



# Financial contribution to European production by VOD platforms : an overview in the EU

Media economics and European policy training  
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# Overview

- 1. Trends in the EU VOD market**
- 2. The EU regulatory framework**
- 3. National approaches**
- 4. Future challenges and next steps**

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# Overview

## 1. Trends in the EU VOD market

### a) Who is who in Streaming World?

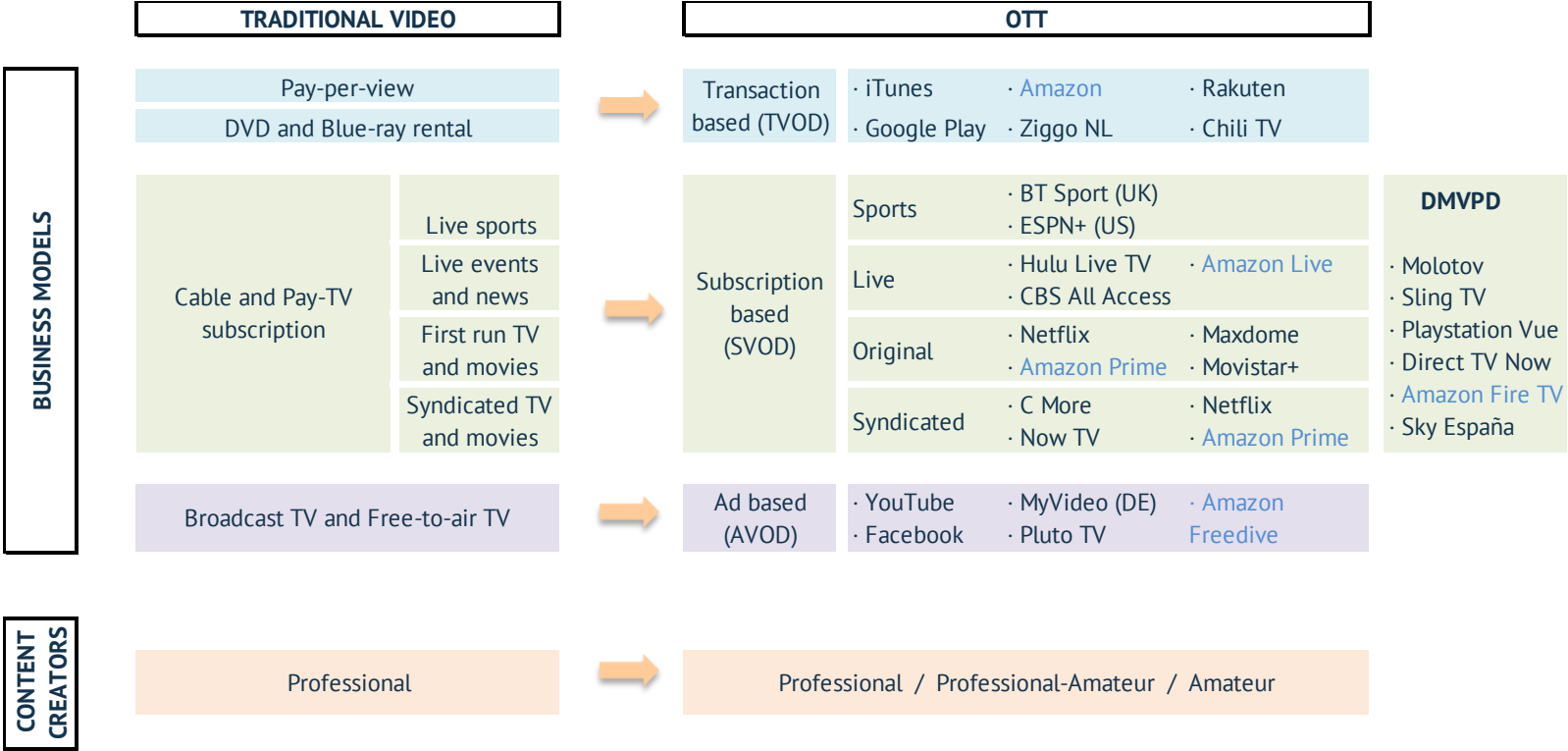
# (R)evolutions

- ➔ **Widespread broadband** leads to **OTT distribution** and multiple devices
- ➔ **ATAWAD** (any time, anywhere, any device) **adopted by consumers**
- ➔ **Explosive growth of EU VOD market in 5 years**
  - D2C disrupts relationship between subscribers and multichannel operators
  - New services launched by traditional and new media players
  - International players expand into the EU
  - Alliances of EU players

***BUT...***

- ➔ **VOD market is still a small segment of EU audiovisual market**
  - ... dominated by a few,
  - ... mainly driven by OTT SVOD,
  - ... major D2C launches expected (Apple TV+, Disney+)

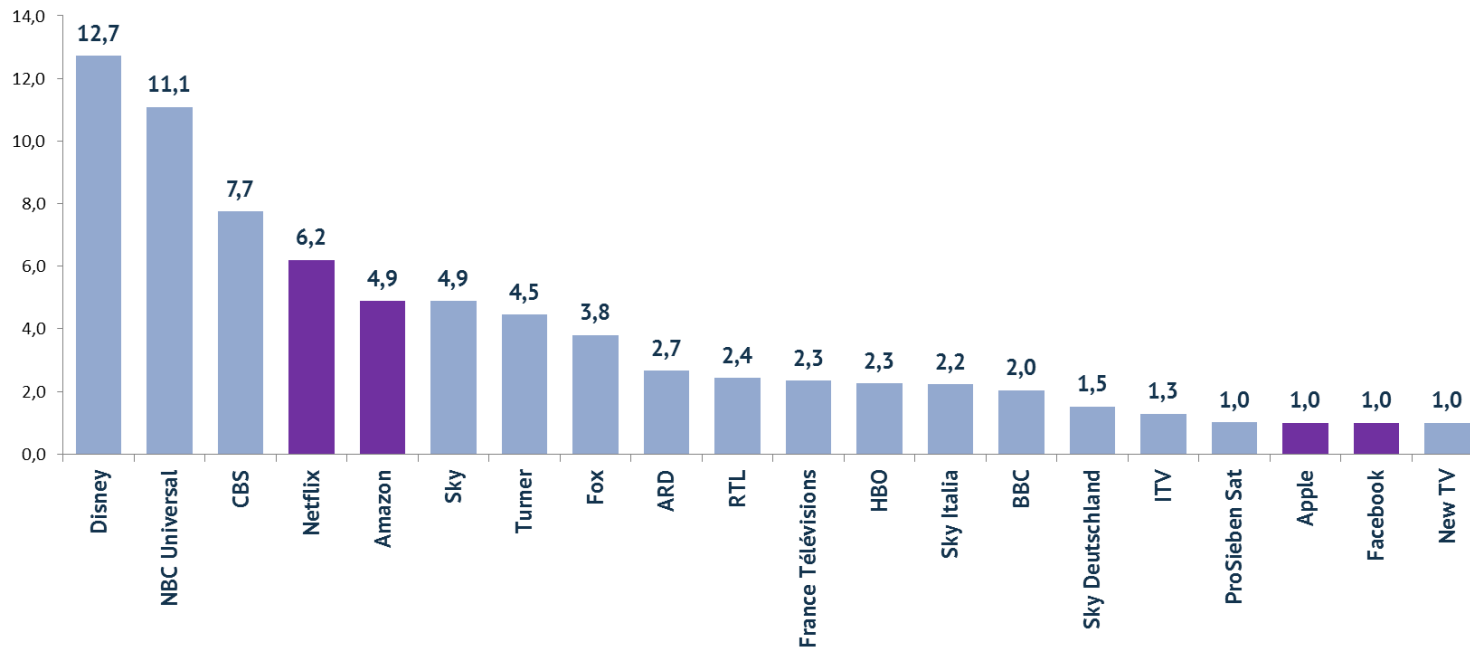
# OTT replicates traditional TV in a digital context



Source: BCG Analysis

# Streaming services changing TV content financing

2017 content spend (original and acquired, incl. sports), in US billion  
(internet companies in purple)



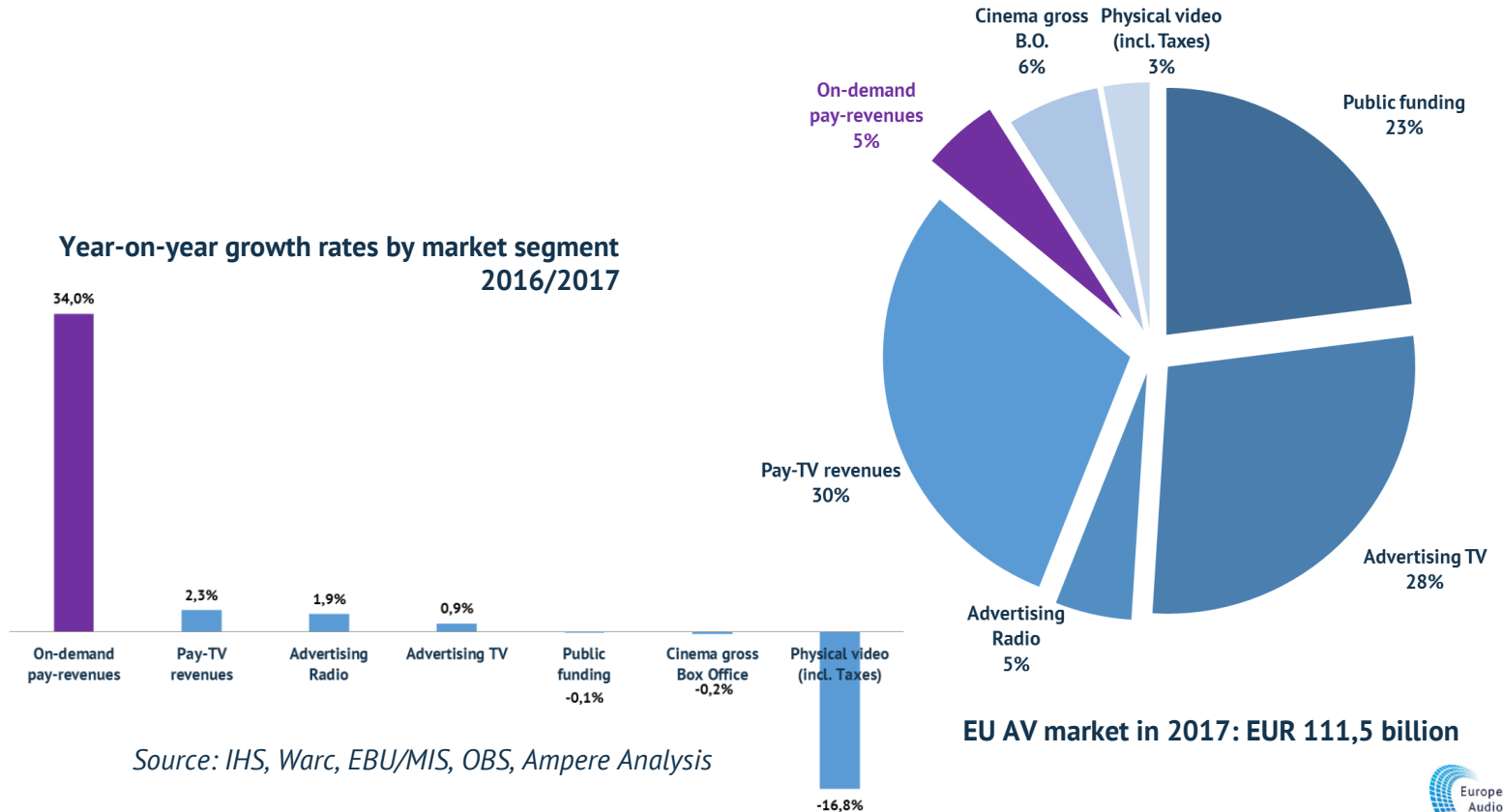
Source: Ampere Analysis

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  - b) Focus on OTT subscription VOD**

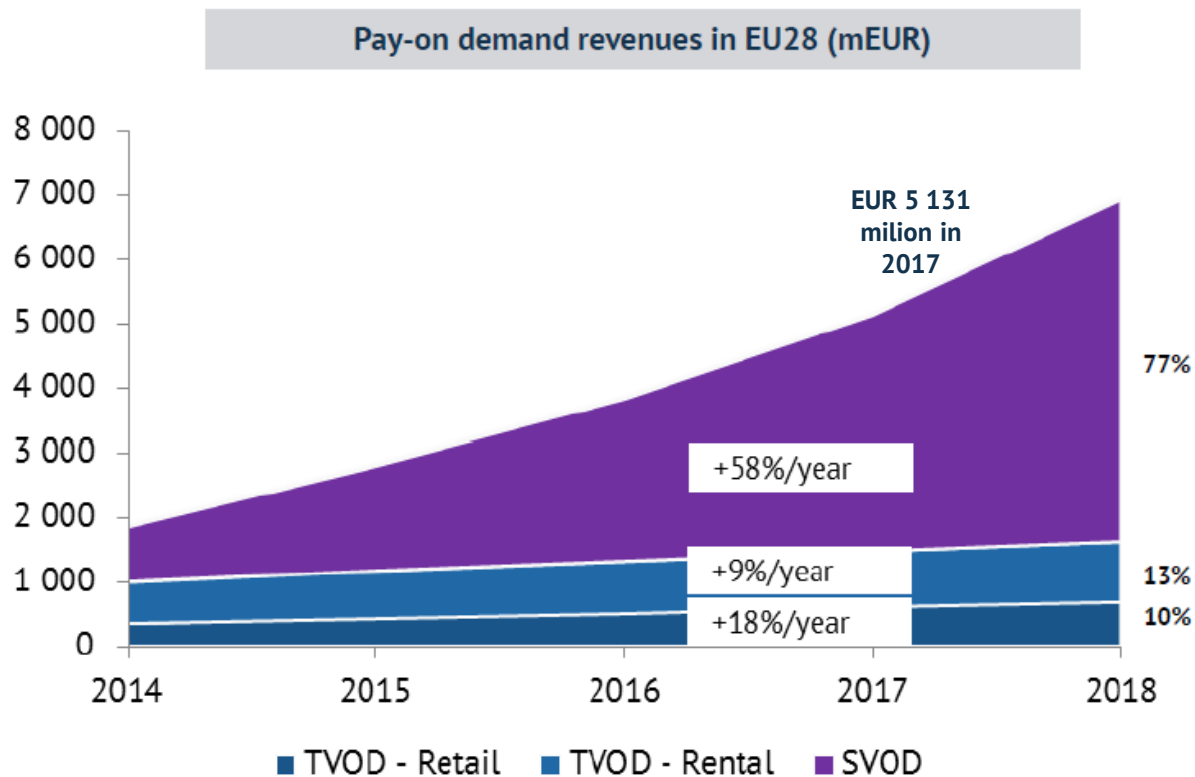


# Pay-on-demand: 5% of all audiovisual ecosystem



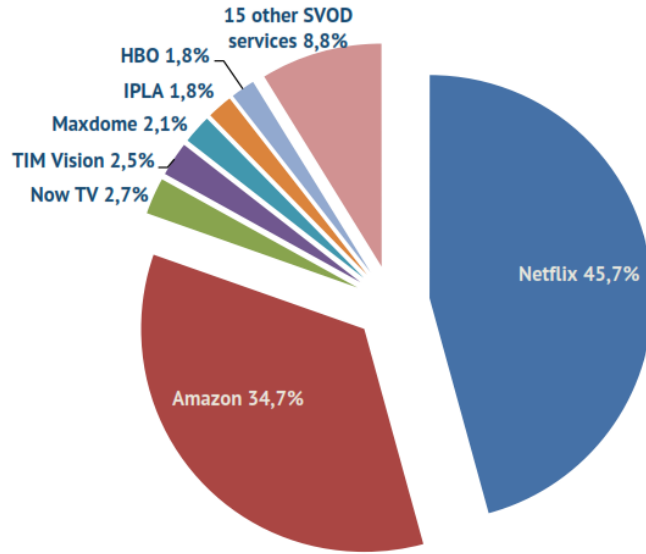
Source: IHS, Warc, EBU/MIS, OBS, Ampere Analysis

# ...but biggest value & growth in pay-on-demand

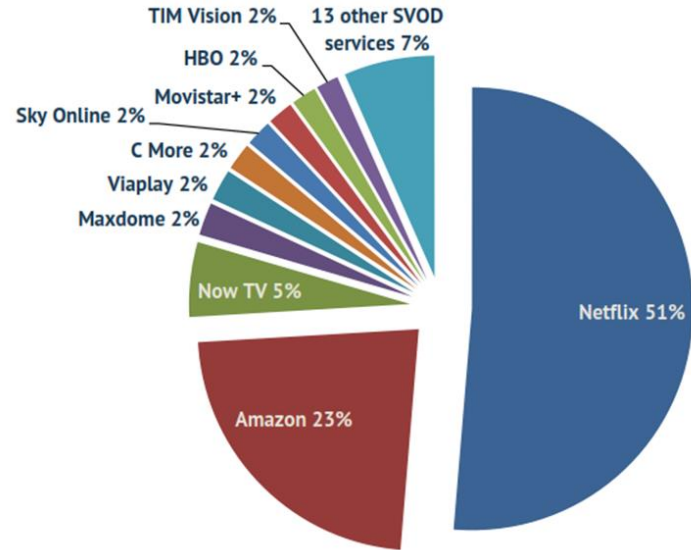


Source: Ampere Analysis (SVOD includes only OTT SVOD)

# SVOD: EU subscribers and revenue



53,9 million SVOD subscribers in 2017 in EU






EUR 3 649 million revenue in 2017 in EU

Source: Ampere Analysis

# Some strong European SVOD services

## Pan-European:

- C More 
- Horizon 
- Sky Now TV 

## Local services:

- Player PL
- Videofutur
- Maxdome
- Movistar+
- TIMVISION
- Universciné
- Voyo Czech SVOD



 **TIMVISION**

# Many joint services arising at EU level...

- **France – Salto: France TV + M6 + TF1**  
(Online subscription video platform)
- **Germany – 7TV: ProSieben + Discovery**  
(TV streaming platform)
- **UK – BritBox: ITV + BBC**  
SVOD service based on their US service, UK contents
- **Spain – LovesTV: RTVE + Mediaset + Atresmedia**  
(HbbTV-based platform, a joint OTT TV service as a second phase)

# ... and alliances for high-end content production

15

## ▪ **European Pubcaster Alliance: RAI + ZDF + France TV (2018)**

- Goal: produce high-end scripted productions & innovative projects for younger target groups
- Two of the three broadcasters as co-producing/commissioning partners, with the third one designated as a pre-buyer
- “Privileged” partnerships with RTVE, RTBF, VRT and RTS. An invitation to join the alliance is also extended to other European broadcasters

## **Nordic12 (2018)**

- Five Nordic channels (from Denmark, Sweden, Norway, Finland and Iceland)
- Alliance to co-produce a dozen series a year

**May also end up co-producing with Netflix and Amazon?**

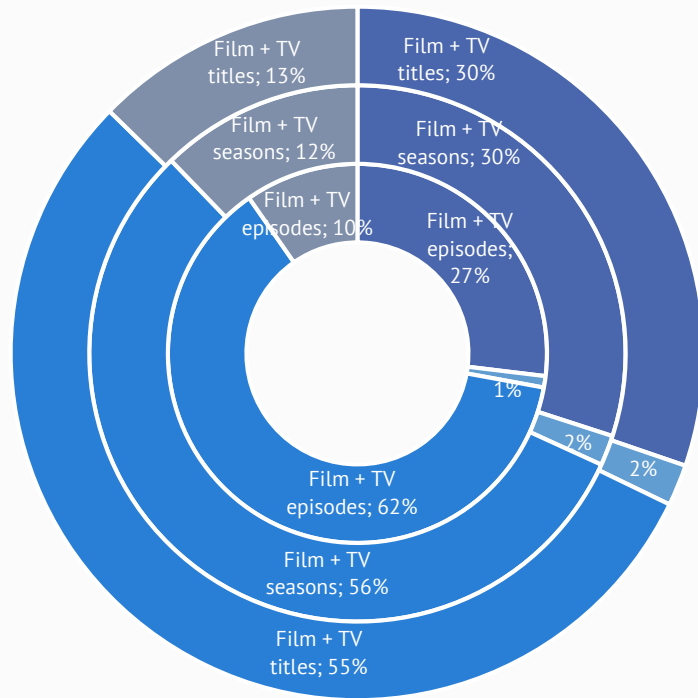
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  - a) Who is who in Streaming World?
  - b) Focus on OTT subscription VOD
  - c) Films and TV content in VOD catalogues**

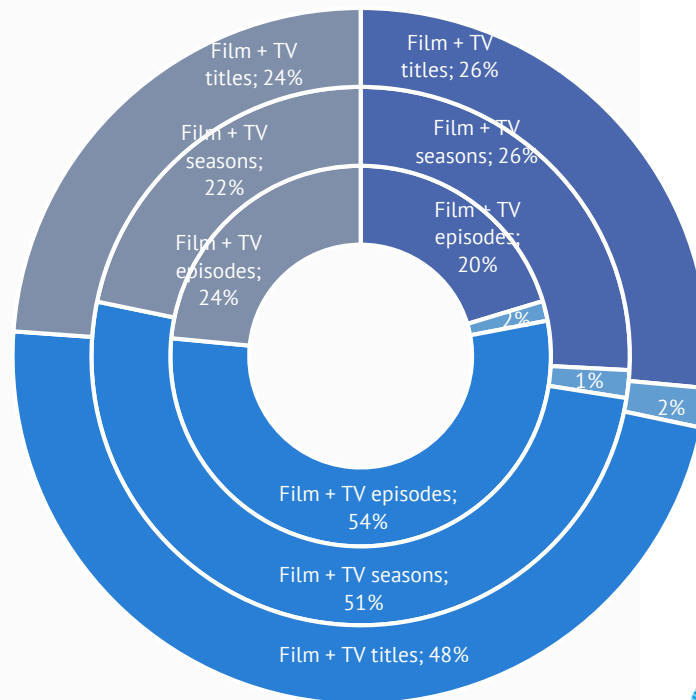
# Origin by region of films + TV titles, Films + TV seasons, Films + TV episodes

Origin of Film + TV titles, seasons or episodes found on TVOD

Origin of Film + TV titles, seasons or episodes found on SVOD



■ EU 28 ■ EUR Obs ■ US ■ Other regions



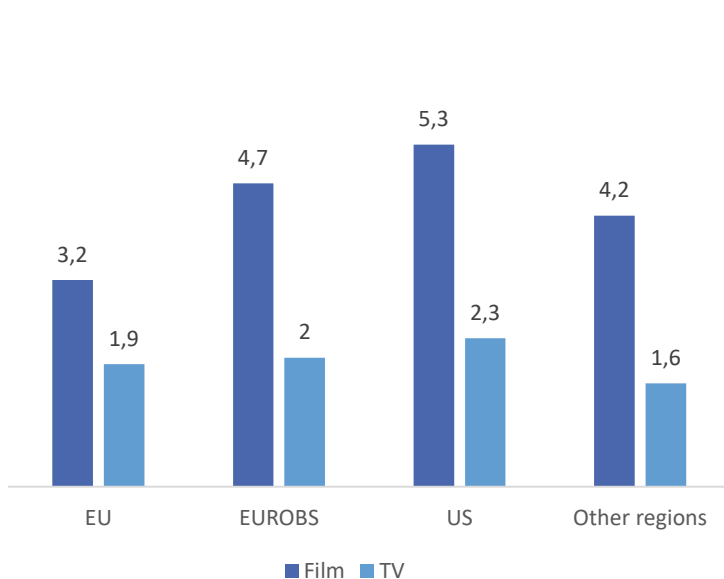
■ EU 28 ■ EUR Obs ■ US ■ Other regions

Source: JustWatch, Ampere, Filmtoro, La Pantalla Digital, EUROVOD catalogue data

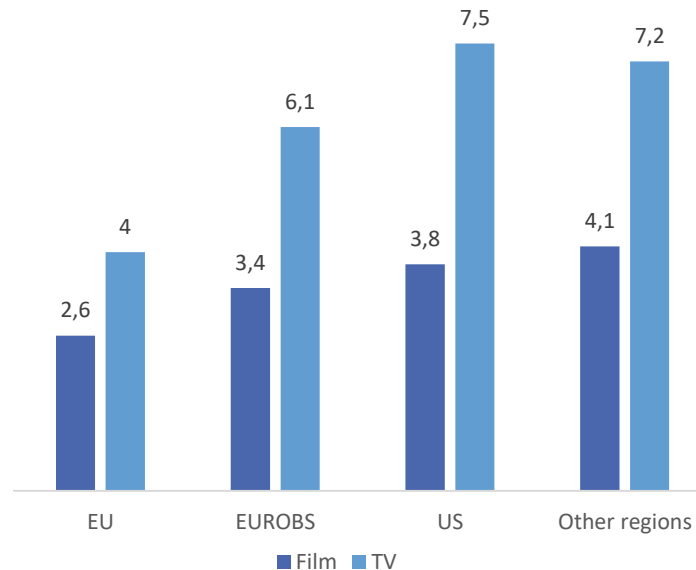


# Country circulation of films and TV unique title by region and by business model

### Circulation on TVOD by number of countries

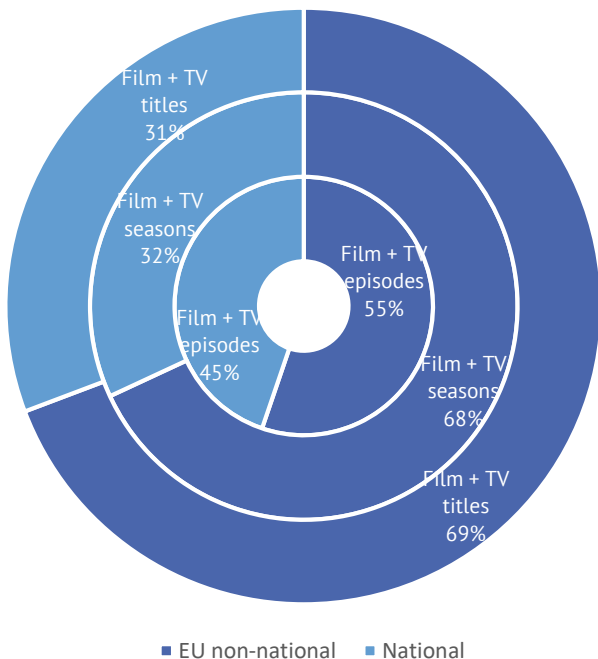


### Circulation on SVOD by number of countries

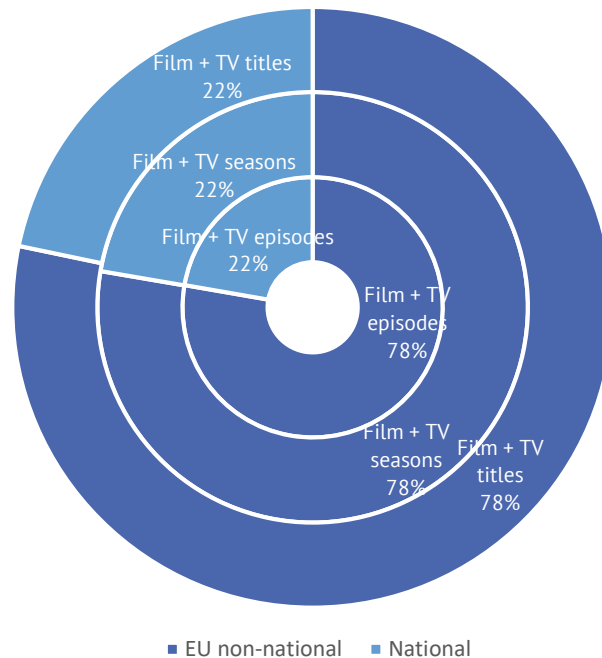


# Share of EU non-national and national Films and TV content in catalogues

Share of EU non-national and national contents on TVOD



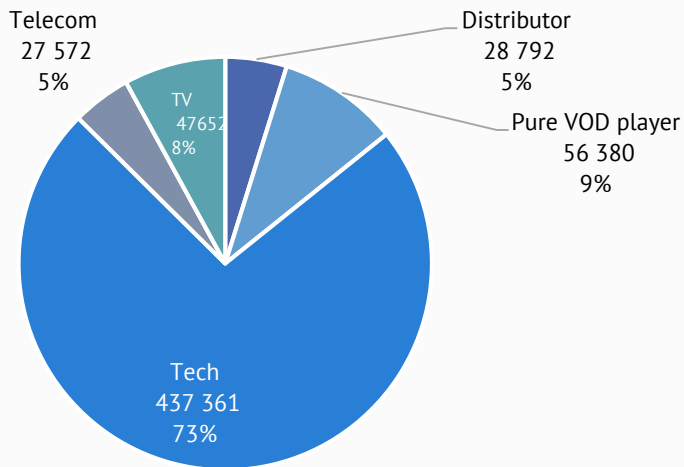
Share of EU non-national and national contents on SVOD



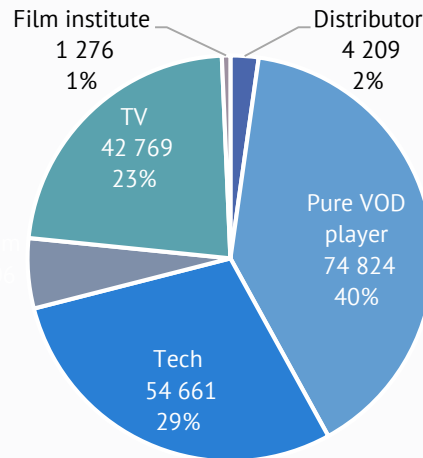
Source: JustWatch, Ampere, Filmtoro, La Pantalla Digital, EUROVOD catalogue data

# Tech and pure VOD players offer the largest amount of film and TV titles

TVOD – Films and TV titles in catalogues



SVOD – Films and TV titles in catalogues



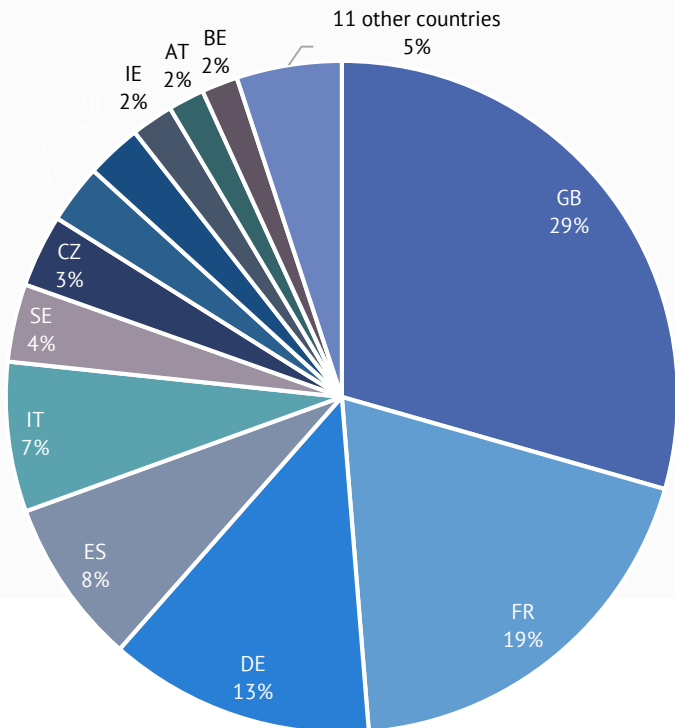
Core business	Number of TVOD catalogues	Average number of film and TV titles
Distributor	16	1 800
Pure VOD player	46	1 226
Tech	106	4 126
Telecom	13	2 121
TV	18	2 647

Core business	Number of SVOD catalogues	Average number of film and TV titles
Distributor	26	162
Pure VOD player	74	1 011
Tech	42	1 301
Telecom	21	500
TV	90	475
Film institute	1	1 276

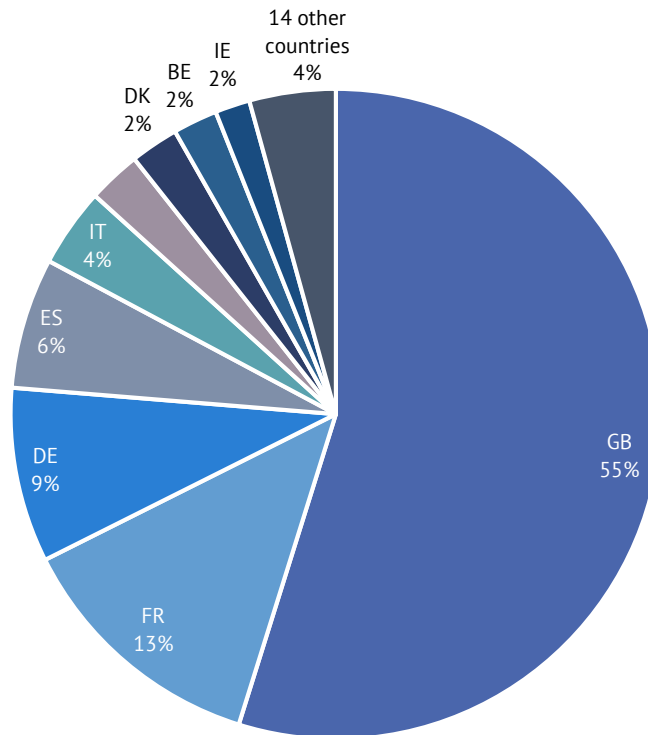
Source: JustWatch, Ampere, Filmtoro, La Pantalla Digital, EUROVOD catalogue data

# Export of EU non-national Film and TV titles on SVOD

### Origin of EU non-national film titles on SVOD



### Origin of EU non-national TV titles on SVOD



Source: JustWatch, Ampere, Filmtoro, La Pantalla Digital, EUROVOD catalogue

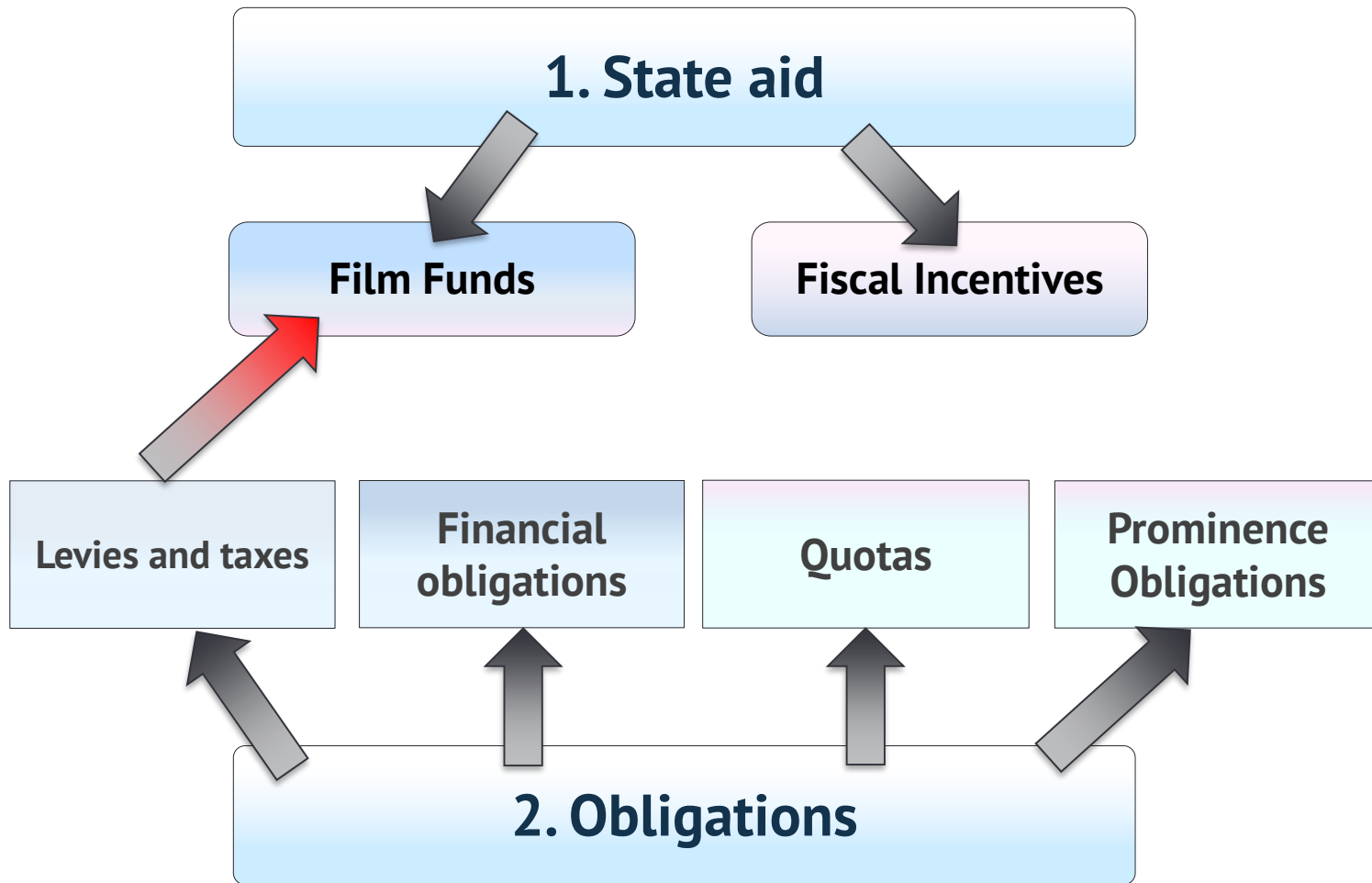
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- 2. The EU regulatory framework**
3. National approaches
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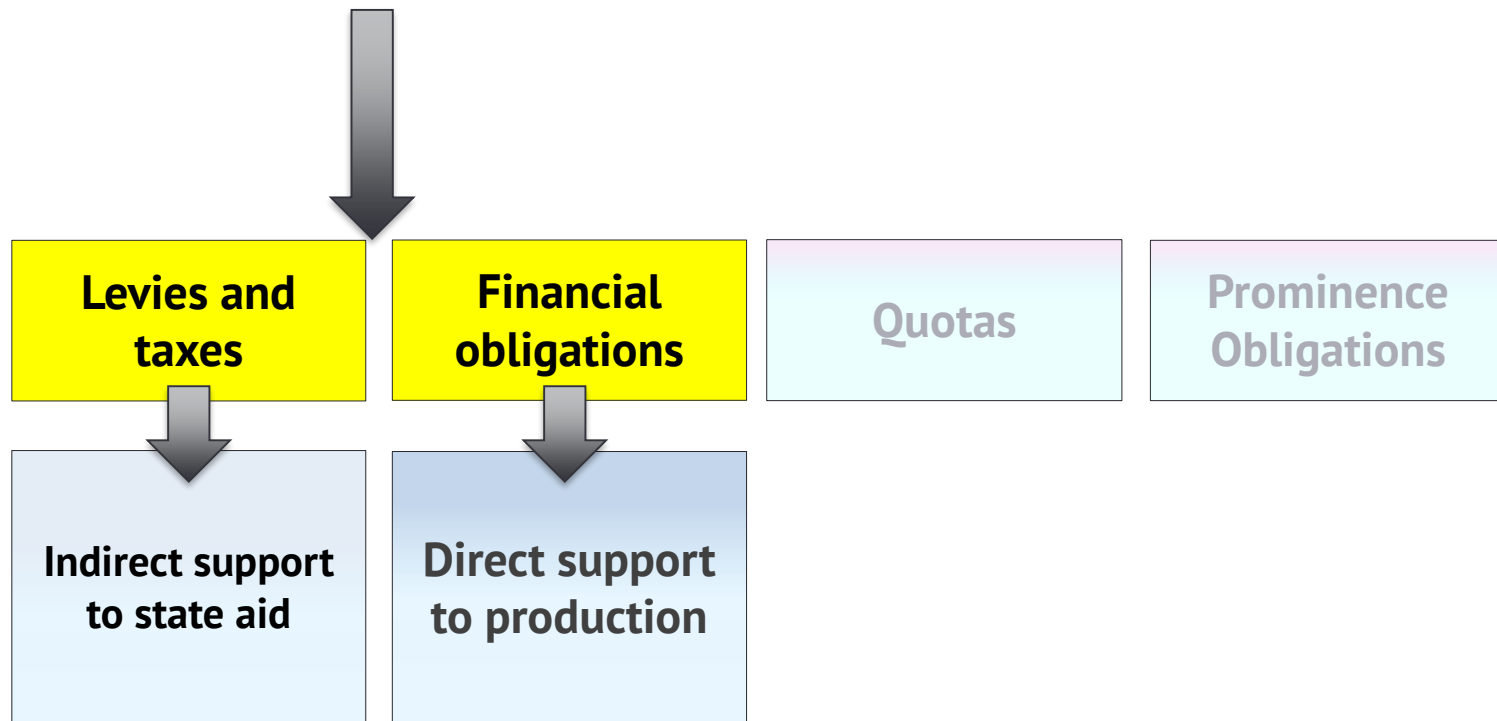
# Overview

## 2. The EU regulatory framework

### a) The audiovisual “ecosystem”



## Legal obligations > VOD

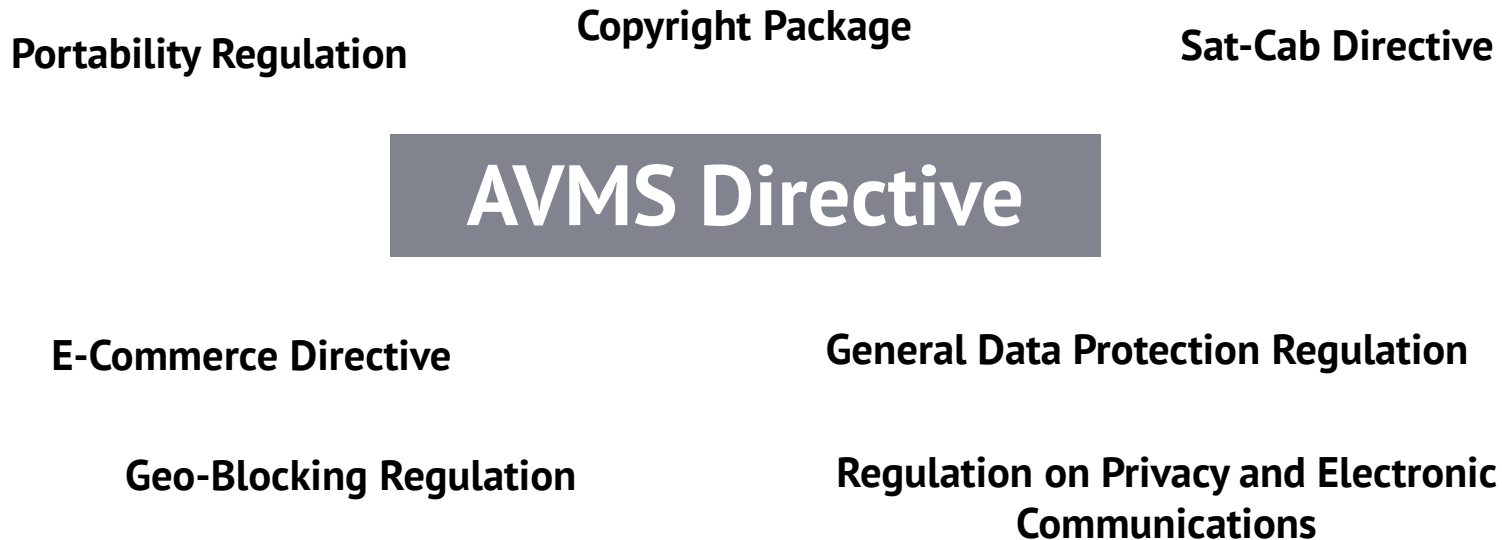




# Overview

2. The EU regulatory framework
  - a) The audiovisual “ecosystem”
  - b) The AVMS Directive**

# A multidimensional legal framework



# VOD versus VSPs: different set of rules

AVMS Directive of 2010 | eCommerce Directive



TV broadcasting

Audiovisual media services



VoD services



Video-sharing platforms

AVMS Directive  
Under the Digital Single Market



## NEW RULES

Video-sharing platforms and social media used for sharing video content will now need to **protect minors from harmful content**, protect citizens from incitement to violence and hatred and from illegal content.

They will also need to respect certain advertising rules and to indicate when user generated videos have an advertising purpose. Video-sharing platforms will also be encouraged to **reduce the exposure of children to ads** for unhealthy foods.



Strengthened rules **against hate speech and terrorist content** across the EU: on TV, VOD and now also on video-sharing platforms.

**Independence of audiovisual regulators** will be reinforced so that their work is not influenced by their governments or industry.



**European works** will be **better promoted** on VOD services - at least 30% share of their catalogues will need to be devoted to European content.



Broadcasters will be given **more flexibility** as to when ads can be shown, but these still cannot make more than 20% of broadcast time during the day (6:00 - 18:00) and during prime time (18:00 - 24:00).

At the same time the rules seeking to **protect the most vulnerable** are reinforced, in particular to protect children from advertising for alcohol or unhealthy foods.



# Overview

2. The EU regulatory framework
  - a) The audiovisual “ecosystem”
  - b) The AVMS Directive
  - c) Key legal concepts**

# Right to lay down stricter or more detailed rules

Member States may lay down detailed or stricter rules **Art. 4(1) for AVMS** and **Art. 28b(6) for VSPs**.

For AVMS, measures can be taken against the provider of the targeting AVMS established in another MS in order to circumvent the stricter or detailed rules, if **Art. 4(4)**:



Measures were notified to Commission and Member State where the AVMS is established



AVMS provider's right of defence were respected



Measure assessed as compatible with EU law by Commission and ERGA

Added in the revision

If needed, Commission may request further information within 1 month

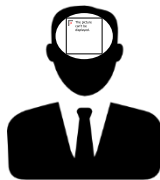
# The “Country of Origin” principle

An AVMS is under the jurisdiction of the Member State where it is:

- effectively **established** on its territory, **Art. 2(2)**, or
- deemed to be established, following the criteria outlined under **Art. 2(3)**:



Head office



Editorial decisions

Defined in the revision



workforce involved in  
programme-related  
activity

Added in the  
revision

No agreement → European Commission may ask ERGA to provide an opinion.

# Overview

2. The EU regulatory framework
  - a) The audiovisual “ecosystem”
  - b) The AVMS Directive
  - c) Key legal concepts
  - d) Promotion of European works by VOD services**



# Promotion of European works – **Non-linear** services (Art. 13)

## Under the previous Directive of 2010

- **Financial contribution** to production/rights acquisition in European works

**OR**

- **Share of European works** in VOD catalogues

**OR**

- **Prominence** obligation

# Promotion of European works – **Non-linear** services (NEW Art. 13)

## Under the revised Directive of 2018



Minimum **share** in catalogues **AND** **prominence**

...and if MS introduce **financial contribution**



**then**

they may include **targeting** services

with exemptions for low turnover / audience...

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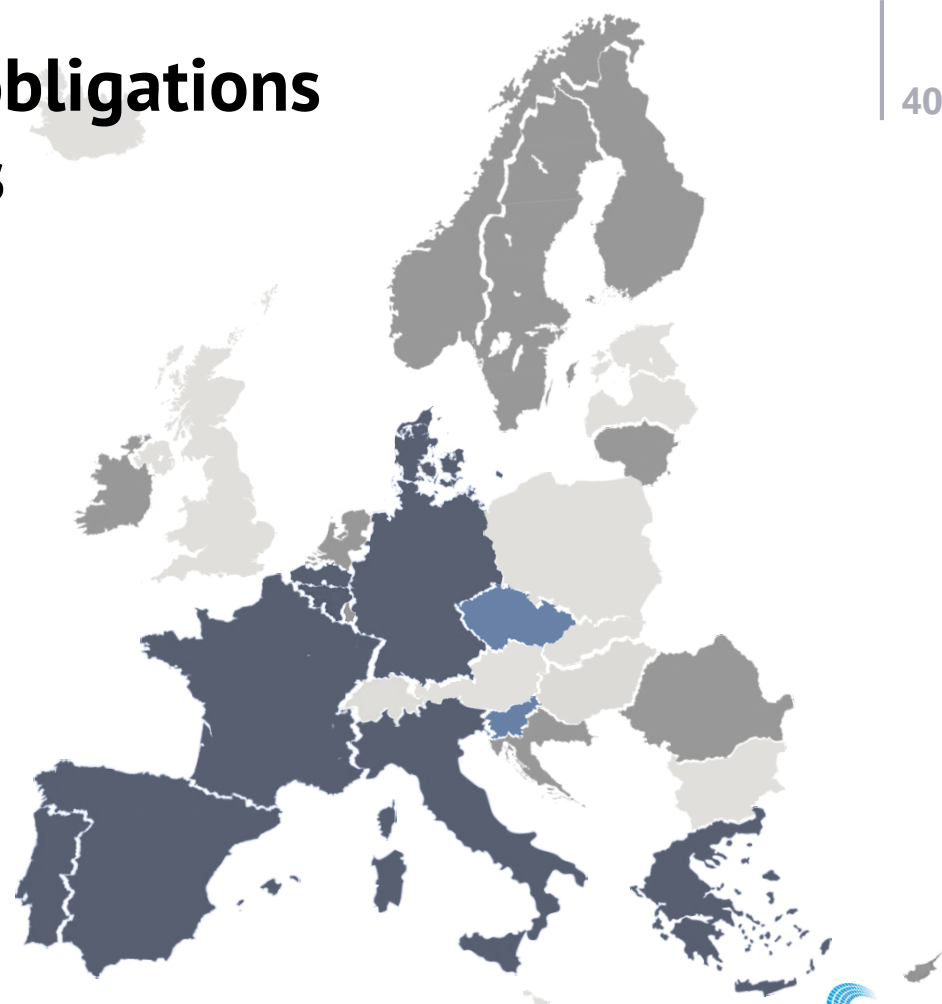
## 3. National approaches

### a) **Direct contributions to production**

# Financial investment obligations by public VOD services






*Direct contribution to production  
or acquisition of rights*

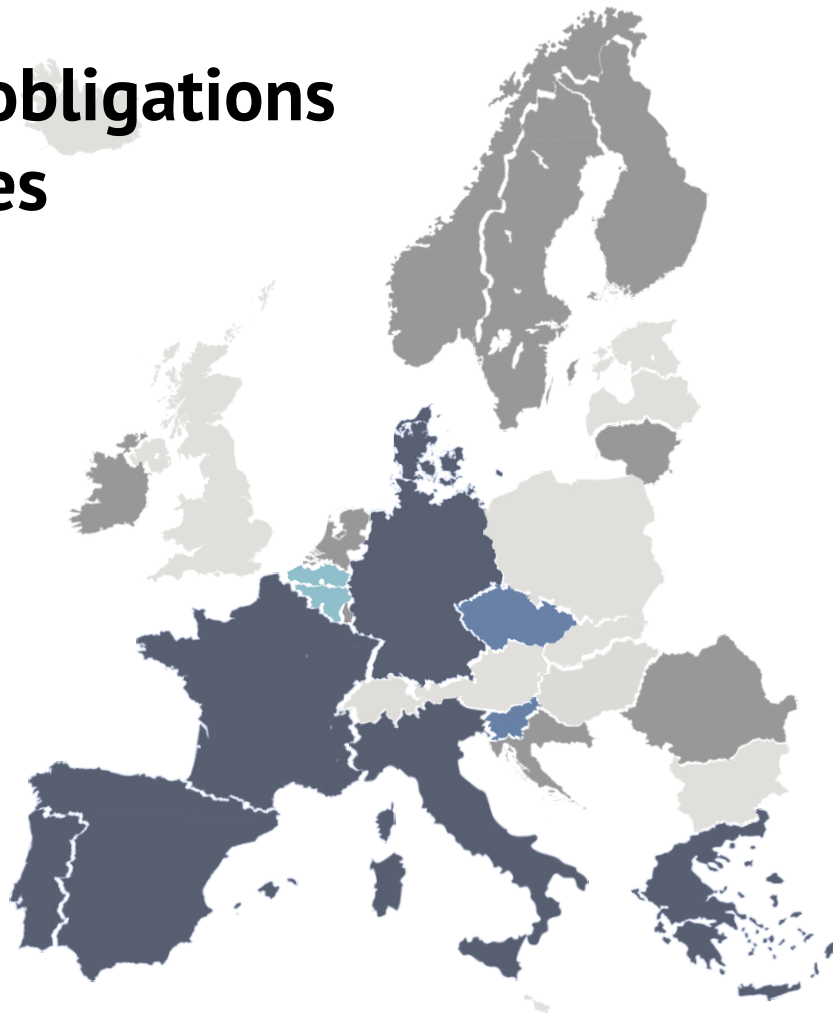
-  **Mandatory Investment**
-  **Optional (or quota)**
-  **General obligation**
-  **No obligation**



# Financial investment obligations by private VOD services

*Direct contribution to production  
or acquisition of rights*

-  **Mandatory Investment**
-  **Optional (or quota)**
-  **Optional (or levy)**
-  **General obligation**
-  **No obligation**

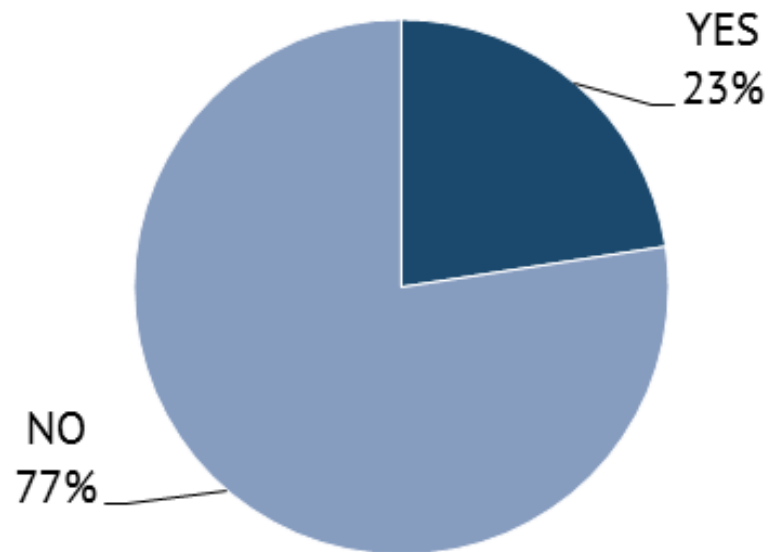


# Overview

## 3. National approaches

- a) Quotas and direct contributions to production
- b) Other indirect contributions** (*beyond 2010 AVMSD*)




# Levies and taxes on VOD services

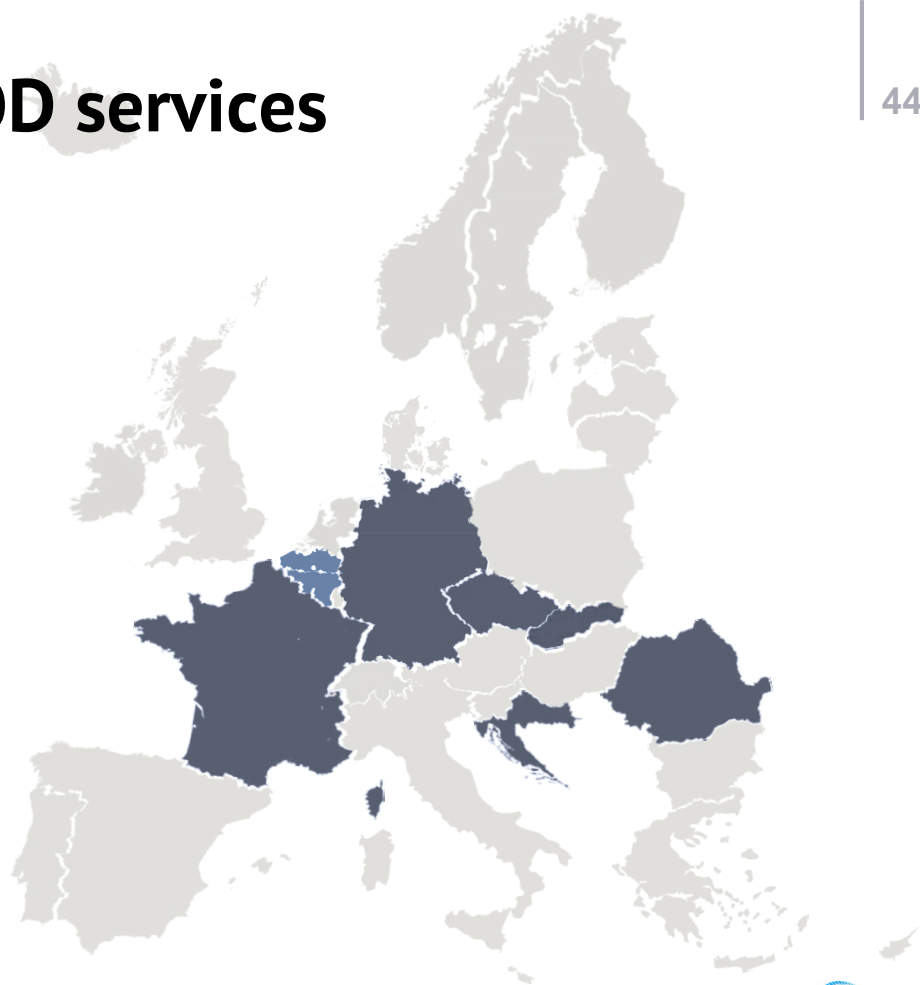




# Levies and taxes on VOD services

***Indirect contribution** to production  
or acquisition of rights*

-  **Mandatory (both public and private)**
-  **Optional (or investment for private)**
-  **No obligation**



# Overview

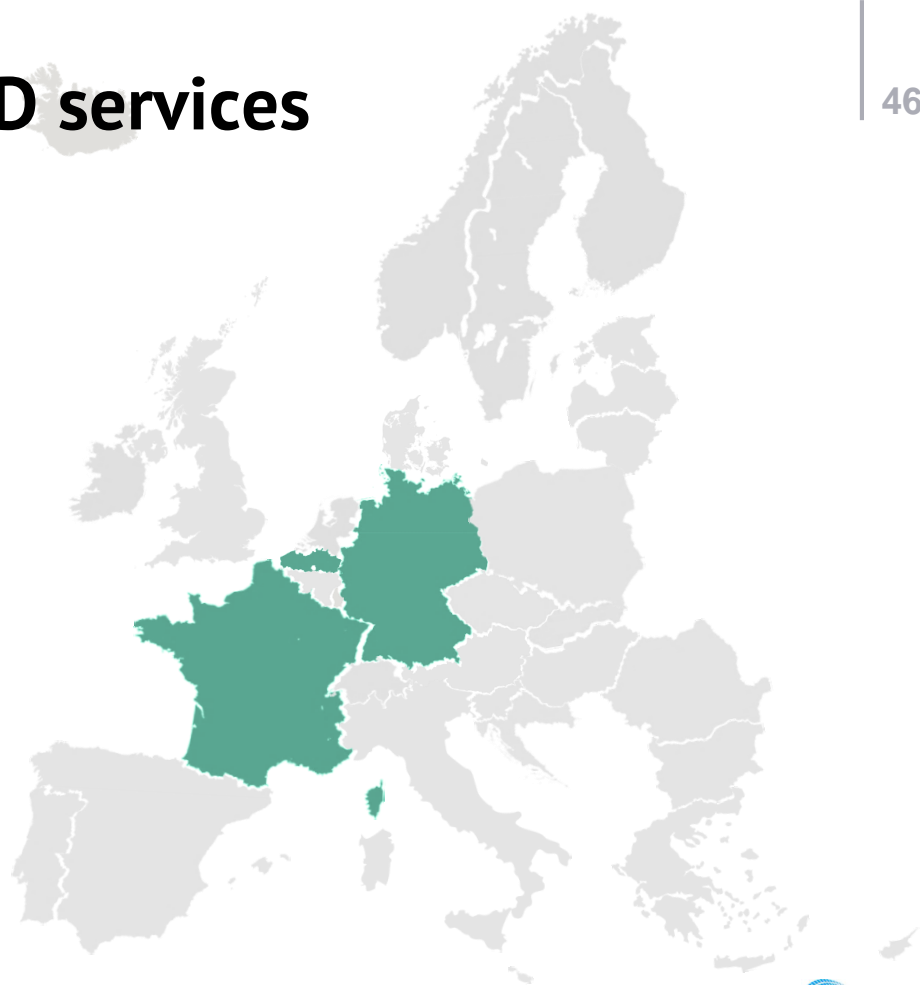
## 3. National approaches

- a) Quotas and direct contributions to production
- b) Other indirect contributions *(beyond 2010 AVMSD)*
- c) **Focus on the so-called “Netflix” taxes**

# Taxes on **targeting** VOD services

***Indirect contribution** to production  
or acquisition of rights*

 **Taxes applicable  
extraterritorially**



# The German « film levy »



- **Art. 153 *Filmförderungsgesetz* (German Film Law, FFG)**
- VOD providers **distributing feature films made for commercial purposes** shall pay a levy of :
  - ✓ **1.8% of yearly turnover**, if turnover from the exploitation of feature films exceeds EUR 500,000 per year, or
  - ✓ **2.5% of yearly turnover**, if turnover exceeds EUR 20 million
- The levy **also applies to foreign VOD providers targeting the German public** with an offer in the German language
- **Except if these revenues are subject to a comparable financial obligation** in the country of establishment of the service
- **German Federal Film Board (FFA) in charge** of collecting and controlling the levy

# The French « video tax »



- **Article 1609 *sexdecies* B of the General Tax Code**

- **Background :**

- ✓ **1993:** Creation of the tax on videograms (VHS, DVD)
- ✓ **2004:** Extended to **pay-per-view French VOD services** (e.g. Canal Play, Orange VOD)
- ✓ **2013:** Extended to **foreign pay video platforms** (e.g. Netflix)
- ✓ **2016:** Extended to **all free video platforms** (YouTube, Dailymotion..), **French or foreign**
- ✓ **2017:** **All video, paid or free platforms, established in France or abroad**, will be subject to the same tax rules on their turnover achieved in France.
- ✓ **2018:** **Implementation of the new « video tax »** (also called « *YouTube tax* »)

- **2% tax on yearly turnover:**

- ✓ **VOD services: based on revenues from access to AV works** (10% if porn or violent content)
- ✓ **Free services: based on advertising incomes;** Abatement of 66% (UGC) or EUR 100,000 (services for free)
- ✓ Exemptions for services offering information on cinematographic and audiovisual works
- ✓ **Payable to tax authorities / proceeds to CNC for financing new AV works**

- **Further direct financial contribution obligations on VOD (from 16% turnover in France)**

# The Flemish tax on VOD providers



- **Article 157, paragraph 2 of the Flemish Media Decree** + implementing government Decision of 1 February 2019
- **Applies also to VOD services established in another EU MS and targeting** the Flemish community
- **Private VOD service can choose** between:
  - ✓ **Financial contribution to the (co-)production of Flemish AV works: 2% annual turnover**, or
  - ✓ **Equivalent flat rate contribution to the Flemish AV Fund (VAF): EUR 3,000,000**
  - ✓ **Monitoring by Flemish media regulator**
- **Exemption** for VOD services whose **turnover is inferior to EUR 500,000** or subject to other incentive schemes

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4. **Future challenges and next steps**

# Overview

## 4. Future challenges and next steps

### a) **Implementation challenges**



# Revisiting the “Country of Origin” principle

## New Article 13 AVMSD



Minimum share in catalogues AND prominence  
...and if MS introduce **financial contribution**

then



they may include **targeting** services

with exemptions for low turnover / audience...

## Defining “targeting” services [Art. 13(2)]

- **Possibility to extend financial contribution, incl. via direct investment in content and contributions to national funds obligations, to « targeting » services**
- **Assessed by MS on a case-by case basis**
- **Possible indicators for « targeting » services:**
  - ✓ Language of the offer
  - ✓ Advertisement or promotions specifically aiming at audience in Member State of reception
  - ✓ Main language of the service
  - ✓ Content or commercial communication aiming specifically at audience in the Member State of reception

# Defining the limits of extra-territorial financial contributions [Art. 13(3)]

- **Any contribution obligation shall be in line with Union law, i.e. compliance with State Aid rules**
- **It shall be:**
  - Proportionate and non-discriminatory
  - Based only on revenues earned in the targeted Member State
  - If the Member State with jurisdiction imposes such financial contribution, it shall take into account any financial contribution imposed by targeted Member States (avoiding the risk of double imposition for media service providers) (Rec. 39)

# Defining « low turnover » and « low audience » services [ Art. 13(6) and (7)]

- **Low turnover or low audience services *shall* be exempted / EC Guidelines**
  - ✓ Taking into account the specificities of the audiovisual markets
  - ✓ Sales numbers, or
  - ✓ Viewing time (Rec. 40)
  
- **Possible exemptions based on type of content provided / Full discretion of MS**
  - ✓ If the obligation would be impracticable or unjustified because of the nature or theme of the service

# Overview

4. Future challenges and next steps
  - a) Implementation challenges
  - b) Procedural aspects**

- **Implementation AVMS Directive due by 19 Sept. 2020**
  
- **Reporting obligations on Art. 13:**
  - ✓ Member States shall report to the Commission by 19 December 2021, and
  - ✓ Every 2 years thereafter on the implementation of Art. 13
  - ✓ Report of the Commission to the European Parliament and the Council on Art. 13, taking into account the market and technological developments and the objective of cultural diversity
  
- **Evaluation AVMS Directive:**
  - ✓ By 19 December 2026

# Overview

4. Future challenges and next steps
  - a) Implementation challenges
  - b) Procedural aspects
  - c) **More “Netflix taxes” throughout the EU?**

# More « Netflix » taxes around Europe?

- **Spain: New « RTVE » tax announced**

- ✓ 8% tax imposed on international OTT players to finance European cinema (5% of operating income) and Spanish public broadcaster (3% of gross income)

- **Italy: New « web tax » in 2020**

- ✓ 3% levy on some internet transactions imposed on large-scale web-based activity from big digital companies (annual revenues above €750 million and digital services exceeding €5.5 million)

- **Other countries?**

- ✓ **The Netherlands?** Advice for a levy from the Dutch Council for Culture to the Government (2018)
- ✓ **Denmark?** Streaming tax of 2% on annual turnover agreed with government in a media agreement with stakeholders



# Conclusion...

**How Netflix taxes will or won't contribute to the production of original content?**



# Thank you!

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