
EU Media Futures Forum Final report

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1. Introduction & mandate

In December 2011, European Commission Vice-President Kroes installed the EU Media Futures Forum asking it to reflect on the future of the media industries from a global perspective. The Forum members cover the whole value chain of the media business and have been selected and appointed in their personal capacity and on the basis of their knowledge, experience and proven track record.

The mandate of the Forum is threefold:

- (1) to identify the opportunities and challenges linked to the major changes in the media sector as a result of the digitization of the industry,
- (2) to assess how current EU policies help or hinder the transition to a digital single market and which new policies might be needed, and finally,
- (3) to attract attention - at the appropriate level - of public authorities, consumers, creators and the rest of the industry on the urgency to act if Europe is to benefit fully from the digital transition.

The focus of the forum is not to protect industry players and structures but to ensure that competitiveness and growth is assured through creating optimal conditions for in-depth journalism and quality and pluriformity of European content to thrive in the digital age, to the benefit of European democracies.

Christian Van Thillo, CEO of De Persgroep, acted as chair of the Forum. Four meetings were held on 7 December 2011, 29 February 2012, 19 April 2012, and 26 June 2012. The present report depicts the key disruptive trends, identifies how they have affected the industry so far and what their expected impact will be in the future, and issues a wake-up call on the urgency for both public authorities and industry players to act. It presents a set of principles which should be the foundation for future policies and finally it formulates recommendations/actions to be taken by the various actors.

2. Scope

It was agreed by the Forum that it would look at all media content forms made available to consumers regardless of the technological platform. This includes content-wise radio, TV and video content (e.g. movies, TV programs, short form), music, written content online and in print (news, magazines, books and their websites), games. Throughout the text reference to the industries offering these types of services is made under the general umbrella of 'media content sector'. Issues related to social networks, advertising and networks/connectivity are also covered because of their importance for the media content sector.

3. Relevance of the media content sector for Europe

Free and diverse media are a prerequisite for the sustainability of our European democracies and quality of life. They contribute to an informed democratic debate and allow people to form views and make informed choices. They also play a crucial role for the richness of our cultural and linguistic diversity and for enhancing Europe's

cultural heritage. They contribute greatly to the quality of living of European citizens. As a sector, the media content sector moreover has a major societal impact as European citizens spend on average 1/3 of their waking time consuming media in one form or the other. This is why the media content sector is not just like any other sector and therefore needs careful handling when it comes to new initiatives.

At the same time, the European media content sector makes an important contribution to the European economy, holds a significant potential for growth and competitiveness, and employs a highly skilled workforce.

The Internet has continued to provide one of the bright spots in the European economy throughout the crisis. It has emerged as a driver of economic growth, adds substantially to economic activity, helps to create jobs, strengthens competitiveness and offers unprecedented opportunities for growth among small businesses and medium sized enterprises. The Internet economy is growing fast and BCG estimates that it should contribute to a total of \$4.2 trillion to the G-20's total GDP in 2016¹. By then EU's Internet economy should outpace the Internet economies of the US, India and Japan, growing to 5.7%.

For consumers, competition and choice are opening up in an unprecedented way. The Internet is growing and diversifying geographically, with the number of Internet users expected to grow from 2 to 5 billion by the end of the decade. Already connected consumers are spending 20 to 30% of their time online and tend to be highly engaged. The ICT revolution touches upon all economic sectors. Media content industries employ 10.8 million workers in the EU27 and average annual growth levels of media content industries are higher than the overall growth levels in the EU². We are definitely amidst a fifth industrial revolution, entering a new industrial age with information technologies as key drivers. The new digital world opens up a wide array of new opportunities for free speech, democratic expression, enjoying content and economic growth. To reap the benefits of this digital world fully, the challenge for the European media content sector is to adjust to new ways of doing things and for policymakers to create the right conditions for turning disruptive trends into opportunities and exploit the huge potential of the digital revolution.

4. Disruptive trends

The forum identified the **new media ecology** as the most disruptive trend, creating opportunities as well as real challenges:

¹ Boston Consulting Group (BCG), report "The Internet Economy in the G-20: The \$4.2 Trillion Growth Opportunity" as part of its *Connected World Series*, January 2012

² Figures from "Statistical, Ecosystems and Competitiveness Analysis of the Media and Content Industries: A Quantitative Overview", 2012, JRC Technical reports.

1. **Digital convergence:** Digital convergence makes that the media, telecommunications and consumer electronics sector come together.

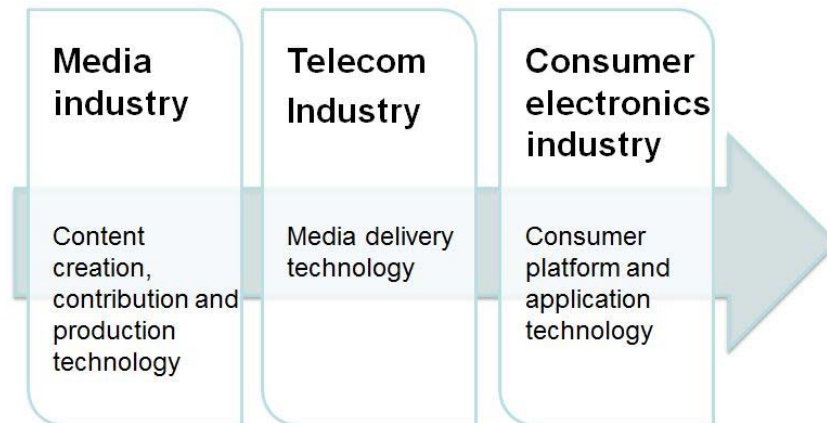


Figure 1: Sectors coming together,
based on Lieven Vermaele '*Technology Strategy Update*' (EBU, 2011)

Various types of content can be searched or aggregated through digital services, distributed over a multitude of distribution channels on a wide variety of connected devices. Media can increasingly be made available anywhere, anytime on any type of device. Access to content, (consumer) data and networks becomes an ever more strategic asset for the competitiveness of media companies, telecom and cable operators, equipment manufacturers and Internet players (search, social media, e-commerce, etc.).

Content storage is no longer an issue and content can easily be circulated beyond frontiers creating a much bigger potential market than ever before globally. This goes for print as well as for audiovisual. In this converging world, traditional media have demonstrated until recently their capacity to retain advertising spending for its offline products whilst attention and audience has progressively been moving online where there is way more content coming from both professionals and users.

With the development of e-commerce and online content services, advertising ad spend is shifting to digital – albeit revenues from digital advertising, at this stage, are only marginally substituting losses in other advertising for traditional media companies. This is mostly at the cost of print, as especially their revenues for classifieds drop. In addition, consumers may have less willingness to pay for online written content. While the online economy will most probably continue to thrive and TV seems to be able to maintain its position, the print sector is clearly in decline and this trend is expected to continue and even accelerate. Overall, a deflationary pressure on the value of the advertising product is noticeable.

Opportunity: Convergence creating new business opportunities and consumption of an increasing array of services on a variety of devices anywhere, anytime and anyplace.

Threat/Challenge: Inability of traditional media players to develop and adopt new business models, compensating for losses incurred in traditional advertising markets; increased competition with new players entering the advertising market; need to adapt offers to cover European wide digital distribution (due to the lack of a digital single market and the associated regulatory barriers).

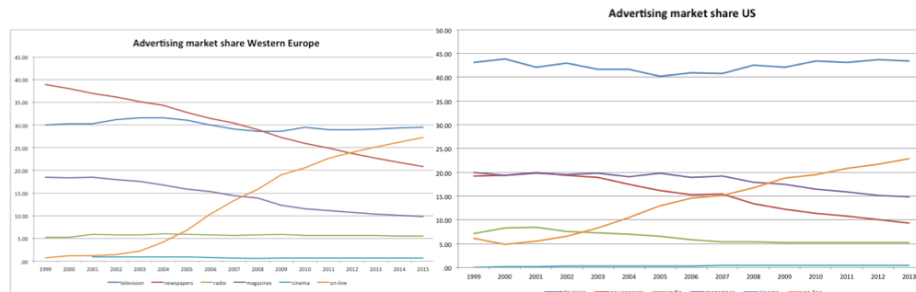


Figure 2: Extrapolation for 2011-2015, based on IAB and ScreenDigest data

2. **From a fragmented linear value chain to centralized platform economics:** Whereas in the analogue world the creation, aggregation, distribution and consumption of media offers was organised along the lines of a linear value chain with clearly defined, perceptible and distinct roles for different players, the current media ecology revolves around platforms.

Digital convergence triggers not only different interactions between previously fairly disconnected players in the market, but also and nearly simultaneously brings about continuously shifting power balances between creation, aggregation, distribution, electronic devices, and consumption. In fact, the four layers of content creation and aggregation, as well as content distribution and consumption become increasingly interlinked while at the same time imbalances in negotiating power in the media value chain occur.

This shift from a linear value chain to a circular, multi-directional media ecology offers a number of opportunities in terms of the creation of new services (through new partnerships) cutting cost for distribution and will partly replace activities and functions of traditional linear players (e.g. in content selection, curation and marketing).

New players investing in innovative business models compete for becoming the primary gateway for consumers for content navigation, for controlling the access to consumers and for collecting consumer data. Given the fact that the new “platform ecosystems” are centred around these few large players who are interacting with a fragmented media industry, some Forum members consider that there are risks that revenues do not end up with those creating and shaping the content and that access to content can be skewed by these platforms. *There clearly exists a different interpretation of what should and what should not be allowed with respect to the direct or indirect use of professional media content on*

the Internet. Such evolutions raise concerns among some Forum members around competition/market dominance and other regulatory issues such as data protection and copyright protection.

All agree that there is a need to find ways for those that invest in content production as well as in innovative services (e.g. for users to discover and access this content) to find economic rewards. In other words: those that create and invest must be able to find economic rewards on market terms for this. Indeed, one should acknowledge that if revenues for actors investing in content creation collapse, creation of quality content in the long term can no longer be guaranteed. The future of the whole sector depends on a healthy situation for all parties in the value chain.

Opportunity: new players and technologies challenging traditional media companies to develop new services, to strengthen their relations with consumers and to develop new business models (potentially with new entrants in the market); renewed partnerships between players to increase exposure and access to works.

Threat/Challenge: unfair use of professional media content; unclarity and uncertainty about who pays/gets paid for content creation; platform owners increasingly becoming content censors and the gateways to data on consumer behaviours, one-sidedly collecting, controlling and exploiting these to the detriment of the wider media ecosystem.

3. **Changing consumer behaviour:** Technological change leads to a major shift in audience habit, from passive media consumption to active content selection and creation. Citizens increasingly expect to watch anything, anywhere, anytime, and over a communication device of their choice. They increasingly become technology-savvy and network-agnostic. Social network applications, personalised recommendations and search technologies influence how users discover and select media content. As demonstrated by the rise of video games, they move to new and innovative media.

The abundance of content and the users' active engagement in content selection and creation, has given rise to a set of online services focusing on content discovery such as social media or search engines. Unlike content aggregation, content discovery does not rely on content selection, but on users' search and increasingly so on users' recommendations and search algorithms. It provides them with more capacity to access their preferred content and engage in new modes of consumption on top of "obligatory" content bundles (newspaper, linear TV channel, music album) by cherry picking individual pieces of content, therefore shifting away from simple passive consumption.

In fact, they become real producers of content and contribute to content abundance of all kinds on the web. The rise of user-created content has taken major proportions and offers unprecedented opportunities for professional media to engage with their audience, foster creativity and new content. Making the most of content discovery in general and of

social media recommendation in particular is central for European media to further develop users' reach online at a local and/or global level.

However, consumers can find it difficult to understand that sometimes access to certain services is limited to certain countries due to geo-blocking. This partly leads to content being accessed illegally. Another factor affecting piracy and a low willingness to pay for digital content is that in many cases it is still very cumbersome for consumers to make micro payments for individual pieces of content.

Finally, in general, the new media ecology is characterised by a partial shift of control from the market to consumers and a reluctance to pay for content. This can only partly be compensated for by personalised and targeted advertising, but *consumers' actions and their monitoring have in themselves become commodities that can be valued by platform and media owners*. Of course, these trends *pose questions related to data protection and privacy*.

Opportunity: increased choice for consumers and possibilities to co-create; new insights into consumer behaviour can lead to improved content and targeted advertising offerings (this requires collection or access to consumer data as to enable media companies to re-define their business strategies).

Threat/Challenge: treating consumers' actions and preferences as commodities might invoke problems related to data protection; unauthorised offers in unfair competition with legal offers and user-unfriendly micro payment models lower the willingness to pay for content; illegal use of content is jeopardising creativity, innovation and investment in content creation.

- 4. Disruptive innovation comes from global, often non-European, technology players.** The new digital players who play a determining role in the new media ecosystems described above have very different characteristics from the European media industries; they are technology-driven, can benefit from global scale and network effects and have access to significant resources both financially and from a human resource perspective. The strong role of these (often non-European) players is of concern to some of the Forum members, especially as they do not play by the same rules of the game. If these players are not established in the EU or do not provide their services from within the EU, they will not face the same regulation and will have to abide only by their often less strict domestic rules, in a number of areas such as data protection, protection of minors, taxation or financing of content creation.

Moreover, as they do not have a European origin, they might not be intimately acquainted with the particularities and the mixed cultural and economic importance of the media industries in Europe. The growing influence of these technology-driven companies may have a negative effect on European media sectors where small nationally organised media

companies play an important role with, possibly, negative consequences for media pluralism, quality and cultural diversity.

At the same time European media have a clear opportunity to benefit from these disruptive innovations at European and global level. Where e-commerce is opening up the single market for flourishing retail activity, the opportunities for digital content (be it for entertainment, cultural diversity or quality journalism) are evidently the strongest of all. Developing sound business models that allow all players, including those investing in content creation, to benefit from the digital economy is a first step to ensure the well-being and growth of the European media content sector. Consolidation can be a step following from this. Of course, further consolidation should be carefully balanced with the European consensus on the importance of diversity.

Opportunity: global players showing the way to fast and effective innovation; new business opportunities at both European and international levels; more efficient and easier access to content and broadened market reach.

Threat/Challenge: global technology-driven companies driving innovation to the detriment of the economic and cultural development of the European media content sector; a non-level playing field and issues of market dominance.

Overall, the emergence of a new media ecology offers many opportunities to develop win-win solutions in terms of content creation, discovery, aggregation, distribution and consumption:

- Wider access to information, services and content choices for consumers.
- Enhanced possibility to be creative and to share information for citizens.
- New opportunities for free speech and democratic expression.
- More opportunities for talent to reach its audiences and for the European cultural diversity to be further exploited.
- New digital rights management tools and mechanisms that better link creators and other right holders to the revenue stream of their works.
- Growth and jobs creation in digital businesses.
- New partnerships (across the different parts of the ecosystem), innovation potential, market access, better understanding of consumption behaviour for businesses.
- Global market meeting local audience demand and local media meeting global opportunities (reaping benefits from a true digital single market).
- Targeted and personalised advertising.

Yet, European players risk not sufficiently seizing these opportunities or not competing on the global scene if challenges with regard to new business models, level playing field, rights management and privacy are not addressed proactively.

5. Eight bottlenecks

On the basis of current trends and despite the national strengths and successes of the European media industries, a concern clearly exists that Europe would insufficiently capture the global opportunities offered by the new media ecology. Europe has a strong and creative content industry, plays a significant role in the consumption device space and media companies successfully address their national audiences. Europe is, however, lagging behind in the development of new content aggregation and Internet service industries. *Admittedly, Europe has also failed to develop a legal framework that facilitates the development of sound and fair business relations between the traditional companies in the media content sector and the new players in the digital ecosystem* (e.g., distributors, device makers, and Internet companies).

Whilst differences might exist between media industry sectors, the main obstacles to the emergence of an effective digital market identified by Forum members and to be tackled urgently are the following:

1) An uncompleted Digital Single Market

The European Union has established a single market for goods and services for more than twenty years. However, moving digital services and content across borders remains a challenge in the EU today.

There are many areas where pan-European platforms and services could support the media sector. Of course, businesses should not be compelled to offer pan-European content or services if they do not want to, and they should retain contractual freedom in that respect; but for those willing to, it should be both possible, and straightforward. The Forum's members agreed that too many technical and regulatory factors stand in the way of such platforms and new business models emerging in Europe, to compete globally without harming cultural diversity. These barriers may include, for example, different consumer protection rules in Europe, creating significant uncertainty for both consumers and businesses, territorial limitations in licensing of copyrighted content, diverging regulation of privacy, intermediary liability, spectrum usage, on-line payment, taxation such as different VAT rates offline and online, different or inflexible rules and commercial practices on release windows, and a lack of an integrated delivery market.

However, there were differing views in the Forum on issues related to copyright, licensing, enforcement, and the unauthorised use of content. Some Forum Members suggested that the current EU copyright law is no longer adequate and adapted to the digital single market. Others thought that existing copyright *acquis* was an adequate foundation on which new business models are being developed. Among these, some recognised that nevertheless work was needed to take advantage of new ways of licensing content, using technology to build better standard ways of identifying rights and expressing terms and conditions of access to and use of that content. Still some others thought that substantive copyright law was fundamentally a red herring and not really a problem when it comes to fostering the growth of legal online offers. In this context, some pointed at the fact that the US have developed a copyright framework that is strong enough for Hollywood and flexible enough for Silicon Valley, pointing at the fact that Europe must aim at achieving a similar balance

through exception measures. In any case, some believed that the historically broad catalogue of 20 facultative copyright exceptions should be strictly consolidated to further harmonize the application of copyright law in the EU. To ensure an equitable level of copyright enforcement throughout the Member States, EU rules could be worded in a more binding way or even be transferred into an EU regulation.

2) Barriers to developing new business models

The Internet world offers vast new business opportunities for an enhanced consumer experience, generating growth and jobs. Many of these new business opportunities rely on the possibility of making use of personal data. The question therefore appears to be which price the consumer has to pay in return and whether there is enough information available to the consumer to give his consent to the use of his personal data. Some Forum members experience that the development and expansion of EU companies might be hindered, because large, mainly US companies processing much more personal data than what is permitted under EU legislation are in a position to capture the entire online activity of a user, holding tremendous power in their hands. Others raised concerns regarding the loss of privacy which goes hand in hand with a tailor made offer. Still others argue that more should be done to ensure an informed consumer choice. Consumers should be aware that data availability is one element that will enable media companies to re-invent their business models, while an illegal and disproportional use of their data is avoided. Discussions stressed the need for the consumers to be well informed so that they can trust these new business models and allow them to develop. This also relates to the possibility of the customer to make relevant choices with regard to the services received, being able to choose objectively between different services and to switch between providers. Overall, the question remains how to develop a European privacy framework, based on the respect of fundamental citizens' rights, suitable to support European content creation by monetising it through better targeted advertising (and also allowing for paid models) and finding an appropriate balance between privacy and business interests.

3) Disagreement on ways to share remuneration

In principle, the digital revolution more than ever permits to facilitate access to creative content to a large, pan-European audience. Many content creators are embracing the opportunities provided by digital technologies to offer works to consumers via an attractive range of new services. However, a large number of content creators are concerned with losing the ability to manage their intellectual property once it is made available online. Content can be easily copied without authorisation and major distributors, hardware manufacturers and/or Internet companies can piggyback without giving them a chance of being remunerated adequately. Some also raised concerns that quality journalism and media plurality may suffer from falling advertising revenues and a lower willingness to pay for online content but also from the development of these new practices. However, a distinction was drawn by some on the difference between services allowing for discoverability or access to content, pointing at the fact that services allowing discoverability drive traffic towards content providers who monetize this access. With the growing amount of content coming online, the development of services allowing for a content to meet its audience should be fully supported.

A number of members also pointed at the question of the "signal integrity" of the content and the programming schedule of broadcasters displayed on hybrid devices, underlining the fact that third parties should not be able to make money on content that is not theirs, be it through overlays, pop-up advertising, automated ad skipping, or by allowing differed viewing.

There can also be a gap between consumers' expectations to share and modify content and the need to respect copyright law. Different levels of copyright enforcement throughout the Member States add to this uncertainty. Some members highlighted that on the one hand the consumer should be made aware of the negative impact of piracy whilst at the same time legal access to content should be made possible.

Also, some members of the Forum suggested that with a growing number of content creators and a fragmented repertoire between the music collecting societies, it has in many countries become difficult for content distributors and collecting societies to effectively license content. Some members felt that the process of rights clearance would be simplified if the EU delivered a modern regulatory framework on transparent collective rights management setting quality standards for national and cross-border licensing. In this context, solutions such as the extended collective licensing (ECL) system that is working and has wide support among all players in the Nordic countries were mentioned by some members.

Combined efforts of different industry stakeholders to set up an open, transparent and interoperable communications platform and database were welcomed. The establishment of a voluntary digital copyright exchange, i.e. a common automated website or network that allows licensors and licensees to directly conduct business, was also seen as an effective means to simplify licensing and to enable tracking of the licences attributed to a work – particularly for some sectors. Today technology provides opportunities to process and license the on-line content distribution, identify what content was consumed and remunerate right holders according to real usage.

Finally, many retail payments in the media sector are relatively small — consider the price of a newspaper. Paying a euro for something online sometimes seems expensive, awkward or not worth the effort. Industry players should make it easier to pay for content, so that even relatively small sums can be remitted easily and safely ("micro payments").

The main objective should be to further develop an environment that facilitates legal digital distribution of copyrighted content whether it is on a local, national, cross-border and pan-European basis. This would significantly improve European conditions for content creation and distribution and allow revenue growth for all parties, according to their contributions and on the basis of contractual freedom.

4) Fragmented support policies to the audiovisual sector

Many European originated entertainment formats are rolled out globally (with adaptation to local markets). UK and the Netherlands are seen, with the US, as the most successful originators of new content formats. Europe is strong at producing quality content but still often has difficulties exporting it.

With the exception of some TV productions which enjoy global success on condition that they have access to adequate financing and a multiple market appeal, Europe is facing an important deficit on its trade balance for audiovisual products. Diffusion of European content inside the EU is hampered by cultural and linguistic specificities and the absence of a genuine single market.

While Europe public support for film and broadcasters plays an important role in fuelling the creation of quality content which helps maintaining our cultural diversity, patchy public support policies in the Member States often reinforce fragmentation. Some members of the Forum argue that given the smaller domestic markets and tougher regulation in Europe compared to the US, quality European content can only survive and compete with subsidies. There has also been criticism on the perceived lack of contributions from distribution and aggregation to content creation. So far these concerns have not been addressed by European media policy.

Because the financing of European works remains complex, geographic (e.g. territorial selling of rights) and temporal segmentations (release windows) are therefore also invoked by some as a major prerequisite for sound financing decisions of producers and investors.

The Forum rather would support quality European content and professional journalism by making sure that content is remunerated and returns on investment reflect value added. Rich and competitive license based digital offering of media content will provide the best opportunity for increasing revenues for content creation in a transparent and fair manner.

5) Lack of a level playing field

There is no level playing field between players in the European market and the global market; between companies in the electronic communications, audiovisual and print sectors; but also between similar services depending whether they operate online or offline. This results from the existence of different rules and regulatory asymmetry, and different enforcement of existing legislation related to advertising, taxes, copyright, competition and privacy in various countries and sectors.

In many cases, non-EU players, if not established in the EU or not providing their services from within the EU, will not face the same regulatory obligations. For example, this is in a context where Member States have developed specific media regulations compatible with their national goals (e.g. compulsory obligation to finance content creation such as in France) and where non EU players may be subject to much lighter regulation and thereby having a competitive advantage.

Converging media (such as over-the-top delivery of content) create particular uncertainty about the accountability/responsibility between industry players in the value chain who increasingly provide competing services through different channels. Net neutrality is increasingly an issue in this context. Similarly, players from different sectors competing in the same convergent industries (telecom versus TV broadcast versus Internet) face regulatory and fiscal asymmetries.

In addition online and offline service providers competing with each other may be subject to different regulations and tax regimes.

A majority of the Forum members agreed for the need to treat traditional content industry players and new Internet aggregators/distributors in an equitable manner. Level playing fields should be created with regard to data-protection/privacy, national VAT laws, advertising regulations, content licensing, etc. The EU should update the VAT system by aligning the VAT rates for digital with the existing rates offline and should also address undesirable regulatory incentives created through regulatory asymmetry between the Audiovisual Media Services Directive and the Electronic Commerce Directive, in particular with a view to Connected TV and the rise of new curation models. There was no consensus however among Forum members on the way to align regulations. Some favoured more stringent regulations applying across sectors (*de facto* exporting the rules applying to media content services); others favoured the implementation of softer regulation for media content services as is the case for Internet services today.

6) Barriers to entry on new markets

Most Forum members found that competition policy does not always seem to adapt sufficiently to market developments and market definitions need to be ensured to the new digital world. This should take into account the fast changing nature of the new technological environment, and its major difference with the traditional media landscape in term of access and creation, as well as the need to create Pan-European media services. The fact that more and more different actors compete on the same markets to gain access to consumers should also be acknowledged.

New actors with new business models (e.g. aggregators and social media) have started to compete to become the main gateway for consumers, be it for content navigation or access to the main screen, for controlling third companies' access to consumers or for collecting consumer data. Some of their practices are raising concerns among regulators and consumer associations about issues such as competition. For example, the way search engines link to their own vertical search services, structure their agreements on search advertisements or restrict the portability of online search advertising campaigns to other competing platforms could raise competition issues.

In this perspective, access to content is also an important element. Therefore, in some sectors, exclusive (territorial) licensing can be a problem as some types of content are must-haves to build a brand. If access to premium content and sports rights is not open and competitive, this can constitute barrier for the entry of players situated down the value chain.

Some Forum members, whose companies were traditionally engaging directly with viewers and consumers, also raise concerns about new players who can act as gatekeepers and who can limit direct access to consumers. Similarly, some members who have been until now in control of what is transmitted to the consumers feel that the integrity of their signal can be violated and that this could hamper competition between players.

Finally, some members highlighted that public service media have also had a crucial role in securing a pluralistic media landscape and in guaranteeing the provision of quality journalistic content - unlike in many other regions. The co-existence of public and private broadcasting as well as publishers in Europe, creates a valuable pluralistic media landscape and is essential for multilingualism and the protection of minorities' and local cultures. However, there has been criticism that as the media sectors converge, the public funding for public service media makes life for European press publishing companies on all platforms even harder. Private broadcasters but also independent news media publishers find the lack of a clear definition of the role of public service broadcasters in the digital age a source of growing concern. At the same time, the prerequisites of functioning public service media arrangements should not be harmed. Their democratic, social and cultural role must be secured through sustainable financial structures, clearly defined remits and role definitions as defined in each respective Member State, together with a harmonised competition regulation in order to avoid undue market distortions. Existing rules should apply in the digital world.

7) Consumers' unequal access to content

The converged media landscape entails many new opportunities for an enhanced consumer experience. However, Europe's citizens can sometimes not access on-line content or services because of 'geo-blocking' (i.e. restricting access to a website because you are situated in a certain country or redirect you to that of 'your' country).

Equally citizens who have acquired content online in one EU country should be allowed to use it in all others, whether they are at home or away. This is critical with the advent of cloud services that can be used efficiently by consumers to store information and content and to use various services (for example social networks, games or music and audiovisual streaming services). There is an important demand for new cloud-based distribution services that could allow their users to access a wide range of media content but most likely they will appeal to consumers only if they are accessible anytime, anywhere and on any device.

Similarly, data access on mobile networks should soon not be more expensive from abroad as from 'home'.

8) Underinvestment in infrastructures

As we are witnessing in other parts of the world, the Internet revolution unleashes demand for content and applications which can only be served if enough high-speed Internet (mobile or fixed) capacity is available. The EU has set ambitious roll-out targets in its Digital Agenda for Europe: by 2020, access for all to much higher Internet speeds (30 Mbps or above) and 50% or more of European households with Internet connections above 100 Mbps. However, with the noteworthy exception of a few Member States, we do not see investments taking off in Europe. Member States must step up their efforts and accelerate them to free the necessary investments. Vice-President Kroes' policy statement³ of 12 July 2012 on enhancing the broadband

³<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/554&format=HTML&aged=0&language=EN&guiLanguage=en>

investment environment is in this light very positive in setting a long term pro-competition and pro-investment policy framework through to 2020. In this context, some members of the Forum noted that economic regulation of broadband must allow a fair return and encourage openness and competition, based on technology neutrality, as intervening to deflate the valuation and pricing of the existing copper network would only undermine the confidence needed to invest in new, much riskier, fibre networks.

6. Scenarios for policy

European businesses are willing and have already started to develop innovative services and content, but they are still in many cases overly focused on the short-term defence of vested interests. A positive climate and mentality for true innovation, with a licence to fail, still lacks in Europe.

European media policies are also highly fragmented in national markets as a result of national and inward looking regulatory measures. Policies in Europe are in addition more focused on enforcement than on enabling content availability. This partly explains why successful digital business models emerged from global technology companies located outside Europe. Their arrival in the EU stimulated competition and enhanced consumer experience. At the same time, it increasingly calls into question (silo) sector specific policies which are not adapted to digital convergence.

The insufficient business dynamics seem to be explained partly by structural and regulatory differences with the US, the cradle of the new global players (a large single language home market, a homogeneous and less regulated environment - e.g. with regard to data protection, advertising volume, market dominance- and a more entrepreneurial mindset/-ecosystem). A truly digital single market would counter part of these problems, even though it might at the same time lead to an even stronger position of the global players. Until now, a rather defensive approach has been pursued in protecting European companies' interests in the media sector, involving *inter alia*, the promotion of European works through the implementation of the Audiovisual Media Services Directive, strict territorial copyright licensing arrangements and public support to the industry to promote creation and cultural diversity. The majority of the Forum members recognises that because of the lack of real pan-European players, Europe is not benefitting from the boom in the creative content market and the emerging new business models. However, some members also pointed to the existence of many small and medium-sized players, e.g. family owned publishing houses which contribute to media diversity in Europe.

The European media industries and policy-makers have two main options in their quest to seize the above-described opportunities offered by the new media ecology and counter the threats and obstacles at the same time.

1. **A defensive scenario 1: Wait and see:** A first possibility for the EU and its Member States for responding to the challenges in the new media ecology is to implement incremental changes in various policy fields. At the same time, market forces and new technological developments might solve over time the current threats, for example, the developments of truly effective micro payment systems or the emergence of digital copyright exchanges. This seems

to be the road taken so far at the EU level. However, in this scenario, there is a risk that a lack of coordination and decisiveness in countering the fragmentation of the markets and conservatism of the industry would not produce the expected benefits for the European players and that the only players benefitting from such changes would be the big media and technology companies established outside the EU. In other words, this scenario implies the EU and its Member States to continue in an incremental way, trusting that the “child diseases” of the disruptive trends in the new media ecology will heal themselves as media companies, distributors, device makers, and internet companies would slowly normalise their business relations, and as technology and new business models develop.

2. **A pro-active scenario 2: Regulate symmetrically, undertake and create with ambition:** Instead, if European countries want to benefit proactively from the digital revolution, a major shift in its approach to the media industries is needed. Major bottlenecks such as asymmetrical regulatory and fiscal playing fields, unfair competition in the market, complicated privacy and copy rights laws need to be removed and cross-European platforms need to be stimulated (e.g. easy micro payment mechanisms, a common privacy approach, copyright clearance mechanisms, piracy fight). The EU and its Member States need urgently to develop and implement an ambitious overall strategy to make its strong and attractive cultural assets the basis of a powerful creative and outreaching economy. This scenario is disruptive as it stands for ambition (instead of caution), a pro-active (instead of reactive) policy and industry attitude, and a policy and regulatory focus on promoting healthy competition in the market and enabling voluntary digital copyright exchange.

7. Principles

- European consumers should be the main beneficiaries of the evolutions in the ICT and content industries, having access to the widest possible variety of content and services in a safe regulatory environment.
- The European media content sector plays an essential role in the quality of daily life of European citizens. It also contributes to pluralism and diversity of cultural expressions in Europe. As an industry, it contributes significantly to the competitiveness, economic growth and job creation in the EU. At the same time, the Internet has emerged as a driver of economic growth, adds substantially to economic activity, helps to create jobs, strengthens competitiveness and offers unprecedented opportunities for growth for European businesses. Europe should therefore exploit the shifts in the media content sector to their full potential and find win-win solutions as the media now need the Internet and the Internet needs the media. This should be ensured through a clear legal framework, that the players in the media ecosystem fully adapt to and benefit from the digital age.
- Content creation, shaping and curation should be incentivized and rewarded, as appropriate. Aggregating and distributing content originating from other creators/curators without proper/equitable counterpart is unacceptable and not sustainable. Those that invest in content creation and production as well as in innovative services should find economic rewards proportional to their input and investments, while at the same time, there should be no disproportional

reward for freeriding on other stakeholders' investment in content. This means a level playing field has to be established at the level of service offerings and of investments in content and in innovative services or business models.

- Pluralism and cultural diversity are distinctive features of EU content and, hence, quality content production and innovation should be supported.
- Competition drives innovation: for European media companies to succeed they need to embrace change and explore new business models; any abuse of dominant positions within and across the value chain should be subject to strict application of competition rules. Fragmentation of European markets limit competition. Some members have added that the key to the de/re-regulation question – at least in relation to competition – is to adopt a common, coherent approach to bottlenecks across converging sectors, such as pay-tv, based on the principle of technology-neutrality. This kind of bottleneck regulation is already successfully applied in the telecoms network sector in defining markets, assessing market power and proposing appropriate remedies.
- A level playing field must be established; we must enable all companies active in the content industries to compete on an equal footing and subject them to the same regulatory and fiscal principles. This is particularly so in a converged media world.
- The need for a balanced approach regarding personal data protection, based on a sensible balance between the fundamental rights of citizens and the economic needs and goals of businesses in Europe that will allow digital business to develop.

8. How to come back from behind: 8 steps to success

We have mapped out 8 key bottlenecks that have to be addressed if we are to succeed. **We offer both a vision and a roadmap. The proposed solutions are clear and actionable, but they are not a menu from which you can pick the ones that are easy and forget the ones that are hard: they are all needed.** Many of the proposed solutions have been tried and tested in Member States and/or in other parts of the world, and shown to work. **All it takes now is a concerted effort from all stakeholders** – the media content industry, creators, collecting societies and right holders, Member States and the European institutions, to implement this vision and the corresponding roadmap. We either rise to the occasion or accept Europe's media sector's gradual but steady decline.

That's the choice.

1. After 20 years of single market, it is still much easier to move boxes than digital goods across borders. We deny ourselves one of our greatest assets. We can't succeed in this competitive environment with one arm tied behind our back.

Solution 1: Turn Europe into a Digital Single Market by 2015

We, the Media Forum, call for a true digital single market by 2015, and for the removal of obstacles resulting from diverging rules and practices at national level in areas ranging from protection of personal data, consumer rights, taxation, mobile payments and from a lack of an integrated postal and delivery

market.

The freedom to contract remains of the essence. Offline and online VAT should be aligned to incentivize creation of quality content; and because of the important role media and the press play in our democratic European societies such alignment should be at the lower rate.

Some of us take the view that the copyrights framework should be updated with a view to simplifying licensing (particularly for music), harmonising exceptions and promoting common interpretations, whilst others argue that the copyright framework is not an impediment. Some call for aligning release windows⁴ for new productions to promote pan-European services, others however disagree.

2. The Internet world offers vast new business opportunities generating growth and jobs. Many of them rely on the possibility of using personal data. In Europe, we care deeply about the protection of personal data. But we believe there are ways to protect personal data and promote consumer benefits, whilst enabling Europe's Internet sector to grow.

Solution 2: Promote new business models

We, the Media Forum, call for one set of rules for the processing of personal data across the EU which give individuals control over their data. However, we believe that new business models can be developed on the basis of appropriate information, transparency, choice and user friendly approaches which safeguard privacy whilst delivering important consumer benefits.

3. We believe strongly in innovation and new business models. But business can only continue to produce content if the reward is fairly shared between the players of the value chain (e.g. artists, media companies, and searched and aggregated digital services). This is the necessary condition for a healthy business for all and more particularly to support quality journalism. We believe the best response to illegal downloading is legal offers, and making payment for content easier, notably through the use of the latest technological means.

Solution 3: Reward creators and creation of content

We, the Media Forum, call for respect for the ownership of programming as well as of content; for promoting industry-to-industry and collective negotiations as well as inter-industry platforms to ensure appropriate remuneration complying with and supported by competition policy; for developing the necessary standards to encourage the use of ICT in managing creative content, and for promoting an EU-wide system for micro-payments.

We also propose a distinguished European prize for quality journalism (audiovisual and off and online press), established by industry/press associations, to reward outstanding journalism activities in Europe. We hope

⁴ Release windows are a common practice under which films are released only gradually over time to theatres, followed by video (DVD), then pay-per-view television, monthly subscription pay-TV networks and finally basic cable and/or free broadcasting.

that in due time this would become as prestigious as the Pulitzer Prize is in the US.

4. In Europe, public support for film and broadcasters plays an important role in fuelling the creation of quality content. Global competition is fierce while Europe is still hampered by cultural and linguistic specificities and diverging public support policies in the Member States. We need to pool our resources to create critical mass and stand a better chance of exporting European content.

Solution 4: Adapt financial support for audiovisual creation

We, the Media Forum, call for a more efficient and well-endowed European support programme and better coordination between national financing schemes promoting the creation and distribution of audiovisual works that go beyond national/regional borders based on fair competition. Improving access to venture capital is key.

EU and national R&D should fund technologies to overcome linguistic barriers and improve production and distribution of content.

5. Different rules apply for offline and online; to broadcasters, telecom or information service providers; or between EU-based and third-country based companies operating in the same marketplace. This is not fair competition.

Solution 5: Treat like as like

We, the Media Forum, call for equitable regulatory and fiscal principles whenever economic players compete with each other on the same market, whether online or offline players, from outside or inside the EU.

Regulatory principles should reflect the changing landscape of the media, existing and new, both inside and outside the EU. For example, European media companies are subject to strict advertising rules (e.g. limits to advertising time) whereas companies established in third countries, but providing services into the EU, are under no such obligation. The same is true for other public interest obligations such as rules on protection of vulnerable groups (e.g. minors).

Within the EU, the wide variation in VAT rates and national or regional requirements makes it difficult to compete in an online environment.

6. Competition drives innovation; abiding by competition rules will create more growth for each and every actor in the value chain. But competition rules also need to adjust to the fast changing world of Internet.

Solution 6: Avoid new barriers to entry

We, the Media Forum, call for:

- (i) close monitoring of developments in the online and offline environment (many examples of possible new barriers exist and could include restriction of

access for broadcasters to the "main" screen, thus to reach their audiences, aggregation, advertising overlays or popups running over somebody else's content), and,

(ii) competent authorities to take effective action when such developments threaten competition and/or innovation.

Some felt that the role and remit of public services in the digital environment should be clarified to avoid distortions of competition. Others took the view that in the digital world the same rules should apply for public services irrespective of the delivery platforms.

7. Europe's citizens can often not access on-line content or services because of 'geo-blocking' (e.g access to a website is blocked because you are situated in a certain country). Equally, citizens who have acquired content online in one EU country are not always allowed to use it in all others. This can create friction with the advent of cloud services. Similarly high costs of data access on mobile networks are a major barrier to users roaming across the EU.

Solution 7: Increase access to and use of legal content and services from anywhere in the EU on any device for all citizens in the EU

We, the Media Forum, strongly encourage the development of legal content offerings that consumers can access easily across the EU from wherever it is produced and on whatever device. Usage of acquired content should be allowed across the EU. We call on industry to commit to these principles.

We support the EU's data roaming regulation and urge policymakers to work towards a genuine single market for data where any price difference between roaming and use in the home market can be justified.

We need clarity on net-neutrality, allowing for innovation and preventing anti-competitive practices, and a strong commitment from all to the open Internet based on fundamental rights and transparency.

8. Without superfast Internet access, the media sector cannot distribute efficiently its content and European consumers cannot fully enjoy it, as many services and applications (e.g. HDTV and cloud) need much higher speeds. As a principle, all European citizens should have fixed and mobile access to high-speed Internet in line with the Digital Agenda for Europe targets.

Solution 8: Quickly roll out the infrastructure of the future

We, the Media Forum, call for all EU citizens to have access to high-speed Internet as soon as possible and for the EU to become a global leader in ubiquitous high-speed Internet access by 2020.

This will require a pro-competitive, pro-investment policy framework which incentivizes the huge investments needed in next generation networks (both fixed and mobile). Transparency must be ensured so that consumers know they are getting what they pay for (e.g. guaranteed minimum download speeds).