

**Engineering Management BMEVITMMB03**

# **MEDIA REGULATION IN THE EUROPEAN UNION**

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# THE BEGINNINGS OF CONTENT PROVIDING

## The development of written press

- ◆ Ancient Rome – Acta diurna Urbis (The city's daily announcements)
- ◆ Julius Caesar – Acta senatus (The official gazette of Roman Empire)

## China

- ◆ Tipao (Palace report) during Han dynasty ( 202 BC – 220 AD) and Tang dynasty (618-907 AD)
- ◆ 1041 printed media in China

## 1453 Reinventing the printed media

- ◆ Johannes Gutenberg – the emergence of European printed media
- ◆ The first books are limited edition

## The emergence of mass press

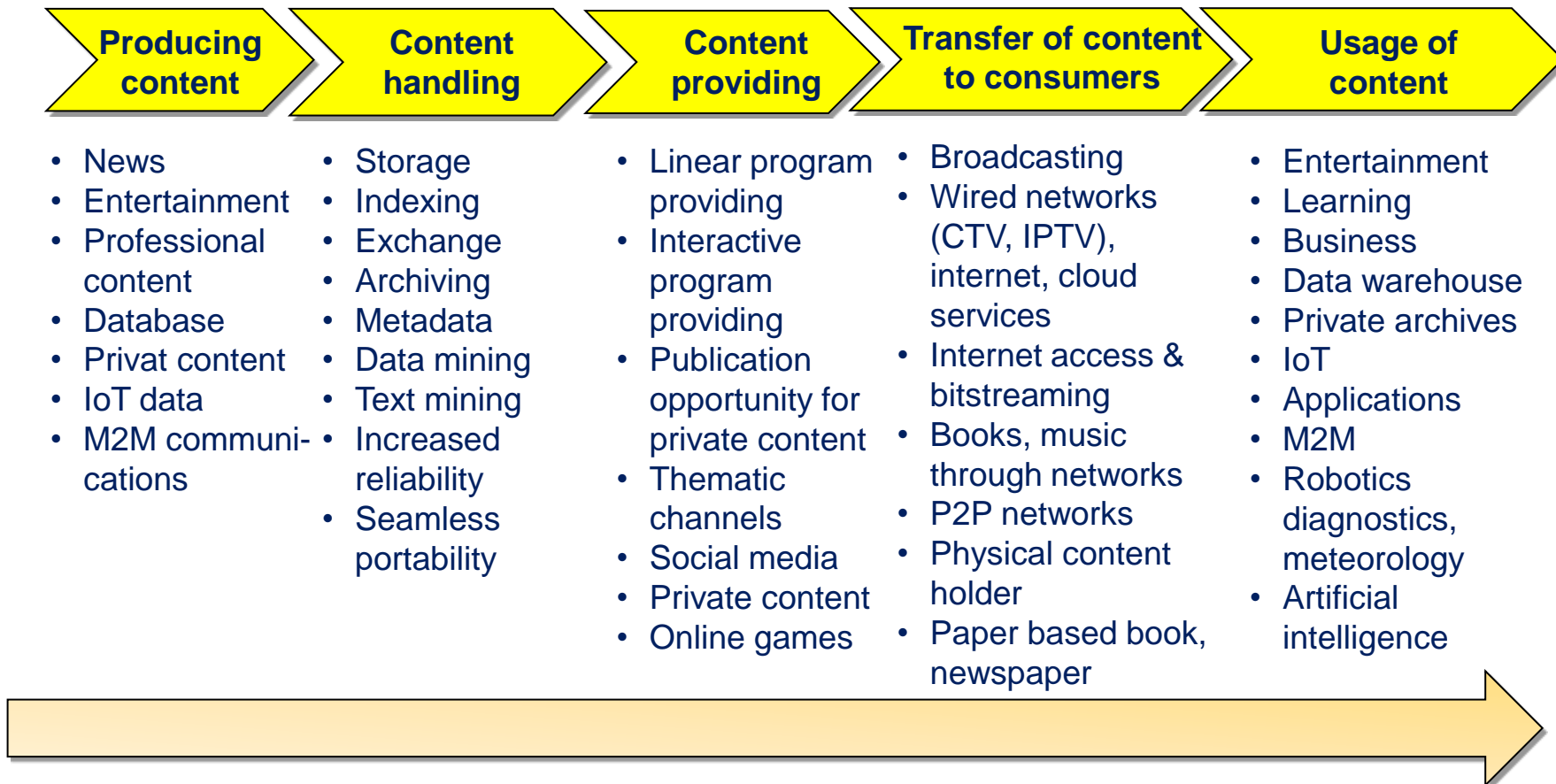
- ◆ Censorship became the weapon of regulation

## 1830s Photography

## 1895 Film and cinema

- ◆ The beginnings of visual representation
- ◆ The film industry is formed

# INDUSTRIAL VALUE CHAIN IN CONTENT PROVIDING



# THE FORMATION OF DUAL MEDIA SYSTEM

## **1920s The appearance of the first radio stations**

- ◆ USA – mainly in the form of free competition
- ◆ Europe – in the form of state monopoly

## **1950s The appearance of television – no changes. Arguments:**

- ◆ Scarcity of frequency
- ◆ The relatively large capital requirement
- ◆ Ensuring balanced information (internal pluralism)

## **1980s All three arguments become obsolete**

- ◆ Technical progress eliminates frequency scarcity
- ◆ The advertising market covers the high costs
- ◆ State and commercial radio/television – external pluralism
- ◆ The consequence of change: development of dual media system

# TELEVISION WITHOUT FRONTIER

## **1984 Green paper on the establishment of the Common Market for broadcasting, especially by satellite and cable**

- ◆ In an economic community only the commercial model can be interpreted
- ◆ The broadcast activity has cultural value
- ◆ Cultural model or commercial model – that is the question
- ◆ The decision: Broadcasting is a cultural service, which, however has a market value
- ◆ Consequence: the media is still regulated at the member state level and later the EU directive on internal market services also excludes audiovisual media from its scope

## **1989 The beginning of the unified media communication space**

- ◆ Television without Frontiers – white book

# TELEVISION WITHOUT FRONTIER

## 1989 Television without Frontiers (TVWF directive)

- ◆ 89/552/EEC directive
  - ◆ Main goals:
    - ◆ eliminating factors preventing the free flow of broadcasting
    - ◆ ensuring free reception for the citizens of the EU member states
    - ◆ fixing certain content and form requirements, thus creating equal conditions for service providers operating in different member states
    - ◆ promoting the strengthening of the European audiovisual industry
- ◆ The main steps of directive:
  - ◆ Determine which member state jurisdiction each broadcaster falls under and introduce the rule of single applicable law, according to which all broadcasters are subject to the jurisdiction of a single member state that is obliged to ensure compliance with the law

# TELEVISION WITHOUT FRONTIER

## 1989 Television without Frontiers (continued)

- ◆ The main steps of directive (continued)
  - ◆ promotes the production and distribution of European works
  - ◆ regulates television advertising and sponsorship
  - ◆ contain rules to ensure the protection of minors and to prevent hatred based on race, gender, nationality or religion
  - ◆ Defines the rules of correction

## 1997 Amending of TVWF directive

- ◆ 97/36/EC directive
  - ◆ Additional rules for the protection of minors, advertising and distant sales, advertising of tobacco products and medicines etc.
  - ◆ It provides the first steps **to expand the regulation towards audiovisual media** instead of television

# THE IMPACT OF CONVERGENCE ON THE MEDIA

## 1997 Green Paper on the convergence

- ◆ It was a document intended for discussion
- ◆ The title: Green Paper on the of the telecommunication, media and information technology sectors and the implications for regulation
- ◆ The first sign of „new media”





# THE IMPACT OF CONVERGENCE ON THE MEDIA

## 1997 Green Paper on the convergence – the convergence of regulation

Telecommunication: traditionally regulated, highly standardized, moderated by an international organization represented at government level



Information technology: unregulated, mainly based on de facto standards, moderated by an international organization represented at the manufactural level



Media: copyrighted, based on member state rules



# AUDIOVISUAL MEDIA SERVICE DIRECTIVE

## 2010 The birth of the audiovisual media regulation

- ◆ 2010/13/EC directive (has applied since 5 May 2010)

## 2018 Update the audiovisual media regulation

- ◆ 2018/1808 directive (has applied since 18 December 2018)
  - ◆ Goal:
    - ◆ ensures the operation of audiovisual media services in accordance with the single European Union market
    - ◆ contribute to the promotion of cultural diversity
    - ◆ provide an adequate level of consumer and child protection
  - ◆ EU countries must ensure freedom of reception and must not restrict audiovisual media transmissions from other EU countries.
  - ◆ Stricter rules than those in this directive can be applied by countries in certain circumstances and following specific procedures.
  - ◆ National authorities must ensure co-regulation and self-regulation through national codes of conduct

# AUDIOVISUAL MEDIA SERVICE DIRECTIVE

## Media regulation types:

- ◆ Statutory regulation: a system of self-regulation where news media (collectively) draw up their own regulations and take full responsibility for monitoring compliance with those regulations through a media council
- ◆ Self-regulation: The state sets the relevant legislative or regulatory rules and monitors and enforces compliance in a transparent way
- ◆ Co-regulation: This is a hybrid form where self-regulation ultimately is back-stopped by statutory regulation

# AUDIOVISUAL MEDIA SERVICE DIRECTIVE

## Definitions

- ♦ **Audiovisual media service:** a service providing programmes, under the editorial responsibility of a media service provider, to the general public, to inform, entertain or educate, using electronic communications networks, either broadcast or on-demand
- ♦ **On-demand audiovisual media service:** 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
- ♦ **Video-sharing platform service:** a service offering programmes, user-generated videos or both to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, using electronic communications networks, and the organisation of which is determined by the video-sharing platform provider, including by use of automatic means of algorithms, in particular by displaying, tagging and sequencing (2018 version)

# AUDIOVISUAL MEDIA SERVICE DIRECTIVE

## Advertising

- ◆ Audiovisual advertising must be readily recognisable as such and must not:
  - ◆ use subliminal techniques
  - ◆ prejudice respect for human dignity
  - ◆ include or promote discrimination
  - ◆ encourage behaviour prejudicial to health or safety
  - ◆ encourage behaviour highly prejudicial to the protection of the environment
- ◆ Banned audiovisual advertising include:
  - ◆ cigarette and tobacco advertising including electronic cigarettes and refill containers
  - ◆ alcohol advertising aimed specifically at minors or encouraging immoderate consumption, among a range of restrictions
  - ◆ advertising for prescription medicines and treatment

# AUDIOVISUAL MEDIA SERVICE DIRECTIVE

## Advertising (continued)

- ◆ Banned audiovisual advertising include:
  - ◆ Advertising exploiting children's inexperience or credulity and trust in adults, or unreasonably showing minors in dangerous situations

## Protecting children

- ◆ EU countries must take action to ensure that programmes which could „impair the physical, mental or moral development of minors’ are only made available in such a way that minors will not normally hear or other technical measures proportionate to the potential harm.

## Hate speech

- ◆ Audiovisual media services must not contain incitement to violence or hatred directed against groups or a member of a group based on discrimination on grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation or nationality.

# AUDIOVISUAL MEDIA SERVICE DIRECTIVE

## Public provocation

- ◆ Public provocation to commit a terrorist offence is also banned

## Accessibility

- ◆ Providers must make their services continuously and progressively more accessible to persons with disabilities and are encouraged to develop accessibility action plans to achieve this.

## Video-sharing

- ◆ Video-sharing platform service providers must put in place appropriate measures to protect minors from content which could affect their physical, mental or moral development and the general public from incitement to violence of hatred or public provocation to commit a terrorist offence.
- ◆ Video-sharing platform service providers have the same obligations as audiovisual service providers in respect of advertising and other content restrictions, taking into account the limited control they can exercise over advertising on their platforms that is not marketed, sold or arranged by them.

# REGULATION OF CROSS-BORDER PORTABILITY

## 2017 Cross-border portability regulation

- ◆ 2017/1128 regulation on cross-border portability of online content services in the internal market
- ◆ The aim of this regulation is to ensure that subscribers to an online service in their own EU country, such as films, sport events, eBooks, video games and music, can access it when they are temporarily staying in other EU countries
- ◆ The content available in other EU countries should be:
  - ◆ the same content
  - ◆ on the same range and number of devices
  - ◆ for the same number of users
  - ◆ with the same functionality
  - ◆ with no extra charges

## Timeline of regulation

- ◆ The regulation applies from 1 April 2018



# COPYRIGHT DIRECTIVE IN THE DIGITAL SINGLE MARKET

## 2019 The new regulation of copyright and related rights in the DSM

- ◆ 2019/790 directive on copyright and related rights is the Digital Single Market
  - ◆ The 3 main objectives:
    - ◆ to adapt certain key expectations to copyright to the digital and the cross-border
    - ◆ to improve licencing practices and ensure wider access to content
    - ◆ to achieve a well-functioning marketplace for copyright
  - ◆ The directive updates but does not replace 11 directives which together comprise the EU's copyright legislation
  - ◆ The directive makes it easier to use copyright-protected material for different purposes, mostly related to access to knowledge, by introducing mandatory exceptions to copyright to foster

# COPYRIGHT DIRECTIVE IN THE DIGITAL SINGLE MARKET

- ◆ More goals
  - ◆ Text- and data mining
  - ◆ Digital uses of works for purpose of illustration for teaching
  - ◆ The preservation of cultural heritage
  - ◆ It facilitates licensing to give wider access to content, in particular providing
    - ◆ a new system to make it easier for cultural heritage institutions, such as libraries, museums and archives, to digitise and disseminate, including online and across borders in the EU, out-of-commerce works that they have in their collections
    - ◆ a specific rule on extended collective licensing and similar mechanisms
    - ◆ a negotiation mechanism to help interested parties reach agreements for the making available of audiovisual works on video-on-demand platforms

# COPYRIGHT DIRECTIVE IN THE DIGITAL SINGLE MARKET

- ◆ The directive also clarifies that anyone can use and share without restriction copies of works of art in the public domain (for example, a picture of a sculpture no longer covered by copyright), under certain conditions
- ◆ Online content-sharing service providers should obtain permission from right holders to make works uploaded by their users available to the public, for example through a licensing agreement. If a licence is not concluded, the concerned platforms benefit from a liability-mitigation mechanism, but they have to make 'best efforts' to make sure that unauthorised content is not available on their websites. They must make those efforts on the basis of relevant and necessary information provided by the rightholders.

## Timeline of directive

- ◆ The directive has applied since 6 June 2019 and must become law in all EU countries by 7 June 2021

# DIGITAL CONTENT AND SERVICES DIRECTIVE

## 2019 The directive for digital content and digital services

- ◆ 2019/770 directive on certain aspects concerning contracts for the supply of digital content and digital services (20 May 2019)
- ◆ Goals: The purpose of this Directive is to contribute to the proper functioning of the internal market while providing for a high level of consumer protection, by laying down common rules on certain requirements concerning contracts between traders and consumers for the supply of digital content or digital services, in particular, rules on:
  - ◆ the conformity of digital content or a digital service with the contract,
  - ◆ remedies in the event of a lack of such conformity or a failure to supply, and the modalities for the exercise of those remedies, and
  - ◆ the modification of digital content or a digital service (Article 1.)

# DIGITAL CONTENT AND SERVICES DIRECTIVE

## The deadlines in 2019/770 directive

- ◆ By 1 July 2021 Member States shall adopt and publish the measures necessary to comply with this Directive.
- ◆ The Member States shall apply those measures from 1 January 2022.
- ◆ The provisions of this Directive shall apply to the supply of digital content or digital services which occurs from 1 January 2022. (Article 23)
- ◆ The Commission shall, not later than 12 June 2024 review the application of this Directive and submit a report to the European Parliament, to the Council and to the European Economic and Social Committee. The report shall examine, inter alia, the case for harmonisation of rules applicable to contracts for the supply of digital content or digital services other than that covered by this Directive, including supplied against advertisements. (Article 24)

# DIGITAL CONTENT AND SERVICES DIRECTIVE

## The scope of digital content and services

- ◆ The Directive cover, inter alia,
  - ◆ computer programmes, applications, video files, audio files, music files, digital games, e-books or other e-publications
  - ◆ digital services which allow the creation of, processing of, accessing or storage of data in digital form, including software-as-a-service, such as video and audio sharing and other file hosting
  - ◆ word processing or games offered in the cloud computing environment and
  - ◆ social media
  
- ◆ The Directive should apply independently of the medium used for the transmission of, or for giving access to, the digital content or digital service.

# DIGITAL CONTENT AND SERVICES DIRECTIVE

## The scope of digital content and services

- ◆ The Directive does not apply to
  - ◆ internet access services
  - ◆ sending messages (such as SMS), excluding number independent interpersonal communication services
  - ◆ healthcare
  - ◆ gaming services
  - ◆ financial services
  - ◆ software offered under a free and open source license (for which the consumer does not pay price and where the personal data provided by the consumer is handled by the trader solely for the purpose of improving the given software)
  - ◆ provision of digital content as part of a performance or event, such as a digital film screenings
  - ◆ digital content provided by public administration bodies

# DIGITAL CONTENT AND SERVICES DIRECTIVE

## Contact regulation

- ◆ Conformity
  - ◆ Contractual provisions regarding digital content and services
  - ◆ Quality and performance characteristics
  - ◆ Regular updates
- ◆ Dealer's responsibility
- ◆ Remedies
  - ◆ In case of faulty performance
  - ◆ Lack of conformity
  - ◆ Termination of the contract

## Timeline of directive

- ◆ It has to become law in the EU countries by 1 July 2021. EU countries must apply the rules of the directive as of 1 January 2022.



# DSA AND DMA AS A CONVERGENT REGULATION

**Digital Services Act – Regulation 2022/2065**

**Digital Markets Act – Regulation 2022/1925**

- ◆ The details were discussed in the last lecture
  - ◆ As a result of convergence these acts also strongly affect the media

## **Timeline of directive**

- ◆ The DSA regulation applies from 17 February 2024.
- ◆ The DMA regulation applies from 2 May 2023

# EUROPEAN MEDIA FREEDOM ACT (DRAFT)

## The aim of the draft regulation

- ◆ To protect media pluralism and media independence in the EU single market, so that media actors can continue their activities regardless of national borders without unwanted interference

## Main regulatory objectives

- ◆ Strengthened the editorial freedom of media companies
- ◆ Results in greater legal certainty and predictability in media market concentrations making it easier for actors to expand their activities in the European internal market
- ◆ Reducing political influence on public media providers through funding
- ◆ Journalists and editors will be better protected from undue interference in editorial decision-making and in the case of public service media, have assurances that their employer is equipped with adequate and stable funding for future operations, in accordance with their public service mission

# EUROPEAN MEDIA FREEDOM ACT (DRAFT)

## Main regulatory objectives (continuation)

- ◆ Prohibition of using spyware against media, journalists and their families
- ◆ The draft proposes to set up a new European Board for Media Services comprised of national media authorities
- ◆ Public media providers must have equal access to state advertisements

## Relations between European legislation

- ◆ The European Media Freedom Act builds on Digital Services Act (DSA) and Digital Markets Act (DMA)
- ◆ The European Media Freedom Act builds on revised Audiovisual Media Service Directive (AVMSD)

## Timeline of draft

- ◆ Member States discuss, adoption of modified draft
- ◆ Most provisions will apply 6 months after the entry into force of the Regulation

# LINK COLLECTION

Television Without Frontier Directive (1989)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31989L0552>

Audiovisual Media Services Directive (2010)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0013>

Cross-border portability Regulation (2017)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1128>

Audiovisual Media Services Directive modification (2018)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1808&rid=9>

Copyright Directive (2019)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0790>

Digital content and digital services directive (2019)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0770>

European Media Freedom Act (draft)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0457>