

EBU EXPERT WORKSHOP ON PLATFORM REGULATION: ROBIN FOSTER'S VIEWS ON ACCESS AND FINDABILITY

What challenges are faced by content providers in a multi-platform environment?

If public service media content is to fulfil its purpose and justify public funding, we must as far as possible ensure that it is universally available, easy to find and hence well-used. But this outcome will be increasingly difficult to secure in the new digital world. Regulation in the form of “must carry” and “appropriate prominence” requirements have to date worked reasonably well to secure continuing prominence for public service media (PSM) on conventional platforms. PSM channels have typically been available on all main platforms and found at the top of relevant EPG listings. But the future brings new challenges:

- We are moving from a limited number of broadcast platforms (where often the network provider also controls the content gateway) to a wide range of content distributors and gateways, using the internet to reach consumers;
- There has been a rapid take-up of smart TVs and mobile devices, often with their own consumer interfaces or content gateways;
- There are new ways of consuming content – on-demand rather than live broadcast;
- And new ways of selecting content – with a move away from grid-like EPGs to more interactive and app-like menus and catalogues, with search functionality and voice recognition techniques.

Practitioners have described this as a shift from “direct” delivery of content to “distributed” delivery. Media content providers, including PSMs, are no longer able to guarantee that their content will be seen as part of a channel or even an “own-branded” on-demand catalogue. Even if they continue to offer content as part of their own packaged service, there is no guarantee that consumers will be able to easily find the PSM brand among many competing propositions.

A key development is the emergence of potentially important new content gateways (or audiovisual platforms). These gateways are “packagers” of content and services, and do not necessarily own the physical means of distribution. They make available a selected range of TV-like audiovisual content to the public, actively select and aggregate content from those content providers they wish to host on their gateway, alongside any content of their own, and design and organise the user interface/on screen environment through which viewers can search for and access such content.

While gateways of this type do not exercise editorial responsibility for the individual pieces of content they aggregate on their gateways, they do carry out a quasi-editorial function in choosing the suppliers of content they will host and – sometimes – in selecting individual items of content to promote and give prominence to.

And gateways play an active role in “pushing” content to consumers, for example through various approaches to recommended content:

- Passive and active filtering to meet user preferences;
- Curated/sponsored content;
- Most popular or most shared content.

These changes will clearly have a big impact on both access and findability of PSM. Unlike with their broadcast channels, PSM is not guaranteed access to the new gateways and neither is there any protection given to ensure prominence of PSM content which the gateways chose to carry. As a result, PSM must negotiate access and prominence, which may prove to be extremely problematic. Risks include:

- Increased distribution costs – as a result of the need to be on more platforms/gateways;
- The possibility that PSM may have to pay for profile, as prominence becomes a valuable commodity that can be traded;
- Gateways may prefer to highlight paid-for content rather than free-to-air, as income sharing will help them make money, and PSM may not be able to agree to commercial deals or offer exclusivity of access;
- Gateways might discriminate in favour of content they have produced themselves.

The biggest challenge will arise from the potential clash between “consumer” interests and “citizen” or societal interests. The new gateways may see themselves as promoting the consumer interest, but we as a society should have the wider citizen’s interests at the heart of media policy. Much has been written about the risks of the “filter bubble” effect, which describes a world in which consumers only choose content which they know they will like and which confirms their own worldview. The public interest lies in securing a diversity and plurality of choices, partly through access to, and findability of, PSM.

What would be a proportionate regulatory response?

Identifying risk is not the same as identifying a clear regulatory solution. There are many consumer benefits associated with the changes taking place, and regulation could impose significant costs if badly designed. Any proposed intervention would therefore need to satisfy the following principles:

- Significance
 - Applied only to content gateways judged to play a significant role in access and consumption – perhaps using a market share or audience expectation test;
 - And to those whose main focus is on AV content aggregation and distribution (not for example search engines or social media).
- Proportionality
 - Applied to “default” settings only –allowing users to override these settings if they wish;
 - And to core EPG/app menus, not to sub-menus, curated content or recommendations.

- Flexibility
 - Allow each EU member state to exercise its interpretation of these broad objectives, taking into account cultural priorities and market variations (with the flexibility to alter or exit regulation if no longer effective/appropriate).

What would this mean in practice?

In practice this might mean a relatively limited set of rules.

Where an EPG grid is still offered by a gateway:

- Similar to today, PSM should be granted appropriate prominence (e.g. PSM channels near the top of first page or relevant genre pages).

Where other approaches (e.g. apps, menus and links to on-demand content) are used:

- PSM providers should be offered a prominent position on the home/start page for their equivalent app (but, reflecting the twin aims of proportionality and practicality, only one per PSM provider).

Intervention would probably not extend at present to PSM prominence on search results, recommendations or on curated content for the following reasons:

- Hard to design effective rules;
- Would discourage innovation;
- Search and recommendation engines supplement rather than replace grids or apps (at present).

But provision would need to be made in any new approach for keeping the role and impact of these new gateways under review.

One approach to introducing these rules would be to update the existing EU frameworks (as set out in Article 31 of the Universal Services Directive and Articles 5 and 6 of the Access Directive) which support “must carry” and EPG prominence measures as currently applied. It is possible to see how these rules could be updated to cover all designated PSM services, (including on demand and not just broadcast), and to redefine relevant networks and services to include new gateways. Must carry and access obligations would thus be extended to the new types of content aggregator or gateway we have been discussing alongside more conventional platforms.

Alternatively, a new legislative approach could identify a new category of online intermediary or media service provider – a content gateway - distinct from either pure information conduits or media service providers who have full editorial control over the content they offer. Intermediaries or gateways of this type would then be expected to meet a certain limited group of obligations, which would cover access and prominence, but might also include measures on child protection etc.

Whichever approach is adopted, the twin aims of “keeping it simple” and allowing flexibility of interpretation and action for each member state should govern our thinking.