



Diverse approaches for diversified content on VOD services: a European perspective

Seminario Internacional –
Plataformas y Diversidad: Netflix a debate
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Sophie Valais
Legal Analyst
European Audiovisual Observatory



Overview

- 1. Trends in the EU VOD market**
- 2. EU rules for the promotion of European works on VOD**
- 3. National legal frameworks**
- 4. Next steps**

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1. Trends in the EU VOD market

a) Who is who in Streaming world?

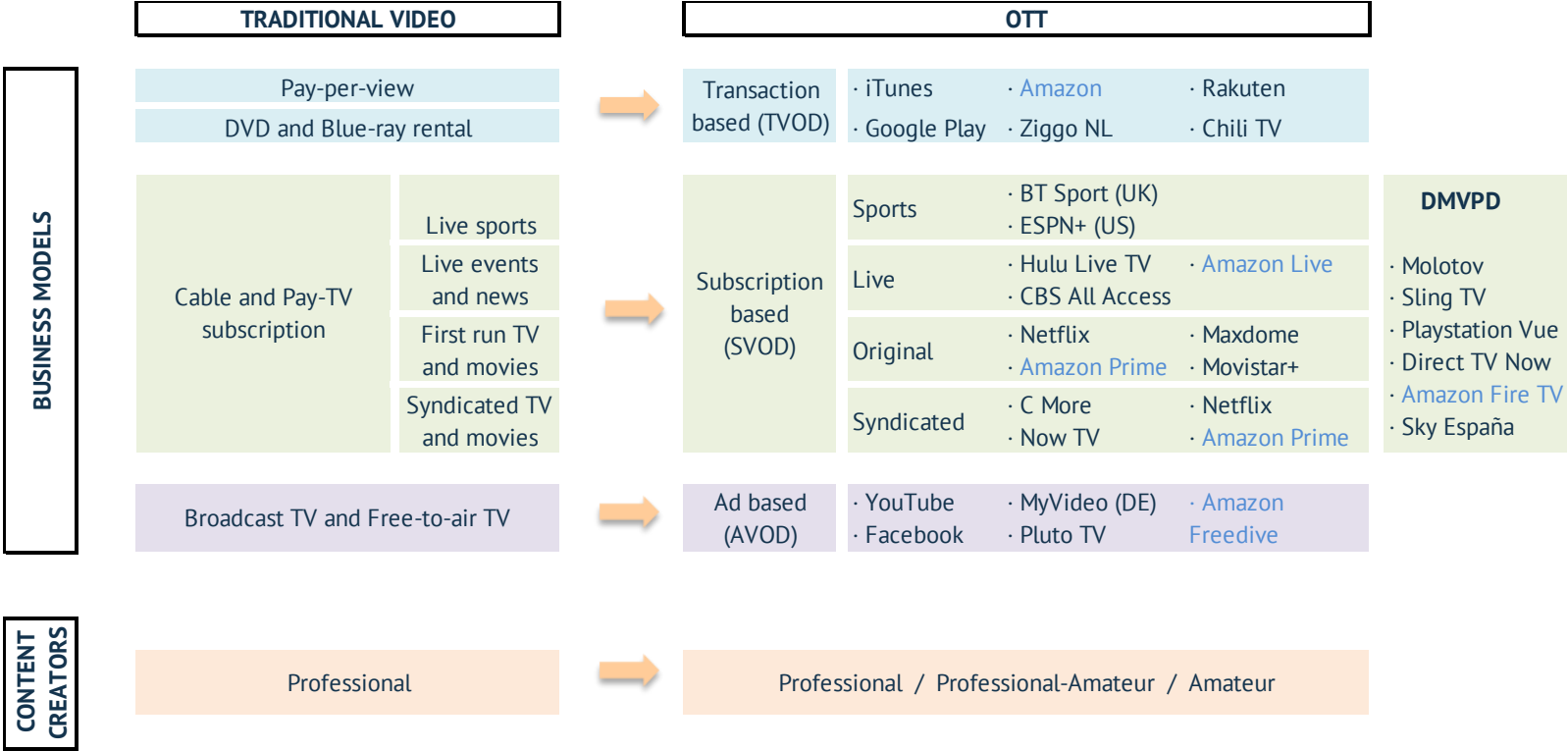
(R)evolutions

- ➔ **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

HOWEVER

- ➔ **VOD market 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



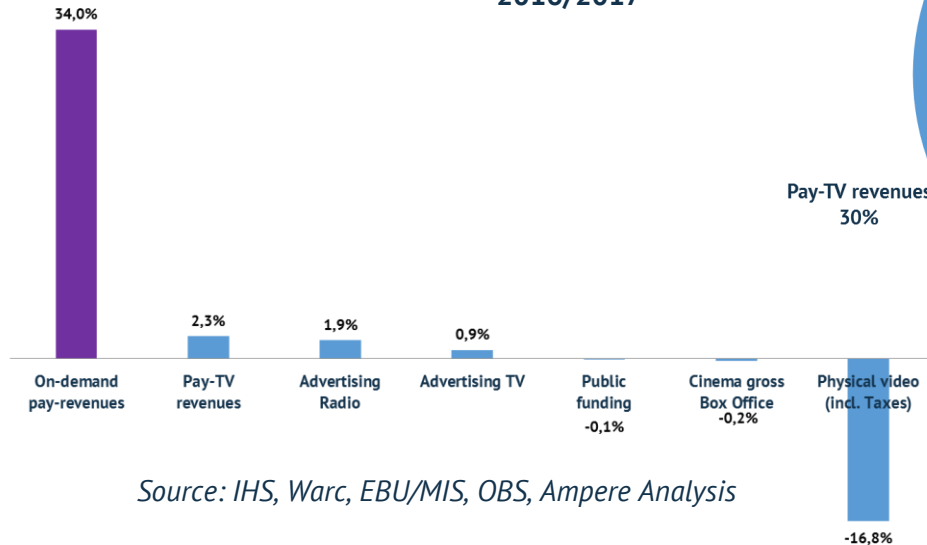
Source: BCG Analysis

Overview

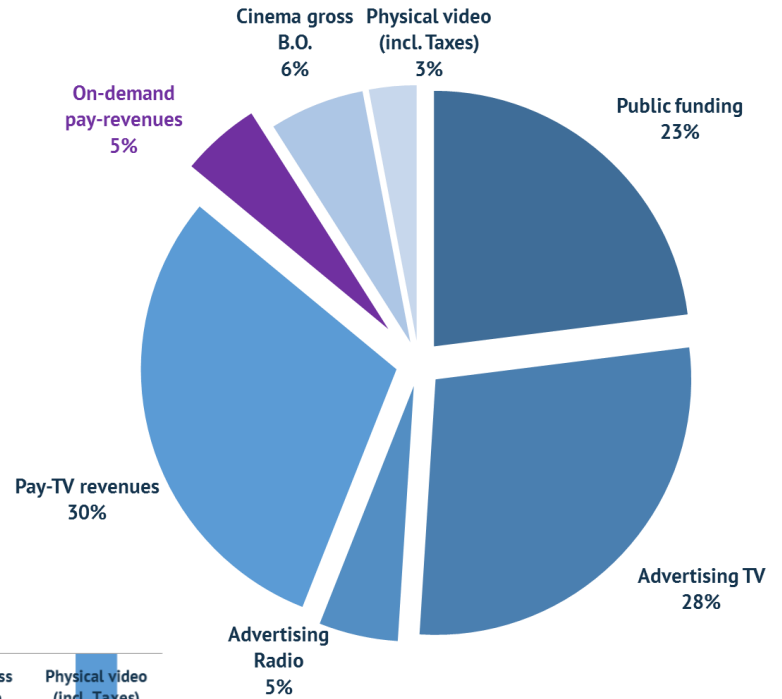
1. Trends in the EU VOD market
 - a) Who is who in Streaming world?
 - b) Focus on OTT subscription VOD**

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

Year-on-year growth rates by market segment 2016/2017



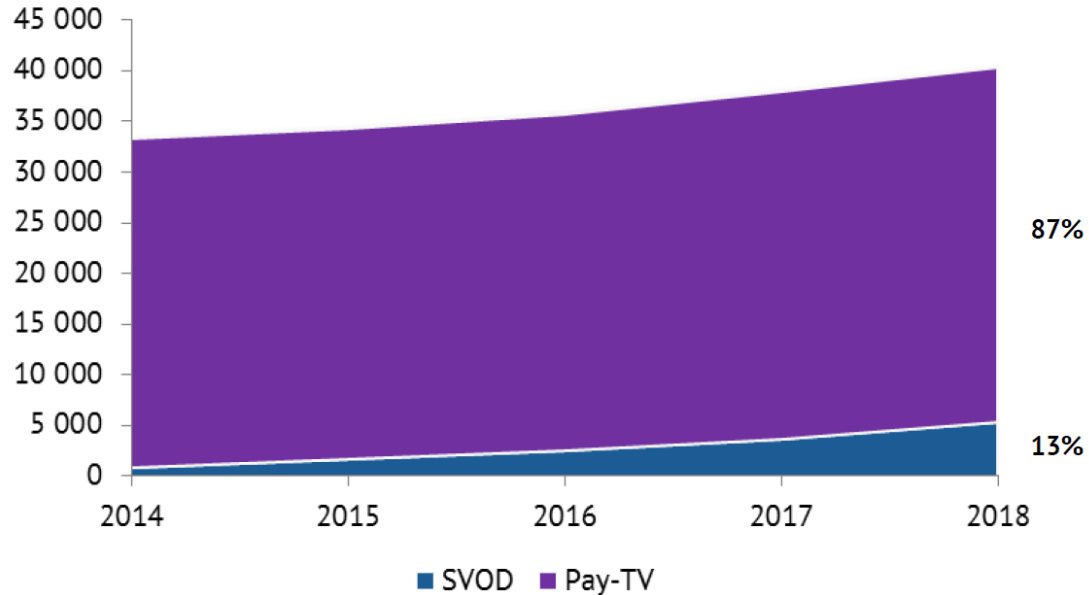
Source: IHS, Warc, EBU/MIS, OBS, Ampere Analysis



EU AV market in 2017: EUR 111,5 billion

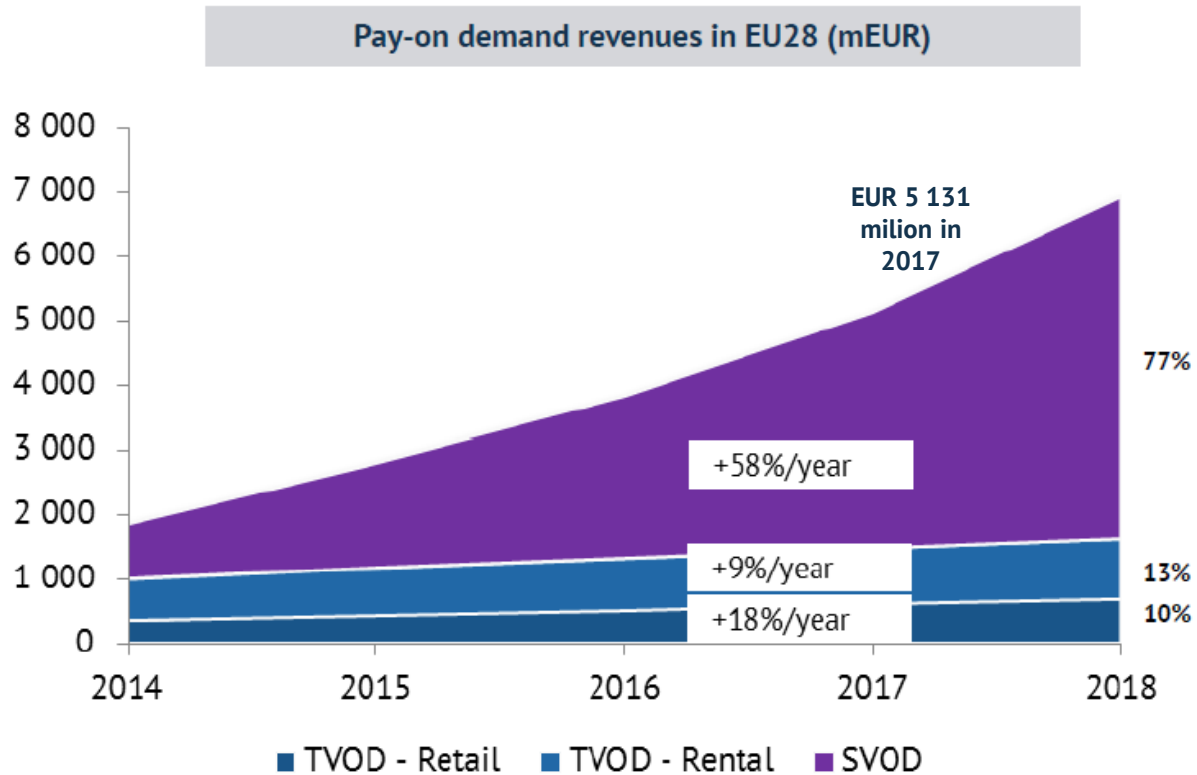
SVOD: only a small fraction of all Pay-services...

Pay-services revenues (mEUR)



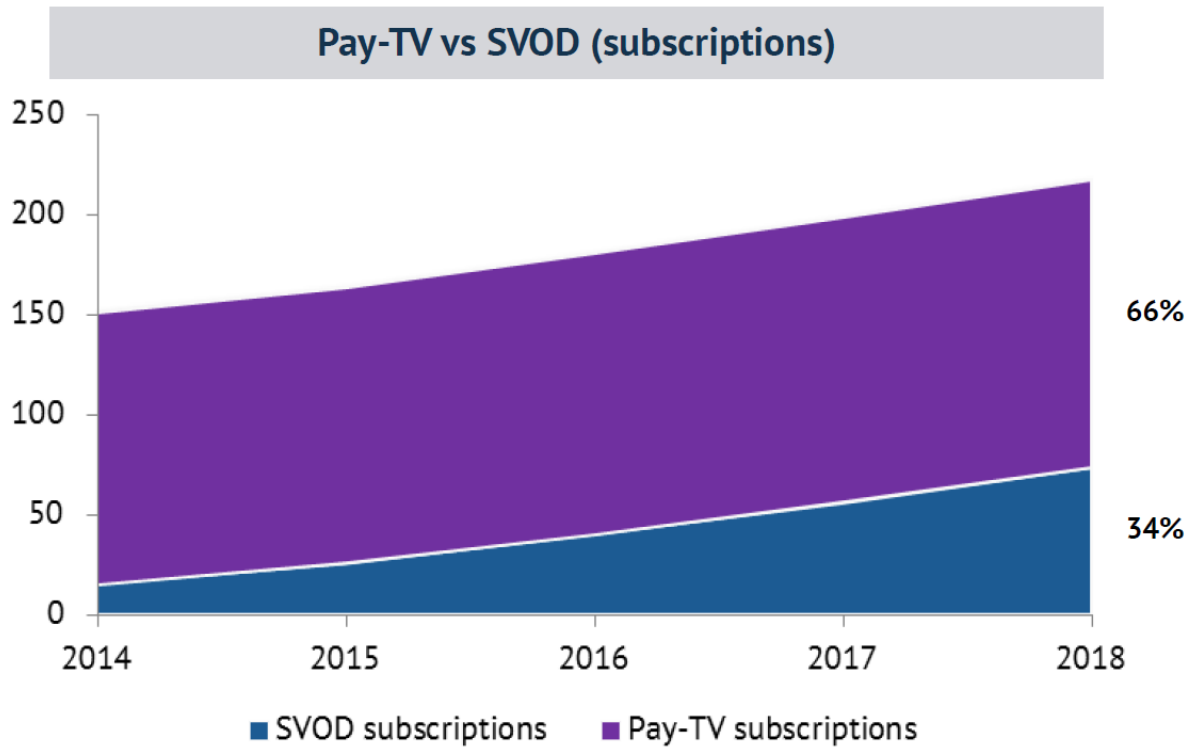
Source: Ampere Analysis (SVOD includes only OTT SVOD)

...but biggest value & growth in Pay-on-demand



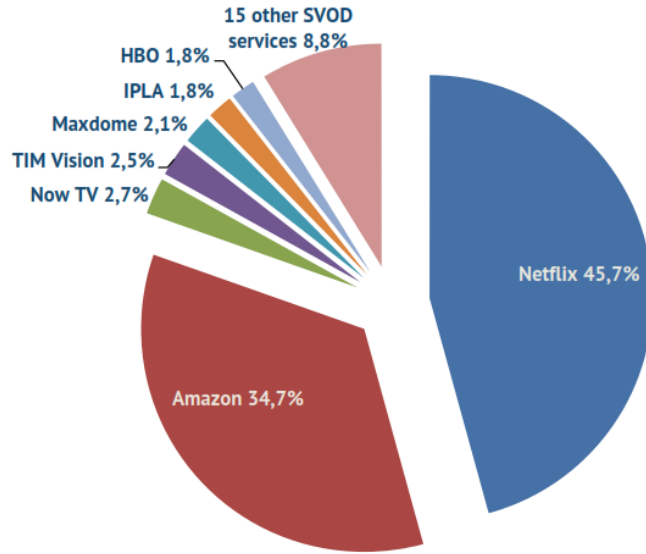
Source: Ampere Analysis (SVOD includes only OTT SVOD)

Also, over one third of subscriptions are SVOD

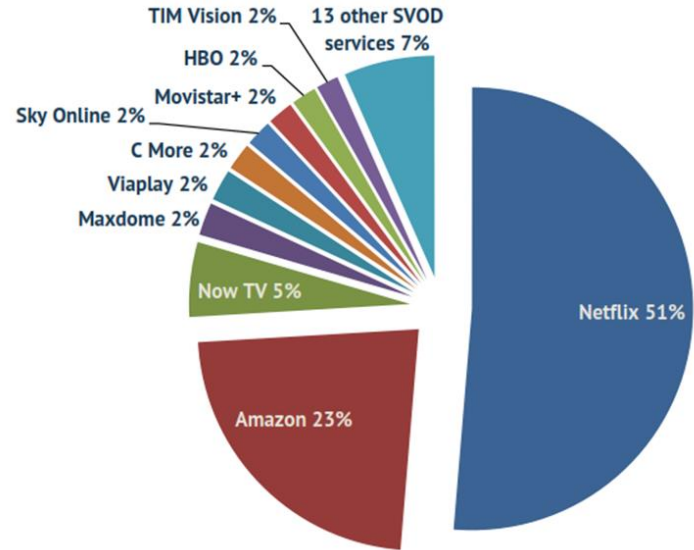


Source: Ampere Analysis (SVOD includes only OTT SVOD)

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

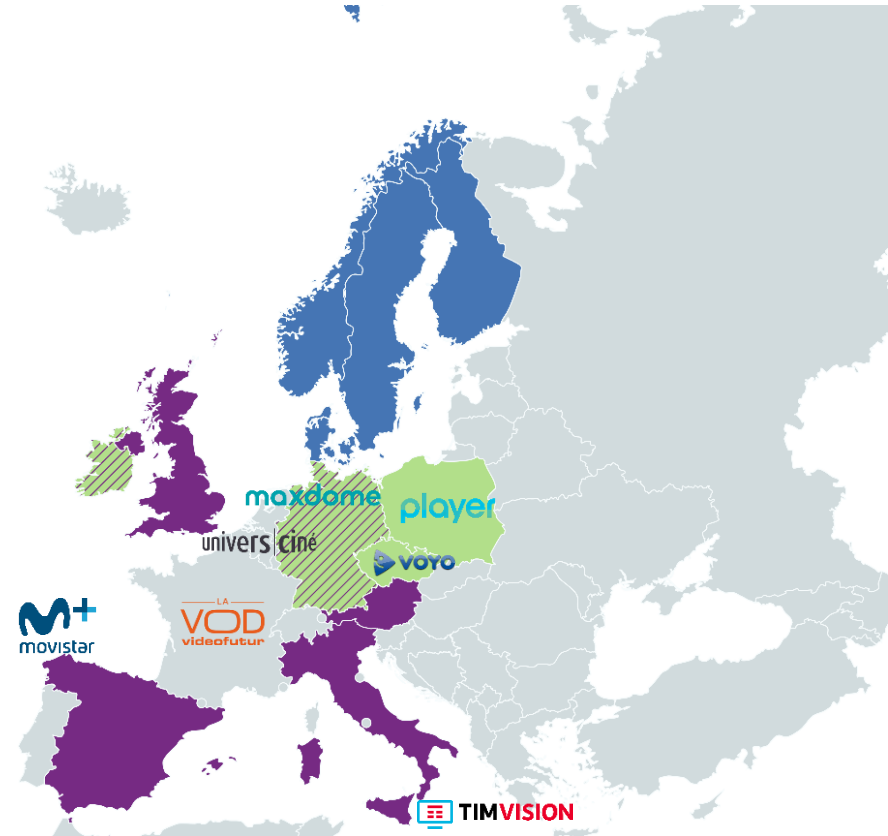
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Pan-European:

- C More 
- Horizon 
- Sky Now TV 

Local services:

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



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Many joint services arising at EU level...

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- **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)

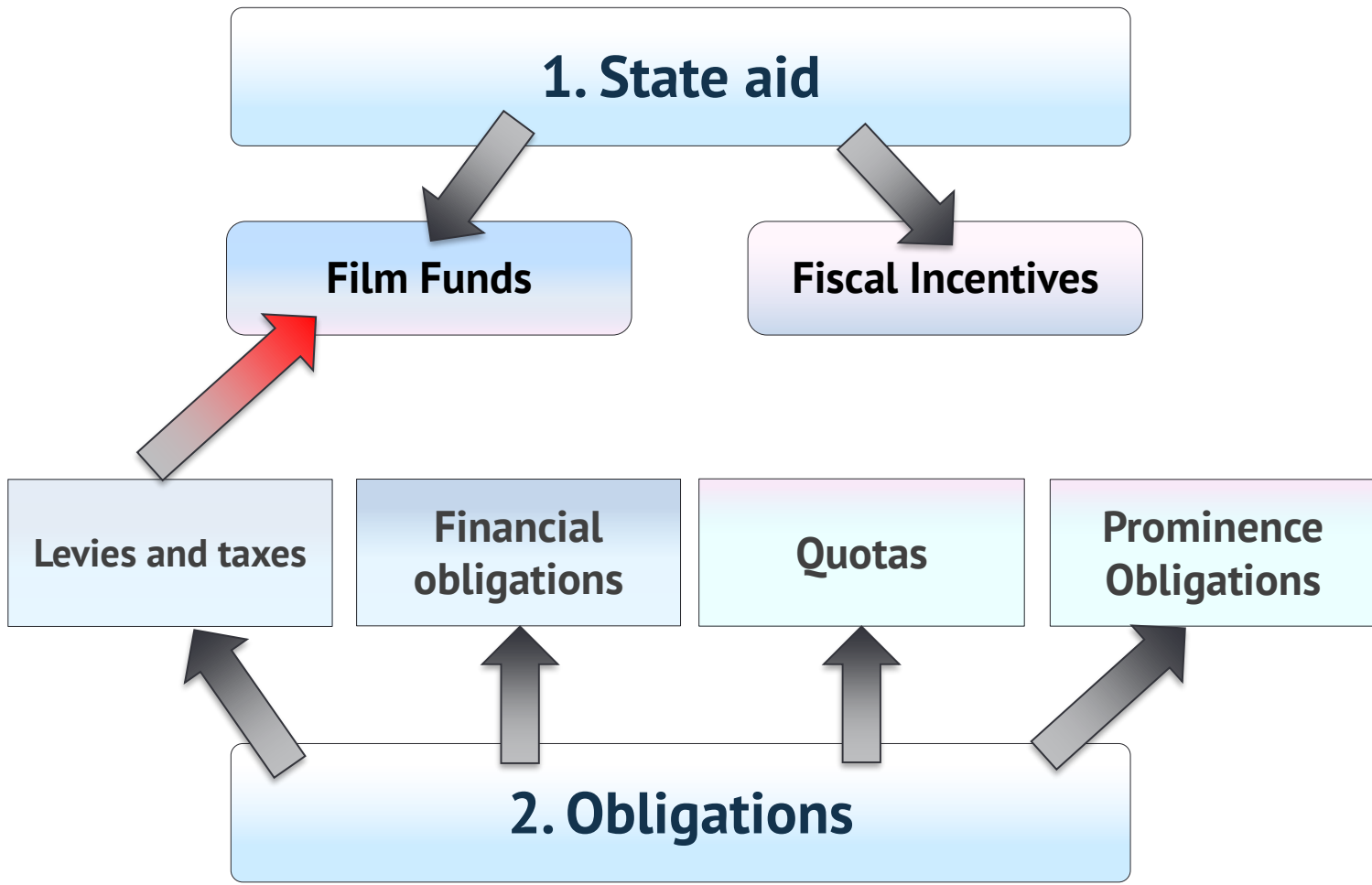
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Overview

2. EU rules for the promotion of European works on VOD
 - a) **The audiovisual “ecosystem”**



Legal obligations > VOD



Levies and taxes

Financial obligations

Quotas

Prominence Obligations



Indirect support to state aid

Direct support to production

Overview

2. EU rules for the promotion of European works on VOD
 - a) The audiovisual “ecosystem”
 - b) The EU regulatory framework**

A multidimensional legal framework

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Portability Regulation

Copyright Package

Sat-Cab Directive

AVMS Directive

E-Commerce Directive

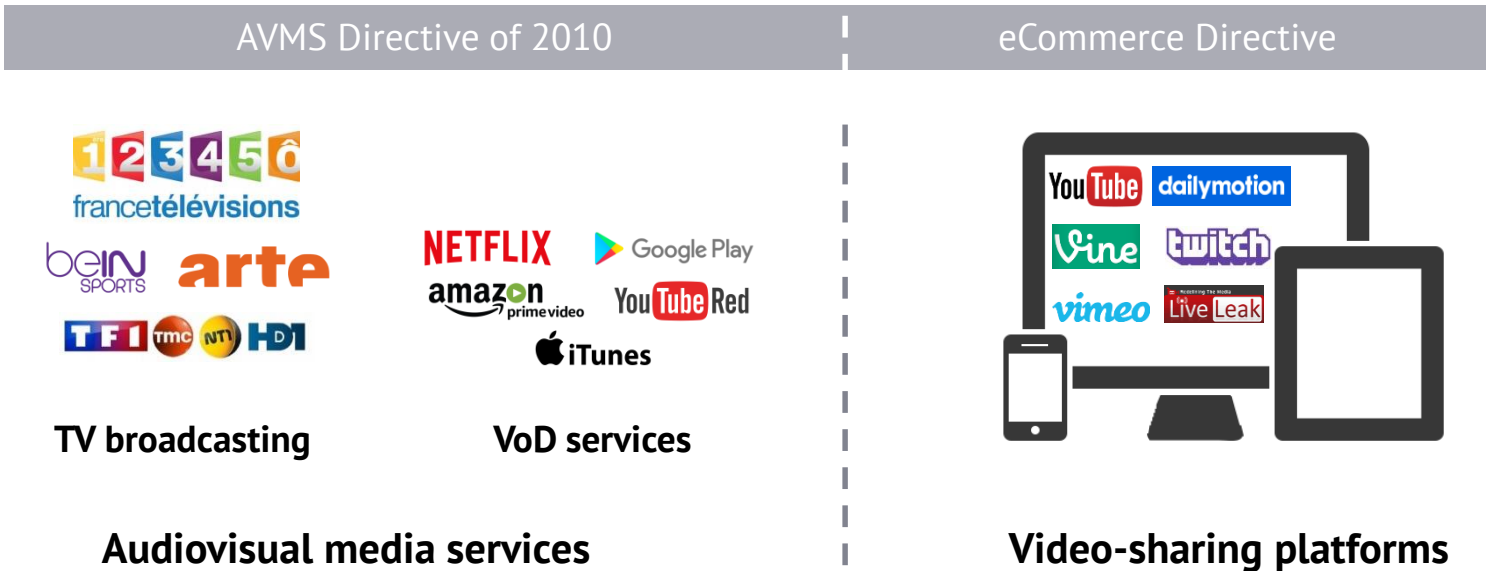
General Data Protection Regulation

Geo-Blocking Regulation

Regulation on Privacy and Electronic
Communications

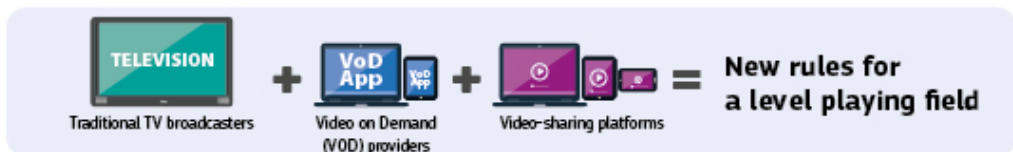
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VOD versus VSPs: different set of rules



AVMS Directive
Under the Digital Single Market

eCommerce Directive



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. EU rules for the promotion of European works on VOD
 - a) The audiovisual “ecosystem”
 - b) The EU regulatory framework
 - c) **Obligations imposed on non-linear services**

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

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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

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Promotion of European works – VOD (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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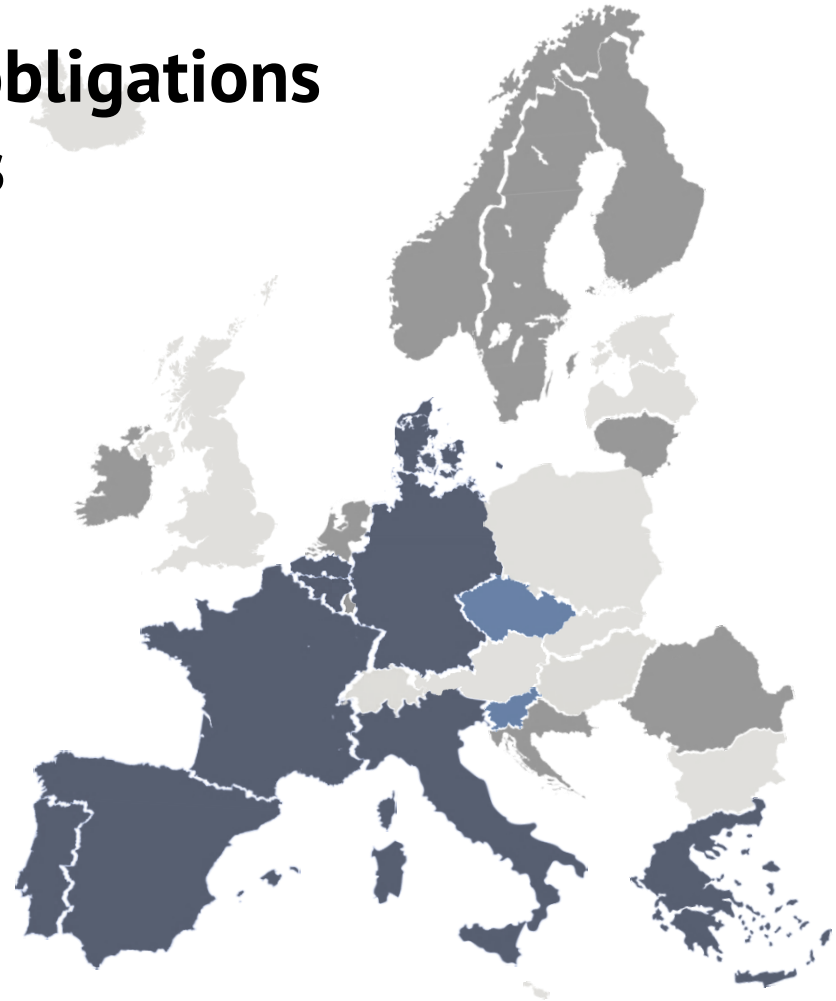
3. National legal approaches

a) Direct contributions to production

Financial investment obligations by public VOD services

*Direct contribution to production
or acquisition of rights*

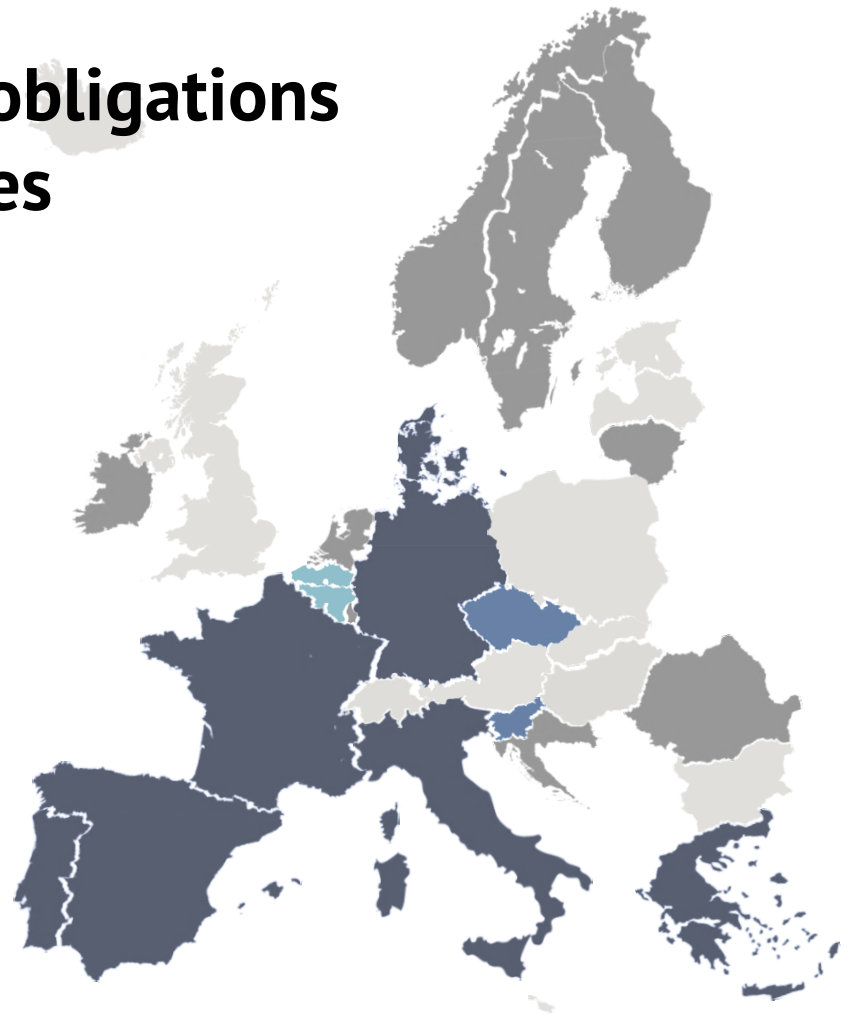
-  **Mandatory Investment**
-  **Optional (or quota)**
-  **General obligation**
-  **No obligation**



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



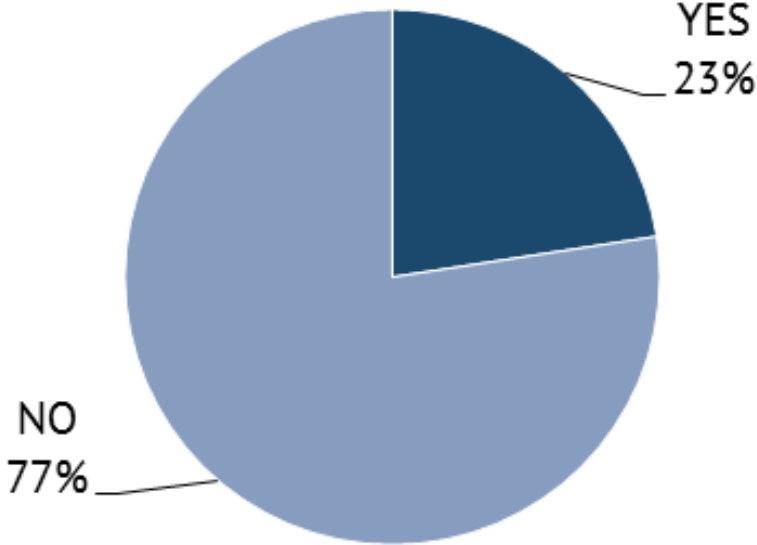
Overview

3. National legal approaches

a) Direct contributions to production

b) Other indirect contributions (beyond AVMSD)

Levies and taxes on VOD services *(beyond AVMSD)*

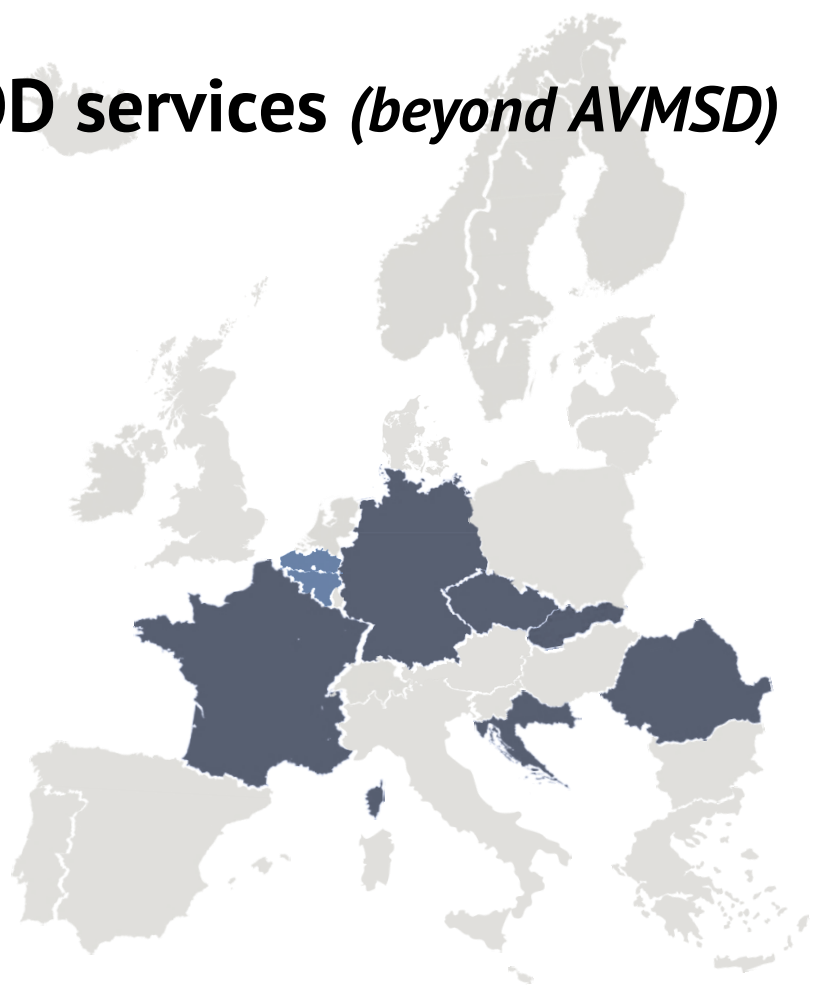


Levies and taxes on VOD services (*beyond AVMSD*)

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*Indirect contribution to production
or acquisition of rights*

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



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Overview

3. National legal approaches

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

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...

New Article 13 paragraphs 2 to 7 (2018 AVMSD)

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- **Possibility to extend financial contribution obligations**, including via direct investment in content and contributions to national funds obligations, **to « targeting » services** – Art. 13(2)
- **Shall be:** (Art. 13(3))
 - Proportionate and non-discriminatory
 - Based only on revenues earned in the targeted MS
 - Takes into account financial contribution imposed by targeted MS
 - Comply with EU State aid rules
- **Low turnover o low audience services *shall* be exempted + possible exemptions based on type of content provided** – Art. 13(6)
- **EC guidelines** re. definition of low audience/turnover – Art. 13(7)

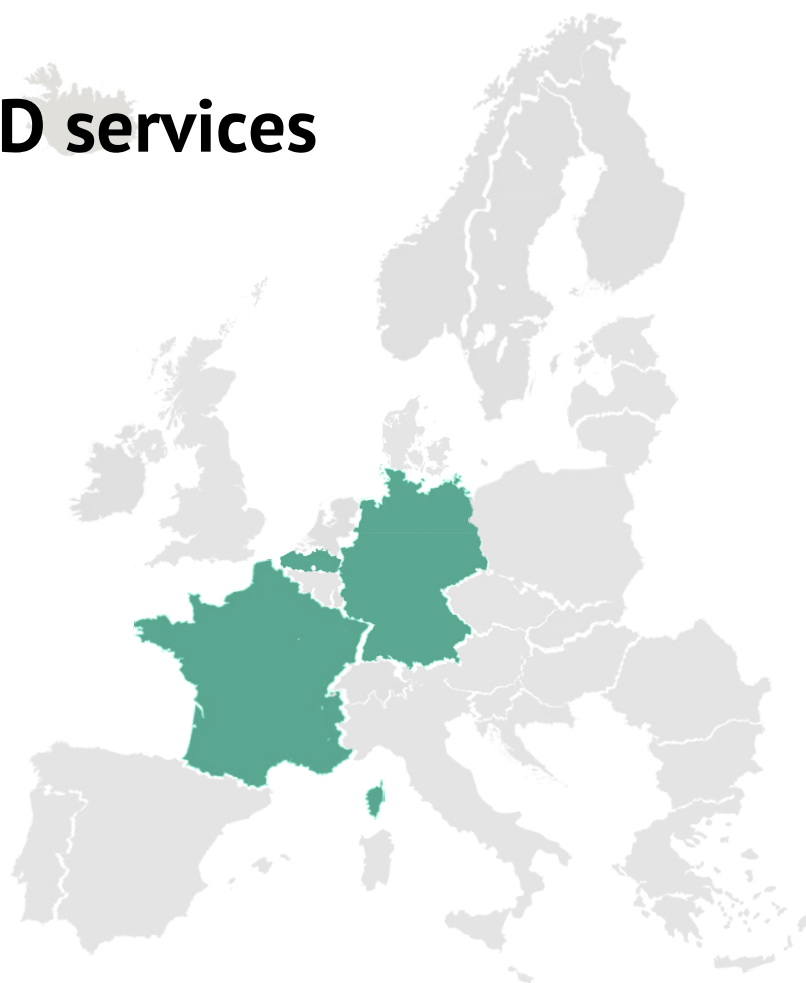
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Targeting taxes on VOD services

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

 **Taxes applicable on targeting
services**



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The German « film levy »



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- **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

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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



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- **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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More « Netflix » taxes around Europe?

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- **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

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Next steps...

- **Implementation AVMS Directive:**
 - ✓ by 19 September 2020
- **Reporting 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

Other implementation issues

- **The awaited EC guidelines**
 - ✓ to define a.o. the scope of the exemptions for low turnover and low audience VOD services

- **Monitoring issues:**
 - ✓ by NRAs? Tax authorities? Film agencies?

- **Other issues related to the promotion of European works**
 - ✓ How to calculate the share of European works (EC guidelines)
 - ✓ How to assess the nationality of European works (on-going mapping of the EAO)

Thank you!

www.obs.coe.int
sophie.valais@coe.int

