by the association's Executive Committee, to publish as soon as possible the result of its monitoring of visits to its members' sites, broken down according to "Traffic France" and "Traffic Abroad". This new indicator, which has been particularly requested by all the market players, will be provided as a percentage in OJD's monthly press release and as an absolute value in its Internet reports, which are also published on a monthly basis;

- in Germany: the Association for Determining the Reach of Advertising Media (Informationsgemeinschaft zur Feststellung der Verbreitung von Werbeträgern, or IVW)[896] provides a database that certifies the traffic of the main German websites, including a number that offer on-demand audiovisual services;[897]
- in Belgium, CIM[898] has decided to launch the MetriWeb website traffic measurement tool.[899] This is site-centric and the aim is to provide objective and independent data on the number of visitors/visits and page requests. MetriWeb does not enable the visitors to a site to be profiled. MetriProfil[900] is CIM's tactical Internet study, which is designed to fill this gap. It establishes a bridge between MetriWeb's anonymous surfers and the flesh-and-blood individuals they embody. In concrete terms, MetriProfil seeks to regularly question a sample of MetriWeb visitors online about their Internet devices, their surfing behaviour and their socio-demographic characteristics. As both the socio-demographic composition of the sample and their surfing behaviour are known (MetriWeb), the profile of each of the sites measured can be determined subject to sufficient observations being available in MetriProfil;
- in Spain: INTROL[901] publishes certified data on website traffic (OJDinteractiva service);[902]
- in Romania, the validation body BRAT has published data on Romanian website audiences since October 2007.[903]

7.4.2.3. Forums

Various international forums are devoted to the quality of Internet audience measurement:

- i-Com (International Conference on Online Measurement)[904] has a site with a wealth of information on methodology, self-regulation, etc and organises an annual international conference;[905]
- The Advertising Research Foundation publishes studies and organised the Audience Measurement 4.0 conference in New York (23-24 June 2009).[906]

It is also possible to find various expert reports on the Internet on methodological issues

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896 http://www.ivwonline.de

897 http://www.ivwonline.de/ausweisung2/suchen2.php

898 http://www.cim.be/base/fr/m/mi.html

899 http://www.cim.be/mtwb/fr/a/index.html

900 http://www.cim.be/mtpr/fr/a/index.html

901 http://www.introl.es

902 http://www.ojdinteractiva.es/

903 http://www.sati.ro/index.php?page=rezultate_site#nespecificat

904 http://www.I-com.org

905 The 3rd I-COM Global Summit On Online Media Measurement conference will take place in Lisbon from 10 February to 1 March 2010.

906 http://www.thearf.org/assets/am-09

relating to Internet audience measurement.[907]

7.4.3. The Internet audience measurement players

Most of the players involved in measuring the audiences of Internet services are of two types:

- players whose origins lie in measuring the traditional media (press circulation certification organisations, television audience measuring companies). Some of the organisations that mainly specialised in radio and television audience measurement (Nielsen, Médiamétrie, TNS, etc) saw the need to diversify into the new media. As far as press circulation certification bodies are concerned, it was mainly the fact that press publishers had also become website publishers that, in some countries, led them to turn their interest to Internet audience measurement;
- players specialising in Internet audience measurement. Most of these are newcomers on the audience measurement market. It should be pointed out that the measurement of all categories of website audiences has recently been complemented by the measurement of Internet video audiences, which has become a new discipline known as video metrics. Some companies from the world of Internet audience measurement have specialised in online video audiences.

Finally, some operators of Internet services, especially Google, are developing their own audience measurement services in order to provide their customers or advertisers with detailed data on their audiences.

7.4.3.1. International measurement services

Some of these services measure the audience of sites in general at the global level:

- Alexa[908] is a tool that enables a comparative measurement to be made of global website traffic. The system is based on detecting traffic by a toolbar installed by a large number of surfers. Owing to its ease of access and the fact that it is free of charge, it has become the most frequently used reference but its methodology is subject to certain limits (see 7.4.3.2);
- Compete.com[909] measures the Internet audience on the basis of information provided by the Internet service providers, "opt-in panels", applications providers and toolbar users (Compete Toolbar);
- Quantcast[910] is a tool that also makes it possible to rank the traffic on a site but is based on the insertion by the site operator of an HTML code that enables statistics to be drawn up. Since it presupposes the site operator's co-operation, it is less universal than Alexa. Quantcast has reached agreements with the Disney/ABC group. YouTube and MySpace are not the subject of internal measurements but Hulu and Dailymotion are.

The activities of these players have led to the emergence of measurement indicators specific to the Internet (unique visitors, pages viewed, etc), thus enabling an initial international comparison to be produced.

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[907] See in particular: E.T. Peterson and M. Berger, "Measuring Multimedia Content in a Web 2.0 World", Nedstat, February 2008. http://www.nedstat.nl/uk/publications/measuring_multimedia_content.pdf

[908] http://www.alexa.com

[909] http://www.compete.com/

[910] http://www.quantcast.com/

7.4.3.2. *The Alexa website traffic ranking system*

Alexa is a service offered by Alexa Inc., a subsidiary of Amazon Inc. Traffic Rank ranks all the world's websites on the basis of an analysis of the use by millions of users of the Alexa Toolbar and other traffic data sources. Alexa provides encrypted data for the sites ranked among the top 25 million in the last three months. The Alexa ranking is produced from a mixture of the number of unique visitors and the number of pages viewed by each visitor. As a first step, Alexa compiles figures on a daily basis for the number of users and the number of pages viewed at each site on the web. The ranking is based on a value derived from these two sets of figures weighted on a period of three months.

All the extensions of an Internet address are taken into account and counted for the same site. For example, for a site with the address coe.int all the visitors to obs.coe.int or http://www.coe.int/t/dg4/eurimages are added together and counted as the same site, that is to say coe.int. If a site possesses different extensions, such as .com, .fr or .org, or has different addresses that all lead to a single site with identical content, its visitors are added together and counted for the same site.

The *reach* is the figure for the number of users and is expressed as a percentage of all the Internet users who have visited a given site. For example, if a site like youtube.com has a *yesterday reach* of 19.3%, this means that 19.3% of all the global users measured by Alexa visited youtube.com or sites of the YouTube family on the previous day. Alexa provides daily, weekly, and monthly *reaches* over a two-month period. The *three months change* is determined by comparing the current *reach* with that of three months before.

Page views measure the number of pages viewed by site visitors. Multiple page views of the same page made by the same user on the same day are counted only once. The page views per user numbers are the average numbers of unique pages viewed per user per day by the visitors to the site. The three-month change is determined by comparing a site's current page view numbers with those from three months ago.

According to the explanations provided by Alexa, Alexa's ranking methodology corrects for a large number of potential biases and calculates the ranks accordingly. Corrections are mainly made on the basis of the visitors' geographical location and demographic distribution. An improvement was made in April 2008 concerning the bias brought about by the fact that Alexa had until then taken its data from the users of its toolbar for Internet Explorer and from integrated sidebars in Mozilla and Netscape. This tended to overestimate the weight in the population measured of webmasters who were more inclined to install the Alexa toolbar. A bias may also come from the fact that anti-virus detectors such as Symantec and McAfee classify the Alexa toolbar as spyware, which may cause users to remove it from their computer. McAfee even regards it as adware that is potentially dangerous for the computer.
In addition to its own extension (the Sparky status bar made available in July 2007), there are other extensions that exploit the Alexa data, including:

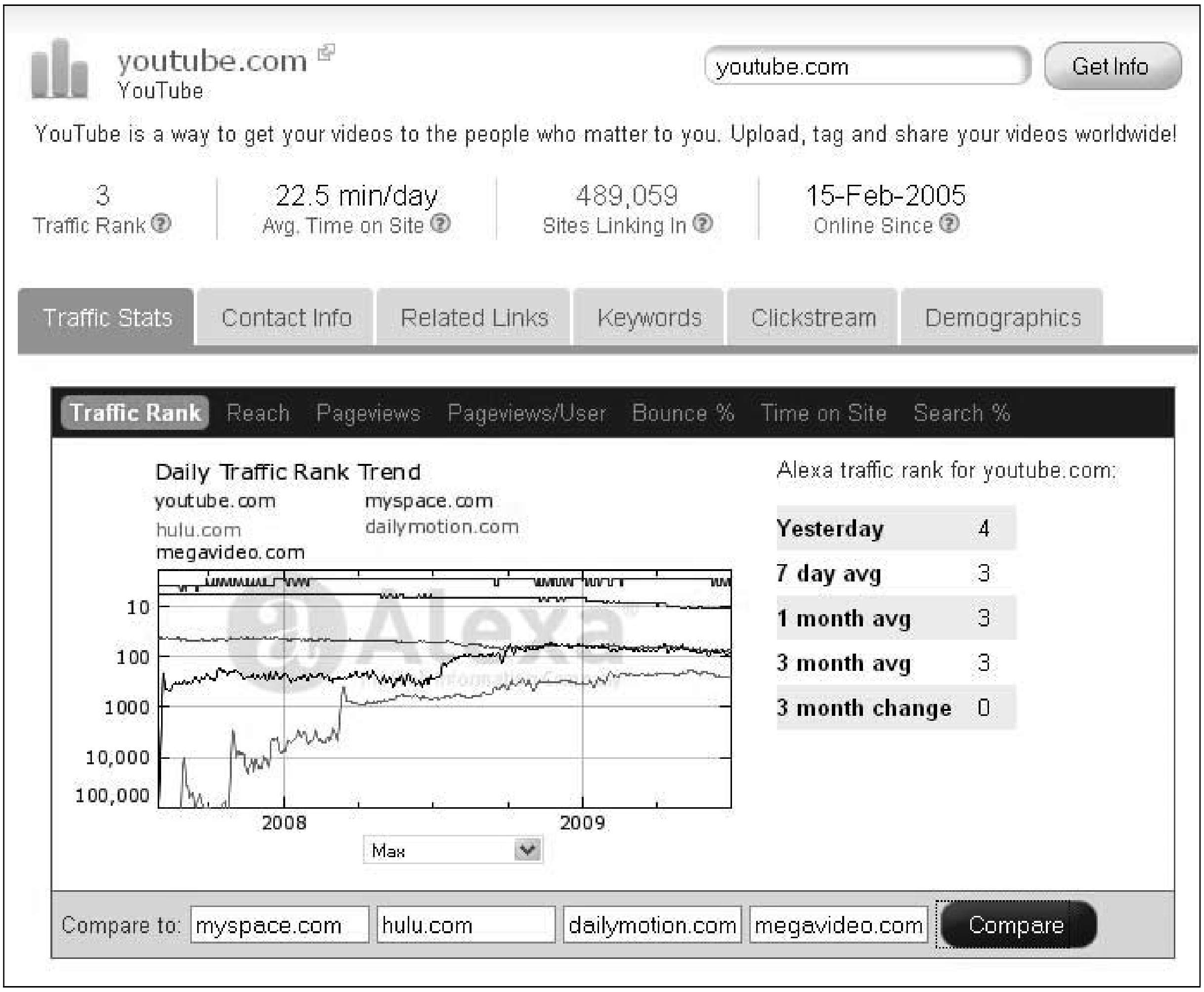
- SearchStatus, which shows Google's PageRank and Alexa TrafficRank,
- the About This Site Firefox plug-in, which shows metadata from Alexa TrafficRank.

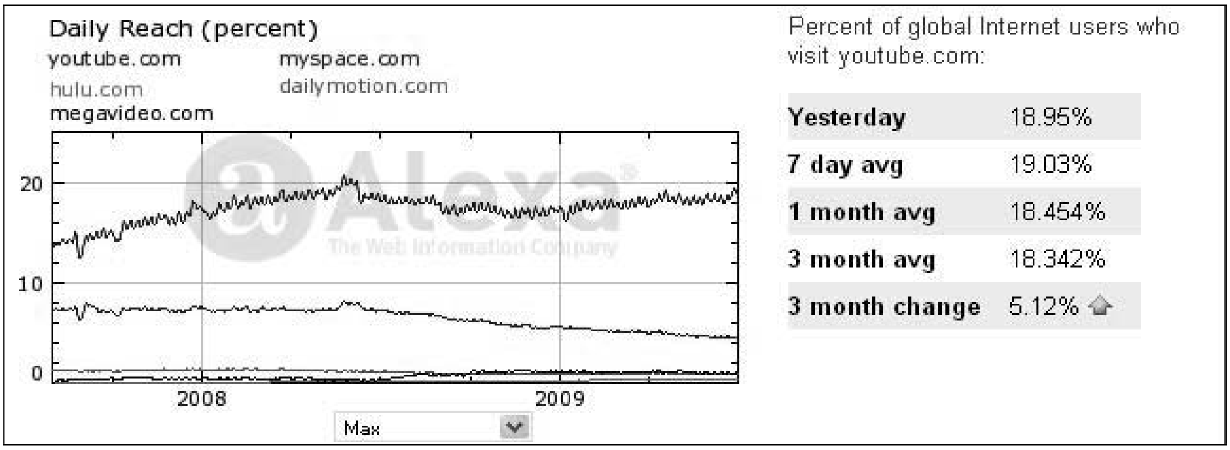
In April 2008, Alexa introduced a new method of calculating its TrafficRank. The data sources were increased in order to provide a refined indication of a site's popularity. The Alexa ranking is thus no longer only produced on the basis of data recorded using the Alexa toolbar. This new ranking method should make it possible to reduce a number of errors.

Despite the reservations resulting from the methodology, Alexa has become a tool frequently used as a reference in the Internet world.

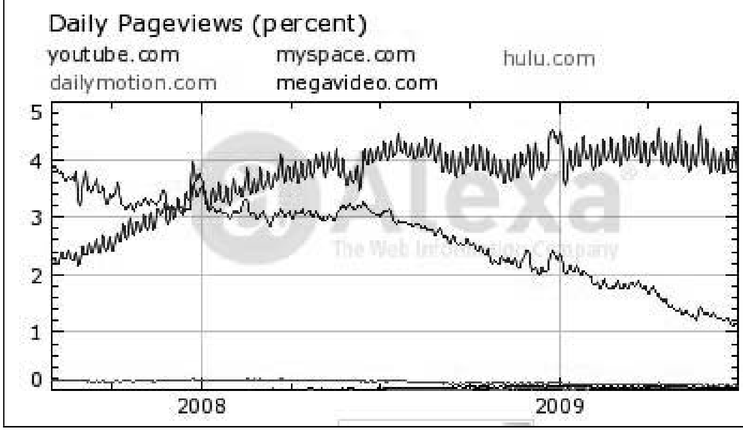
Sources:
- "About the Alexa Traffic Rankings", http://alexa.com/help/traffic_learn_more
- Articles on Alexa at Wikipedia.com and Wikipedia.fr, consulted on 4 July 2009., http://en.wikipedia.org/wiki/Alexa_Internet ; http://fr.wikipedia.org/wiki/Alexa_Internet
- "Alexa Ranking: Does it matter?", *Markt8t.com*, 31 August 2008
- http://www.mark8t.com/2008/08/31/alexa-ranking-does-it-matter-to-increase-your-rank/

Graphic 74 : Information provided by Alexa on youtube.com, myspace.com, hulu.com, dailymotion.com and megavideo.com (4 July 2009)



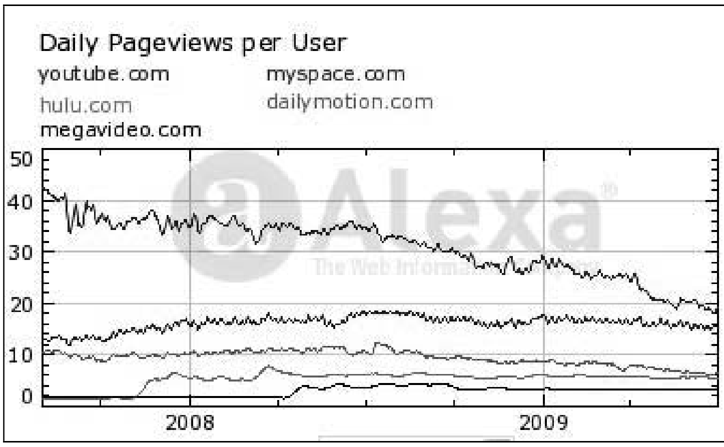


Source: Alexa



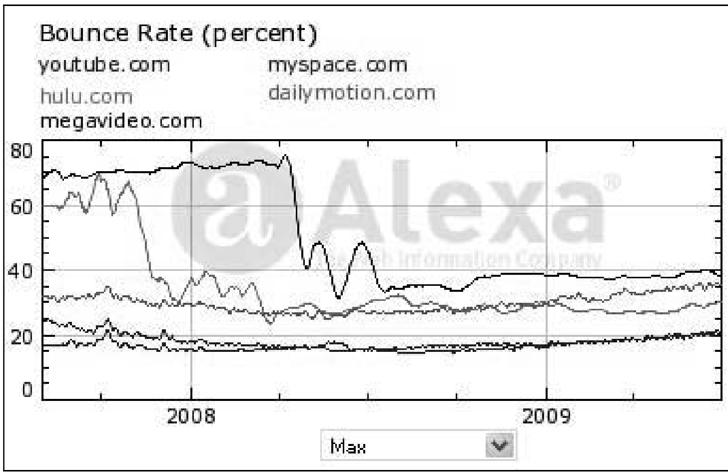
Percent of global pageviews on youtube.com:

Yesterday	3.875%
7 day avg	4.008%
1 month avg	3.9162%
3 month avg	4.054%
3 month change	-0.037%



Daily pageviews per user for youtube.com:

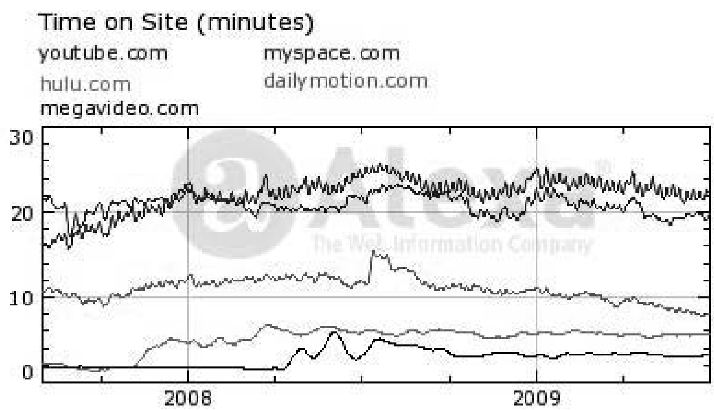
Yesterday	15.62
7 day avg	15.5
1 month avg	15.4
3 month avg	15.91
3 month change	-4.9%



The percentage of visits to youtube.com that consist of a single page turn:

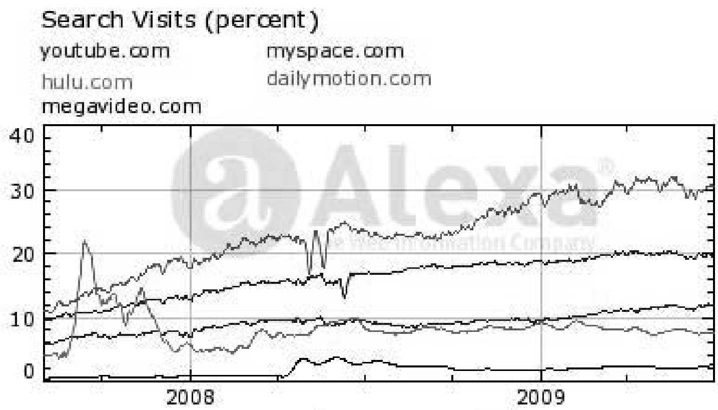
Yesterday	19.2%
7 day avg	20.3%
1 month avg	20.2%
3 month avg	19.4%
3 month change	9%

Source: Alexa



Daily time on site for youtube.com:

Yesterday	22.7
7 day avg	22.2
1 month avg	21.8
3 month avg	22.5
3 month change	-4%

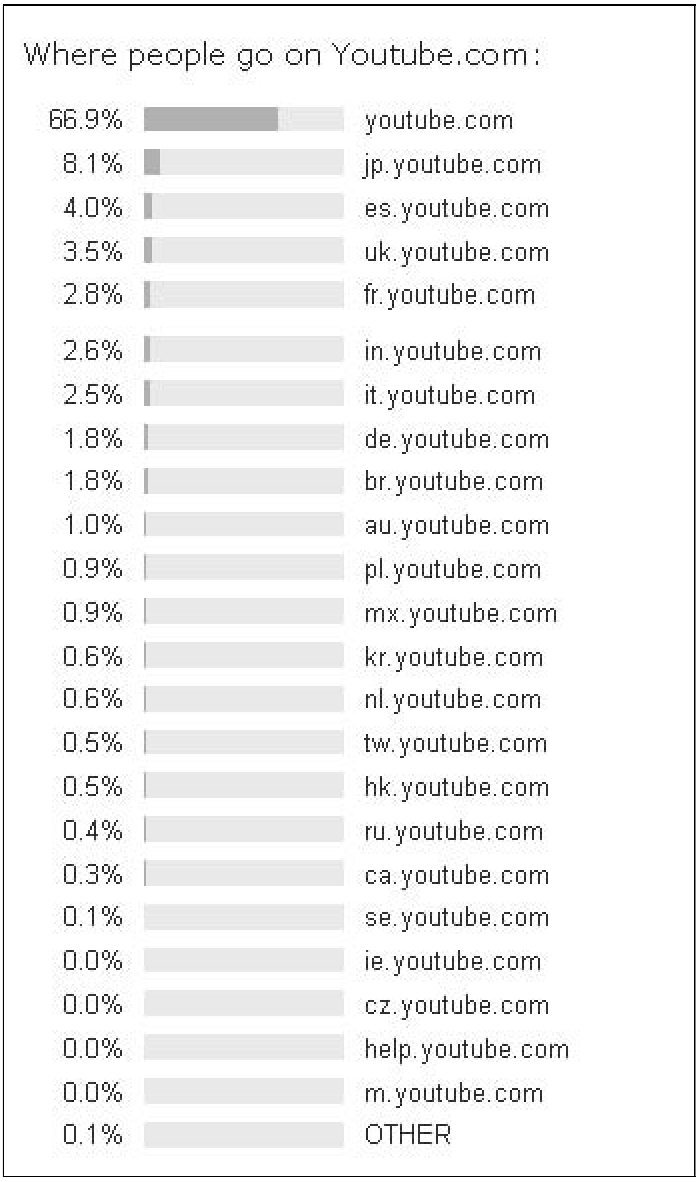


The percentage of visits to youtube.com that came from a search engine:

Yesterday	18.6%
7 day avg	19.6%
1 month avg	19.5%
3 month avg	19.8%
3 month change	3%

Source: Alexa

Table 44 : Breakdown of the YouTube audience between the various sites of the domain (4 July 2009)



Source: Alexa

Table 45 : Breakdown of YouTube visitors according to their origin (4 July 2009)

Youtube.com users come from these countries:

22.8%	United States
7.6%	Japan
4.9%	Germany
4.1%	India
3.9%	Mexico
3.8%	Italy
3.8%	France
3.7%	Brazil
3.7%	United Kingdom
2.6%	Spain
2.3%	Canada
1.4%	Russia
1.4%	Saudi Arabia
1.3%	Netherlands
1.3%	Australia
1.3%	Poland
1.1%	Pakistan
1.1%	Argentina
1.1%	Indonesia
1.0%	Turkey
0.9%	South Korea
0.9%	Greece
0.9%	Thailand
0.8%	Colombia
0.8%	Sweden
0.8%	Egypt
0.8%	Peru
0.8%	Venezuela
0.7%	Iran
0.7%	Belgium

Source: Alexa

Country	Service name	Catalogue publisher	Distributors (Cable, IPTV, DTT, satellite platform) or website operator	Network	Accessibility	Service type	Economic model
FR	France tvod	France Télévisions	France Télévisions	Internet	Ouvert / national	VoD locative / VoD définitive / Télévision de rattrapage	Péage à l'unité
FR	M6 Vidéo [1]	M6 Web (M6 Group)	M6 Web (M6 Group)	Internet	Ouvert / National	VoD locative	Péage à l'unité
FR	M6 Vidéo sur IPTV (Alice, Free, SFR Neufbox)	M6 Web (M6 Group)	Telecom Italia France, Free, SFR	IPTV	Abonnés IPTV / National	VoD locative	Péage à l'unité
FR	Shorts TV VoD (Dartybox)	Shorts TV	Etablissements Darty	IPTV	Abonnés IPTV / National	VoD locative	Péage à l'unité
FR	Shorts TV VoD (Numéricable)	Shorts TV	Numéricable S.A.	Cable/Fibre optic	Abonnés câble / National	VoD locative	Péage à l'unité
FR	TF1 Vision	TF1 Vidéo (TF1 Group)	TF1 VoD (TF1 Group)	Internet	Ouvert / national	VoD locative / VoD définitive	Péage à l'unité
FR	TF1 Vision (Bbox, Dartybox, Free, SFR Neufbox)	TF1 Vidéo (TF1 Group)	Bouygues Telecom, Etablissements Darty, Free, SFR	IPTV	Abonnés IPTV / National	VoD locative	Péage à l'unité
FR	TF1 Vision (Numéricable)	TF1 Vidéo (TF1 Group)	Numéricable S.A.	Cable/Fibre optic	Abonnés câble / National	VoD locative	Péage à l'unité
FR	tvodlab	Panorama (AB Group)	Panorama (AB Group)	Internet	Ouvert / national	VoD locative	Péage à l'unité
GB	4oD	4 Ventures Limited / Channel Four Television Corporation	4 Ventures Limited / Channel Four Television Corporation	Internet	Ouvert / plusieurs territoires	VoD locative / Télévision de rattrapage	Péage à l'unité / Gratuit
GB	Demand Five (formerly Five Download)	Channel 5 Broadcasting	Channel 5 Broadcasting	Internet	Lecteur propriétaire / National	VoD locative / VoD définitive / Télévision de rattrapage	Péage à l'unité / Gratuit
IE	4oD	4 Ventures Limited / Channel Four Television Corporation	4 Ventures Limited / Channel Four Television Corporation	Internet	Ouvert / plusieurs territoires	VoD locative / Télévision de rattrapage	Péage à l'unité / Gratuit
IT	Rivideo	R.T.I. S.P.A. (Mediaset Group)	RTI S.P.A. (Mediaset Group)	Internet	Ouvert / national	VoD locative	Péage à l'unité
NO	C More on Demand (NextGenTel)	C More Entertainment AB	NextGenTel	IPTV	Abonnés IPTV / National	VoD locative	Péage à l'unité
NO	Canal+ WebTV	C More Entertainment AB	C MORE Entertainment AB	Internet	Ouvert / plusieurs territoires	VoD locative	Péage à l'unité
NO	Silver on Demand	NonStop AB	Bonver Entertainment Group AB	Internet	Ouvert / national	VoD locative	Péage à l'unité
SE	C More on Demand (Canal Digital)	C More Entertainment AB	Canal Digital AB	IPTV	Abonnés IPTV / National	VoD locative	Péage à l'unité
SE	C More Web TV	C More Entertainment AB	C More Entertainment AB	Internet	Ouvert / national	VoD locative	Péage à l'unité
SE	Silver on Demand	NonStop AB / Film2Home (Bonver Entertainment)	NonStop AB / Film2Home (Bonver Entertainment)	Internet	Ouvert / national	VoD locative	Péage à l'unité

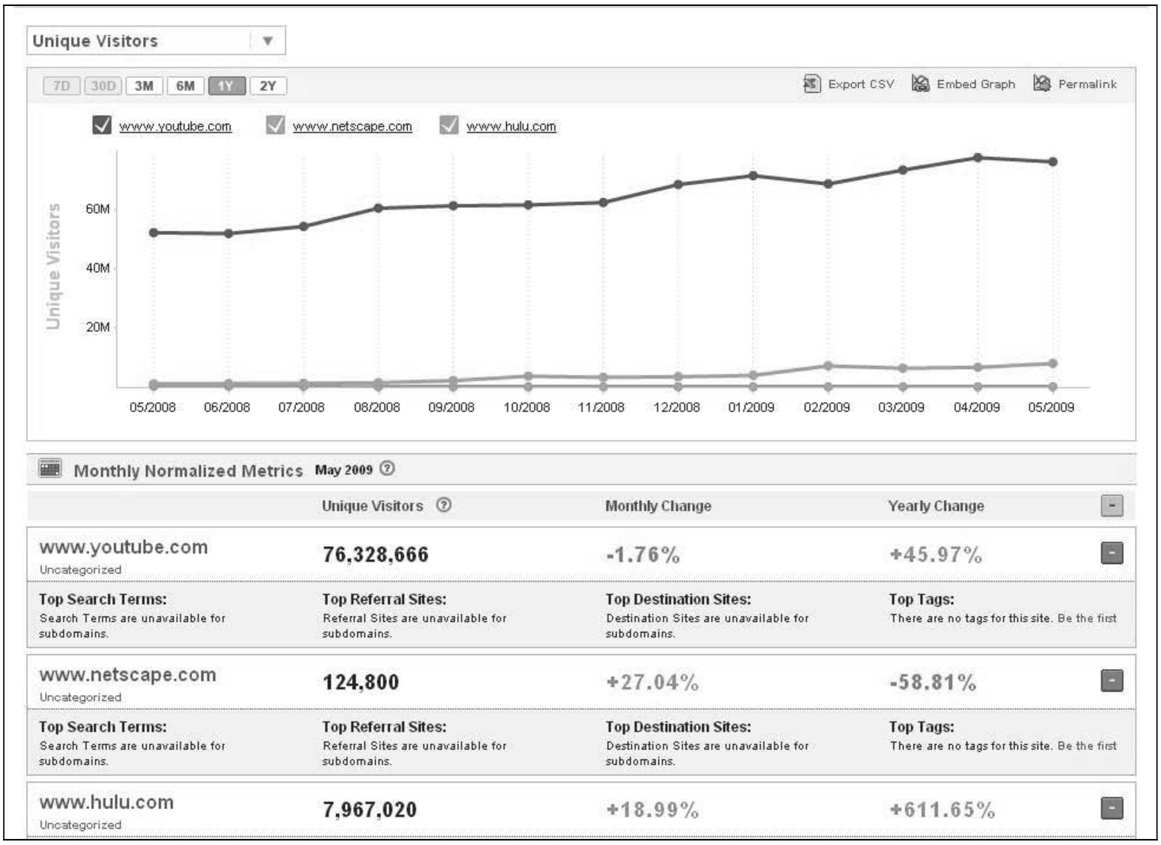
[1] The M6 Vidéo internet service has been suspended.

Source: European Audiovisual Observatory

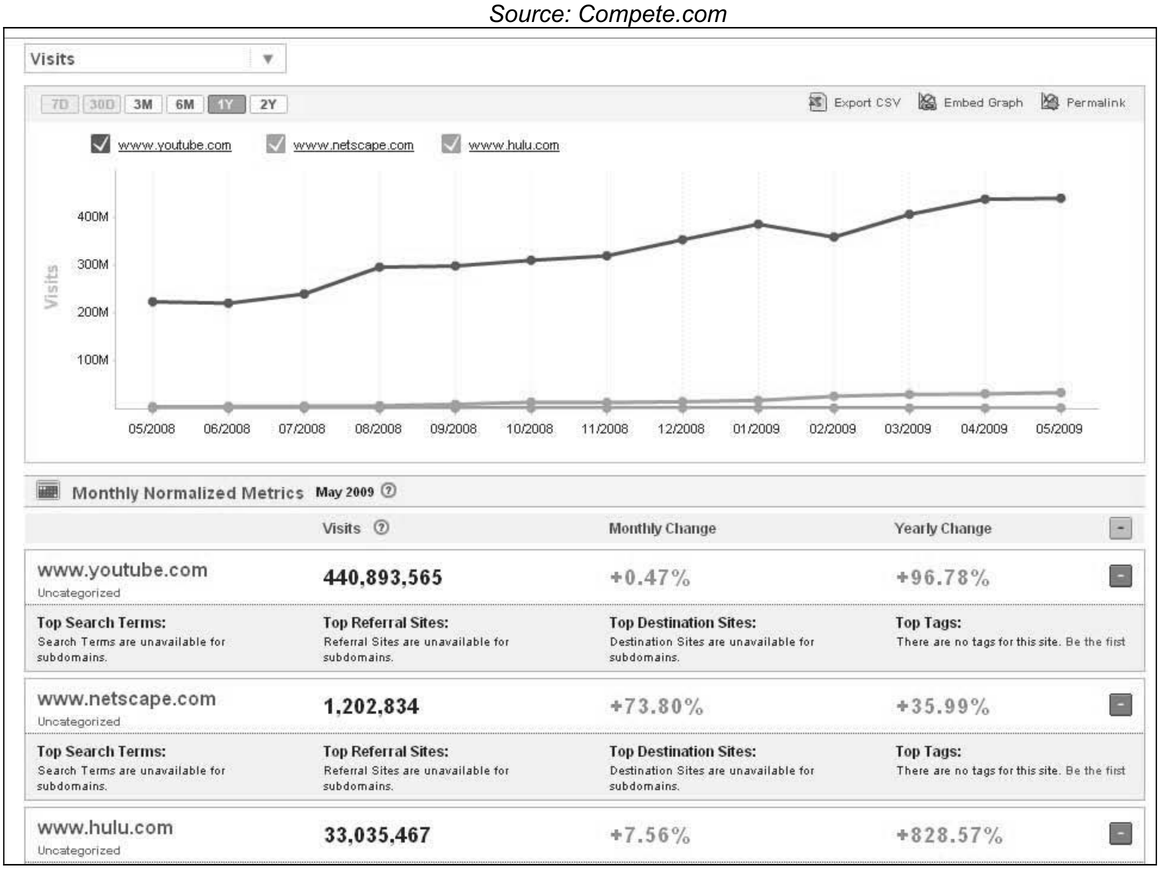
Graphic 75 : Demography of YouTube visitors (4 July 2009)

Source: Alexa

Graphic 76 : Comparison of the traffic of YouTube, MySpace and Hulu, (May 2008-May 2009) by Compete.com

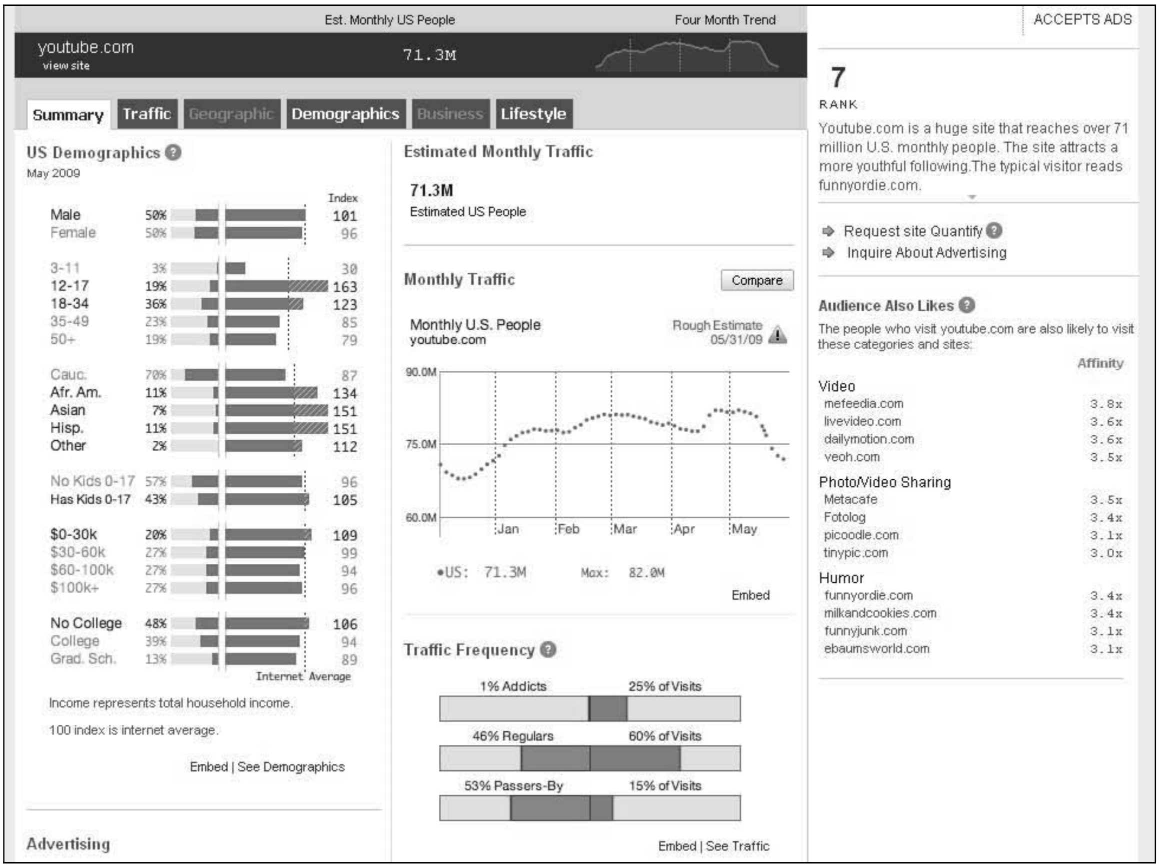


Source: Compete.com



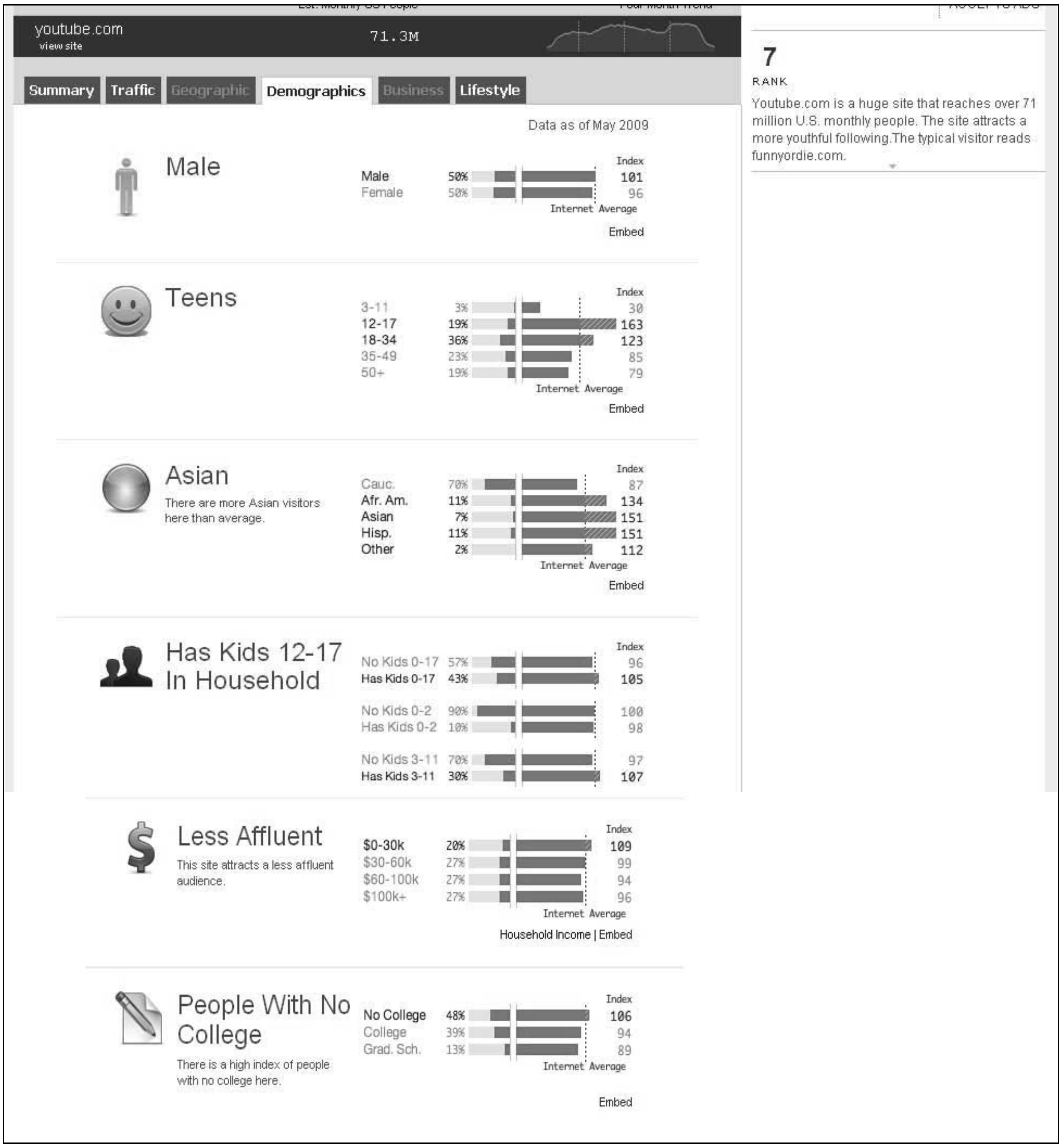
Source: Compete.com

Graphic 77 : Data provided by Quantcast on YouTube, MySpace, Hulu, Dailymotion and Megavideo (January-May 2009)

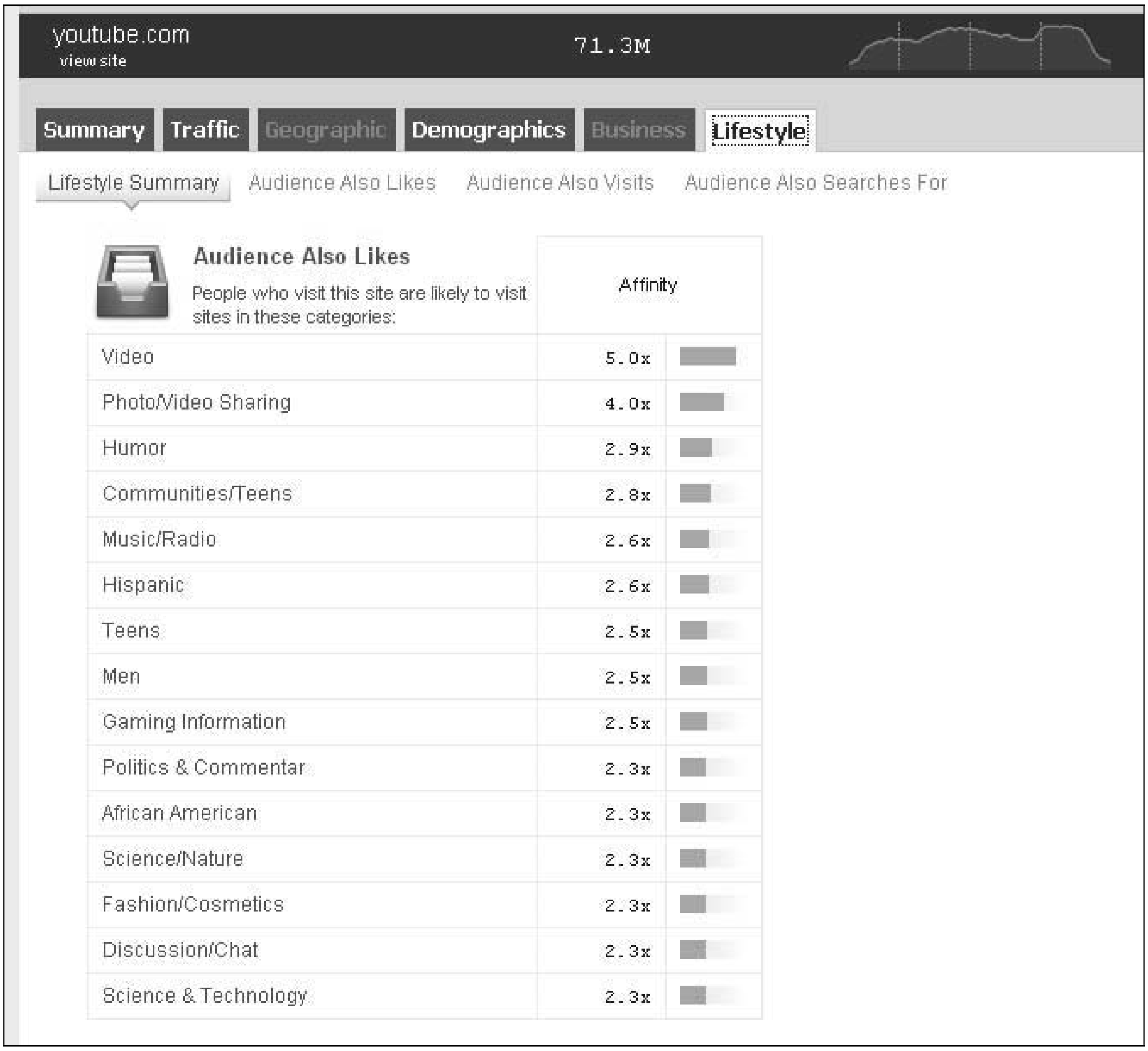


Source: Quantcast

Source: Quantcast



Source: Quantcast



	Affinity
Video	5.0x
Photo/Video Sharing	4.0x
Humor	2.9x
Communities/Teens	2.8x
Music/Radio	2.6x
Hispanic	2.6x
Teens	2.5x
Men	2.5x
Gaming Information	2.5x
Politics & Commentar	2.3x
African American	2.3x
Science/Nature	2.3x
Fashion/Cosmetics	2.3x
Discussion/Chat	2.3x
Science & Technology	2.3x

Source: Quantcast

7.4.3.3. *Companies carrying out Internet audience measurement on the national markets*

Without making any claim to being exhaustive and without being able here to endorse the methodologies and results, here is a tentative list of companies specialising in Internet audience measurement on the national markets.

United States

comScore: http://www.comscore.com
DivinityMetrics: http://www.divinitymetrics.com/blog/
Hitwise: http://www.hitwise.com
Nielsen Online: http://www.nielsen-online.com/
TubeMogol: http://www.tubemogul.com/
VisibleMeasures: http://www.visiblemeasures.com/
VideoCounter: http://www.videocounter.com/

Europe

AT – Austria
Nielsen Online Austria: http://www.nielsen-online.com/intl.jsp?country=at

BE – Belgium
CIM: http://www.cim.be

CH – Switzerland
Nielsen Online Switzerland*: http://www.nielsen-online.com/intl.jsp?country=ch*

DE – Germany
AGOF: http://agof.de
AT Internet: http://www.atInternet.com
comScore: http://www.comscore.com
IVW: http://www.ivwonline.de
Nielsen Online Germany: http://www.nielsen-online.com/intl.jsp?country=de
Spring: http://www.spring.de
VideoCounter: http://www.videocounter.com/

ES – Spain
AT Internet: http://www.atInternet.com
Nielsen Online Spain: http://www.nielsen-online.com/intl.jsp?country=es
OJDInteractiva: http://www.ojdinteractiva.es/

FR – France
AT Internet: http://www.atInternet.com
comScore: http://www.comscore.com
Médiamétrie EStat[911]: http://www.estat.com/besoins-et-services/analyse-contenu.html

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[911] The "Streaming TV" tool of Médiamétrie-eStat enables the number of web users watching a television programme at a website to be measured in real time, minute by minute. It thus paves the way for the convergence of television audience measurement and the measurement of audiences watching videos on the Internet and will accordingly make it possible for these new web usages to play a leading role on the advertising market. TF1 was the first French broadcaster to adopt this tool. Médiamétrie-eStat press release, 5 April 2009, http://www.estat.com/news/TF1_premier_groupe_a_retenir_l_outil_de_mesure_Streaming_TV_de_Mediametrie_eStat.html

Médiamétrie NetRatings Panel:
http://www.mediametrie.com/Internet/solutions/mediametrie-netratings-panel.php?id=8
Nielsen Online France: http://www.nielsen-online.com/intl.jsp?country=fr
OJD Internet: http://www.ojd.com/engine/bureaux/bur_bim.php

GB – United Kingdom
AT Internet: http://www.atInternet.com
comScore: http://www.comscore.com
Nielsen Online UK: http://www.nielsen-online.com/intl.jsp?country=uk
UKOM: (operational in 2010):
http://www.iabuk.net/en/1/towardsaplanningcurrencyforonline250209.mxs

IT – Italy
Audiweb: http://www.audiweb.it/
Nielsen Online Italia: http://www.nielsen-online.com/intl.jsp?country=it

NL – Netherlands
Nedstat: http://www.nedstat.com
Nielsen Online Netherlands: http://www.nielsen-online.com/intl.jsp?country=nl
http://www.visiblemeasures.com/

RO – Romania
BRAT: http://www.brat.ro/
Trafic: http://www.trafic.ro/

SE – Sweden
Nielsen Online Sweden: http://www.nielsen-online.com/intl.jsp?country=se

SI – Slovenia
AT Internet: http://www.atInternet.com

Rest of world

AU – Australia
Nielsen Online Australia: http://www.nielsen-online.com/intl.jsp?country=au
Vquence: http://www.vquence.com.au/metrics-blog.html

BR – Brazil
IBOPE NetRatings (Nielsen Online): http://www.nielsen-online.com/intl.jsp?country=at*

CA – Canada
AT Internet: http://www.atInternet.com
comScore: http://www.comscore.com
Streametrics: http://www.streametrics.tv/

CN – China and Hong Kong
Nielsen Online China: http://www.nielsen-online.com/intl.jsp?country=cn
Nielsen Online Hong Kong: http://www.nielsen-online.com/intl.jsp?country=hk

JP – Japan
Nielsen Online Japan: http://www.netratings.co.jp/

NZ – New Zealand
Nielsen Online New Zeeland: http://www.nielsen-online.com/intl.jsp?country=nz

SG – Singapore
Nielsen Online Singapore: http://www.nielsen-online.com/intl.jsp?country=sg

ZA – South Africa
Nielsen Online South Africa: http://www.nielsen-online.com/intl.jsp?country=za

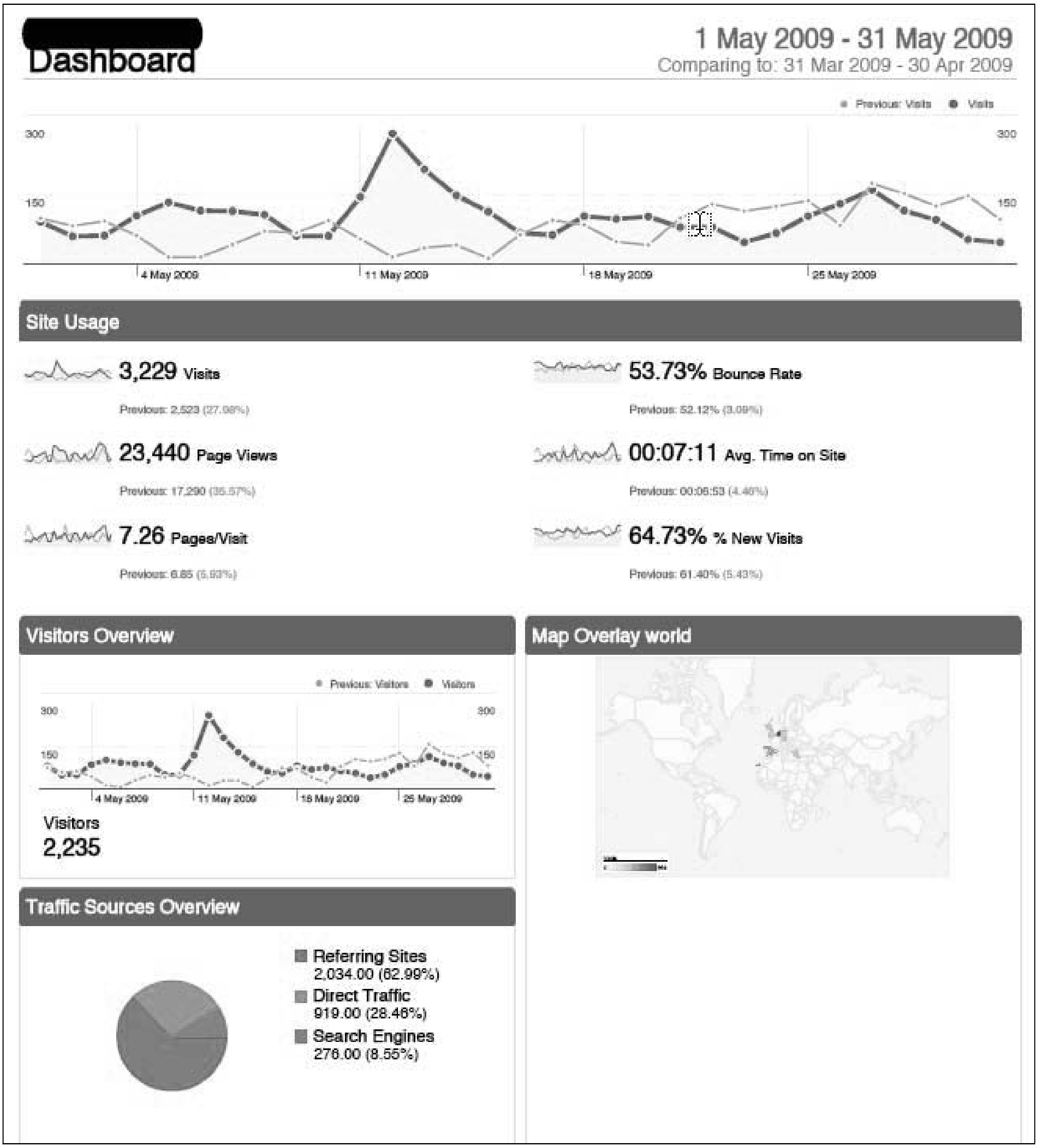
7.4.3.4. Google Analytics

Google is closely interested in the Internet audience measurement market, which would enable it to have additional relevant indicators on Internet consumption at its disposal. For this player, which is the main online research resource, the challenge is to make data likely to be of interest to advertisers available to its advertising department and, at the same time, have reliable information for its YouTube user generated content site at its disposal.

Google offers website operators its Google Analytics solution, a free-of-charge web analytics service that it was able to introduce thanks to its takeover of the Urchin Software Corporation and its software pack for studying website traffic. The *Urchin On Demand* system for analysing web traffic, which was offered to the public for $495 a year ($199 just after the takeover by Google), is now available at no cost for websites that have a traffic of fewer than five million pageviews a month. Google Analytics uses four cookies in its installation by default and offers the possibility of using an additional cookie. These cookies are anonymous (they do not contain any information that enables a person to be identified) and expire when the browser is closed, after 30 minutes, after 6 months and after 2 years respectively.[912]

[912] http://www.google.com/analytics/

Graphic 78 : **Example of a Googe Analytics report for a website (in this case, a free-of-charge VoD site)**

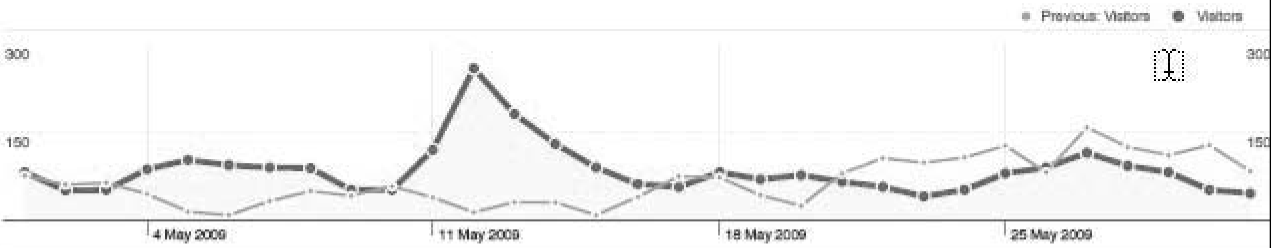


Content Overview		
Pages	Page Views	% Page Views
[redacted]search/AdvancedSearch.do		
1 May 2009 - 31 May 2009	4,707	20.08%
31 Mar 2009 - 30 Apr 2009	3,478	20.12%
% Change	35.34%	-0.17%
/VideoActive/Home.do		
1 May 2009 - 31 May 2009	1,567	6.69%
31 Mar 2009 - 30 Apr 2009	1,832	10.60%
% Change	-14.47%	-36.91%
[redacted]assets/AssetDetails.do?menu_page=menu-		
1 May 2009 - 31 May 2009	1,543	6.58%
31 Mar 2009 - 30 Apr 2009	1,166	6.74%
% Change	32.33%	-2.39%
[redacted]search/Search.do		
1 May 2009 - 31 May 2009	1,248	5.32%
31 Mar 2009 - 30 Apr 2009	596	3.45%
% Change	109.40%	54.46%
[redacted]GetIn.do?menu_page=menu-home		
1 May 2009 - 31 May 2009	662	2.82%
31 Mar 2009 - 30 Apr 2009	489	2.83%
% Change	35.38%	-0.14%

[redacted]

Visitors Overview

1 May 2009 - 31 May 2009
Comparing to: 31 Mar 2009 - 30 Apr 2009



2,235 people visited this site

3,229 Visits
Previous: 2,523 (27.98%)

2,235 Absolute Unique Visitors
Previous: 1,664 (34.31%)

23,440 Page Views
Previous: 17,290 (35.57%)

7.26 Average Page Views
Previous: 6.85 (5.93%)

00:07:11 Time on Site
Previous: 00:06:53 (4.46%)

53.73% Bounce Rate
Previous: 52.12% (3.09%)

64.73% New Visits
Previous: 61.40% (5.43%)

Technical Profile

Browser	Visits	% visits
Internet Explorer		
1 May 2009 - 31 May 2009	1,581	48.96%
31 Mar 2009 - 30 Apr 2009	1,175	46.57%
% Change	34.55%	5.13%
Firefox		
1 May 2009 - 31 May 2009	1,216	37.66%
31 Mar 2009 - 30 Apr 2009	1,006	39.87%

Connection Speed	Visits	% visits
DSL		
1 May 2009 - 31 May 2009	1,241	38.43%
31 Mar 2009 - 30 Apr 2009	813	32.22%
% Change	52.64%	19.27%
Unknown		
1 May 2009 - 31 May 2009	834	25.83%
31 Mar 2009 - 30 Apr 2009	676	26.79%

Safari		
1 May 2009 - 31 May 2009	282	8.73%
31 Mar 2009 - 30 Apr 2009	250	9.91%

T1		
1 May 2009 - 31 May 2009	559	17.31%
31 Mar 2009 - 30 Apr 2009	585	23.19%

3 Google Analytics

% Change	12.80%	-11.86%
Chrome		
1 May 2009 - 31 May 2009	87	2.69%
31 Mar 2009 - 30 Apr 2009	48	1.90%
% Change	81.25%	41.62%
Opera		
1 May 2009 - 31 May 2009	52	1.61%
31 Mar 2009 - 30 Apr 2009	36	1.43%
% Change	44.44%	12.86%

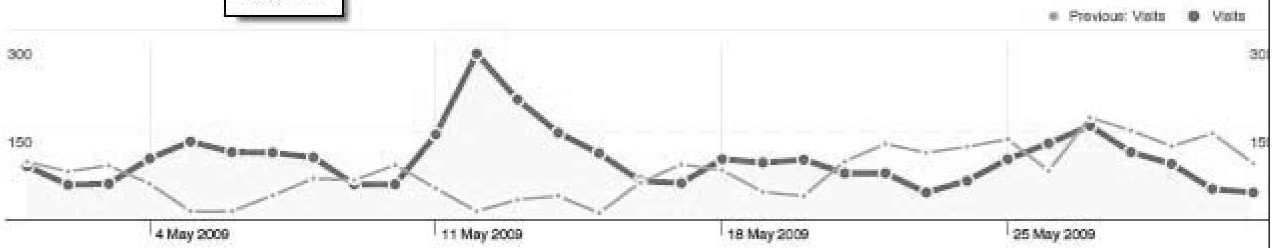
% Change	-4.44%	-25.34%
Cable		
1 May 2009 - 31 May 2009	506	15.67%
31 Mar 2009 - 30 Apr 2009	406	16.09%
% Change	24.63%	-2.62%
Dialup		
1 May 2009 - 31 May 2009	82	2.54%
31 Mar 2009 - 30 Apr 2009	40	1.59%
% Change	105.00%	60.18%

[redacted]

Traffic Sources Overview

LANGE

1 May 2009 - 31 May 2009
Comparing to: 31 Mar 2009 - 30 Apr 2009



All traffic sources sent a total of 3,229 visits

28.46% Direct Traffic
Previous: 31.67% (-10.13%)

62.99% Referring Sites
Previous: 57.07% (10.37%)

8.55% Search Engines
Previous: 11.26% (-24.07%)

Referring Sites
2,034.00 (62.99%)
Direct Traffic
919.00 (28.46%)
Search Engines
276.00 (8.55%)

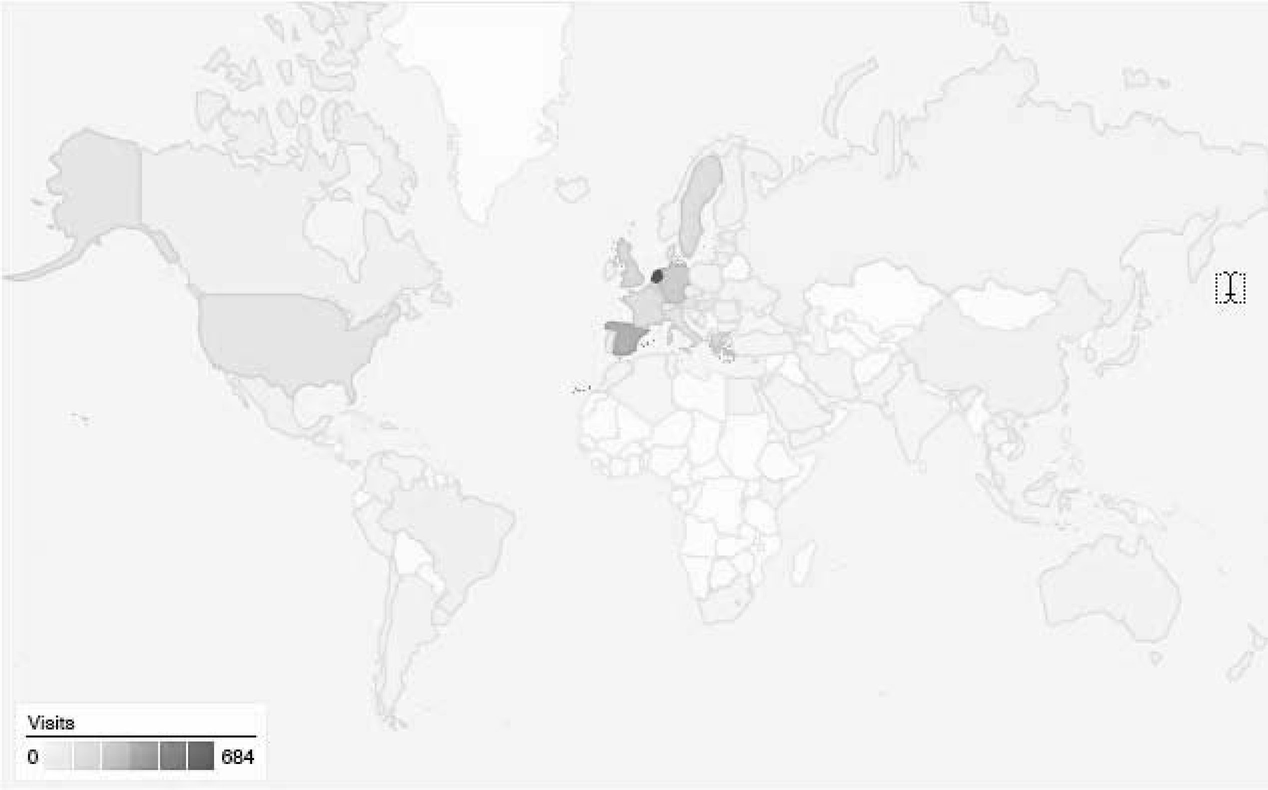
Top Traffic Sources

Sources	Visits	% visits
europeana.eu (referral)		
1 May 2009 - 31 May 2009	1,473	45.62%
31 Mar 2009 - 30 Apr 2009	697	27.63%
% Change	111.33%	65.13%
(direct) ((none))		
1 May 2009 - 31 May 2009	919	28.46%
31 Mar 2009 - 30 Apr 2009	799	31.67%
% Change	15.02%	-10.13%
google (organic)		
1 May 2009 - 31 May 2009	266	8.24%
31 Mar 2009 - 30 Apr 2009	275	10.90%
% Change	-3.27%	-24.42%

Keywords	Visits	% visits
[redacted]		
1 May 2009 - 31 May 2009	73	26.45%
31 Mar 2009 - 30 Apr 2009	78	27.46%
% Change	-6.41%	-3.70%
[redacted]		
1 May 2009 - 31 May 2009	55	19.93%
31 Mar 2009 - 30 Apr 2009	31	10.92%
% Change	77.42%	82.56%
[redacted]		
1 May 2009 - 31 May 2009	11	3.99%
31 Mar 2009 - 30 Apr 2009	17	5.99%
% Change	-35.29%	-33.42%

[redacted]
Map Overlay

1 May 2009 - 31 May 2009
Comparing to: 31 Mar 2009 - 30 Apr 2009



3,229 visits came from 91 countries/territories

Site Usage

Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
3,229	**7.26**	**00:07:11**	**64.82%**	**53.73%**
Previous: 2,523 (27.98%)	Previous: 6.85 (5.93%)	Previous: 00:06:53 (4.46%)	Previous: 61.43% (5.51%)	Previous: 52.12% (3.09%)

Country/Territory	Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
Netherlands					
1 May 2009 - 31 May 2009	684	7.41	00:06:42	46.78%	40.20%
31 March 2009 - 30 April 2009	571	9.63	00:08:39	44.13%	40.98%
% Change	19.79%	-23.03%	-22.60%	6.01%	-1.89%
Spain					
1 May 2009 - 31 May 2009	347	7.48	00:06:37	76.08%	55.04%
31 March 2009 - 30 April 2009	312	6.29	00:05:14	80.45%	54.49%
% Change	11.22%	18.89%	26.63%	-5.43%	1.02%
Germany					
1 May 2009 - 31 May 2009	253	7.00	00:09:55	72.33%	45.45%

United Kingdom					

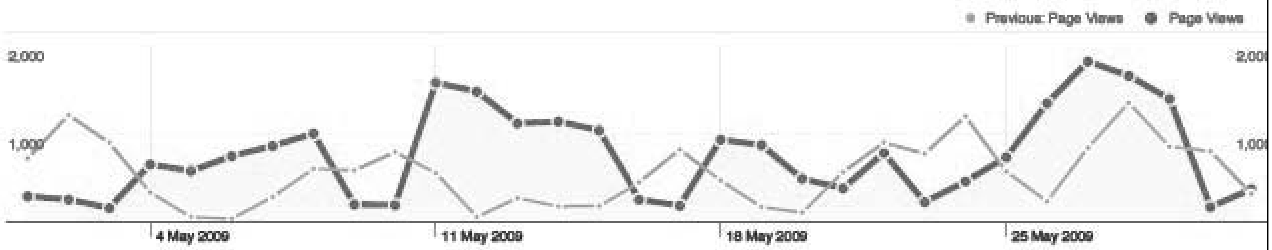
7 Google Analytics

1 May 2009 - 31 May 2009	197	24.88	00:19:33	39.09%	33.50%
31 March 2009 - 30 April 2009	152	15.98	00:09:02	44.74%	32.89%
% Change	29.61%	55.68%	116.51%	-12.63%	1.85%
Greece					
1 May 2009 - 31 May 2009	178	6.28	00:05:39	67.98%	52.25%
31 March 2009 - 30 April 2009	172	7.60	00:07:26	65.12%	44.19%
% Change	3.49%	-17.34%	-24.01%	4.39%	18.24%
Sweden					
1 May 2009 - 31 May 2009	169	3.60	00:02:54	17.16%	81.07%
31 March 2009 - 30 April 2009	134	1.51	00:00:18	8.21%	93.28%
% Change	26.12%	137.48%	882.67%	109.04%	-13.10%
Belgium					
1 May 2009 - 31 May 2009	160	11.71	00:08:07	66.25%	40.62%
31 March 2009 - 30 April 2009	111	8.05	00:09:30	66.67%	49.55%
% Change	44.14%	45.35%	-14.65%	-0.62%	-18.01%
France					
1 May 2009 - 31 May 2009	145	3.19	00:02:26	92.41%	66.90%
31 March 2009 - 30 April 2009	97	2.89	00:01:49	94.85%	62.89%
% Change	49.48%	10.62%	33.26%	-2.56%	6.38%
Italy					
1 May 2009 - 31 May 2009	122	2.70	00:02:37	90.98%	65.57%
31 March 2009 - 30 April 2009	47	3.66	00:02:18	74.47%	65.96%
% Change	159.57%	-26.09%	13.87%	22.18%	-0.58%
United States					
1 May 2009 - 31 May 2009	113	2.81	00:02:30	88.50%	71.68%
31 March 2009 - 30 April 2009	219	2.51	00:02:01	91.32%	62.56%
% Change	-48.40%	12.05%	23.50%	-3.10%	14.59%

[redacted]

Content Overview

1 May 2009 - 31 May 2009
Comparing to: 31 Mar 2009 - 30 Apr 2009



Pages on this site were viewed a total of 23,440 times

23,440 Page Views
Previous: 17,290 (35.57%)

12,280 Unique Views
Previous: 9,499 (29.28%)

53.73% Bounce Rate
Previous: 52.12% (3.09%)

Top Content

Pages	Page Views	% Page Views
[redacted]search/AdvancedSearch.do		
1 May 2009 - 31 May 2009	4,707	20.08%
31 Mar 2009 - 30 Apr 2009	3,478	20.12%
% Change	35.34%	-0.17%
[redacted]/Home.do		
1 May 2009 - 31 May 2009	1,567	6.69%
31 Mar 2009 - 30 Apr 2009	1,832	10.60%
% Change	-14.47%	-36.91%
[redacted]assets/AssetDetails.do?menu_page=menu-asset&ws_menu=ws_modifyAsset		
1 May 2009 - 31 May 2009	1,543	6.58%
31 Mar 2009 - 30 Apr 2009	1,166	6.74%
% Change	32.33%	-2.39%

7.5. THE POPULARITY OF VIDEO SHARING SITES

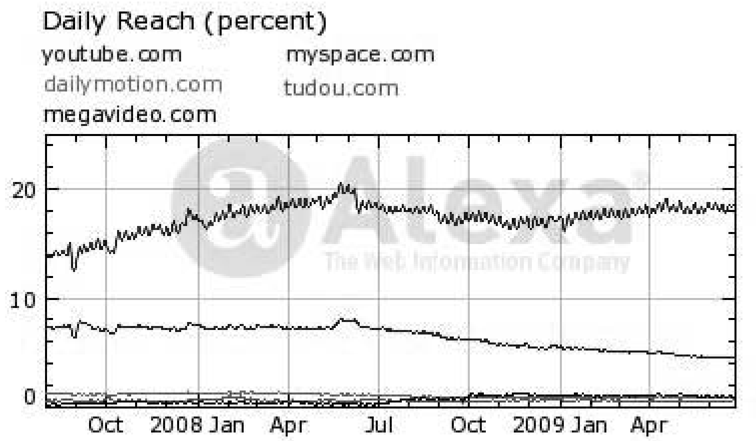
7.5.1. The international character of video sharing sites

The various studies available, whether it be studies on consumer habits or on audience measurement, set out to show the considerable popularity of video sharing sites and, to a lesser extent, catch-up television and free-of-charge VoD sites.

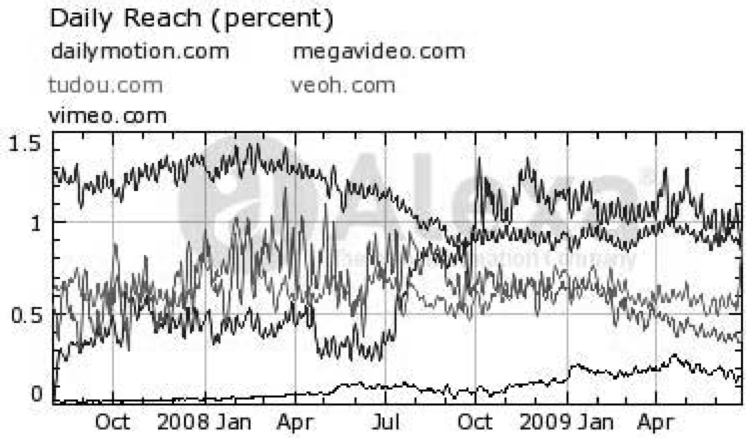
The site sharing sector is extremely concentrated and is dominated in the United States and Europe by YouTube, which commands over 50% of the site sharing market.

The data published by Alexa have the advantage that they group together the different language versions of sites from the same family and thus indicate their respective position in the global ranking.[913] MySpace, which is strictly speaking more a social networking site than a sharing platform but nonetheless contains videos posted by users, hold 11th position in June 2009. The video sharing sites Youporn, Pornhub, Redtub and Tube8, which specialise in adult videos, were in 47th, 51st, 68th and 72nd position respectively. The first real international competitor of YouTube is the French site Dailymotion.com, which was in 73rd position in June 2009. The Hong Kong based site Megavideo was ranked 82nd, while the Belgian service Netlog, which is available in 30 different languages, was 107th. The Chinese site Tudou came 124th.

Graphic 79 : International daily reach of the main Internet video sharing sites (October 2008–June 2009)



[913] http://www.alexa.com/topsites



Source: Alexa

In Europe there are also national video sharing sites but they seem marginal when their audience is compared with that of the international sites, although they may have a significant national audience.

The domination of YouTube is confirmed by the studies carried out by comScore on sites that offer video. The video sharing sites operated by Google (i.e., mainly YouTube) dominate the consumption of online video on the American, Canadian, German, British and French markets. On the national European markets, the other major sharing services (such as Clipfish, Dailymotion and Netlog) are sometimes evenly matched with the VoD service platforms operated by audiovisual groups.

Table 46 : Online Video Viewing Reach

Ranked by percent reach of total online population, age 15+, December 2007.
Excludes traffic from public computers such as Internet cafés or access from mobile phones or PDAs.

Country	**Total unique visitors** (000s)	**Videos** (000s)	**Videos per visitor**	**% reach online Population**
Canada	19,047	2,137,074	112	89%
United Kingdom	28,686	3,092,867	108	87%
Germany	27,321	2,514,039	92	81%
France	24,063	2,138,802	89	84%
US	124,362	9,509,544	77	78%

Source: comScore, press release 10 April 2008

7.5.2. Measurement of the Internet video audience in the United States

It seems undeniable that the video sharing sites are meeting with much greater success than video on demand and, even, catch-up TV.

According to Nielsen Online, the number of American web users who watch online video rose by 12.8% between May 2008 and May 2009 and the time spent per viewer increased by 48.9% in the same period.[914] YouTube was the online video leader by far, with over 6 billion

914 "Time Spent Viewing Video Online Up 49 Percent", Nielsen Wire, 15 June 2009. http://blog.nielsen.com/nielsenwire/online_mobile/time-spent-viewing-video-online-up-49-percent/

streams and 95 million unique visitors. The other online video sites in the Top 5 are Hulu, Yahoo!, Fox Interactive Media and ABC.

Table 47 : Online video usage in the United States (May 2009)

Overall online video usage (US)

	May 2009	Year over year	Month over month
Unique Viewers (000)	133,797	12.8%	14.7%
Total Streams (000)	10,043,049	34.8%	6.2%
Streams per Viewer	75.1	19.6%	-7.3%
Time per Viewer (min)	188.7	48.9%	-8.3%

Source: Nielsen Online, VideoCensus – Note: includes progressive downloads and excludes the video advertising

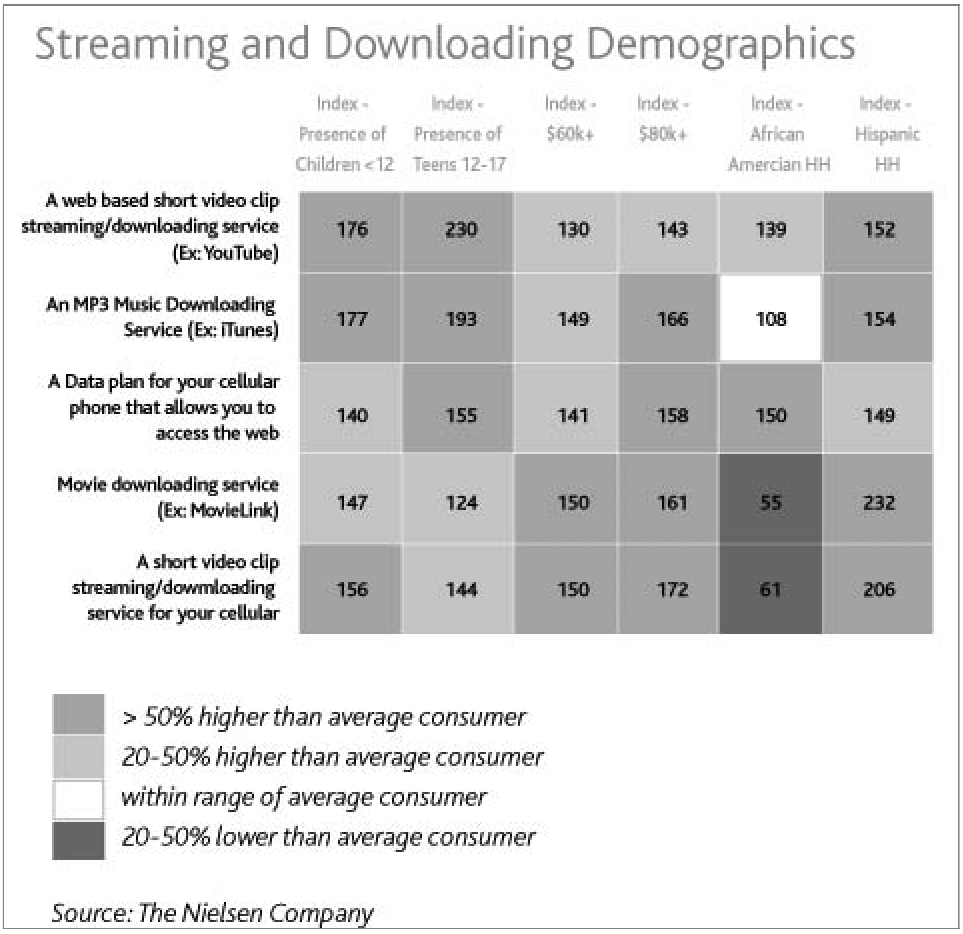
Table 48 : United States – Main video sites by number of videos viewed in April 2009 according to the Nielsen VideoCensus[915]

Video Brand	Apr-09 Total Streams (000)	Month-over-Month % Change	Year-over-Year % Change	Share of Streams
Overall Online Video Usage	9,452,996	-2.3%	24.2%	100.0%
YouTube	5,490,204	0.2%	35.5%	58.1%
Hulu	373,290	7.1%	490.4%	3.9%
Yahoo!	203,628	-12.2%	-8.1%	2.2%
Fox Interactive Media	201,362	-3.0%	-38.8%	2.1%
Nickelodeon Kids and Family Network	175,917	-10.3%	15.9%	1.9%
MSN/Windows Live	164,422	-2.7%	9.8%	1.7%
ABC.COM	148,830	-15.9%	144.8%	1.6%
MTV Networks Music	143,356	15.7%	359.6%	1.5%
Turner Sports and Entertainment Digital	130,559	-5.1%	60.0%	1.4%
Network				
CNN Digital Network	112,469	8.7%	32.7%	1.2%

Source: Nielsen VideoCensus
Note: Includes progressive downloads and excludes video advertising.

915 "YouTube Leads Video Streams as Hulu Grows 490% from Last Year", Nielsen Wire, 14 May 2009. http://blog.nielsen.com/nielsenwire/online_mobile/YouTube-leads-video-streams-hulu-grows/

Graphic 80 : Streaming and downloading demographics in the United States



Streaming and Downloading Demographics

	Index - Presence of Children <12	Index - Presence of Teens 12-17	Index - $60k+	Index - $80k+	Index - African Amercian HH	Index - Hispanic HH
A web based short video clip streaming/downloading service (Ex: YouTube)	176	230	130	143	139	152
An MP3 Music Downloading Service (Ex: iTunes)	177	193	149	166	108	154
A Data plan for your cellular phone that allows you to access the web	140	155	141	158	150	149
Movie downloading service (Ex: MovieLink)	147	124	150	161	55	232
A short video clip streaming/dowmloading service for your cellular	156	144	150	172	61	206

> 50% higher than average consumer
20-50% higher than average consumer
within range of average consumer
20-50% lower than average consumer

Source: The Nielsen Company

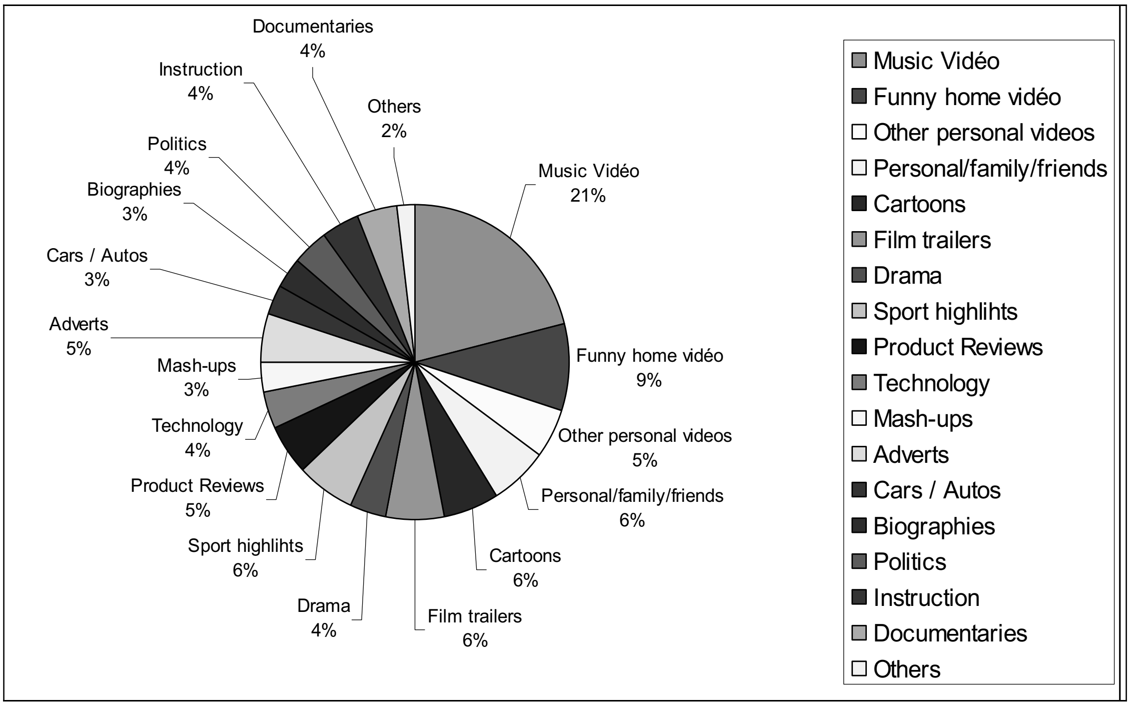
According to a Global Web Index study[916], online video has become more popular among Internet users than blogging and social networking. In January 2009, 72% of surfers in the United States viewed video clips, whereas only 46% read a book, 41% maintained a profile at a social networking site (MySpace, Facebook, Linkedin, etc) and only 19% maintained a blog. 39% of users shared video clips and 32% posted video clips. In the youngest age group observed in the study (16-17 year olds), 82%, 52% and 46% watched, shared and posted video clips respectively. The percentages for the 18-24 and 25-34 age groups were broadly similar. Conversely the percentages were lower in the older age groups but nonetheless still high in the 55-64 age group, with 65%, 29% and 20% respectively having watched, shared and posted video clips.

The study suggests that the consumption of online video is becoming just as important as watching the television programmes of the networks: in December 2008, the reach of online video was 97 million, compared with 114 million for ABC and CBS, 112 million for NBC and 86 million for Fox. 9% of the surfers questioned said they had watched more than 20 videos in the previous week, 10% had watched between 10 and 20 and 43% had watched between 1 and 10. 10% had not watched any in the previous week, 13% had not watched any in the previous month and 15% had never watched any.

---

[916] T. Smith, "Online Video: 2009 is Primetime", *Globalwebindex.net*, Trendstream, June 2009. http://www.trendstream.net/wp-content/uploads/2009/06/video-online-2009-is-primetime.pdf. See in particular "Online video more popular than blogging and social networking", *MediaWeek*, 29 May 2009, http://www.mediaweek.co.uk/news/909094/Online-video-popular-blogging-social-networking/

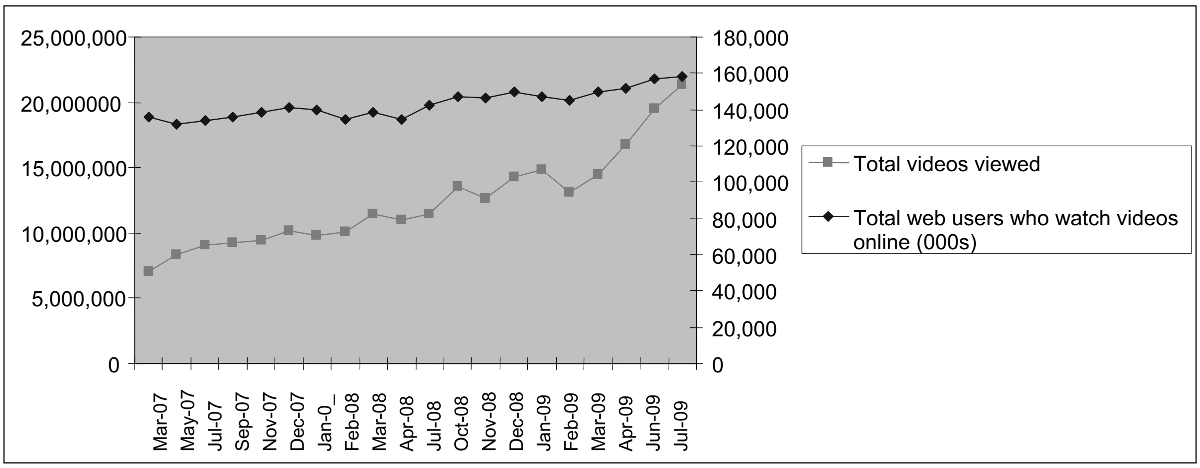
Graphic 81 : Breakdown by genre of video programmes viewed online in the previous week by web users in the United States (January 2009)



Source: Global Web Index

According to comScore, the number of American web users who watch videos online rose from 136 million in March 2007 to 158.4 million in July 2009. At the same time, the number of videos viewed went up from 7 million to 21.4 million, which means that the average monthly number of videos watched by web users online increased from 51.6 to 134.9.[917] The rise in the number of videos watched has been particularly marked since March 2009.

Graphic 82 : United States - Total number of unique visitors to video sites and total number of videos viewed (per month) (March 2007-July 2009)



Source: Comscore / European Audiovisual Observatory

917 See the comScore press releases, http://www.comscore.com/Press_Events/Press_Releases.

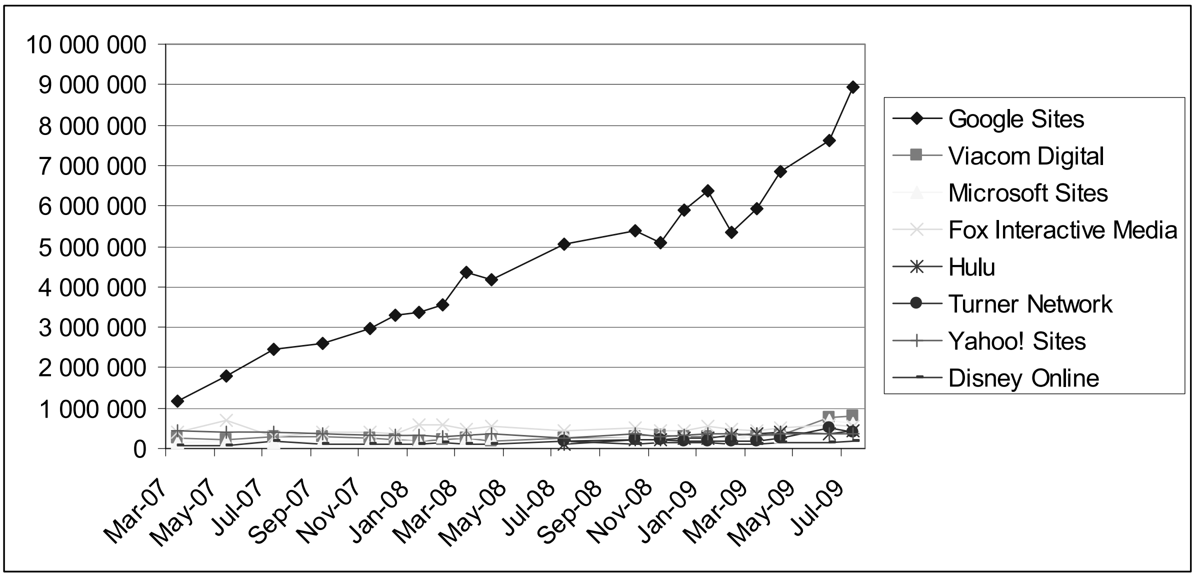
The comScore data mettent highlight the overwhelming domination of the Google sites (*de facto*, mainly YouTube), whose market share in terms of the number of videos viewed rose from 16.7% in March 2007 to 41.9% in July 2009, after peaking at 44.1% in July 2008. However, it was not the Google group that grew the most between July 2008 and July 2009 as Hulu, Viacom Digital (including MTV, Nickelodeon Kids and the Family Network), the Turner Network (including CNN), Microsft (including MSNBC) and CBS Interactive recorded significantly higher growth rates.

Table 49 : United States – Number of videos viewed at the main groups' websites (July 2007-July 2009)

	Jul-07	Jul-08	Jul-09	Jul08/Jul07	Jul09/Jul08
Google Sites	2 454 000	5 044 053	8 953 948	106%	77,5%
Viacom Digital	281 000	246 413	812 343	-12%	229,7%
Microsoft Sites	149 000	282 748	630 631	90%	123,0%
Fox Interactive Media	298 000	445 682	558 500	50%	25,3%
Hulu		119 357	457 010	_	282,9%
Turner Network		171 065	390 848	_	128,5%
Yahoo! Sites	390 000	269 452	374 746	-31%	39,1%
Disney Online	182 000	186 700	169 756	3%	-9,1%
CBS Interactive		69 316	150 165	_	116,6%

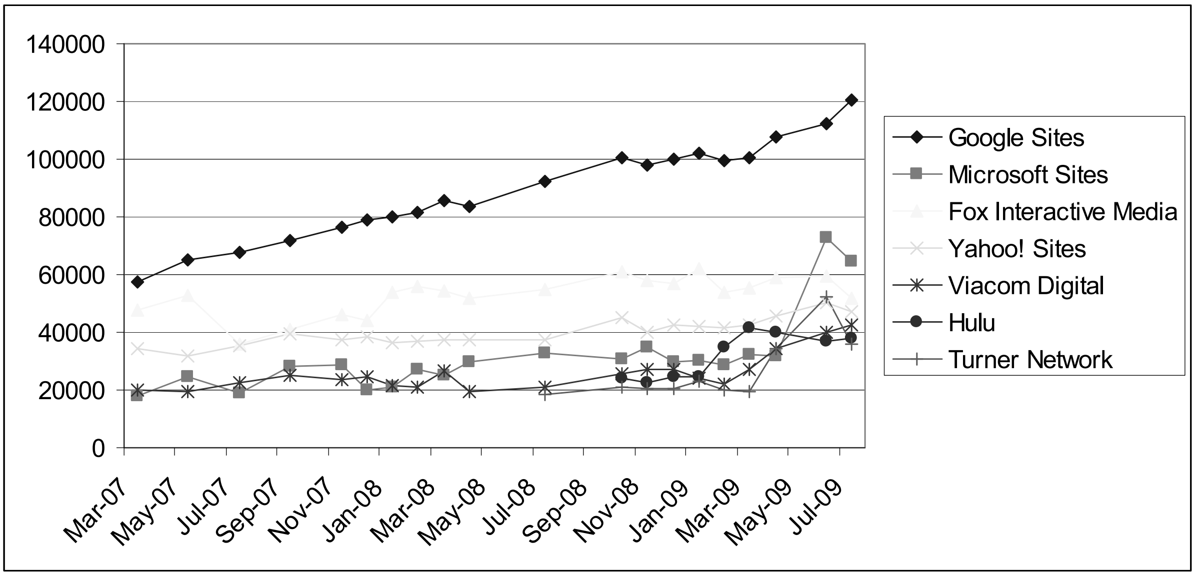
Source: comScore / European Audiovisual Observatory

Graphic 83 : United States – Number of videos viewed at the at the main groups' websites (March 2007-July 2009)



Source: comScore / European Audiovisual Observatory

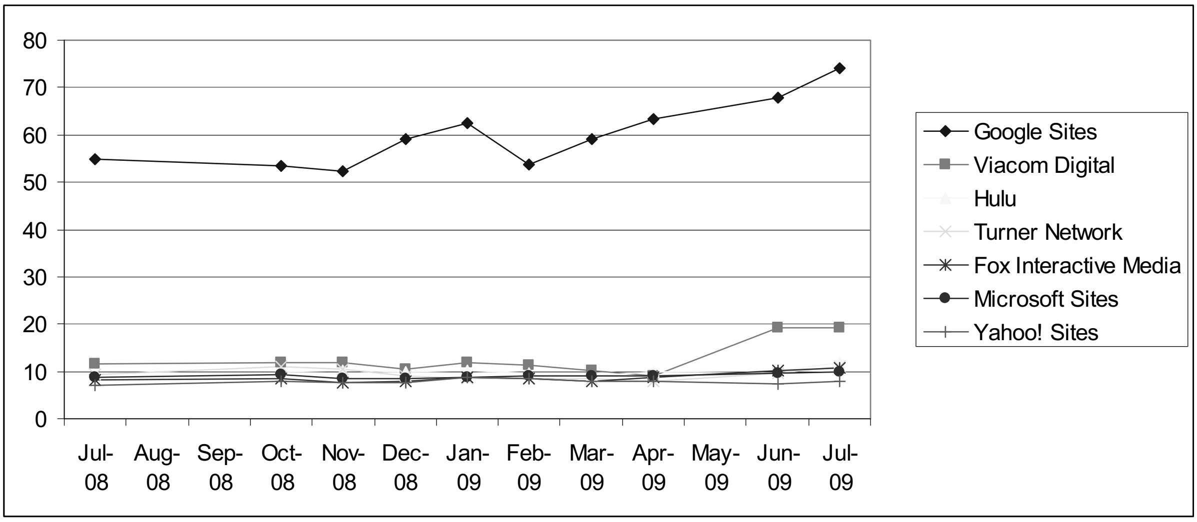
Graphic 84 : United States - Number of unique visitors to the various groups' video sites (in 000s) (March 2007-July 2009)



Source: comScore / European Audiovisual Observatory

The strength of Google/YouTube mainly lies in the fact that the average number of videos viewed by a web user per month is well above the figure for videos viewed at the other groups' sites: it rose from 54.7 in July 2008 to 74.1 in July 2009 but remained stable at around 10 to 12 videos in the case of the company's main competitors.

Graphic 85 : United States – Average number of videos watched by web users at the various groups' sites (July 2008-July 2009)



Source: comScore / European Audiovisual Observatory

According to Hitwise[918], YouTube had a 75.43% video market share in the United States in May 2008 (calculated on the basis of the number of visitors to 63 video sharing sites). The

[918] Hitwise press release, 25 June 2008, http://www.hitwise.com/press-center/hitwiseHS2004/google-increase-twentysix.php

Online Video category represented 1.14% of all the website visits in that month, which was a reduction of 9% over May 2007, although the time spent on those sites had increased by 6%.

Table 50 : The five online video websites ranked by market share of US visits (May 2007-May 2008)

			May 2007	May 2008	Variation
1	YouTube	www.youtube;com	59.55%	75.43%	26%
2	MySpaceTV	www.myspacetv.com	16.06%	9.01%	-44%
3	Google Video	www.video.google.com	7.80%	3.73%	-52%
4	Yahoo! Video	www.video.search.yahoo.com	2.77%	1.92%	-31%
5	Veoh	www.veoh.com	0.86%	1.13%	32%

Source: Hitwise

7.5.3. Measurement of the Internet video audience in Europe

Conclusions corroborating those of the Global Web Index study were put forward by a study published in April 2009 by Microsoft[919], according to which the Europeans spent an average of 8.9 hours a week (or 1.5 days a month) on the Internet, which is a rise of 27% over 2004. The study quotes the Jupiter Research figures, which indicate that the consumption of online video has become the most popular form of online entertainment. 28% of Europeans are reported to have watched short or feature length videos, representing an increase of 150% since 2006.[920]

According to a study published by the European Internet Advertising Association (EIAA), 21% of European surfers watch video programmes (films, TV, video clips) on the web, but this percentage rises to 38% for the category of multi-taskers, that is to say consumers who mix their media.[921] In the 23-34 age group, 30% of European watch video programmes (films, TV, video clips) on the web.[922]

As in the United States, the various data available illustrate the number one position of YouTube. The ranking produced by comScore for December 2007 showed the predominance of the Google sites (i.e., mainly YouTube). Fox Interactive Media (MySpace) in the United Kingdom and Germany, Dailymotion in France and Clipfish in Germany were also included in the list of the top five video sites.

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919 "Europe Logs On. European Internet Trends of Today and Tomorrow", Executive Summary, Microsoft, April 2009, http://advertising.microsoft.com/deutschland/WWDocs/User/de-de/NewsAndEvents/PressReleases/europe%20Logs%20On%20-%20Zusammenfassung%20englisch.pdf

See also, for 2006, *EIAA Mediascope Europe Study*, 2007, http://www.eiaa.net/Ftp/casestudiesppt/EIAA_2007_PRESENTATION_PAN-EUROPEAN,%20for%20website.pdf

920 Jupiter, *European Media Consumption*, October 2008.

921 EIAA Media Multi-tasking Report, Executive Summary, undated, http://eiaa.net/research/research-details.asp?SID=1&id=440&lang=6&origin=media-consumption.asp

922 EIAA, Mediascope Europe 2008, Pan-European Executive Summary, undated, http://eiaa.net/research/research-details.asp?SID=1&id=429&lang=6&origin=media-consumption.asp

Table 51 : Top five video properties in the United Kingdom, France and Germany

Ranked by total number of videos (000s) watched by unique viewers, 15 +, December 2007

	United Kingdom	France	Germany
1	Google sites	Google sites	Google sites
2	BBC sites	Dailymotion.com	Vivendi
3	Microsoft sites	TF1 Group	ProSiebenSat.1 sites[923]
4	Yahoo! sites	Amazon sites[924]	Clipfish.de
5	Fox Interactive Media	Yahoo! sites	Fox Interactive Media

Source: comScore, press release of 10 April 2008

UGC sites account for most of the online video content watched by French and British web users according to the same company, which in April 2007 assessed the proportion of time spent online watching video at 13% in France, 10% in the United Kingdom and 9% in Germany.[925]

In the United States, YouTube's market share in terms of video viewed was 40.7% in April 2009.[926] The data published by comScore for 2008 and 2009 for the three European countries studied confirmed this trend.

7.5.3.1. United Kingdom

In the United Kingdom, there were six video sharing sites among the top ten in January 2009. 2008 saw the strengthening of the dominant position of the Google (YouTube) sites and a decline in the Fox Interactive Media (MySpace) sites, which benefited Facebook and Megavideo.

According to comScore, the number of videos viewed online in the United Kingdom rose from 3.5 billion in March 2008 to 4 billion in 2009. In January 2009, the number of videos viewed on the sites of the five major broadcasters (BBC, ITV, Channel 4, Sky and Five) went up to 99.5 million videos (or 2.5% of the total).

Apart from the domination of Google/YouTube (which accounts for nearly 50% of the videos viewed online), the market is highly fragmented: taken together, the top nine other sites in the ranking only account for 4 to 5% of the market, which means that the other small operators account for 45%.

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923 Includes catch-up TV and VoD sites, as well as MyVideo, a video sharing and free-of-charge VoD site.

924 In our view, comScore's listing of the Amazon domain as one of the video sites in Europe is inappropriate.

925 Source: comScore Video Metrix

926 comScore press release, 4 June 2009, http://www.comscore.com/Press_Events/Press_Releases/2009/6/Americans_Viewed_a_Record_16.8_Billion_Videos_Online_in_April

Table 52 : Top UK online video properties ranked by total of unique viewers (000s) – January/March/June 2008–January 2009

		Jan 2008	Mar 2008	Jun 2008	Jan 2009
Google sites	sharing	20,679	20,727	20,463	23,664
YouTube.com	sharing	20,042	n/a	n/a	23,523
BBC sites	catch-up	5,746	6,318	5,913	6,771
Microsoft sites	free VoD	4,963	4,821	5,752	4,344
Facebook.com	sharing	1,489	1,560	1,533	3,582
Yahoo! sites	sharing	3,402	3,720	2,741	2,998
Amazon sites	n/a	1,620	n/a	n/a	2,945
Fox Interactive Media	sharing	3,829	5,450	3,946	2,587
AOL LLC	free VoD	n/a	n/a	n/a	2,198
Megavideo.com	sharing	800	n/a	1,227	2,189
Metacafe	sharing	1,835	1,556	n/a	1,940
Viacom Digital	free VoD	n/a	2,272	1,679	n/a
ITV sites	catch-up	n/a	n/a	1,524	n/a
Dailymotion.com	sharing	n/a	1,773	1,277	n/a
Disney Online	free VoD	n/a	1,603	n/a	n/a
Total Internet		**26,806**	**27,406**	**27,437**	**29,574**

Source: comScore - press releases of 25 June 2008, 16 September 2008 and 17 March 2009

Table 53 : Top UK online video properties ranked by videos viewed – March/June2008-January 2009

Age 15+, home and work locations	March 2008		June 2008		January 2009
	Videos (000s)	Market share	Videos (000s)	Market share	Videos (000s)
Google sites	1,681,887	48	1,592,477	49.3	2,000,000
BBC sites	42,417	1,2	45,014	1.4	54,455
Microsoft sites	25,287	0,7	25,984	0.8	n/a
Channel 4	n/a	n/a	13,045	0.4	23,724
Fox Interactive Media	29,748	0,9	21,910	0.7	n/a
Yahoo! sites	19,975	0,6	16,643	0.5	n/a
ITV sites	n/a	n/a	18,008	0.6	13,527
Dailymotion.com	15,590	0,4	13,204	0.4	n/a
Megavideo.com	n/a	n/a	11,477	0.4	n/a
Veoh.com	15,070	0,4	10,914	0.3	n/a
Disney Online	13,893	0,4	n/a	n/a	n/a
Viacom Digital	13,528	0,4	n/a	n/a	n/a
Total	**3,500,627**	**100**	**3,229,476**	**100**	**4,000,000**

Source: comScore, press releases of 25 June 2008, 16 September 2008 and 17 March 2009

The figures published by Hitwise (which, unlike those published by comScore, are not consolidated by group) provide a significantly different ranking for February 2009.[927] They indicate that YouTube alone accounted for 62.9% of the visits to video websites in the United Kingdom, with its site being the 6th most visited and the second most popular after Wikipedia for music searches. The traffic to video websites is said to have increased by 40.7% between

[927] Hitwise press release, 19 March 2009, http://www.hitwise.co.uk/other/press-center.php

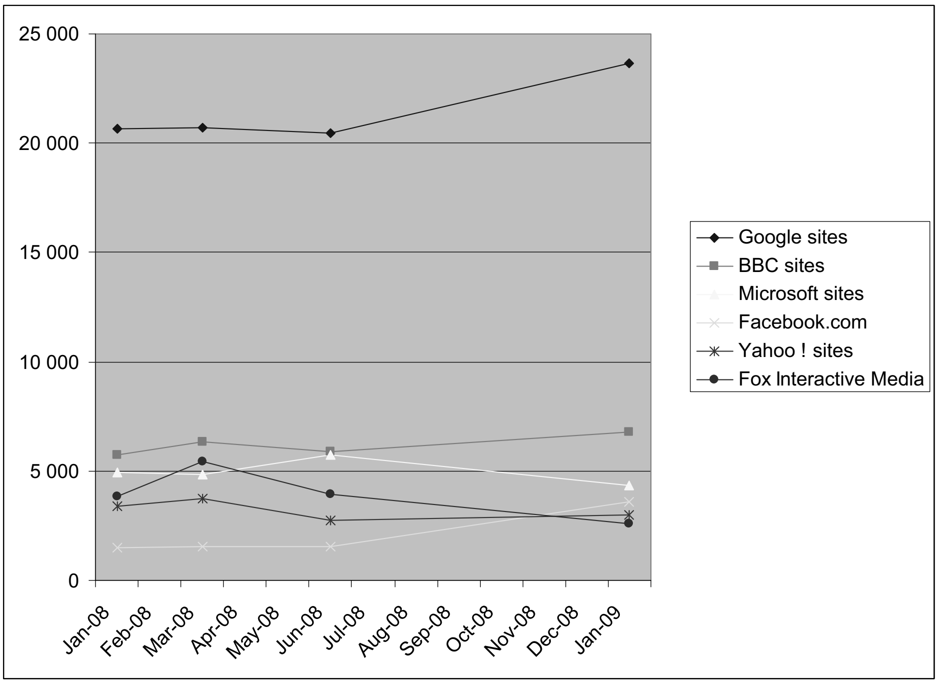
February 2008 and February 2009, and visits to a video website accounted for one out of thirty-five in February 2009, compared with one out of fifty a year earlier.

Table 54 : The Top 10 video websites by market share in the UK, February 2009

1	YouTube	www.youtube.com	62.90%
2	BBC iPlayer	www.bbc.co.uk/iPlayer	11.20%
3	Google Video	video.google.com	2%
4	MegaVideo	www.megavideo.com	1.50%
5	MSN Video	video.msn.cim	1.40%
6	Google Video UK	video.google.co.uk	1.30%
7	Channel 4 TV	www.channel4.com/video	1.30%
8	MetaCafe	www.metacafe.com	1.20%
9	Vuze	www.vuze.com	1.20%
10	Dailymotion	www.dailymotion.com	1.10%

Source: Hitwise

Graphic 86 : Changes in the number of unique visitors to video websites in the United Kingdom (January 2008–January 2009)



Source: comScore

7.5.3.2. France

According to comScore, in France the number of web users downloading videos reached 25.4 million in September 2008. The average download per user was 89.9 videos in January 2008 and 88.4 in September that year. The number of videos viewed at the Google (YouTube) websites went up from 602 million in January 2008 to 745.5 million in September that year, which means that the market share of the Google video websites rose in that period from 28.8% to 33.2%. This market share, which is lower than in the United Kingdom, can be explained by the presence of a challenger on the video sharing market in the form of the French company Dailymotion. However, this company is now losing speed: the number of videos viewed fell from 350.7 million in January to 303.6 million in September, and the market share dropped from 16.8% in January to 13.5% in September 2008. The websites of the TF1 group (VoD and catch-up TV) gained ground and saw the number of videos viewed rise from 40.7 million to 50 million between January and September 2008.

Table 55 : Top French online video properties ranked by total of unique viewers

January-September 2008, age 15+ home & work locations		Total unique viewers (000s)			Average videos		
		Jan 08	May 08	Sep 08	Jan 08	May 08	Sep 08
Google sites	sharing	12,181	12,508	14,557	49.4	52.0	51.2
Dailymotion.com	sharing	10,041	10,340	10,673	34.9	35.0	28.4
Groupe TF1	catch up/VoD	4,231	5,015	5,950	9.6	7.0	8.4
Microsoft sites	free VoD	4,176	5,015	5,481	2.6	3.0	4.8
Kewego	Sharing	2,093	n/a	2,414	6.4	n/a	3.5
Orange sites	VoD/web TV	1,439	1,425	2,343	4.6	7.3	3.7
AlloCine sites	film trailers	2,275	1,750	2,131	5.1	4.4	4.6
AOL LLC	free VoD	1,619	n/a	2,097	5.9	n/a	9.7
Megavideo.com	Sharing	n/a	n/a	1,531	n/a	n/a	14.7
Iliad/Free.fr sites	web TV	2,074	1,677	1,401	6.8	4.5	5.6
Fox Interactive Media	Sharing	1,514	2,348	n/a	3.0	3.4	n/a
France Télévisions Interactive	catch up/VoD	n/a	1,380	n/a	n/a	4.5	n/a
Total Internet		**23,243**	**25,168**	**25,361**	**89.9**	**92.8**	**88.4**

Source: comScore

Table 56 : Top French Online Properties ranked by videos viewed

January-May 2008, age 15+ home & work locations		Videos (000s)			Market share (%)		
		Jan 08	May 08	Sep 08	Jan 08	May 08	Sep 08
Google sites	sharing	602,032	650,251	745,480	28.8	27.9	33.2
Dailymotion.com	sharing	350,720	361,957	303,552	16.8	15.5	13.5
Groupe TF1	catch up/VoD	40,742	34,954	50,081	1.9	1.5	2.2
Microsoft sites	free VoD	10,830	19,816	26,186	0.5	0.8	1.2
Megavideo.com	Sharing	n/a	10,473	22,546	n/a	0.4	1
AOL LLC	free VoD	n/a	n/a	20,351	n/a	n/a	0.9
AlloCine sites	film trailers	11,531	7,685	9,801	0.6	0.3	0.4
France Télévisions Interactive	catch up/VoD	n/a	n/a	9,016	n/a	n/a	0.4
Orange sites	VoD/web TV	n/a	10,383	8,637	n/a	0.4	0.4
Kewego	sharing	13,466	10,943	8,482	0.6	n/a	0.4
Iliad/Free.fr sites	web TV	14,070	7,624	n/a	0.7	0.3	n/a
Fox Interactive Media	sharing	n/a	7,882	n/a	n/a	0.3	n/a
Yahoo!	free VoD	11,643	n/a	n/a	0.6	0.5	n/a
VEOH.COM	sharing	10,895	n/a	n/a	0.5	n/a	n/a
Stage6 by DivX	sharing	10,739	n/a	n/a	0.5	n/a	n/a
Total Internet		**2,090,201**	**2,334,344**	**2,242,437**	**n/a**	**n/a**	**n/a**

Source: comScore

7.5.3.3. Germany

In Germany, according to comScore, the Google (YouTube) websites saw their number of unique visitors rise from 13 million in December 2007 to 19.3 million in December 2008, when 1.7 billion videos were viewed on YouTube, which obtained a market share of 50.5%. YouTube has no real challenger on the video sharing market, and it is the major broadcasting groups (ProSiebenSat.1 and the RTL Group) that are fighting for second place, with their catch-up TV and VoD websites. ProSiebenSat.1 gained a foothold on the video sharing website market with its takeover of the Romanian service MyVideo.

Table 57 : The top German online video properties, ranked by total unique viewers (December 2007-December 2008)

Age 15+, home & work locations		Total number of unique visitors (000s)				Average number of videos viewed per visitor		
		Dec 2007	**May 2008**	**Aug 2008**	**Dec 2008**	**May 2008**	**Aug 2008**	**Dec 2008**
Google sites	sharing	13,086	14,945	16,652	19,379	76.8	95.5	88.3
Universal Music	music video	7,160	12,721	8,879	8,552	4.9	3.1	6.5
ProSiebenSat1 sites	catch up / sharing	4,759	5,345	4,007	6,508	9.7	11.5	9.7
RTL Group Sites	catch up / VoD	1,568	3,859	4,449	4,076	14.2	7.5	8.4
Microsoft Sites	free VoD	1,292	2,453	1,915	2,462	4.4	6.2	5.9
Fox interactive Media	sharing	2,447	1,747	1,342	2,229	3.9	3.5	n/a
Megavideo.com	sharing	161	1,545	2,090	2,068	13.6	15.1	15.1
Warner Music	music video	545	n/a	n/a	1,837	n/a	n/a	n/a
Axel Springer AG	free VoD	n/a	1,534	1,083	1,569	3.9	5.2	n/a
Yahoo! Sites	free VoD	1,269	1,665	1,375	1,519	8.8	6.1	8.0
Viacom Digital	music video	n/a	1,802	1,643	n/a	6.2	5.9	7.0
Total Internet		**25,955**	**25,980**	**25,959**	**28,516**	**118.8**	**117.6**	**118.8**

Source: comScore

Table 58 : The top German online video properties ranked by total videos viewed (May 2008 - December 2008)

	Videos (000s)			Market share (%)		
	May 2008	**Aug. 2008**	**Dec. 2008**	**May 2008**	**Aug. 2008**	**Dec. 2008**
Google sites	1,147,366	1,590,301	1,711,577	38.2	52.1	50.5
ProSiebenSat1 sites	52,037	46,237	62,827	1.7	1.5	1.9
Universal Music Group	62,637	27,534	55,950	2.1	0.9	1.7
RTL Group Sites	54,767	33,527	34,414	1.8	1.1	1
Megavideo.com	20,979	31,522	31,154	0.7	1.0	0.9
Microsoft Sites	10,783	11,816	14,641	0.4	0.4	0.4
Yahoo! sites	14,589	8,322	12,169	0.5	0.3	0.4
Sport1 online	n/a	n/a	11,963	n/a	n/a	0.4
Dailymotion.com	n/a	7,377	10,500	n/a	0.2	0.3
Viacom digital	11,149	9,748	8,426	0.4	0.3	0.2
lokalisten.de	n/a	10,497	n/a	n/a	0.3	n/a
Netlog.com	11,489	n/a	n/a	0.4	n/a	n/a
Veoh.com	10,093	n/a	n/a	0.3	n/a	n/a
Total Internet	**3,006,991**	**3,052,670**	**3,388,086**	**100**	**100**	**100**

Source: comScore

It should be noted that, curiously enough, the most recent study published by AGOF does not identify the consumption of videos on the Internet as one of the possible activities for web users. YouTube does not appear in the rankings of the most visited sites.[928]

The certified data produced by IVW do not take account of websites established outside Germany, such as YouTube or the iTunes Stores, or of the catch-up TV sites of the public service channels.

Table 59 : Certified audience of websites offering video in Germany (May 2008-May 2009)

		Visits May 2008	Visits May 2009	Growth	Page impressions May 2009
T-Online	Generalist portal with videos	285,595,709	363,324,569	27.2%	3,785,918,202
MSN	Generalist portal with videos	233,850,838	282,644,523	20.9%	704,762,841
ProSieben Online	TV highlights/trailers	123,394,032	152,829,596	23.9%	462,977,190
AOL	Generalist portal with videos	70,473,720	71,039,221	0.8%	388,849,047
RTL.de	Generalist portal with videos	45,652,811	56,418,035	23.6%	499,692,541
MySpace	Social networking with videos	44,211,024	55,947,254	26.5%	771,029,790
MyVideo	Video sharing	43,190,887	49,250,000	14.0%	491,811,749
sat.1 online	TV highlights/trailers	16,627,986	18,313,032	10.1%	187,801,374
n-tv online	News videos	14,017,413	17,771,067	26.8%	114,465,765
Netlog	Video sharing	_	360,969	_	233,983,409
Maxdome	Pay-VoD	1,500,879	718,176	480.9%	29,369,037
Clipfish.de	Video sharing	9,612,256	6,015,125	-37.4%	61,948,477
N24 Online	News videos	6,482,424	4,128,975	-36.3%	37,940,060
animeMANGA	Free VoD	1,575,456	3,849,142	144.3%	25,070,078
Ladies.de	Adult VoD	2,708,082	3,612,058	33.4%	192,613,708
Truveo	Video search tool	_	3,460,715	_	8,003,373
mtv.de	FOD music	2,515,802	3,174,531	26.2%	22,837,302
kabeleins online	TV highlights/trailers	2,891,487	3,036,852	5.0%	26,237,169
RTL 2	TV highlights/trailers	968,302	2,263,604	133.8%	28,895,071
TOGGO.de (Super RTL)	Free VoD for children	2,189,973	2,182,170	-0.4%	105,737,745

The websites of the public service channels and foreign sites such as YouTube or the iTunes Stores are not included.

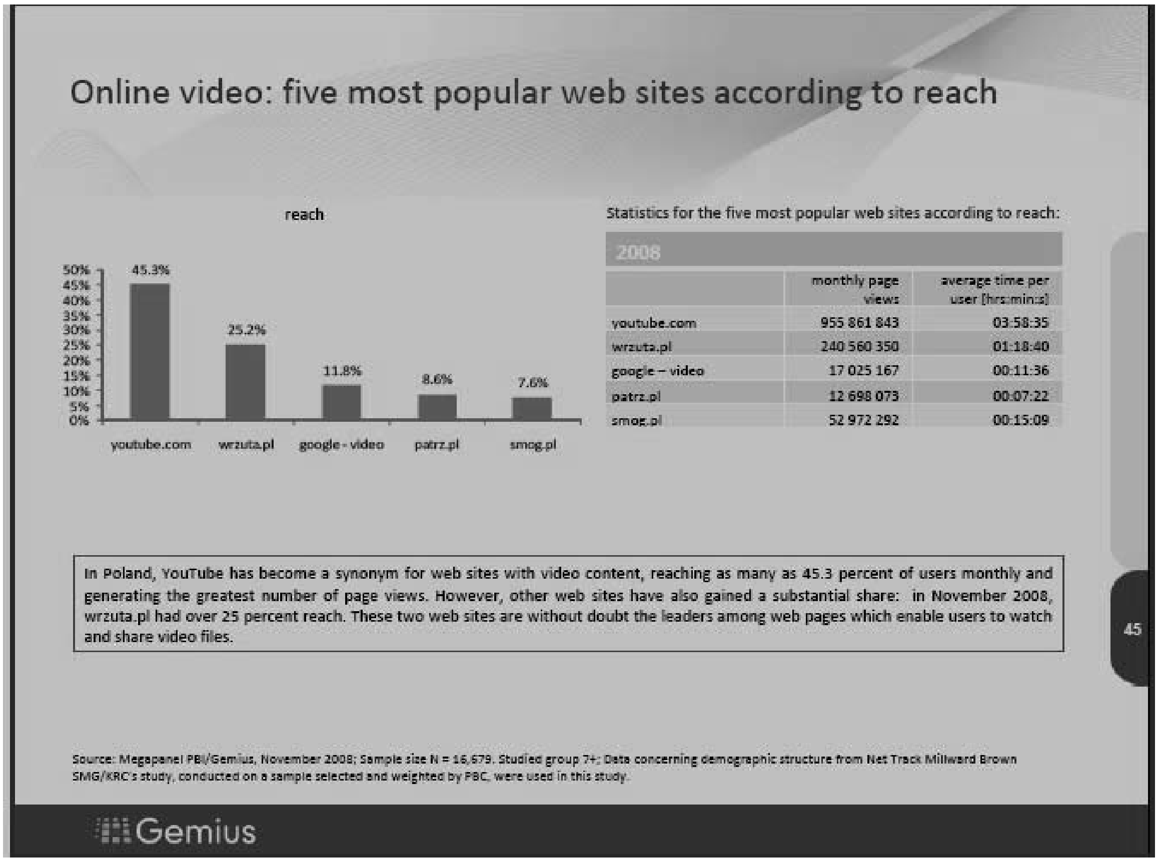
Source: IVW/OBS

[928] AGOF*, Internet facts 2009-I*, 18 June 2009, http://www.agof.de/studie.583.html

7.5.3.4. Poland

In Poland, according to the most recent study published by Gemius, YouTube also dominates the online video market. YouTube's average monthly audience was 955.9 million pages viewed, compared with 240.1 million at the Polish website Wrzuta.[929]

Graphic 87 : Online video: five most popular web sites according to reach



Source: Megapanel PBI / Gemius

[929] Polish Internet 2008/2009, *Gemius*, February 2009, http://files.gemius.pl/Reports/2009/Polish_Internet_2008_2009_gemiusReport.pdf

7.6. MEASUREMENT OF THE AUDIENCE OF MOBILE SERVICES

Since 2006, the development of mobile telephones that enable television and Internet services to be received has opened up a new field of investigation for organisations specialising in audience measurement.[930] The first measurement service emerged in the United States: the Mobile Adinsights service of InsightExpress (June 2007)[931] and QuickPlay Media.[932] The latter company, which is also at the forefront in the field of solutions for mobile television operators, publishes quarterly reports. According to the most recent study, the Total number of live TV and video streams increased by 61% between the last quarter of 2008 and the first quarter of 2009. The number of unique viewers rose by 11%. The average streams per user decreased from 17.4 to 15.7 but the average number of downloads rose from 6.1 to 6.3.[933]

In Europe, the feasibility of such measurements was recognised and the first measurement services began to be introduced. In May 2007, the GSM Association (GSMA), which groups together five major operators on the European market (the Vodafone Group, Telefónica O2 Europe, T-Mobile International, the FT-Orange Group, 3) announced the launch of its Mobile Media Metrics programme. Then, in February 2008, it announced the creation of a task force on matters relating to the measurement of mobile audiences.[934] The results of the feasibility study carried out by comScore were presented in February 2009[935], and in September 2009 the GSMA announced that it had chosen comScore as its measurement partner.[936]

7.6.1. Germany

The feasibility of measuring the audience of mobile services has been studied in Germany by AGOF (Arbeitsgemeinschaft Online Forschung[937]) in co-operation with Fachgruppe Mobile des Bundesverbandes Digitale Wirtschaft (BVDW) e.V.

On 29 June 2009, AGOF announced the formation of AGOF Mobile, which aims to bring about the unification of the German market for the measurement of mobile audiences. The 14 founder members are: Axel Springer AG, freeXmedia GmbH, Gruner + Jahr Electronic Media Sales GmbH, InteractiveMedia CCSP GmbH, IP Deutschland GmbH, iq media marketing gmbh, QUALITY CHANNEL GmbH, T-Mobile International AG, Telefonica O2

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930 *Advertising Age*, 21 November 2006.

931 InsightExpress press release, 6 June 2007, http://www.insightexpress.com/release.asp?aid=356

932 http://www.quickplay.com/solutions_mediaCompany.htm

933 "QuickPlay Media Sees Continued Demand for Mobile TV and Video Content in Q1 2009 ", QuickPlay Media press release, 11 May 2009, http://www.quickplay.com/pressItem_049.htm. See also the survey of American consumers concerning their perception of television and on-demand mobile services: QuickPlay Media, US Mobile TV and Video Survey 2009 Summary, 10 March 2009, http://www.quickplay.com/pdf/QuickPlay_MediaSurvey_2009.pdf

934 "GSMA launches mobile advertising programme to optimise advertising on the 'fourth screen'", 22 May 2007, http://gsmworld.com/newsroom/press-releases/2033.htm#nav-6, "Leading Operators Work Together To Measure Mobile Advertising", 11 February 2008, http://gsmworld.com/newsroom/press-releases/2008/791.htm#nav-6

935 "GSMA Leads Mobile Advertising Initiative", GSMA press release, 16 February 2009. The results are based on a sample of anonymised data from the British mobile operators. 68% of users visit the mobile operators' websites. It should be noted that the websites offering videos (BBC and Apple Inc. i.e., the iTunes Stores) are in 5th and 6th position respectively, http://www.gsmworld.com/newsroom/press-releases/2009/2532.htm

936 comScore press release, 2 September 2009, http://www.comscore.com/Press_Events/Press_Releases/2009/9/GSMA_Announces_comScore_as_U.K._Partner_for_Mobile_Media_Metrics_initiative

937 http://www.agof.de/

Germany GmbH & Co. OHG, TOMORROW FOCUS AG, United Internet Media AG, Vodafone D2 GmbH, Yahoo! Deutschland GmbH and YOC AG.[938]

7.6.2. *United Kingdom*

In April 2008, the Dutch company Nedstat published the results of an initial study on the use of websites on mobiles.[939] For the period 1 to 21 April 2008, the Apple websites accounted for 50.2% of the traffic.[940]

In February 2009, the Canadian company QuickPlay Media published a study on the British consumers' perception of mobile television and on-demand services.[941]

7.6.3. *France*

In France, the French Mobile Multimedia Association (AFMM), which groups together the three operators Orange, SFR and Bouygues Telecom, has teamed up with the publisher members of Geste (Groupement des Editeurs et Services en Ligne) and with online commerce sites that are members of Acsel (Association pour le Commerce et les Services en Ligne) to develop their own audience measurement tool. The measurements are not likely to be carried out by means of a user panel but by recording mobile surfers' visits to websites. According to AFMM, "the approach adopted consists in exploiting all the data on mobile Internet use, as observed by the operators' information systems and rendered anonymous, so as to obtain the most exhaustive measurement possible". The connection logs will be obtained by using the mobile telephone number and user ID in order to evaluate the paths chosen by users. As reported by the magazine *Les Echos*, this approach poses two problems. Firstly, each operator will have to provide the two others with details of its own logs, which will make it necessary to agree on a standard format. Secondly, the collection of this information will have to be made anonymous in order to preserve respect for personal privacy. This means that the method employed must be given the approval of CNIL (Commission nationale de l'informatique et des libertés) and CESP (Centre d'étude des supports de publicité). AFMM is expecting to rely on a third party player for these data collection operations and has begun a consultation to determine who will do this and what the arrangements will be. The main market players, such as Médiamétrie, comScore and GfK, were in the running and Médiamétrie was chosen. The launch of the audience measurement tool is planned for the end of 2009, with funding of 3 million euros over three years, which should make it possible to facilitate the take-off of the mobile advertising market, which is seen as promising but absolutely has to have reliable monitoring tools. The first figures should become available in the first half of 2010.[942]

In June 2009, Médiamétrie and Nielsen Telecom Practice signed a partnership agreement with the aim of providing the market every quarter with a baseline study of the telecoms

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938 AGOF press release, 29 June 2009, http://agof.de/index.929.de.html

939 "Nedstat introduces mobile analytics. New insights in mobile browsing and conversion", press release, 24 April 2008, http://www.nedstat.co.uk/web/nedstatuk.nsf/pages/mobile-analytics-introduction?opendocument&img=latestnews

940 http://www.nedstat.co.uk/web/nedstatuk.nsf/pages/mobile-web-analytics

941 "QuickPlay Media, UK Mobile TV and Video Survey 2009 – Summary", 16 February 2009, http://www.quickplay.com/pdf/QuickPlay_UK_Survey_Summary_2009.pdf

942 "Bouygues, SFR, Orange créent leur propre mesure d'audience", *Les Echos*, 14 January 2009, http://www.lesechos.fr/info/comm/4818485-bouygues--sfr--orange-creent-leur-mesure-d-audience-pour-le-mobile.htm; "Médiamétrie retenu pour mesurer l'audience d'Internet mobile", *Les Echos*, 5 July 2009.

ecosystem in France.[943] It is claimed that the study will become the standard measurement of the use of mobile telephones and telecommunications and the associated consumption behaviour and that it will provide a complete picture of that use and consumption. It will cover the various angles (service, products, media and content) and the entire consumption cycle from the purchase of the mobile and the importance of the technical aspects of the devices, the content and the applications used – Internet, video, music, mobile games – to the satisfaction and the churn rate (the proportion of lost customers). This baseline study will make it possible in particular:

- to assess the perception of the various services and brands present on the mobile telephone market;
- to understand the motivations, the factors that trigger purchases and the subscriptions of users when they choose or renew their mobile telephone and operator;
- to study the ways in which consumers use their mobile telephones;
- to shed light on the new usages, such as the websites consulted and the content downloaded from the mobile Internet;
- to measure satisfaction of users and therefore their purchasing behaviour and future usages.

7.6.4. Measuring website and mobile audiences

The question of the comparability of the audience data for the websites consulted online and on mobile telephones has been exercising minds for some time and Nielsen launched a cross-platform service in the United States in April 2008.[944] The first results showed that a presence on mobiles increased the audience of websites by an average of 13%. In the case of sites providing weather forecasts and entertainment, the increase was 22%.

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943 "Lancement de Mobile Consumer Insight", Médiamétrie press release, 11 June 2006. http://www.mediametrie.fr/comportements/communiques/lancement-de-mobile-consumer-insight.php?id=79

944 "Mobile Internet Extends the Reach of Leading Internet Sites by 13%. Nielsen launches Total Web as the first cross-platform Internet measurement service to report total Internet audiences", Nielsen press release, 1 May 2008, http://www.nielsenmedia.com/nc/portal/site/Public/menuitem.55dc65b4a7d5adff3f65936147a062a0/?vgnextoid=27e6a153e30a9110VgnVCM100000ac0a260aRCRD

Table 60 : Average online audience lift provided by mobile web, by programme category in the United States (4th quarter 2007)

TotalWeb - Average Online Audience Lift Provided by Mobile Web, by Category (Q4 2007)	
Category	**Average Lift (%)**
Total	13
Weather[1]	22
Entertainment	22
Games	15
Music	15
Email	11
Sports	10
Business/Finance	4
Social Networking	3
Search	2
Shopping/Auctions	1

Source: TotalWeb Q4 2007, The Nielsen Company. Based on 200+ Internet sites measured across both Home PC and Mobile Internet.

[1]To be read: In Q4 2007, weather sites measured by TotalWeb averaged a 22% lift in overall audience reach through mobile web traffic, over home PC traffic alone.

Source: The Nielsen Company

In May 2008, comScore took over M:Metrics, which was the market leader in the field of mobile audience measurement. comScore has since become the main source of information in this area. According to its figures, the number of mobile users accessing the Internet doubled in the United States between January 2008 and January 2009.[945] However, contrary to the Nielsen studies, those carried out by comScore on the use of mobile telephones in Europe do not show that people use their mobiles to download videos.[946]

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945 "Mobile Internet Becoming A Daily Activity For Many. Number of people accessing news and information on their mobile device more than doubles in a year", comScore press release, 16 March 2009. http://www.comscore.com/Press_Events/Press_Releases/2009/3/Daily_Mobile_Internet_Usage_Grows

946 "Financial Sites Popular Among Older European Mobile Web Users; Entertainment Content Appeals Most to Teens", comScore press release, 29 April 2009, http://www.comscore.com/Press_Events/Press_Releases/2009/4/Financial_Sites_Popular_Among_Older_European_Mobile_Web_Users

Table 61 : Category of websites visited on mobiles by European mobile subscribers by age (3-month average, ending February 2009)

Top News and Information Categories, by Age Three-Month Average Ending February 2009 European* Mobile Subscribers Source: comScore Mobile					
Age 13-17		**Age 18-24**		**Age 25-34**	
Site Category	**% Visiting**	**Site Category**	**% Visiting**	**Site Category**	**% Visiting**
Social Networking	15.2	Social networking	19.5	Social networking	16.5
Web Search	9.5	Web Search	12	Web Search	12.1
Entertainment News	9.1	Weather	11	Weather	10.5
Weather	7.2	Entertainment News	10.8	Sports Info	10.3
Sports Info	7.2	Sports Info	10.7	News	9.9
News	6.3	News	9.6	Entertainment News	8.6
Tech News	6.1	Maps	8.5	Maps	8.3
Gaming Info	5.9	Tech News	8.1	Tech News	7
Movie Info	5.7	Stock Quotes/Financial news	7.6	Stock Quotes/Financial News	6.6
Comics or humor	5.2	Movie Info	7	Traded Stocks/Accessed Financial Account	6.4

**France, Germany, Italy, Spain and the United Kingdom*

Source: comScore

Even for iPhone users, downloading videos does not seem to be one of the important usages.[947]

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947 "comScore releases first data on iPhone users in the U.K. 93 per cent of iPhone users accessed mobile media in January; E-mail is the most popular mobile application", comScore press release, 26 March 2009. http://www.comscore.com/Press_Events/Press_Releases/2009/3/UK_iPhone_Users

Table 62 : Top activities among iPhone users vs. all Smartphone users in the United Kingdom (3-month average ending January 2009)

Top Activities Among iPhone Users vs. All Smartphone Users Three-month average ending January 2009 Total U.K. Age 13+, Smartphone Owners Source: comScore Mobile			
Activity	**Per cent of iPhone Users**	**Per cent of Smartphone Users**	**Per cent of All Mobile Phone Users**
Accessed news/info via browser	79.7	48.0	19.8
Accessed e-mail	75.4	35.4	13.1
Listened to mobile music	65.6	40.5	22.6
Accessed news or info via downloaded application	55.6	22.1	6.3
Accessed social networking site	54.8	29.6	12.7
Accessed weather	55.5	26.1	9.2
Used web search	55.1	31.9	12.3

Source: comScore

In the period September-November 2008, the use of a mobile to view videos was only mentioned by 4% of subscribers in the United Kingdom, 5% in Germany, 6% in France, 7% in Italy and 8% in Spain. This practice even seemed to be in decline in the United Kingdom (-27%), France (-7%) and Italy (-4%) compared to previous year.[948]

However, according to a Nielsen study on the use of the iPhone in the United States in the first quarter of 2009, i.e. before the introduction of the iPhone GS, 37% of iPhone users watch videos, i.e. six times more than the typical subscribers.[949]

[948] "Mobile Social Networking Driving Growth of the Mobile Internet in Europe", comScore press release, 29 January 2009, http://www.comscore.com/Industry_Solutions

[949] "iPhone Users Watch More Video… and are Older than You Think", Nielsen Wire, 10 June 2009, http://blog.nielsen.com/nielsenwire/online_mobile/iphone-users-watch-more-video-and-are-older-than-you-think/

Table 63 : Evolution of mobile consuming habits of European mobile subscribers in France, Germany, Italy, Spain and UK

(3-month average ending November 2008 and comparison with previous year)

comScore Mobile Benchmark Study
Three-month average ending November 2008 and % Change Vs Year Ago
(% Users Measure is Based on All Mobile Phone Users)
European Mobile Subscribers (France, Germany, Italy, Spain, UK)
Source: comScore M:Metrics

	Germany		Spain		France		Italy		UK	
Activity	% Users	% Change	% Users	% Change	% Users	% Change	% Users	% Change	% Users	% Change
Watched video	5%	2%	8%	0%	6%	-7%	7%	-4%	4%	-27%
Listened to music	20%	-2%	23%	-1%	17%	-3%	17%	-2%	22%	-1%
Accessed news/info via browser	9%	10%	10%	10%	14%	5%	10%	5%	19%	5%
Received SMS ads	27%	0%	75%	5%	64%	-1%	54%	2%	36%	0%
Played downloaded game	8%	-2%	10%	-6%	4%	-14%	8%	-5%	10%	-4%
Accessed downloaded application	4%	25%	5%	26%	3%	16%	6%	12%	6%	17%
Sent/received photos or videos	23%	0%	31%	-3%	25%	-6%	30%	-5%	30%	-2%
Purchased ringtones	4%	10%	4%	2%	3%	-8%	4%	6%	3%	4%
Used email	9%	7%	11%	-1%	9%	11%	12%	2%	12%	12%
Accessed social networking sites	3%	25%	5%	33%	5%	20%	5%	33%	9%	12%

Source: comScore

Table 64 : Top mobile sites vs. top Internet sites (December 2008, UK mobile phone users)

Top Mobile Sites vs. Top Internet Sites, December 2008 UK Mobile Phone Users (sample of UK Operators) and UK Internet Users¹

	Top 10 Mobile Sites	**Top 10 PC Internet Sites**
1	Mobile Operator Sites	Google Sites
2	Google Sites	Microsoft Sites
3	Facebook.com	Yahoo! Sites
4	Yahoo! Sites	Facebook.com
5	BBC Sites	EBay
6	Apple Inc. Sites	BBC Sites
7	Microsoft Sites	AOL (inc. Bebo)
8	Sony Online (inc. Sony Ericsson)	Amazon Sites
9	Nokia	Ask Network
10	AOL (inc. Bebo)	Wikimedia Foundation Sites

Source: *GSMA Mobile Media Metrics; comScore Media Metrix (PC data)*

PART 8:

THE ECONOMIC IMPORTANCE OF ON-DEMAND AUDIOVISUAL SERVICES

It is not easy to measure the economic importance of on-demand audiovisual services. Most operators do not publish detailed data on this specific area of activity. In company reports, the as yet modest figures relating to on-demand audiovisual service operations are usually incorporated into broader categories. The operators also say very little about the number of transactions carried out, which makes it difficult if not impossible to model the revenues, whether they originate from sales, rentals or advertising.

Nonetheless, a number of attempts to quantify the VoD market and its position relative to other audiovisual industry revenues have been made in the United States, France, the United Kingdom and Spain.

8.1. UNITED STATES

An estimate of the size of the physical video and VoD market in the United States has been published by Blockbuster Inc. and is based on figures complied by the company Adams Media Research.

Rental VoD (which comprises the three categories cable VoD on, digital VoD (rental VoD on the Internet) and subscription VoD, is estimated to have been $1.9 billion in 2008, which is an increase of 27.6% over 2007. Digital retail VoD is estimated at $437 million, an increase of 62.5% over 2007.

In all, the revenues from rental and digital retail VoD are estimated to have amounted to $2.3 billion in 2008, which is an increase of 33% over 2007. VoD is reported to account for 8.7% of the total video market (physical and VoD), compared with 6.8% in 2007.

Table 65 : The size of the US physical video and VoD market in the United States (2007-2008)

	2007	2008	2007	2008	2008/2007
In-store rental	6,215	5,797	24.0%	21.7%	-6.7%
Vending	198	377	0.8%	1.4%	90.4%
By-mail rental	1,789	2,128	6.9%	8.0%	18.9%
Physical film rental market	8,202	8,302	31.7%	31.1%	1.2%
Cable video-on-demand (“VoD”)	1,038	1,164	4.0%	4.4%	12.1%
Digital VoD	166	258	0.6%	1.0%	55.4%
Subscription VoD	277	468	1.1%	1.8%	69.0%
Digital film rental market	1,481	1,890	5.7%	7.1%	27.6%
Total film rental market	**9,683**	**10,192**	**37.4%**	**38.2%**	**5.3%**
Physical retail	15,946	16,083	61.6%	60.2%	0.9%
Digital retail	269	437	1.0%	1.6%	62.5%
Film retail market	16,215	16,520	62.6%	61.8%	1.9%
Total VoD rental + retail	**1,750**	**2,327**	**6.8%**	**8.7%**	**33.0%**
Total film rental and retail market	**25,898**	**26,712**	**100.0%**	**100.0%**	**3.1%**

Source: Blockbuster Inc. (based on Adams Media Research data)

8.2. FRANCE

In France, an assessment of the amount spent by households on VoD is provided by the NPA-GfK barometer. The money spent was calculated at €14 million in 2006, €29 million in 2007 and €53 million in 2008. According to the CNC[950], this last figure represented 0.7% of household expenditure on audiovisual programmes in 2008 (including TV licence fees, TV subscriptions, cinema tickets and expenditure on videos).

In comparison with the United States, where VoD accounted for 9.7% of the total expenditure on physical video/VoD in 2008, the figure was only 3.3% in France. However, the VoD growth rate between 2008 and 2007 (82.8%) was well above that of audiovisual expenditure as a whole (+2.8%).

Table 66 : Household expenditure on audiovisual programmes in France (2006-2008) - in millions of euros

	2006	2007	2008		2006	2007	2008		2008/2007
TV licences	1,763	1,764	1,883		22.6%	23.1%	24.0%		6.7%
TV subscriptions	3,157	3,245	3,351		40.5%	42.5%	42.7%		3.3%
Physical video (sales/rentals)	1,737	1,543	1,414		22.3%	20.2%	18.0%		-8.4%
VoD	14	29	53		0.2%	0.4%	0.7%		82.8%
Cinema	1,121	1,058	1,139		14.4%	13.8%	14.5%		7.7%
TOTAL	**7,792**	**7,639**	**7,840**		**100.0%**	**100.0%**	**100.0%**		**2.6%**

Source: CNC, based on French Finance Act data and figures from IDATE, GfK/NPA and SEVN

	2006	2007	2008		2006	2007	2008		2008/2007
Physical video (sales/rentals)	1,737	1,543	1,414		99.2%	98.2%	96.4%		-8.4%
VoD	14	29	53		0.8%	1.8%	3.6%		82.8%
Total Video	**1,751**	**1,572**	**1,467**		**100.0%**	**100.0%**	**100.0%**		**-6.7%**

Source: European Audiovisual Observatory, based on CNC data

950 CNC, *Bilan 2008*, Paris, May 2009. This publication also provides a detailed analysis of the VoD market in France.

8.3. UNITED KINGDOM

In the United Kingdom, the UK Film Council publishes data on the revenues of the film industry. Unlike the aforementioned CNC data, they do not relate to all the expenditure of households on audiovisual programmes but only to the money spent on films. In contrast to the CNC statistics, the TV revenues calculated are an estimate of the amount spent by channels on the purchase of films and not the money spent by households on licence fees and subscriptions. Finally, the data on VoD expenditure are combined with those for nVoD (pay-per-view).[951]

Table 67 : Fim industry revenues in the United Kingdom (2007-2008) – in GBP millions

	2007	2008		2007	2008		2008/2007
Theatrical	821	850		22.5%	22.9%		3.5%
DVD/video rental	297	219		8.2%	5.9%		-26.3%
Sell-through DVD/video	1,440	1,454		39.5%	39.2%		1.0%
Pay-TV	516	521		14.2%	14.0%		1.0%
Terrestrial TV	254	257		7.0%	6.9%		1.2%
“Free” multi-channel TV	224	289		6.1%	7.8%		29.0%
nVoD and VoD	92	120		2.5%	3.2%		30.4%
Total	**3,644**	**3,710**		**100.0%**	**100.0%**		**1.8%**

Sources: UK Film Council based on data from Nielsen EDI, MRIB, Official Charts Company, Attentional, Screen Digest, RSU

	2007	2008		2007	2008		2008/2007
DVD/video rental	297	219		16.2%	12.2%		-26.3%
Sell-through DVD/video	1,440	1,454		78.7%	81.1%		1.0%
nVoD and VoD	92	120		5.0%	6.7%		30.4%
Total physical video/nVoD/VoD	**1,829**	**1,793**		**100.0%**	**100.0%**		**-2.0%**

Source: European Audiovisual Observatory based on UK Film Council data

According to these data, the total nVoD/VoD revenues were 3.2% of film revenues in 2008 and 6.7% of all revenues for nVoD/VoD and physical video.

951 UK Film Council, *Statistical Yearbook 2009*, London, 2009. p.109

8.4. SPAIN

In Spain, an assessment of the audiovisual market is published by the regulator Comisión del Mercado de las Telecomuniaciones (CMT).[952] It only contains the revenues of the audiovisual services sector. In this assessment, the figures for VoD and pay-per-view are added together and are said to have amounted to €243.8 million in 2008, or 3.6% of the sector's revenues.

Based on the video market estimates provided by the IVF and the aggregated pay-per-view/VoD figures supplied by the CMT, the total pay-per-view/VoD revenues account for 33.6% of all physical video/nVoD/VoD revenues. This seems a fairly high proportion and is well above the 6.7% identified in the United Kingdom. It can perhaps be explained by the fact that the Spanish statistics probably include pay-per-view income from sports services, whereas the British data only relate to films.

Table 68 : Revenues of the audiovisual industry in Spain (2006-2008) EUR million

	2006	2007	2008		2006	2007	2008		2008/ 2007
Commercial advertising	3290.6	3582.5	3246.5		50.3%	52.8%	47.7%		-9,4%
Pay-TV subscriptions	1323.9	1393.9	1439.1		20.3%	20.5%	21.2%		3,2%
Pay-per-view and VoD	184.9	227.7	243.8		2.8%	3.4%	3.6%		7,1%
Subsidies	1190.9	1017.7	1277.5		18.2%	15.0%	18.8%		25,5%
Other	546.9	564.3	597.2		8.4%	8.3%	8.8%		5,8%
Total	**6537.2**	**6786.1**	**6804.1**		**100.0%**	**100.0%**	**100.0%**		**0,3%**

Source: CMT

	2006	2007	2008		2006	2007	2008		2008/ 2007
Video (sales)	364.5	372.4	318.6		44.7%	46.6%	43.9%		-14,4%
Video (rentals)	266.5	199.8	162.8		32.7%	25.0%	22.4%		-18,5%
Pay-per-view and VoD	184.9	227.7	243.8		22.7%	28.5%	33.6%		7,1%
Total video, nVoD and VoD	**815.9**	**799.9**	**725.2**		**100.0%**	**100.0%**	**100.0%**		**-9,3%**

Source: European Audiovisual Observatory based on IVF and CMT data

952 CMT, *Annual Report* 2008, CMT, Madrid, 2009, http://www.cmt.es/en/publicaciones/anexos/Informe_Anual_2008_ECONOMIC_REPORT_eng.pdf

8.5. ITALY

According to a Prometeia study carried out for the professional association Univideo, Italian consumer expenditure on VoD services accounted for barely 0.5% of all video expenditure in 2008. A specific feature of the Italian market is said to be the predominance of download-to-own VoD, which makes up two-thirds of the market compared with only one-third for rental VoD.[953]

[953] *Rapporto Univideo 2009 sullo stato dell'editoria audiovisiva in Italia*, Univideo, Rome, September 2009, http://www.univideo.org/cms/attach/editor/Rapporto_completo_Univideo_2009.pdf

PART 9:

SUMMARY

IN VIEW OF THE MANY DIFFERENT SERVICES AVAILABLE, USERS WILL GIVE PRIORITY TO VIEWING CONVENIENCE AND THE PROVISION OF EDITORIAL INFORMATION

It is now standard practice to distinguish between four main types of on-demand audiovisual programme offering:

- legal video on demand (VoD) services, either free or paid, provide catalogues of stock programmes (films, television fiction, documentaries, animation, educational programmes);
- catch-up television services provide, for a limited period, programmes that have just been broadcast by a television channel. These services may be free or paid;
- content offered by video sharing sites set up by hosts that do not act as content providers: these services offer programmes provided by users;
- pirate offerings available on the Internet (mainly on peer-to-peer networks relayed by sites that inform users where they can find the films they are looking for).

In principle, only the first two types meet the definition of "on-demand audiovisual service" contained in the European Audiovisual Media Services Directive adopted in December 2008 and currently being transposed into national law by the EU member states.

However, one trend that it has been possible to observe in the past few months is the convergence or, indeed, the mixing of different types of service.

The establishment of links between the hosts of video sharing sites and the professional players

Drawing on their success in terms of their audiences but accused of encouraging piracy by allowing their users to upload copyright protected works, the hosts of video sharing sites (such as YouTube and Dailymotion) have developed strategies aimed at enhancing their legitimacy as advertising media. They have increasingly sought to ensure that videos uploaded without authorisation are taken down and have set up filtering systems. They have approached the professional players (studios, television channels, institutions, etc) to offer them the opportunity to use their hosting capacities and share advertising revenues. At the sites concerned, this co-operation takes the form of brand channels provided by the various partners. These hosts have also entered into agreements with collecting rights societies under which they agree to pay the authors and composers whose works they disseminate.

Closing the gap between a recommendation and sale

As more and more VoD offerings become available, the editorial forms that make it possible to guide the consumer, establish a catalogue hierarchy and provide advice come into their own. On the Internet in particular, the cultural magazine and online sales formats could soon converge and result in an encouragement to purchase being followed by a sale. First of all, the recommendation may be made by assessing probabilities, as already happens at various sites: the purchaser of an item of content (initially a book, a record, a videogramme but also now the content of a VoD service) is automatically offered the opportunity to buy other items that are similar (in terms of genre, subject or author) to his or her previous purchases. Secondly, the recommendation may be presented in a more elaborate way: the presentation of films may be accompanied by notes and comments from users or by additional biographical details or a critique of the work that has been made available online. These editorial formats make it possible to guide the enthusiast and minimise the gap between the invitation to watch an item and its purchase.

The uncertain profitability of free services funded by advertising

Advertising is a promising but still unstable resource. Free online services funded by advertising, whether they be video sharing sites, free-VoD portals such as Hulu (United States) or, in Europe, catch-up TV sites operated by private television companies, are meeting with undeniable success in terms of their audience reach. They have gradually gained recognition among advertisers and agencies as a means of reaching various consumer groups, especially the young, despite the costs per thousand, which are still high. However, since the second half of 2008 the operators of these services have suffered from the recession on the advertising market. Although these services are still expanding, they are slow to reach their breakeven point, thus sometimes putting a project's financial stability and the jobs involved at risk.

The "totally free" model is accordingly being called into question. In the United States, the operators of free services like YouTube and Hulu recently stated their intention to include a paid offering in their services.

Progress in combating piracy

The development of legal pay-VoD services is still being impeded by the considerable amount of piracy taking place. This is putting downward pressure on prices, forcing operators to shorten the release windows (at the risk of having an adverse impact on the cinema and video exploitation of works) and increasing the reluctance of some rights holders to make their catalogues available on the Internet.

In its fight against online piracy, the industry has scored a number of successes in the last few months: laws have been passed in Sweden, Finland and France. The graduated response principle, which is particularly controversial in France, is currently being implemented in Ireland and is under examination in the United Kingdom.

The judgment delivered by a Swedish court against the BitTorrent site The Pirate Bay resulted in the transfer of ownership in the website and statements of intent on the part of the new owners to turn the site into a legal offering. At the same time, the operators of Mininova in the Netherlands or RapidShare in Germany proclaim their desire to eliminate links to pirate programmes from their sites. However, these statements need to be translated into action and the debate on the adoption of regulations seems to be having the paradoxical effect of bringing about a current of opinion in support of piracy that is making itself heard in parliamentary forums.

The slow development of pay-VoD services

After a period of adopting a cautious approach, the Hollywood studios seem to be recognising the opportunities offered by pay-VoD services and have diversified their marketing strategies, both in the United States and Europe. In Europe, the VoD services that offer films or television broadcasts from the catalogues of the major studios have proliferated at the instigation of manufacturers (such as Apple, Microsoft and Sony), private television channels and distributors of channel packages (operators of satellite packages or of cable, ADSL or digital terrestrial television networks).

The many differences in the national situations and the fairly general lack of transparency make it impossible to provide any precise figures on the development of the pay-VoD market but the following trends seem to be emerging in Europe:

- the digitisation of the cable networks in the major markets such as the United Kingdom and Germany could result in the predominance of cable as the vehicle for pay-VoD;
- the telecommunications operators that offer triple-play generally provide VoD to make their services more attractive. In countries such as France, Spain and Italy and in some Central European countries, they undeniably have a substantial foothold on the pay-VoD market but they are only of subsidiary importance in the United Kingdom and Germany;
- when compared with pay-VoD services on cable or an ADSL network, the online VoD services seem less attractive for consumers. The online services operated by the equipment manufacturers (Apple, Microsoft, Sony) through specialised portals that permit easy downloads seem destined to be more successful than other types of pay services, which would appear doomed to lead a more marginal existence, often concentrated on niche markets (arthouse films, animation, documentaries, etc).

Catch-up television has been very quick to find an audience in Europe

Catch-up television has come into its own in the past two years as a specific segment of on-demand audiovisual services. Broadcasters are tending to negotiate the rights to provide catch-up content as an integral part of TV broadcasting rights, in contrast to VoD rights for catalogue works.

Catch-up services are generally offered free of charge (in the case of the public channels and advertising-funded channels) or as part of subscriptions (in the case of pay-TV channels). The success of the BBC iPlayer in the United Kingdom has demonstrated the public broadcasting service's ability to handle the various ways of distributing a catch-up service. However, the blocking in the United Kingdom of the Project Kangaroo archive content platform or the reductions in the catalogue of ZDF's Mediathek service in Germany indicate that, in response to appeals from private broadcasters, government authorities intend to impose strict limits on the activities of public broadcasters in the emerging field of on-demand services.

The issue of access to a television set

Paradoxically, while all analysts highlight the success of Internet video, the possibility of offering on-demand services on a television screen has become a major issue for the different types of industrial player.

At a time of flat screens and high definition, the television set is still the preferred device for viewing programmes of long duration (films, television fiction). Access to television screens is easier for the television channels that were originally set up to broadcast linear programmes and have developed their own VoD service than for on-demand services that have developed directly on the Internet: the latter are forced to negotiate the matter of access with the cable operators or operators of television services on ADSL networks (IPTV). Other solutions are available by using games consoles or dedicated set-top boxes as intermediate devices between the Internet and a television set. However, the market seems to be moving in the direction of Internet enabled television sets and Blu-ray players. In the United States, the consumer electronics manufacturers recently entered into agreements with the main VoD services, the hosts of video sharing sites and the portal operators to make these services available on enabled TVs.

The emergence of on-demand services delivered to mobile telephones

In the first few years, audiovisual services for mobile telephones, delivered via the 3G networks, were made up of television channels and short programmes available either live or as downloads from some operators' websites.

By launching a new technical and business model for its iPhone in the form of mobile applications ("Apps") that facilitate access to Internet services, Apple has provided a boost to the on-demand online services market: it is now possible to gain easy access on a mobile telephone – both via the 3G networks and WiFi – to on-demand services, such as the iTunes Store, the catch-up services of news or sports channels or the content offered by video sharing sites. Other manufacturers, such as Nokia and Sony Ericsson, are now also trying to implement such a model.

Measuring success and transparency

The growth of the different types of on-demand audiovisual service raises various questions relating to transparency and to measuring their success. There are currently few official initiatives to collect statistical data from operators that would provide a precise picture of the services available and their success. Market data are almost exclusively compiled by private consultancy firms, which have to work on the basis of assumptions that are not necessarily substantiated by sound data.

Apart from the fact that it may be problematic for the rights holders, this lack of transparency may have an adverse impact on investment and market development.

However, mention should be made of the initiatives by the professional audiovisual industry to create standards and establish methodological transparency for measuring the audience of services financed by advertising: advertisers call for the acquisition of reliable data that enable comparisons to be made between the audiovisual consumption of linear and non-linear services, between live and time-shifted consumption, and between consumption using the three types of screen available (TV, computer, mobile telephone).

The considerable fragmentation of the markets

The proliferation of technical platforms, services and commercial arrangements, coupled with the traditional administrative and cultural segmentation of the European audiovisual market, is leading to the considerable fragmentation of the on-demand services markets. The initial dream of a direct producer-consumer relationship is being replaced by the reality of an extremely complex market. This complexity is opening up new possibilities for the distributors and other intermediaries that specialise in drawing up new contracts adapted to the diversity of the different segments.

The debate initiated by the European Commission on the general availability of multi-territory licensing to facilitate the circulation of works on the European market has highlighted the polarisation between, on the one hand, the major international operators (especially manufacturers, hosts of video sharing sites and operators of international portals) and, on the other hand, the traditional audiovisual industry players (producers, distributors, broadcasters), who think this fragmentation tends to protect the small operators and, therefore, cultural diversity.

APPENDIX 1: TERMINOLOGY AND STATISTICAL INDICATORS

Proposal made by NPA Conseil

VoD terminology

Video on demand is a generic term that covers a wide variety of practices. In its broadest sense, it relates to any way of viewing content based on moving images and detached from a physical medium, provided that the consumer can choose the moment the programme starts (within a period of a few seconds to a few hours). A service that meets this definition can thus not be excluded from the scope of video on demand simply on the ground of a particular business model or the origin of the content.

Video on demand is different from linear television, the cinema, pay-per-view and video on a physical medium (VHS, DVD, Blu-ray, memory card, etc). By definition, the concept of video on demand is based on the non-linear distribution of audiovisual programmes on a non-physical medium.

a) Distribution network

The extent to which VoD has developed in European countries is very much bound up with the availability of service platforms on the various digital audiovisual distribution networks.

Before drawing up a quantified report on the VoD services offered it will thus be necessary to identify the number of platforms by distribution network:

- Internet
- IPTV
- Cable
- Satellite
- DTT

b) Mode of consumption

The first factor to be taken into account in classifying a VoD service is the technical means by which the content is made available to viewers. Here, the following distinctions can be drawn:

- **Streamed viewing**: the playback of the video begins immediately from the remote server on which the item is stored, and not from the destination computer or device. The file is normally not downloaded in its entirety but piece by piece from a buffer in the memory.
- **Temporary download**: this is the equivalent of renting a DVD. The video arrives in its entirety on reception computer or device but can only be viewed for a limited period (24 hours, 48 hours, one month, etc). The digital rights management (DRM) system prevents it from being played again once this period has expired.
- **Purchase to own with technical limitations** (DRM): The rights management system may allow the video to be acquired and kept by the consumer but limit viewing it to

specific software or a specific machine, prevent it being burned onto an optical medium (DVD) or limit or prohibit its duplication.

- **Purchase to own without technical limitations**: a video may be sold without any system of protection (without DRM), in which case it is possible to copy it, burn it, share it on the Internet or transfer it to a device other than the device of origin.
- **Podcast**: a podcast is a variant of download to own and comprises a subscription (e.g., Podemus, iTunes, Miro, etc) to a regularly updated source of videos via specific software. This involves the video producer making available a standard (XML) file that enables the podcast software to be automatically synchronised with the updates and any new videos published to be downloaded.

c) Marketing approach

The second key criterion for finding one's way about the many different VoD offerings is economic in nature, namely the way in which the sector players ensure they receive payment for their operations. There are four different models, which may sometimes co-exist on the same service platform:

- **Pay-per-view**: the company that provides the service offers customers the opportunity to rent or buy videos by the unit or as a package. The transaction is similar to classical e-commerce, the only difference being that the consumer pays for an article in electronic form, that is to say a package of bytes, and not for the same amount of information on a physical medium.
- **Payment by specific subscription**: the subscription model, mostly on a monthly basis, provides access to a complete catalogue of videos from which the consumer can choose the ones to view. In order to make the offering attractive and retain existing subscribers, these catalogues are regularly revised and supplemented by new videos.
- **Inclusion in a wider subscription**: this is a variant of the previous model but needs to be distinguished from it because of the different marketing approach involved. The consumer pays for a service, a subscription to a pay-TV service or triple play Internet access and is also given broad, or even unlimited, access to a catalogue of videos.
- **Funding by advertising**: videos are accompanied by advertising messages, which may either be texts and banners around the player window or commercials inserted into the video in the same way as for linear television.

d) The nature of the audiovisual programmes offered

Finally, the last aspect to be considered in this survey of VoD is the editorial make-up of the offering. Focusing on the type of programmes offered and, especially, the relationship with other distribution methods or the application of a specific time window, the following may be mentioned in particular:

- **Autonomous production**: generally speaking, the term autonomous production may be used to designate all types of audiovisual programmes specially conceived for exploitation as VoD, that is to say independent of a cinema release or television broadcast.

- **Cinema on demand**: offers of recent films in the form of video on demand meets precise conditions, especially the inclusion in a chronology of media release windows resulting from inter-occupational agreements.
- **Catch-up television**: this consists in offering television programmes for viewing for a short period after they have been aired (usually 7 days).
- **Television on demand:** an offer of recent audiovisual works (fiction, documentaries, animation) for which the catch-up TV period has elapsed and VoD rights have been agreed with the rights holders.
- **Preview screenings**: a preview screening is when an entire film or television programme is distributed free of charge or against payment before its cinema release or television airing.
- **Promotional videos**: some distributors or broadcasters can make available to consumers videos whose purpose is to promote other films or programmes, for example trailers, excerpts, bonus shorts, interviews, etc.
- **Archives**: any audiovisual programme has a finite exploitation period, which ranges from a few hours (for news items) to many years (in the case of fiction or certain documentaries, for example). Apart from this “normal” exploitation, these programmes are still valuable for preserving a historical memory or testimony, which justifies involving the VoD distribution networks in order to offer them to the public once again.
- **Older titles**: without it being possible to speak of archives since they still have enough intrinsic value, old programmes (films, TV series, documentaries, magazines, shows, etc) that may still be of interest to consumers constitute a large proportion of the products ready to be made available in the form of VoD.
- **Other types of content**: other types of programme that have not been mentioned up to now, for example video clips or commercials.

Finally, another method is to classify content according to the national origin of the works offered. Like the other means of distributing/broadcasting audiovisual content, VoD is part of the process of maximising the economic value of the work. European and national audiovisual policies focus on promoting the production sector in the member states. Recent measures taken by the Commission and member states are aimed in particular at the establishment of a competitive European production sector adapted to the digital environment.

Similar to the monitoring approaches established for other forms of exploitation, works available as VoD can be divided into four groups:

- National works
- Non national European works
- American works
- Works of other origin.

Principal market monitoring indicators

There are many difficulties in establishing monitoring indicators on what is still an embryonic market. The fragmentation of the market, the small size of the bodies operating in this area and their general ability to set up internal monitoring tools are all obstacles in this regard. This monitoring will also have to take account of the extent to which the authorities responsible for dealing with the question of VoD are able to set up the proper structures.

Initially, the monitoring will accordingly have to endeavour to remain as lightweight as possible while at the same time enabling the main market trends to be analysed. It will also need to focus on a number of key problems identified by the players.

Among the good market practices, mention might be made of the monitoring centre set up by the CNC or the GfK-NPA VoD barometer in France, as well as the studies conducted by the UK Film Council.

a) *Monitoring of national markets*

At the national level, the following indicators can be provided:

Breakdown by type of network	**Indicator no. 1**	**Indicator no. 2**
	Number of VoD services based in the country	*Number of VoD services accessible in the country*
Internet		
IPTV		
Cable		
Satellite		
DTT		

Breakdown by type of network	**Indicator no. 3**			
	% of national titles	*% of non-national European titles*	*% of American titles*	*% of titles of other origin*
Cinema				
Documentaries				
TV series				
Animation				
Other				

Breakdown by type of network	**Indicator no. 4**	**Indicator no. 5**	**Indicator no. 6**	**Indicator no. 7**	**Indicator no. 8**	**Indicator no. 9**
	Revenues of pay-VoD	*Number of paid downloads*	*Revenues of free VoD*	*Number of free downloads*	*Number of unlimited subscriptions*	*Consumption via unlimited subscriptions (volume)*
Cinema						
Documentaries						
TV series						
Animation						
Other						

b) Monitoring of platforms

Certain indicators can be provided for each service platform:

Breakdown by type of network	Indicator no. 1	Indicator no. 2
	Distribution networks	*Number of territories in which present*
Internet		
IPTV		
Cable		
Satellite		
DTT		

Breakdown by type of offering	Indicator no. 3	Indicator no. 4	Indicator no. 5	Indicator no. 6	Indicator no. 7	Indicator no. 8
	Number of titles available	*Number of paid downloads or views*	*Revenues generated by pay-VoD*	*Number of unlimited subscriptions*	*Number of free downloads or views*	*Revenues generated by free VoD*
Cinema						
Documentaries						
TV series						
Music						
Shows						
Animation						
Adult						
Other						
Total (after eliminations)						

Provision of additional indicators

Based on the terms employed, a number of additional indicators can be provided. Although it is not very likely that they can all be developed straightaway, they can potentially provide a quantified description of the VoD landscape and any changes that take place.

Even if it is possible to imagine shortening the period until monthly data can be collected for certain indicators, intervals of one year are recommended for most of them. The scope of each one can be limited to the study of a service or a given player but should generally relate to an entire national market by aggregating the data from all the players present on this market.

Finally, in order to obtain more details on the make-up of this VoD landscapes and its dynamics it would be instructive to break down the data collected according to the type of offering: Cinema, Documentaries, TV series, Music, Humour, Youth, Adult, Other.

a) *Indicators relating to the size of the market*

Breakdown by type of network	Indicator no. 1	Indicator no. 2
	Number of VoD services based in the country	*Number of services available in the country*
Internet		
IPTV		
Cable		
Satellite		
DTT		
Strengths	This indicator shows the respective importance of each network in the national VoD offering and the overall extent of this offering.	This makes it possible not to ignore those VoD services that are not provided from within the country studied.
Weaknesses	The same service may be present on several platforms, and therefore counted several times.	Harder to measure. Apart from the criterion that the geolocation of the offering must be left out of account, there is also the matter of the content language.

Breakdown by type of offering	Indicator no. 4 *Number of VoD services operating*	Indicator no. 5 *Number of paid downloads or views*	Indicator no. 6 *Revenues generated*
Cinema			
Documentaries			
TV series			
Music			
Shows			
Animation			
Adult			
Other			
Total (after eliminations)			
Strengths	Makes it possible to measure the density of the existing service for each type of programme.	Specifies the number of programmes actually watched by consumers.	Makes it possible to quantify the VoD market in terms of its value.
Weaknesses	Provides little information on the composition of the offerings and none on the actual demand.	Does not differentiate between free or unlimited and pay-per-view programmes. Provides no indications on the duration of programmes (short or full-length).	Data hard to obtain from companies since some are unable to establish performance indicators

Breakdown by type of business model	Indicator no. 7 *Number of services operating*	Indicator no. 8 *Number of paid/free downloads or views*	Indicator no. 9 *Revenues generated*
Catch-up TV			
SVOD			
Pay per download			
Download to own			
Strengths	Makes it possible to measure the density of the existing service for each type of distribution model.		Makes it possible to quantify the VoD market in terms of its value.
Weaknesses	Some services may be counted several times if they provide several types of offering.		

In many cases, services will be counted several times (different pricing options, for example).

b) Indicators relating to the composition of offerings

Breakdown by type of offering	Indicator no. 1 *Number of videos offered*	Indicator no. 2 *Proportion of total offering*	Indicator no. 3 *Average rental price*
Cinema			
Documentaries			
TV series			
Music			
Shows			
Animation			
Adult			
Other			
Total (after eliminations)			
Strengths	Gives an indication of the size of the VoD service and makes it possible to compare it to the cinema, television or DVD.	The proportion of cinema films or youth programmes in the service as a whole enables the main VoD themes to be identified and developments to be monitored.	The average price of the videos provides an idea of the value of each type of programme.
Weaknesses	Not every service always classifies the various videos in the same way.	Makes it necessary to know the precise number of videos in each category (cf. indicator no. 1).	This indicator does not apply to free videos funded by advertising, unless a variant is employed, such as the cost of a thousand views.

c) Indicators relating to the renewal of catalogues

Pay-per-view VoD offerings:

Breakdown by type of offering	Indicator no. 1 *Proportion of new releases (< 1 year)*	Indicator no. 2 *Availability rate of works when the VoD window is opened*	Indicator no. 3 *Average time between the cinema release and the availability as VoD*	Indicator no. 4 *Proportion of national cinema*
Cinema				
Documentaries				
TV series				
Music				
Shows				
Animation				
Adult				
Other				
Total (after eliminations)				
Strengths	Makes it possible to measure which proportion of the programmes offered as VoD are recent.	The aim of the indicator is to measure to what extent film production is included in the VoD services.	Will make it possible to study the extent to which the official or contractual chronology corresponds to actual practice.	Interesting to compare to film production and cinema attendances in the country.
Weaknesses	Makes it necessary to know the production date of the programmes offered.	Applies only to the cinema.	Applies only to the cinema.	May vary considerably from one week or month to another.

SVOD services:

Breakdown by type of offering	Indicator no. 1 *Proportion of new releases (< 1 year)*	Indicator no. 2 *Frequency of the renewal of the catalogue offered*	Indicator no. 3 *Catalogue renewal rate at each update*
Cinema			
Documentaries			
TV series			
Music			
Shows			
Animation			
Adult			
Other			
Total (after eliminations)			
Strengths	Makes it possible to measure which proportion of programmes offered as SVOD are recent.	The renewal frequency linked to the size of the catalogue provides an indication of the diversity of the service and the items viewed by subscribers.	Make it possible to determine what proportion of the videos are added and deleted at each update. This indicator measures the dynamism of the SVOD services.
Weaknesses	Makes it necessary to know the production date of the programmes offered.	It is necessary to count both films that have been added (new releases) and those that have been removed. The catalogue cannot be updated at a fixed time and sometimes has to be updated on an ad hoc basis.	The catalogue cannot be updated at a fixed time and sometimes has to be updated on an ad hoc basis.

Catch-up television services:

Breakdown by type of offering	Indicator no. 1	Indicator no. 2
	Proportion of programming made available as VoD	*Average duration of the availability of programmes after being broadcast on TV*
Cinema		
Documentaries		
TV series		
Music		
Shows		
Animation		
Adult		
Other		
Total (after eliminations)		
Strengths	Measures the television channels' efforts to delinearise programmes.	Simple to establish. Indicates the period of time during which viewers can find their programmes in the form of VoD.
Weaknesses	It is necessary to count only those programmes included in their entirety and not in the form of excerpts. Hard to establish the proportion of catch-up TV programmes included by genre.	Some programmes can remain available online without any time-limit, so it will not be possible to count them.

d) Technology-related indicators

The aim of these more comprehensive indicators is to compare the different countries with one another as far as their conception of VoD is concerned, especially the aid mechanisms and incentives available.

Breakdown by type of network	**Indicator no. 1** *Proportion of the offering availability in HD*	**Indicator no. 2** *Proportion of films that may be burnt onto a disk*
Internet		
IPTV		
Cable		
Satellite		
DTT		
Strengths	Measures the extent of the HD offering in terms of the distribution network.	Makes it possible to establish the possibility of downloading a film onto a computer and then viewed on a television connected to a DVD player.
Weaknesses	The term “HD” is sometimes inappropriately used by certain websites in the claims they make. Only content in native HD with a resolution above 720 lines should be considered.	Applies only to Internet reception on a computer with a DVD burner.

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OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSSTELLE

Video on demand and catch-up TV in Europe

On-demand audiovisual services have mushroomed in Europe. Video on demand, catch-up television and video sharing are vying for the consumer's attention but are facing the problem of internet piracy at the same time. The landscape has become very fragmented and is developing very rapidly. Business models are being defined and are in some cases merging with one another. The crisis on the advertising market and the limits imposed on the development of the free services offered by the public broadcasters are leading to a growing interest in paid-for services, but the development of pay models is being impeded by piracy and it seems these services will not come into their own until on-demand offerings can be fully accessed on a television set instead of only on a computer screen or mobile telephone. The provision of access to VOD on a TV is thus becoming a very important issue and galvanising manufacturers and network operators into action.

This report provides a complete and up-to-date picture of the different on-demand audiovisual services and of how they fit into the strategy of the various types of player. It is both concise and detailed and will be a useful tool for anyone seeking to understand the complexity of this evolving field.

European Audiovisual Observatory

Set up in December 1992, the European Audiovisual Observatory's mission is to gather and distribute information on the audiovisual industry in Europe. The Observatory is a European public service body comprised of 36 member states and the European Community, represented by the European Commission. It operates within the legal framework of the Council of Europe and works alongside a number of partner and professional organisations from within the industry and with a network of correspondents. In addition to contributions to conferences, other major activities are the publication of a Yearbook, newsletters and reports, the compilation and management of databases and the provision of information through the Observatory's Internet site (http://www.obs.coe.int).

Direction du développement des médias

The *Direction du développement des médias* (Directorate for Media Development, http://www.ddm.gouv.fr) is the French administrative body in charge of the development of all the media, ranging from the written press and traditional audiovisual services to new forms of online communication.

It is the preferred interlocutor of professionals working in this sector and has three main roles:

- modernization of the administrative supervision of public broadcasting services ;
- adaptation of the national public support of the press ;
- follow-up of the necessary legislation evolutions regarding freedom of the press, communications and on-line services.

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