

Connected TV: A challenge for market players and regulators

What is Connected TV?

Connected TV is a TV set that connects to the Internet. It enables the consumer to access all forms of non-linear web content via a form of remote control. App-like portals with large icons are easily accessible, and movies and video games are now only a few clicks away from the sofa.

Connected or “smart” TV will replace linear TVs, just like smart phones have replaced original mobile phones. About 1 million TV sets in Germany are connected today and estimates suggest that by 2016 more than 50% of all TVs will be connectable. It is expected that many consumers will buy “hybrid” devices, but won’t actually **connect** them to the internet until there is a “killer application” in the market.

New television services are consumed through mobile as well as fixed devices. Services can be interactive to a state where it is hard to distinguish between “video games” and “television”. Programming comes through all kinds of channels: terrestrial broadcast, cable, satellite, and, of course the Internet. A “Connected TV” device is able to show “classic” TV channels as well as other media from the internet, and assemble them in one place. A modern TV device can show pictures from several sources on the same screen, at the same time – for example, placing a YouTube video stream directly next to the TV signal from a regular public broadcaster.

There are different players in the market, using different distribution channels and pursuing different business models. From a European perspective, however, one should keep an eye out for HbbTV: This is an open standard for “hybrid”, or respectively, “connected” TV. HbbTV is supported by a wide coalition of broadcasters and manufacturers in Germany and has a good chance of becoming the main brand in Europe.

The current legal framework in the EU

EU media law is not ready for Connected TV. Whilst the EU has tried to maintain the legal framework as “technologically neutral”, going as far as renaming the former “Television without Frontiers Directive” as the “Audiovisual Media Services Directive” one must remember the framework was created in a different

media landscape, with different issues and participants in mind.

At the European level the current legal framework is made from a collection of different directives:

- the **telecoms package** (including, inter alia, the framework directive, the access directive and the universal services directive) aims to regulate the **transport** of data through various networks. There are still aspects of the package which touch on the regulation of content, such as the rules directed at electronic program guides in Art. 5 (2) of the Access Directive, or Art. 31 of the Universal Services Directive, which governs “must carry” obligations in the Member States
- the **Audiovisual Media Services Directive** (“AVMSD”) regulates media services. The directive defines two categories: “Television broadcasting” as a linear audiovisual media service, and “on-demand audiovisual media services” as non-linear services, meaning a service “provided by a media service provider for the viewing of programs at the time chosen by the user and at their individual request.” Different regulation applies depending on what service the viewer chooses
- the **E-Commerce Directive** regulates “information society services” – these are usually traditional Internet services, such as access providers and hosting providers. The directive grants safe harbor provisions, but also sets a framework for electronic commerce.

When it comes to Connected TV, the categories of the directives become blurry. Different directives apply to content that appears simultaneously on one TV screen. Within the AVMSD, the relaxed rules for non-linear services and the stricter rules for linear services apply to content on one screen. For example, linear TV news must not be interrupted by commercials. However with Connected TV, the commercials could appear on the same screen at the same time as a news show. While certain erotic content is permitted on the non-linear part of the screen, the same content would be

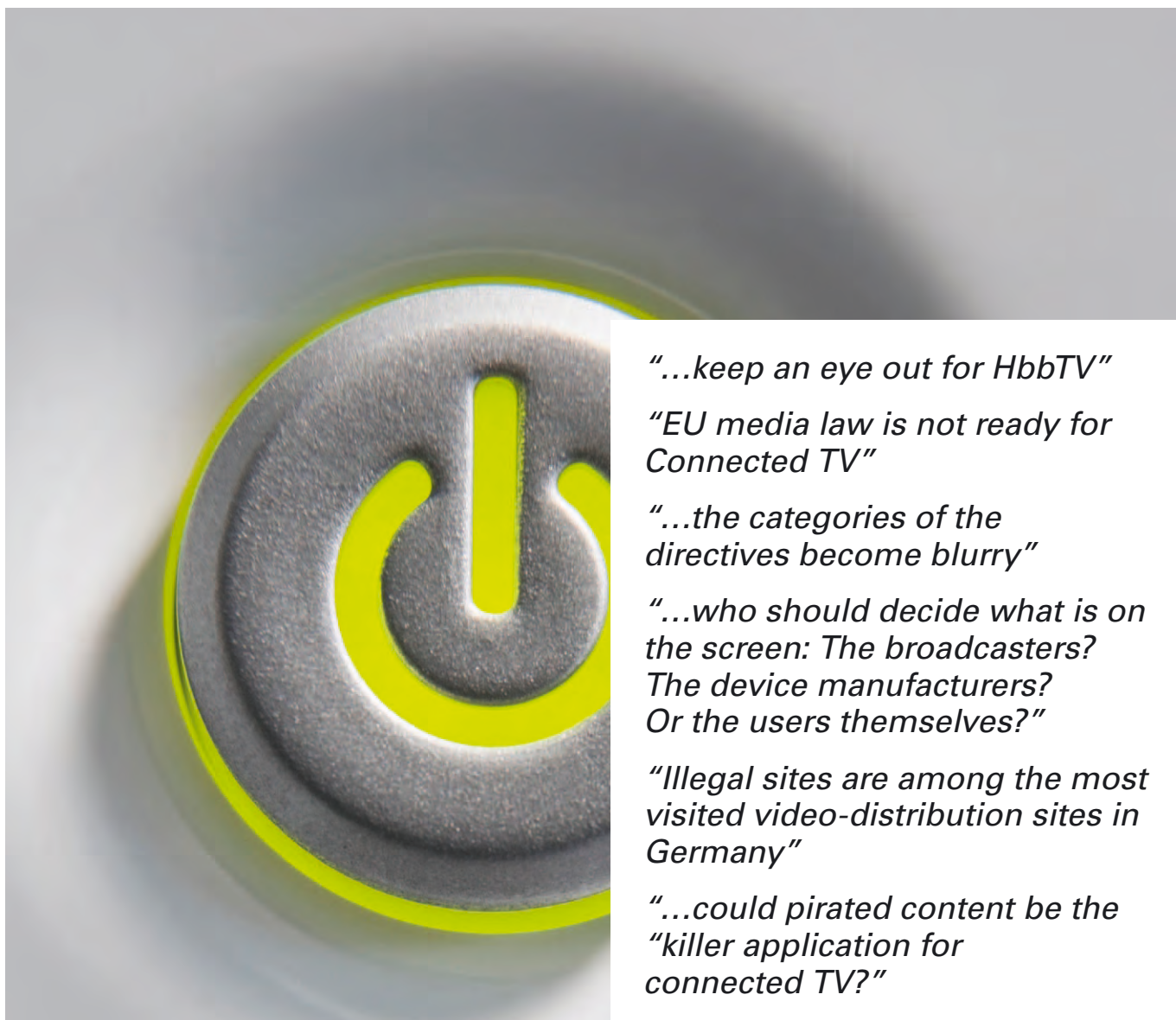
prohibited and sanctioned on the linear part. Evidently, this does not make much sense.

Legal uncertainties

Connected TV will include linear TV, which would be deemed a television service under the regime of the AVMSD. It will include non-linear TV, classified as an on-demand audiovisual media service with more freedoms. It could also include an information society service, caught by the scope of the E-Commerce

Directive. It could of course be all of this at the same time. How does one regulate this in a legislative environment that was essentially built on the idea that there are different types of services that can be addressed by different regulatory frameworks?

Broadcasters worry a lot about their share of advertising revenues. Previously, when a channel was switched "on", the channel operator had full control over what the user could see on the screen. In the age



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of the split screen and “intelligent” displaying devices, this is no longer the case. Users “skip” advertising by using intelligent recording software. In addition platform providers might use layover ads to replace the ads of others with their own. Therefore, at the center of the discussion on Connected TV is the question of who should decide what is on the screen: The broadcasters? The device manufacturers? Or the users themselves?

There is another interesting aspect. Connected TV enables the broadcasters to monitor an audience regionally and is much more accurate than the methods that are used to allocate advertising revenues today. This will change the world of existing oligopolies and present new opportunities for smaller niche players.

Opening the gate for piracy?

So far, the discussion of Connected TV has focused mainly on questions of media law. However, this is only half of the picture. Illegal sites are among the most-visited video-distribution sites in Germany, generating revenues via the streaming of pirated movies. Some of them offer adult entertainment without sufficient youth protection. If TV sets have full access to the Internet, these sites are now only one click away from people’s living rooms. Consuming pirated content might become very convenient for the viewers – could pirated content be the “killer application” for connected TV?

How could legal companies offering video downloads compete with these organized criminals? Even though these groups ignore copyright law, tax law, and youth protection law, they are permitted to operate freely through the Internet. If there is no level playing field, legal providers of content for Connected TV stand no chance.

An opportunity, but also a challenge

Viewed from a legal point of view, there are both dangers and opportunities. Both the EU and domestic media law will have to adapt quickly. However, Connected TV means more freedom of choice for the consumers and more competition

in the market. It will pave the way for new business models, which will increase competition and innovation. Embracing this challenge in the future, will be essential for everyone involved.



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