

Global reform trends of broadcasting regulation

"...services provided at the specific request of individual consumers can be regulated less strictly"

Countries all around the world are examining how to reform their broadcasting regulatory systems, and have been doing so essentially ever since the move towards digital media began. With the global shift towards digital television ("DTT") firmly underway, together with enormous growth in alternatives to broadcast media, the mainly hypothetical "convergence" concept has become reality. Regulators are struggling to keep up.

We can find examples in numerous contexts, particularly among the earliest countries to achieve the digital transition for standard broadcasting, such as examples in Australia, Canada, France, the United Kingdom and Europe as a whole.

Australia initiated its digital transition as early as 1999, with the switchover from analogue to digital television starting in 2011 and have set a deadline for total switchover by 2013. As early as March 2006 the government issued a "Digital challenge" paper, leading to a Convergence Review in December 2010 and a series of committee papers throughout 2011. It also initiated an independent media review to look at future broadcasting policy. A final report was to be issued by the Convergence Review Committee by the end of March 2012 to explore how government policy should respond to the changing landscape.

Canada established its first DTT station in January 2003, with the total switchover first scheduled for August 2011 but this has now been extended to the end of this year. The Canadian regulator the CRTC initiated a "new media" proceeding in May 1999, leading to a decision not to license new forms of television distribution. By 2006, the government ordered a review of the future of the broadcasting environment, leading to numerous CRTC reviews, including "Navigating Convergence 1" in February 2010 and "Navigating Conference II" in August 2011. The CRTC issued a paper earlier in 2011 on shaping regulatory approaches for the future while the Canadian Parliament issued a report on future policy in June 2011.

France has always been a leader in devising future television policy, as demonstrated when it adopted a law on “Television of the Future” in March 2007. The country planned the final date for the digital transition to DTT to be November 2011 under the “France Numérique 2012” plan. The government called on the head of the broadcast regulator the CSA to develop a report on future policy, called the “Boyon Report” which was issued in September 2011, and named after the head of the CSA.

For its part, the **UK** re-launched the DTT transition in October 2002, leading to a final switchover date planned for October 2012. The regulator Ofcom as well as the UK government have held numerous consultations on various aspects of future broadcasting, such as a regulation on video on demand which was concluded in December 2009. The government issued a paper on “Digital Britain” in June 2009, followed by a communication review initiated in May 2011 which remains pending.

Both of these **European Union** member states have adopted policies against the backdrop of the binding EU set of rules published in 2007, the Audiovisual Media Services Directive (“**AVMS**”), which substantially amended and changed the focus of the previous Television Without Frontiers directive.¹ The AVMS Directive sets out the EU-wide regulations for traditional broadcasting, as well as certain rules for services that are ‘like TV’ but not your standard broadcasting, with different levels of strictness depending on whether the service is “on-demand” or not – the theory being that services provided at the specific request of individual consumers can be regulated less strictly.

Under Article 33, of the AVMS Directive, the European Commission was supposed to issue a report not later than 19 December 2011 on the application of the directive and any necessary proposals to update it. Curiously, we are yet to hear anything from the Commission on this report, and the deadline they previously set seems to have been overlooked.

The common theme in the above is that governments are constantly seeking to keep up with the fast paced developments of the broadcast sector. This cannot even be called broadcasting any longer, as so many new services are being developed. For instance, the UK Competition Commission had to reopen a proceeding in March this year on competition in the market for pay to view TV movies, based on the impact of recent services supplied via the Internet. We expect these consultations, reviews, reports and other proceedings will continue, as the media marketplace continues to evolve.



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¹ The 2007 AVMS Directive amended two earlier legislative instruments, making a messy set of provisions difficult to parse through. The entire set of legislation was “codified”, ie, combined into a single document, in Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010.